

the designated area and remain clear of the area at a safe distance until launch operations are complete, and launch will not occur until the designated area is clear. Patrol aircraft may also employ the method of warning known as "buzzing" which consists of low flight by the airplane and repeated opening and closing of the throttle. Surveillance vessels may also come close to watercraft and employ flashing light to establish communications to indicate that the watercraft is entering the designated hazard area.

(5) Any watercraft being so warned shall immediately leave designated area until the conclusion of launch operations, and shall remain at a distance that it will be safe from falling debris.

(6) Nothing in this regulation shall be intended to prevent commercial fishing or the lawful use of approved waterfowl hunting blinds along the shorelines of the Wallops Flight Facility at Wallops Island, Virginia, provided that all necessary licenses and permits have been obtained from the Virginia Marine Resources Commission, Virginia Department of Game and Inland Fisheries, and U.S. Fish and Wildlife Service. Commercial fishermen and waterfowl hunters must observe all warnings and range clearances during hazardous range operations.

(c) *Enforcement.* The regulations in this section shall be enforced by the Director, National Aeronautics and Space Administration, Goddard Space Flight Center, Wallops Flight Facility Wallops Island, Va., or such agencies as he or she may designate.

Dated: September 30, 2011.

**Michael G. Ensich,**

*Chief, Operations and Regulatory, Directorate of Civil Works.*

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## DEPARTMENT OF AGRICULTURE

### Forest Service

**36 CFR Parts 212, 214, 215, 218, 222, 228, 241, 251, 254, and 292**

**RIN 0596-AB45**

### Appeal of Decisions Relating to Occupancy or Use of National Forest System Lands and Resources

**AGENCY:** USDA, Forest Service.

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** The Forest Service, United States Department of Agriculture (USDA), is proposing to update, rename, and relocate the administrative appeal regulations governing occupancy or use of National Forest System (NFS) lands and resources. The appeal process for decisions related to occupancy or use of NFS lands and resources has remained substantially unchanged since 1989. The proposed rule simplifies the appeal process, shortens the appeal period, and reduces the cost of appeal while still providing a fair and deliberate procedure by which eligible individuals and entities may obtain administrative review of certain types of Forest Service decisions affecting their occupancy or use of NFS lands or resources. The proposed rule also relocates the provision entitled "Mediation of Term Grazing Permit Disputes" to a more appropriate location in the range management regulations. Finally, conforming technical revisions to other parts of the Code of Federal Regulations (CFR) affected by this proposed rule are being made.

**DATES:** Comments must be received in writing by December 12, 2011.

**ADDRESSES:** Submit comments through the Web site <http://www.regulations.gov> or mail written comments to Director, Ecosystem Management Coordination, Mailstop 1104, Forest Service, USDA, 1400 Independence Ave, SW., Washington, D.C. 20250-1103. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Persons wishing to inspect the comments are encouraged to call ahead 202-205-1323 to facilitate entry into the building.

Comments concerning the information collection requirements contained in this proposed rule should reference OMB No. 0596-New and the docket number, date, and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements may be submitted as provided for comments on the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Deb Beighley, Assistant Director, Appeals and Litigation, Ecosystem Management Coordination staff, 202-205-1277, or Mike McGee, Appeals Specialist, Ecosystem Management Coordination staff, 202-205-1323.

#### **SUPPLEMENTARY INFORMATION:**

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#### **1. Background and Need for the Proposed Rule**

On January 23, 1989, the Forest Service, USDA adopted a new administrative appeal rule at 36 CFR part 251, subpart C (54 FR 3362) (the 251 Appeal Rule). The 251 Appeal Rule set procedures for holders of or, in some cases, applicants for a written authorization to occupy and use NFS lands and resources to appeal certain Forest Service decisions with regard to the issuance, approval, or administration of the written instrument. The rule established who may appeal, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various timeframes that govern the conduct of an appeal. The appeal procedures vary depending on whether the decision subject to appeal was made by a District Ranger, Forest or Grassland Supervisor, Regional Forester, or the Chief. Except for the addition of a section governing mediation of term grazing permit disputes in 1999, the 251 Appeal Rule has changed little since its adoption in 1989.

As a result of technological advances, communications improvements, and the Agency's experience administering the 251 Appeal Rule for the past 20 years, the Forest Service has identified several modifications that will simplify the appeal process, shorten the appeal time period, and achieve cost savings.

The proposed rule relocates the 251 Appeal Rule to a new part 214, entitled "Appeal of Decisions Relating to Occupancy or Use of National Forest System Lands and Resources." Current provisions in the 251 Appeal Rule will be rewritten or replaced with new provisions, and part 251, subpart C, will be removed. The proposed rule also moves the provision governing mediation of term grazing permit disputes to a new subpart D under the range management regulations found at 36 CFR part 222, since mediation is unique to the range management program and is not part of the administrative review process under the 251 Appeal Rule.

The following table provides a crosswalk between the 251 Appeal Rule and the proposed rule.

| Current 36 CFR part 251, subpart C                        | Proposed 36 CFR part 214                                   |
|---|--|
| § 251.80 Purpose and scope .....                          | § 214.1 Purpose and scope.                                 |
| § 251.81 Definitions and terminology .....                | § 214.2 Definitions.                                       |
| § 251.82 Appealable decisions .....                       | § 214.4 Decisions that are appealable.                     |
| § 251.83 Decisions not appealable .....                   | § 214.5 Decisions that are not appealable.                 |
| § 251.84 Obtaining notice .....                           | § 214.7 Notice of an appealable decision.                  |
| § 251.85 Election of appeal process .....                 | § 214.6 Election of appeal process.                        |
| § 251.86 Parties .....                                    | § 214.3 Parties to an appeal.                              |
| § 251.87 Levels of appeal .....                           | § 214.8 Levels of review.                                  |
| § 251.88(a) Filing Procedures .....                       | § 214.9 Appeal content.                                    |
| § 251.90 Content of notice of appeals;                    |  |
| § 251.88(b), (c) Filing Procedures .....                  | § 214.14 (b), (c), (e), (f), (g) Conduct of an appeal.     |
| § 251.95 Authority of reviewing officer;                  |  |
| No equivalent .....                                       | § 214.14(a) Method of filing.                              |
| No equivalent .....                                       | § 214.14(h) Service of documents.                          |
| No equivalent .....                                       | § 214.14(i) Posting of Final Decision.                     |
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| § 251.89 Time extensions .....                            | § 214.14(d) Extensions of time.                            |
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| § 251.92 Dismissal .....                                  | § 214.10 Dismissal of an appeal.                           |
| § 251.93 Resolution of issues .....                       | § 214.15 Resolution of issues prior to an appeal decision. |
| § 251.94 Responsive statement .....                       | § 214.12 Responsive statement and reply.                   |
| § 251.96 Intervention .....                               | § 214.11 Intervention.                                     |
| § 251.97 Oral presentation .....                          | § 214.16 Oral presentation.                                |
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| § 251.101 Policy in event of judicial proceedings .....   | § 214.20 Exhaustion of administrative remedies.            |
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| § 251.102 Applicability and effective date .....          | § 214.22 Applicability and effective date.                 |
| § 251.103 Mediation of term grazing permit disputes ..... | Moved to 36 CFR part 222, subpart D.                       |

## 2. Section-by-Section Analysis of Proposed Rule Changes

### Section 214.1 Purpose and scope.

This section replaces § 251.80 and generally describes the objectives of the administrative review process outlined in the proposed rule and briefly discusses its key features.

Section 214.1(a) corresponds with § 251.80(b) and explains that the purpose of this regulation is to establish a fair and deliberate process by which certain individuals and entities may obtain administrative review of specific written decisions issued by Forest Service officers that affect written authorizations for the occupancy or use of NFS lands and resources.

Section 214.1(b) corresponds with § 251.80(a) and identifies who is eligible to appeal, the decisions that are appealable and not appealable, the responsibilities of the parties to an appeal, and the time periods and procedures that govern the conduct of appeals.

Section 214.2 Definitions. This section replaces § 251.81 and defines technical terms and individuals who have a specific role in the administrative review process.

The proposed rule removes the following seven terms from the definitions and terminology section in the 251 Appeal Rule because they are not used in the proposed rule: “Deciding Officer,” “Decisions

regarding a written instrument or authorization to occupy and use National Forest System lands,” “Forest Service line officer,” “Issuance of a written instrument or authorization,” “Notice of appeal,” “Parties to an appeal,” and “Reviewing Officer.”

The proposed rule adds the following 12 terms to the definitions section: “Appeal Deciding Officer,” “Responsible Official,” “Cancellation,” “Discretionary Reviewing Officer,” “Holder,” “Modification,” “Operator,” “Prospectus,” “Revocation,” “Solicited applicant,” “Suspension,” and “Termination.”

“Deciding Officer” and “Reviewing Officer” in the 251 Appeal Rule are replaced by “Responsible Official” and “Appeal Deciding Officer,” respectively, in the proposed rule. “Responsible Official” refers to the Forest Service employee (generally a line officer) who has issued an appealable decision under the proposed rule, and “Appeal Deciding Officer” refers to the Forest Service employee (also generally a line officer) one organizational level above the Responsible Official who issues the appeal decision. “Responsible Official” is used in Forest Service appeal regulations at 36 CFR part 215 for projects and activities implementing land and resource management plans and in Forest Service regulations at 36 CFR part 218, which provide a predecisional administrative review

process for decisions or activities authorized under the Healthy Forests Restoration Act, to denote the individual authorized to issue a decision that is subject to the objection process. For consistency, the Agency is proposing to use the same definition for “Responsible Official” in parts 214, 215, and 218. “Appeal Deciding Officer” is used in Forest Service appeal regulations at 36 CFR part 215 to refer to the individual responsible for issuing an appeal decision. For consistency, the Agency is proposing to use the same definition for “Appeal Deciding Officer” in parts 214 and 215. Additionally, the Agency is proposing to use the same definitions for “Appeal,” “Appeal record,” and “Appellant” in parts 214 and 215.

Another term from the 251 Appeal Rule, “Notice of appeal,” is replaced by the term “Appeal” in the proposed rule and refers to the document filed by a holder, operator, or solicited applicant in which relief is sought from an appealable decision. This term minimizes the potential for confusion that parties to an appeal experienced with the term “notice of appeal,” which could be interpreted either as the Forest Service’s notification that an appealable decision had been issued or the holder’s request for an appeal of a Forest Service decision.

The term “written instrument or authorization” in the 251 Appeal Rule

is renamed "written authorization," and the definition is modified in the proposed rule.

Several definitions are adopted from other Forest Service regulations, including "cancellation" from § 222.1; "revocation" from § 251.51, and "termination" from § 251.51.

Seven terms are retained from the 251 Appeal Rule, including "Appeal," "Appeal decision," "Appeal record," "Appellant," "Intervenor," "Oral presentation," and "Responsive statement." The Agency has revised some of the definitions for these terms, but has retained their overall meaning in the proposed rule.

The following terms are defined in the proposed rule:

**Appeal.** A document filed with an Appeal Deciding Officer in which an individual or entity seeks review of a Forest Service decision under this proposed rule.

**Appeal Deciding Officer.** The Forest Service employee who is one organizational level above the Responsible Official and who is authorized to issue an appeal decision under the proposed rule. This term replaces "Reviewing Officer" in § 251.81 and is consistent with terminology in other Forest Service appeal regulations, such as 36 CFR part 215.

**Appeal decision.** The final written decision issued by an Appeal Deciding Officer on an appeal filed under the proposed rule which affirms or reverses the Responsible Official's appealable decision in whole or in part, explains the basis for the decision, and provides additional instructions to the parties as necessary. This change simplifies the corresponding definition found in the 251 Appeal Rule.

**Appeal record.** The documentation and other information filed with the Appeal Deciding Officer by the parties to the appeal within the relevant time period established in § 214.17 and upon which review of an appeal is conducted.

**Appellant.** An individual or entity that has filed an appeal under this proposed rule.

**Cancellation.** The invalidation, in whole or in part, of a term grazing permit or an instrument for the disposal of mineral materials, consistent with use of that term in other Forest Service regulations, such as 36 CFR part 222. This definition addresses a type of decision that is appealable under the proposed rule.

**Discretionary Reviewing Officer.** The USDA or Forest Service employee one organizational level above the Appeal Deciding Officer who is authorized to review an appeal decision or certain

decisions of the Chief under the proposed rule. This definition clarifies the distinction between the Appeal Deciding Officer who reviews appealable decisions and the Discretionary Reviewing Officer who reviews appeal decisions or Chief's decisions.

**Holder.** An individual or entity that holds a valid written authorization to occupy or use NFS lands or resources. The Agency is proposing a corresponding revision to the definition for "holder" in 36 CFR part 251, subpart B, governing special use authorizations.

**Intervenor.** An individual or entity whose request to intervene has been granted by the Appeal Deciding Officer.

**Modification.** A Responsible Official's written revision of the terms and conditions of a written authorization.

**Operator.** An individual or entity conducting or proposing to conduct mineral operations. This definition specifically identifies one class of individuals that may participate in an appeal under the proposed rule.

**Oral presentation.** An informal meeting presided over by the Appeal Deciding Officer during which parties to an appeal may present information in support of their position.

**Prospectus.** A public announcement published by the Forest Service soliciting competitive applications for a written authorization.

**Responsible Official.** A Forest Service employee who is authorized to issue a decision that may be appealed under this proposed rule. This term is the same as the one used in 36 CFR parts 215 and 218 to describe the individual who issues a decision that is subject to review under the appeals or predecisional administrative review process in those rules. The term "Responsible Official" replaces the term "Deciding Officer" in the 251 Appeal Rule.

**Responsive statement.** The document filed by the Responsible Official with the Appeal Deciding Officer that addresses the issues raised and relief requested in an appeal.

**Revocation.** The cessation, in whole or in part, of a written authorization, other than a term grazing permit or an instrument for the disposal of mineral materials, by action of a Responsible Official before the end of the specified period of occupancy or use. This definition addresses a type of decision that is appealable under the proposed rule.

**Solicited applicant.** An individual or entity that has submitted a competitive application in response to a prospectus.

**Suspension.** A temporary revocation or cancellation of a written authorization.

**Termination.** The cessation of a written authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in the written authorization, which does not require action by a Responsible Official. Examples of termination include the expiration of the authorized term; change in ownership or control of the authorized improvements; or change in ownership or control of the holder of the authorization. For consistency, the definition for "termination" in 36 CFR part 251, subpart B, is being revised to match the definition for "termination" in the proposed rule. This definition is included to distinguish revocation and cancellation, which involve cessation of a written authorization due to action of the Responsible Official and are appealable, from termination, which involves cessation of a written authorization without action of the Responsible Official and is not appealable.

**Written authorization.** A term grazing permit, plan of operations, special use authorization, mineral material contract or permit, or other type of written instrument issued by the Forest Service or a lease or permit for leasable minerals issued by the U.S. Department of the Interior that authorizes occupancy or use of NFS lands or resources in accordance with the terms and conditions in the instrument. The Agency is proposing a corresponding change to the definition for "special use authorization" in 36 CFR part 251, subpart B, to expressly state that a special use authorization must be in writing.

**Section 214.3 Parties to an appeal.** This section replaces § 251.86 and states that only holders, operators, solicited applicants, intervenors, and the Responsible Official may be considered a party to an appeal under the proposed rule. The parties eligible to appeal are the same under the proposed rule and the 251 Appeal Rule, except that operators have been added as an eligible party in the proposed rule, and solicited applicants who have been offered a special use authorization and who object to its terms and conditions have been removed as an eligible party from the proposed rule. The Agency does not believe it is appropriate to allow solicited applicants to appeal terms and conditions in special use authorizations because these provisions are standardized nationally and have been approved by the Office of Management and Budget (OMB) as part of

information collection requirements under the Paperwork Reduction Act.

*Section 214.4 Decisions that are appealable.* Replaces § 251.82 and enumerates the types of decisions that are appealable under the proposed rule.

When § 214.4 is read together with § 214.5, the structure of the proposed rule states that a decision is not appealable unless it is expressly set forth in § 214.4. As a result, the list of appealable decisions in § 214.4 is considerably more extensive than the list of appealable decisions in § 251.82. Enumerating all types of appealable decisions will minimize potential confusion regarding whether a decision is appealable.

Section 214.4 is subdivided based on the type of written authorization. Paragraph (a) lists appealable decisions involving the administration of livestock grazing; paragraph (b) lists appealable decisions involving the administration of mineral exploration and development activities; paragraph (c) lists appealable decisions involving the administration of special uses; and paragraph (d) lists appealable decisions associated with other land uses.

Paragraph (a) enumerates the following four types of appealable decisions involving the administration of livestock grazing activities:

- (1) Modification of term grazing permits issued under 36 CFR part 222, subpart A. Issuance of annual operating instructions does not constitute a permit modification and is not an appealable decision;
- (2) Suspension or cancellation, other than cancellation resulting from the permittee's waiver to the United States, of term grazing permits issued under 36 CFR part 222, subpart A;
- (3) Denial of reauthorization of livestock grazing under a term grazing permit if the holder files an application for a new permit before the existing permit expires; and
- (4) Denial of a term grazing permit issued under 36 CFR part 222, subpart C, to a solicited applicant.

Paragraph (b) enumerates the following 9 types of appealable decisions involving the administration of mineral exploration and development activities:

- (1) Approval or denial of an initial, modified, or supplemental plan of operations or operating plan; requirement of an increase in bond coverage; requirement of measures to avoid irreparable injury, loss, or damage to surface resources pending modification of a plan of operations or operating plan; or issuance of a notice of noncompliance pursuant to 36 CFR

part 228, subpart A or D, or part 292, subpart D, F, or G;

(2) Approval or denial of an operating plan, issuance of a notice of noncompliance, extension, suspension, or cancellation, other than cancellation by mutual agreement, for contracts, permits, or prospecting permits for mineral materials issued under 36 CFR part 228, subpart C;

(3) Approval or denial of a surface use plan of operations, request to supplement a surface use plan of operations, suspension of oil and gas operations, or issuance of a notice of noncompliance pursuant to 36 CFR part 228, subpart E;

(4) Consent or denial of consent to the U.S. Department of the Interior's administration of previously issued leases or permits for leasable minerals other than oil and gas resources;

(5) Suspension, or revocation of an operating plan for Federal lands within the Sawtooth National Recreation Area pursuant to 36 CFR part 292, subpart D;

(6) Suspension of locatable mineral operations on NFS lands within the Hells Canyon National Recreation Area pursuant to 36 CFR part 292, subpart F;

(7) Suspension of locatable mineral operations on NFS lands within the Smith River National Recreation Area or approval of an initial or amended operating plan for exercise of outstanding mineral rights on NFS lands within the Smith River National Recreation Area pursuant to 36 CFR part 292, subpart G;

(8) Except as provided in paragraph (7), determinations of the acceptability of an initial or amended operating plan for exercise of outstanding mineral rights on NFS lands; and

(9) Determinations of the acceptability of an initial or amended operating plan for exercise of reserved mineral rights located on NFS lands.

Paragraph (c) enumerates the following 5 types of appealable special uses decisions:

(1) Modification, suspension, or revocation of a special use authorization, other than acceptance of an operating plan, including:

(i) A special use authorization issued under 36 CFR part 251, subpart B or D, other than modification, suspension, or revocation of a noncommercial group use permit, suspension or revocation of an easement issued pursuant to 36 CFR 251.53(e) or 251.53(l), or revocation with the consent of the holder;

(ii) A special use authorization for ingress and egress to intermingled and adjacent private lands across NFS lands issued under 36 CFR part 212, subpart A;

(iii) A special use authorization issued under 36 CFR part 251, subpart A, that authorizes the exercise of rights reserved in conveyances to the United States;

(iv) A permit and occupancy agreement issued under 36 CFR 213.3 for national grasslands and other lands administered under Title III of the Bankhead-Jones Farm Tenant Act;

(v) A permit issued under 36 CFR 293.13 for access to valid occupancies entirely within a wilderness in the NFS;

(vi) A permit issued under the Archaeological Resources Protection Act of 1979 and 36 CFR part 296 for excavation or removal of archaeological resources; and

(vii) A special use authorization governing surface use associated with the exercise of outstanding mineral rights;

(2) Denial of a special use authorization to a solicited applicant;

(3) Implementation of new land use fees for a special use authorization, other than:

(i) Revision or replacement of a land use fee system or schedule that is implemented through public notice and comment; and

(ii) Annual land use fee adjustments based on an inflation factor that are calculated under an established fee system or schedule in accordance with the terms and conditions of a written authorization;

(4) Assignment of a performance rating to holders of outfitting and guiding or campground concession permits that affects reissuance or extension of a special use authorization; or

(5) Denial of renewal of a special use authorization if it specifically provides for renewal and if the holder requests renewal of the authorization before it expires.

Paragraph (d) enumerates one additional type of appealable decision associated with other land uses: denial or revocation of a certification of compliance issued under 36 CFR part 292, subpart C, related to the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area.

*Section 214.5 Decisions that are not appealable.* This section replaces § 251.83. Contrary to the 251 Appeal Rule, which enumerates 15 types of decisions that are not appealable, the proposed rule simply states that any decision not expressly enumerated in § 214.4 is not appealable. This is an easier way to distinguish appealable decisions from those decisions that may not be appealed, to ensure coverage of

all decisions and to eliminate guesswork that occurs when a decision is not included in either an appealable decision list or a non-appealable decision list.

*Section 214.6 Election of appeal process.* This section replaces § 251.85. This section generally corresponds with and merges § 251.85(a) and (b) and explains that some decisions that are appealable under this part may also be appealable under other Forest Service appeal procedures in different parts of the CFR. The proposed rule states that where multiple appeal options exist, a holder, operator, or solicited applicant must elect one of the appeal procedures and in so doing forego the opportunity to pursue an appeal under the other appeal procedures. References to specific parts of the CFR have been removed in this section to ensure that this election requirement applies to all administrative review procedures offered by the Agency. The proposed rule omits the statement in § 251.85(b) that an appellant who has forfeited the right to appeal under part 217 may still intervene pursuant to that part. This statement was eliminated because 36 CFR part 217 is no longer in the CFR. The proposed rule also makes conforming changes to the election of appeals provision in the administrative appeal regulations at 36 CFR part 215.

*Section 214.7 Notice of an appealable decision.* This section replaces § 251.84 and describes the mechanism by which the Responsible Official notifies a holder, operator, or solicited applicant that an appealable decision has been issued concerning either a written authorization possessed by a holder or operator or a written authorization for which a competitive application has been submitted by a solicited applicant.

Section 214.7(a) generally corresponds with § 251.84(a) and requires the Responsible Official to include language in a written decision which informs the affected holder, operator, or solicited applicants whether an opportunity to appeal exists. Unlike the 251 Appeal Rule, which contains a provision requiring the Responsible Official to notify “holders of like instruments” of the decision if these holders had previously made a written request for that information, the proposed rule limits the Responsible Official’s notice obligation to the party or parties directly affected by the decision. As a result, under § 214.11, it is the responsibility of individuals or entities who are not directly affected by the appealable decision to obtain a copy of the decision and to evaluate whether to request participation as an intervenor.

Section 214.7(b) generally corresponds with § 251.84(a) and (b) and specifies what items must be addressed in the notice. For example, the proposed rule requires the notice to the affected holder, operator, or solicited applicant to include:

- The rule or rules under which an appeal may be filed;
- The contents of an appeal;
- The name and mailing address of the Appeal Deciding Officer;
- The filing deadline;
- An expression of the Responsible Official’s willingness to meet to discuss the decision; and
- Where applicable, the opportunity to request mediation of certain term grazing permit disputes.

The first two bulleted items above are new and provide the affected holder, operator, or solicited applicant with a better understanding of appeal options and what must be included in an appeal for further review by the Appeal Deciding Officer. The inclusion of this information in the notice of an appealable decision will expedite the appeal process and may reduce the number of appeals that are dismissed based on the filing of an inadequate appeal.

Section 214.7(c) does not have a counterpart in the 251 Appeal Rule and simply requires the Responsible Official to notify the affected holder, operator, or solicited applicant if the decision is not appealable. As the proposed rule provides for notice of appealable decisions, the Forest Service considers it appropriate to inform affected holders, operators, and solicited applicants of decisions that are not appealable. This approach should lead to greater understanding of the administrative review process and reduce the number of appeals that will be dismissed because the decisions are not appealable.

*Section 214.8 Levels of review.* This section replaces § 251.87 and describes the administrative review procedures applicable to appealable decisions. Unlike the 251 Appeal Rule, which establishes different review procedures depending on whether the appealable decision is made by a District Ranger, Forest or Grassland Supervisor, or Regional Forester, § 214.8 establishes the same review procedures regardless of the position of the Responsible Official who issued the appealable decision.

Specifically, § 251.87(b) and (c) provides for two levels of appeal for appealable decisions made by District Rangers, but only one level of appeal and discretionary review for appealable decisions made by Forest Supervisors

and Regional Foresters. Proposed § 214.8(a)(1) would provide for one level of appeal and discretionary review for appealable decisions made by District Rangers, Forest or Grassland Supervisors, and Regional Foresters. Substituting discretionary review for the second level of appeal for appealable decisions made by District Rangers simplifies and expedites the appeals process for the Agency and the public.

Similar to § 251.87(a) of the 251 Appeal Rule, proposed § 214.8(a)(2) and (b)(2) states that decisions made by the Chief are not appealable, but are eligible for discretionary review by the Under Secretary for Natural Resources and Environment if they fall into one of the categories of decisions listed in § 214.4.

There is no counterpart in the proposed rule to § 251.87(d), which provides for discretionary review of certain dismissal decisions because the Agency does not believe that further administrative review of dismissal decisions, which are based primarily on procedural grounds, is an efficient use of limited agency resources.

*Section 214.9 Appeal content.* This section replaces § 251.90 and enumerates general and specific requirements that must be contained in an appeal, as well as the timeframes for filing an appeal.

While many of the general requirements in § 214.9(a) are identical to the items that must be included in a notice of appeal under § 251.90(b), this section additionally requires an appellant to include an e-mail address, if any; any documents and other information upon which the appeal relies; and a signature and date. This section also requires submission of a copy of the decision being appealed, rather than a “brief description” and date of the decision as in the 251 Appeal Rule. Further, like the 251 Appeal Rule, the proposed rule requires an appeal to include a reference to the title or type of written authorization that is the subject of the appealable decision and the date of application for or issuance of the authorization. However, unlike the 251 Appeal Rule, the proposed rule does not require an appeal to include the name of the “responsible Forest Service officer.”

Section 214.9(b) generally corresponds with § 251.90(c) and identifies additional items that may be included in an appeal depending on the nature of the dispute and the relief being sought by the appellant. In contrast to § 251.90(c), this section requires appellants to include in an appeal a request for an oral presentation, a request for a stay, and, where applicable, a request for

mediation of term grazing permit disputes. Except for grazing mediation, these requests may be made at any time under the 251 Appeal Rule prior to the closing of the appeal record. This proposed change shortens the appeal timeline.

Section 214.9(c) replaces § 251.88(a) and establishes the time frame for filing an appeal. Unlike the 251 Appeal Rule, which establishes 45 days from the date of the notice of the appealable decision as the time within which an appeal must be filed, the proposed rule shortens the timeframe to 30 days with one exception. The exception is the National Forest Roads and Trails Act of 1964, 16 U.S.C. 532 *et seq.*, which states that appeals of decisions to revoke an easement based on abandonment must be filed within 60 days of the revocation decision. The Agency has otherwise shortened the timeframe to file an appeal in recognition of improvements in information and communications technology that have taken place over the last 20 years, which allow for a more expeditious handling of appeals.

*Section 214.10 Dismissal of an appeal.* This section replaces § 251.92 and enumerates the same eight grounds for dismissal of an appeal as currently identified in the 251 Appeal Rule.

Section 214.10(b) corresponds with § 251.92(b) and requires the Appeal Deciding Officer to give written notice of and explain a decision to dismiss an appeal.

Unlike § 251.92(c), which allows for discretionary review of certain dismissal decisions, the proposed rule does not allow discretionary review of any dismissal decisions because discretionary review of these decisions presents an unnecessary administrative burden.

*Section 214.11 Intervention.* This section replaces § 251.96 and sets forth the procedures for participation in an appeal by those whose interests may be affected by the appeal but who do not have standing to appeal. Section 214.11(a)(1) generally corresponds with § 251.96(b) and describes the criteria under which an individual is eligible to intervene in an appeal. Unlike the 251 Appeal Rule, which describes an intervenor as “an applicant for or a holder of a written instrument issued by the Forest Service that is the subject of or affected by the appeal,” the proposed rule describes an intervenor more simply as a holder, operator, or solicited applicant who claims an interest relating to the subject matter of the decision being appealed and is situated so that disposition of the appeal may impair that interest. For example, the holder of a written authorization that

was issued through a competitive process would be eligible to intervene in an appeal filed by an unsuccessful solicited applicant for the authorization.

Section 214.11(a)(2) generally corresponds with § 251.96(a) and requires those wishing to intervene to file a written request with the Appeal Deciding Officer. However, unlike the 251 Appeal Rule, which allows intervention requests to be filed at any time before the appeal record is closed, the proposed rule requires the intervention request to be filed within 15 days of the filing of an appeal. Setting a deadline early in the appeal process for filing intervention requests facilitates the orderly and expeditious handling of appeals.

Section 214.11(b) generally corresponds with § 251.96(b)(1) and (b)(3) and describes the process for requesting intervention in an appeal. In contrast to § 251.96(b)(3), which merely requires the requesting party to show how the decision being appealed would directly affect that party's interests, § 214.11(b) requires the party requesting intervention to include, at a minimum, a description of the requester's interest in the appeal; how disposition of the appeal may impair that interest; the factual and legal allegations in the appeal with which the requester agrees or disagrees; additional facts and issues that are not raised in the appeal that the requester believes are relevant and should be considered; the relief sought by the requester, particularly as it differs from the relief sought by the appellant; a response, where applicable, to the appellant's request for a stay, an oral presentation, or mediation of a term grazing permit dispute; and the requester's signature and date.

Section 214.11(c) is new and allows the appellant and the Responsible Official to submit a written response within 5 days of the filing of the intervention request. Section 214.11(d) generally corresponds with § 251.96(c) with respect to issuance of a decision on an intervention request. Unlike the 251 Appeal Rule, which does not include a timeframe for issuing a decision, the proposed rule requires the Appeal Deciding Officer to decide whether to grant an intervention request within 5 days after a response is due.

Section 214.11 does not include language similar to § 251.96(d), which states that intervention decisions are not appealable, because this statement is unnecessary and duplicative given that the complete list of appealable decisions is specified in § 214.4. Section 214.11 also does not include language similar to § 251.96(e), which requires service of intervention documents on all parties to

the appeal, because § 214.15(h) of the proposed rule establishes broad service requirements for all documents filed in an appeal, including those related to a proposed intervention.

*Section 214.12 Responsive statement and reply.* This section replaces § 251.94. Section 214.12(a) generally corresponds with § 251.94(a) and (b). In contrast to § 251.94(b), which provides for a responsive statement to be filed within 30 days of receipt of the appeal or conclusion of mediation of a term grazing permit dispute, § 214.12(a) provides for a responsive statement to be filed within 20 days of receipt of the appeal or the unsuccessful conclusion of mediation, whichever is later.

Section 214.12(b) generally corresponds with § 251.94(c) with respect to filing a reply to a responsive statement, but gives an appellant (and intervenors where appropriate) 10 days instead of 20 days to file a reply. This approach will provide the appellant (and intervenors) with an opportunity to address contentions in the responsive statement, not to restate the entire appeal (or intervention). This change will shorten the appeal process, yet still provide the appellant (and intervenors) with sufficient time to file a meaningful reply.

*Section 214.13 Stays.* This section replaces § 251.91 and addresses postponement of implementation of an appealable decision until the appeal has concluded. Unlike the 251 Appeal Rule, the proposed rule establishes two categories of stays, authorized and automatic, establishes the procedures for obtaining an authorized stay, and enumerates the types of decisions that are subject to an automatic stay.

Section 214.13(a) generally corresponds with § 251.91(a) and provides that decisions under appeal shall be implemented during the administrative review process unless a stay has been granted or an automatic stay has gone into effect.

Section 214.13(b) generally corresponds with § 251.91(b) through (g) and addresses authorized stays, which are granted at the discretion of the Appeal Deciding Officer. Unlike § 251.91(b), which allows for a stay request to be filed at any time during the appeal period, § 214.13(b)(1) requires an appellant to include a request for stay in the appeal. In contrast to § 251.91(d), which allows a response to a stay request to be filed by the Deciding Officer and other parties but does not specify when or how the response must be filed, § 214.13(b)(2) provides for the Responsible Official to include a response to a stay request in the responsive statement and for a

prospective intervenor to include a response to a stay request in the intervention request. This approach simplifies and enhances the efficiency of the appeal process. Section 214.13(b)(3) requires the Appeal Deciding Officer to issue a decision on the stay request within 10 days after a responsive statement or an intervention request is filed, whichever is later. The Appeal Deciding Officer is also required to provide a brief explanation of the basis for the decision to grant or deny the stay request.

Section 214.13(c) is new and enumerates three types of decisions that are automatically stayed. The first category includes decisions to issue a written authorization pursuant to a prospectus. In this circumstance, a concession permit is being issued through a competitive process. Issuance of the permit needs to be stayed pending appeal, so as to avoid revocation of the permit if the Appeal Deciding Officer determines that the selection decision is improper. The second category includes decisions to recalculate revenue-based land use fees for a special use authorization pursuant to an audit. In this circumstance, delaying implementation of the revised fee would obviate the need to make a refund if the fee calculation is erroneous. The third category includes decisions to cancel or suspend a term grazing permit for which mediation is available and has been requested.

Section 214.13(d) specifies that authorized and automatic stays remain in effect until a final administrative decision is issued in the appeal, unless they have been modified or lifted pursuant to § 214.13(e), or in the case of mediation, for the duration of that process. This provision simplifies and clarifies the current regulation governing duration of stays at § 251.91(h), which provides that stays remain in effect “for the 15-day period for determining discretionary review,” but fails to address the status of the stay beyond that time.

Section 214.13(e) generally corresponds with § 251.91(j). In contrast to § 251.91(j), which allows an Appeal Deciding Officer to change a stay in accordance with its terms or changed circumstances, this section authorizes an Appeal Deciding Officer or Discretionary Reviewing Officer to modify or lift an authorized stay based upon a written request by a party (parties other than the appellant may seek to modify a stay) who demonstrates that the circumstances have changed since the stay was granted and that it is unduly burdensome or unfair to maintain the stay. Section 214.13(e)

obviates the need for a separate section similar to § 251.100(e), which allows for a stay to be extended by a reviewing officer during discretionary review. This provision is unnecessary under the proposed rule because stays will remain in effect, unless modified or lifted, until the final administrative decision is made, including issuance of a discretionary review decision.

Section 214.13 does not include language similar to § 251.91(k), which provides that most decisions to grant, deny, lift, or modify a stay are not subject to appeal or discretionary review. This provision is unnecessary given the omission of this type of decision from the list of appealable decisions proposed in § 214.4. As a result, decisions on stay requests are not appealable under § 214.5.

*Section 214.14 Conduct of an appeal.* This section replaces §§ 251.88(b), 251.88(c), and 251.95. This section consolidates general procedures for the conduct of an appeal currently found at §§ 251.91, 251.94(b) and (c), 251.96(e), 251.99(e), and 251.100(g).

Section 214.14(a), which is new, provides that appeals may be filed in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail.

Section 214.14(b) corresponds generally with § 251.88(b) and states that it is the appellant’s responsibility to file an appeal within the relevant time period and that questions regarding timeliness will be determined by the Appeal Deciding Officer based on specific criteria that vary depending on the filing method used. For example, for appeal documents sent via the U.S. Postal Service (USPS), timeliness will be determined by the postmark. Timeliness determinations for appeal documents sent via a private carrier like Federal Express or the United Parcel Service will be determined by the date of receipt by the private carrier. This section clarifies that timeliness determinations will be based on the date when a document is received for shipment regardless of whether the carrier is public, *i.e.*, USPS, or private. The 5 business day delay is to allow sufficient time for any appeal filed through the U.S. Postal Service or private carrier (*i.e.*, postmarked on date of receipt before the end of the appeal filing period) to be received by the reviewing officer. The proposed rule amends similar sections regarding timeliness determinations in 36 CFR parts 215 and 218 to conform with § 214.14(b).

As in § 251.88(c)(2), § 214.14(c) provides that time periods begin on the day after the event or action triggering

the time period and that all time periods are computed using calendar days (including Saturdays, Sundays, and Federal holidays). However, if a time period expires on a Saturday, Sunday, or Federal holiday, the expiration date is extended to the end of the next Federal business day.

Section 214.14(d) replaces § 251.89 and specifies which time periods in the proposed rule may be extended by the Appeal Deciding Officer. Section 214.14(d)(1) corresponds to § 251.89(b) and states that the parties to an appeal are responsible for meeting the time periods specified, unless an extension of time has been granted by the Appeal Deciding Officer. Contrary to the 251 Appeal Rule, which is silent on this matter, § 214.14(d)(1) also specifies that extension requests by an appellant, intervenor, or Responsible Official must be in writing and must explain the rationale for the request. These requirements improve accountability and prevent unreasonable and unexplained delays in the processing of appeal decisions.

Section 214.14(d)(2) corresponds with § 251.89(a) and enumerates the filing deadlines that may not be extended. Unlike the 251 Appeal Rule, which prohibits extending only the time period for filing an appeal, the proposed rule also would prohibit extending the time period for deciding whether to conduct discretionary review and for issuing a discretionary review decision.

Section 214.14(d)(3) corresponds with § 251.89(b) and provides that all other time periods may be extended upon a finding of good cause for the extension by the Appeal Deciding Officer. An example of good cause might include the occurrence of severe and unanticipated natural events or other extenuating circumstances that make compliance with the filing deadline extremely burdensome. This section also states that extensions will automatically be granted if the parties jointly represent that they are working together in good faith to resolve the dispute and need additional time to reach a mutually agreeable resolution.

Section 214.14(d)(4) corresponds with § 251.89(b) and requires the Appeal Deciding Officer to issue a decision granting or denying the extension within 10 days after a request has been filed.

Section 214.14(d)(5) is new and states that the Appeal Deciding Officer should avoid granting extensions which add more than 60 days to the appeal process.

Taken as a whole, § 214.14(d) reflects the Agency’s understanding that some extensions of filing deadlines may be necessary and perhaps even

unavoidable and provides guidance to the Appeal Deciding Officer on when and for how long to grant extensions.

Section 214.14(e) corresponds with § 251.95(a) and authorizes the Appeal Deciding Officer to issue procedural orders governing the appeal process.

Section 214.14(f) corresponds with § 251.95(b) and authorizes the Appeal Deciding Officer to consolidate appeals of the same or similar decisions involving common issues of fact and law. This section of the proposed rule also authorizes the Appeal Deciding Officer to issue one decision for multiple appeals that involve common issues of fact and law. There is no counterpart in the proposed rule to § 251.95(a)(3) and § 251.95(b)(1), which state, respectively, that decisions involving procedural orders or consolidation decisions are not subject to appeal and further review. These provisions are unnecessary in light of § 214.4, which does not include these decisions in the list of appealable decisions. Consequently, decisions involving procedural orders and consolidation decisions are not appealable under the proposed rule.

Section 214.14(g) corresponds with § 251.95(c) and authorizes the Appeal Deciding Officer to request additional information from the parties to clarify appeal issues and to extend appeal time periods as necessary to allow for submission of the requested information and to give the other parties an opportunity to review and comment on these submissions.

Section 214.14(h) requires all parties to send each other copies of all appeal documents when they are filed with the Appeal Deciding Officer. This section consolidates several sections of the 251 Appeal Rule that use slightly different terminology but essentially require one party to serve documents related to an appeal on all other parties involved in the appeal. Relocating and consolidating these sections into a single provision simplifies procedures, minimizes the potential for confusion, and enhances consistency of administration. This section also makes each party responsible for identifying other parties to the appeal and allows each party to contact the Appeal Deciding Officer for other parties' names and addresses.

Section 214.14(i) is new and requires the Forest Service to post electronic versions of all appeal decisions and discretionary review decisions on the Web site of the national forest or national grassland or region that issued the appealable decision or on the Web site of the Washington Office for Chief's decisions. These postings are required under the Electronic Freedom of

Information Act of 1996 and a 1999 settlement agreement in *Wyoming Outdoor Council v. United States Department of the Interior*, No. 98–220 (D. Wyo.), in which the Forest Service was a party.

Section 214.14(j) is new and promulgates the Agency's current practice to require each party to bear its own expenses in an appeal, including costs associated with preparing the appeal, participating in and obtaining a transcript of the oral presentation, obtaining information regarding the appeal, and retaining professional consultants or counsel.

*Section 214.15 Resolution of issues prior to an appeal decision.* This section replaces § 251.93. Section 214.15(a) corresponds with § 251.93(b) and allows the Responsible Official to discuss an appeal with the appellant or other parties to narrow issues, agree on facts, and determine whether one or more of the issues (or perhaps the entire appeal) could be resolved without the expenditure of time and money required to complete the administrative review process.

Section 214.15(b) corresponds to § 251.93(c) and allows the Responsible Official to withdraw an appealable decision, in whole or in part, during an appeal to facilitate informal resolution of a dispute. The Responsible Official is required to notify the Appeal Deciding Officer and the other parties of the withdrawal. The Appeal Deciding Officer will dismiss the appeal under § 214.10 if withdrawal of the decision eliminates all the issues in dispute in the appeal. The proposed rule does not adopt the provision in § 251.93(a), which provides for consultation with holders of written instruments prior to issuing a written decision. This activity takes place prior to initiation of an appeal and is therefore beyond the scope of the proposed rule.

*Section 214.16 Oral presentation.* This section replaces § 251.97. Section 214.16(a) states that the purpose of an oral presentation is to provide the parties to an appeal with an opportunity to present arguments in support of their position to the Appeal Deciding Officer. The language in § 251.97(a) regarding the informal nature of oral presentations is not included as it does not pertain to the purpose of the oral presentation.

Section 214.16(b) describes the scope of information and argument that may be raised in an oral presentation, which generally reflects the purpose statement of § 251.97(a). Section 214.16(b) also includes a statement allowing new information to be presented in an oral presentation only in those cases where it could not have been raised earlier in

the appeal and where it would be unfair and prejudicial to exclude it.

Contrary to § 251.97(b), which allows an appellant to make a request for an oral presentation at any time prior to the closing of the appeal record, § 214.9(b)(1) requires appellants to request an oral presentation in the appeal. If an appellant requests an oral presentation in the appeal, § 214.16(c) requires the Appeal Deciding Officer to grant the request, unless the appeal has been dismissed under § 214.10. Requiring appellants to request an oral presentation in the appeal will facilitate orderly conduct of appeals, including scheduling of the oral presentation.

Section 214.16(d) corresponds with § 251.97(d), which authorizes oral presentations only during appeal of a decision, not during discretionary review. Section 214.16(e) is new and requires the Appeal Deciding Officer to schedule an oral presentation within 10 days of the filing of the reply to the responsive statement. This provision is intended to promote a more thoughtful discussion of the appeal issues in the oral presentation since it will be held shortly after the filing of the appeal, responsive statement, and reply. In addition, this section expedites the appeal process by eliminating the potential for a lengthy delay between the filing of the reply and the oral presentation. The second sentence of § 214.16(e) corresponds to § 251.97(c) and requires the Appeal Deciding Officer to notify the parties of the date, time, and location of and procedures for the oral presentation.

Section 214.16(f) corresponds to the first sentence of § 251.97(c) and provides that only parties to the appeal may participate in the oral presentation and that the oral presentation will be open to the public at the discretion of the Appeal Deciding Officer.

Section 214.16(g) is new and allows for a summary or transcript of an oral presentation to be included in the appeal record if it is submitted to the Appeal Deciding Officer by a party at the end of the oral presentation. A transcript prepared by a certified court reporter may be included in the appeal record if it is filed with the Appeal Deciding Officer within 10 days after the oral presentation and is paid for by those who requested it.

*Section 214.17 Appeal record.* This section replaces § 251.98. Section 214.17(a) corresponds with § 251.98(a) and requires the Appeal Deciding Officer to maintain the appeal record in one location. Section 214.17(b) corresponds with § 251.98(b) and provides a non-exhaustive list of

documents that should be included in the appeal record.

Section 214.17(c) addresses closure of the appeal record and generally corresponds with § 251.98(d), but takes into account that a transcript of an oral presentation may be submitted 10 days after the oral presentation and still be included as part of the appeal record under § 214.16(g). Therefore, § 214.17(c) states that the appeal record closes the day after a reply is due if no oral presentation is held; the day after an oral presentation is held if no transcript is being prepared; or the day after a transcript of the oral presentation is due if one is being prepared.

In contrast to § 251.98(e), § 214.17(d) clarifies that the appeal record is open for public inspection only to the extent authorized by the Freedom of Information Act, the Privacy Act, and associated regulations at 7 CFR part 1. The inclusion of the qualifying language clarifies that the appeal record may be made available to the public for inspection and disclosure only to the extent allowed by law.

*Section 214.18 Appeal decision.* This section replaces § 251.99. Section 214.18(a) corresponds with § 251.99(c) and requires the Appeal Deciding Officer to issue the appeal decision within 30 days of the closing of the appeal record.

Section 214.18(b) corresponds with § 251.99(a) and states that the appeal decision must be based solely on the appeal record and the oral presentation, if one is conducted.

Section 214.18(c) corresponds to § 251.99(a) and states that the appeal decision must conform to applicable laws, regulations, policies, and procedures.

Section 214.18(d) corresponds with § 251.99(b) and states that appeal decisions may affirm or reverse, in whole or in part, the appealable decision under review; must specify the basis for affirmation or reversal; and may also include instructions for further action by the Responsible Official.

Section 214.18(e) corresponds with § 251.99(f) and states that except where a decision to conduct discretionary review has been made and a discretionary review decision is pending or has been issued, the appeal decision is USDA's final administrative decision on the matter, and that no further administrative review will take place. If a decision to conduct discretionary review has been made but a discretionary review decision is not issued by the Discretionary Reviewing Officer within 30 days, the appeal decision is the final administrative decision. The Agency is not adopting

the provision in § 251.99(d) regarding issuance of a second-level appeal decision within 30 days of receipt of the appeal record from the first level reviewing officer, since the proposed rule does not provide for two levels of appeal.

*Section 214.19 Procedures for discretionary review.* This section replaces § 251.100 and establishes the procedures for discretionary review of appeal decisions by the line officer one level above the Appeal Deciding Officer and of Chief's decisions by the Under Secretary for Natural Resources and Environment. In contrast to § 251.100, this section does not provide for discretionary review of certain dismissal or stay decisions because the Agency believes it is not appropriate to provide for discretionary review of purely procedural decisions.

Section 214.19 differs from § 251.100 in several ways. First, § 214.19(a)(1) requires the Appeal Deciding Officer to transmit the appeal decision, appeal, and appealable decision to the Discretionary Reviewing Officer one day after the issuance of the appeal decision, while § 251.100(b) requires transmission of only the appeal decision and appealable decision. By including a copy of the appeal in the transmitted documents, it will be easier for the Discretionary Reviewing Officer to identify the issues in dispute and determine whether discretionary review is warranted. This approach will simplify, expedite, and reduce the expense of the appeal process. Under § 214.19(a)(2), one day after a Chief's decision that is eligible for discretionary review under § 214.8(b)(2), the Chief will have to submit the decision to the Discretionary Reviewing Officer. Since Chief's decisions are not appealable, there will not be an appeal decision or appeal of a Chief's decision to transmit to the Discretionary Reviewing Officer.

Like § 251.100(a), § 214.19(b) requires the Discretionary Reviewing Officer to decide whether to conduct discretionary review based, at a minimum, on the degree of controversy surrounding the decision, the potential for litigation, and the extent to which the decision establishes precedent or new policy. However, unlike § 251.100(a), which acknowledges the potential that petitions or requests for discretionary review may be submitted by an appellant or intervenor, the proposed rule is silent on this issue. A petition or request is not necessary to trigger discretionary review. The decision as to whether to conduct discretionary review is entirely within the purview of the Discretionary Reviewing Officer, based on evaluation of specific criteria.

Section 214.19(c) states that the time frame for determining whether to exercise discretionary review starts to run upon the Discretionary Reviewing Officer's receipt of the appeal decision, appeal, and appealable decision or Chief's decision. Section 214.19(c) also simplifies and in some cases shortens the time periods in § 251.100(c). Section 251.100(c) gives the Discretionary Reviewing Officer 15 days from receipt of the appeal decision and the appealable decision to decide whether to conduct discretionary review. However, the 251 Appeal Rule provides that the Discretionary Reviewing Officer may request the appeal record within that 15-day period to assist in deciding whether to conduct discretionary review. Once that request is made, the Appeal Deciding Officer has 5 days to transmit the appeal record to the Discretionary Reviewing Officer, who then has 15 days from receipt of the appeal record to decide whether to conduct discretionary review.

In contrast, § 214.19(c) gives the Discretionary Reviewing Officer 30 days from receipt of an appeal decision, appeal, and appealable decision or Chief's decision to decide whether to conduct discretionary review. The Discretionary Reviewing Officer may request the appeal record at any time during this 30-day period to assist in deciding whether to conduct discretionary review. If that request is made, the appeal record must be transmitted to the Discretionary Reviewing Officer within 5 days. However, no additional time is added to the 30-day period if a request for the appeal record is made. Consequently, the proposed rule encourages a Discretionary Reviewing Officer to request the appeal record promptly if there is any uncertainty as to whether discretionary review may be warranted based upon evaluation of the appeal decision, appeal, and appealable decision or Chief's decision. Prompt requests for the appeal record will expedite the process of determining whether to conduct discretionary review.

Section 214.19(d) requires the Discretionary Reviewing Officer to notify the parties in writing of a decision to conduct discretionary review and gives the Discretionary Reviewing Officer the option to notify the parties of a decision not to conduct discretionary review prior to the end of the 30-day period. This approach makes it clear when the administrative review process has concluded for exhaustion purposes.

In addition, § 214.19(d) replaces the provisions in § 251.100(c) regarding the

consequences of taking no action during the discretionary review period. In contrast to § 251.100(c), which provides that if no action is taken during that period, the parties will be notified that the appeal decision stands as USDA's final administrative decision, this section does not require the Discretionary Reviewing Officer to notify the parties that no action has been taken during the 30-day review period. If no action is taken during the discretionary review period, the appeal decision or Chief's decision will constitute USDA's final administrative decision without notification to the parties. This approach eliminates the ambiguity that exists under the 251 Appeal Rule when the 30-day period for issuing a discretionary review decision has expired, but the parties have not yet been notified of the Discretionary Reviewing Officer's decision.

Section 214.19(e) consolidates provisions from § 251.100(c), (d), (f), and (g) regarding issuance of discretionary review decisions. Specifically, like § 251.100(f), § 214.19(e) requires the Discretionary Reviewing Officer to issue a discretionary review decision within 30 days after deciding to conduct discretionary review; like § 251.100(d), § 214.19(e) requires discretionary review to be conducted exclusively on the appeal record; and like § 251.100(c) and (g), § 214.19(e) provides that if the Discretionary Reviewing Officer fails to issue a discretionary review decision within 30 days after notification of the decision to conduct discretionary review, the appeal decision or Chief's decision will constitute USDA's final administrative decision. Section 214.19(e) also provides that the Discretionary Reviewing Officer's decision will constitute USDA's final administrative decision.

There is no counterpart in this section of the proposed rule to § 251.100(e), which allows for extension of stays during the discretionary review process. As discussed earlier, these extensions are unnecessary under the proposed rule, because stays will remain in effect under § 214.13(d) until a final administrative decision is made.

**Section 214.20 Exhaustion of administrative remedies.** This section replaces § 251.101 and states that judicial review of an appealable decision is premature until the plaintiff has exhausted administrative remedies in part 214. However, this section omits the statement in § 251.101 regarding waiver of the exhaustion requirement by the Chief. Since section 212(e) of the Federal Crop Insurance and Department of Agriculture Reorganization Act (7

U.S.C. § 6912(e)) requires exhaustion of the Department's administrative remedies, the Chief lacks the discretion to waive this requirement.

**Section 214.21—Information collection requirements.** The Agency has added this section because information that has to be included in an appeal under proposed § 214.9 is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320. Public comment is being sought on this information collection requirement, as discussed in the Regulatory Certifications section. See the Addresses section for instructions on how to submit comments on the information collection requirement. The OMB control number for this information collection requirement will be included in the final rule.

**Section 214.22 Applicability and effective date.** This section replaces § 251.102 and states that the proposed rule will apply only prospectively, *i.e.*, decisions will be subject to its provisions only on or after the effective date of the final rule. Decisions issued prior to the effective date of the final rule will continue to be governed by the provisions of the 251 Appeal Rule.

### 3. Conforming Substantive Changes to Other Parts of Title 36 of the CFR

**Part 222, Subpart D—Mediation of term grazing disputes.** This proposed rule establishes a new Subpart D to the Forest Service's range management regulations that will contain substantially all of § 251.103 of the 251 Appeal Rule. This provision was added to the 251 Appeal Rule in 1999 following enactment of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, which added grazing disputes on NFS lands to the list of issues eligible for mediation under USDA-certified State mediation programs. The Agency is proposing to relocate this section for two reasons. First, mediation of term grazing permit disputes is separate from the administrative appeal process and is conducted by a mediator affiliated with a State mediation program certified by USDA. If requested and submitted concurrently with an appeal, mediation sets aside the administrative appeal and may render completion of the administrative appeal process unnecessary. Second, mediation of term grazing permit disputes is unique to the range management program and does not apply to decisions involving any other types of written authorizations issued by the Forest Service. Appropriate cross-references will be included in 36 CFR part 214 and 36 CFR

part 222, subpart D, to ensure that the Agency and the public understand the linkage between the grazing mediation and administrative appeal procedures.

### 4. Conforming Technical Changes to Other Parts of Title 36 of the CFR

The following nonsubstantive, technical changes will be made to other parts of Title 36 of the CFR for consistency with the proposed rule:

1. Part 251, subpart C, will be removed in its entirety and will be reserved for additional special uses regulations.

2. Any references in other parts of Title 36 to 36 CFR part 251, subpart C, will be changed to 36 CFR part 214. These references appear at 36 CFR §§ 212.8(d)(5)(iii), 215.11(d), 215.14(b)(5), 228.14, 228.107(c), 241.22(f), 251.60(a)(2)(ii) and (h)(2), 251.126, 254.4(g), 254.13(b), 254.14(b)(6), and 292.15(l).

3. Section 212.8(d)(5) will be reorganized and reworded slightly to match the corresponding provision at § 251.60(h)(1) governing revocation of easements granted under the act of October 13, 1964 (16 U.S.C. § 534).

4. The last two sentences of § 215.1(b) will be removed. Section 215.1 governs the purpose and scope of part 215. The last two sentences of § 215.1(b) duplicate what is contained in § 215.11(d) regarding election of an appeal process.

5. The definitions of "appeal," "appeal deciding officer," "appeal record," "appellant," and "responsible official" in § 215.2 will be revised to conform, to the extent possible, with the definitions of those terms in § 214.2.

6. Section 215.11(d), governing election of an appeal process under part 215, will be revised to match § 214.6, the provision governing election of an appeal process under part 214.

7. Section 215.14(b)(5), governing contents of an appeal under part 215, will be revised to match § 214.9(a)(3), governing contents of an appeal under part 214.

8. Section 215.15(c), governing timeliness determinations of appeal documents under part 215, will be revised to match § 214.14(b), governing timeliness determinations for appeal documents under part 214.

9. The definitions of "objection," "objector," "responsible official," and "reviewing officer" in § 218.2 will be revised slightly to conform, to the extent possible, with the definitions of the same or analogous terms in § 214.2. For example, the term "objection" in § 218.2 is analogous to the term "appeal" in § 214.2, and the term "objector" in

§ 218.2 is analogous to the term “appellant” in § 214.2.

10. Section 218.10(c), governing timeliness determinations of objection documents under part 218, will be revised to match § 214.14(b), governing timeliness determinations for appeal documents under part 214.

11. Under part 214, revocation and cancellation, where the Responsible Official takes action to end a written authorization, are appealable, but termination, where a written authorization ends by operation of law or in accordance with its terms, is not appealable. In several parts of Title 36 that authorize decisions that will be appealable under part 214, “terminate” or “termination” is used in the context that “revoke” or “cancel” or “revocation” or “cancellation” are used in part 214. Changes in terminology will be made in these other parts for consistency with part 214.

Specifically, in § 212.8(d)(5), governing revocation of easements granted under the act of October 13, 1964 (16 U.S.C. 534), “terminate” will be changed to “revoke,” and “terminated” will be changed to “revoked.”

With regard to contracts for mineral materials, in § 228.65(b)(4), “terminate” will be changed to “cancel.” In the heading and text of § 228.66(c), “termination” will be changed to “cancellation,” and “terminated” will be changed to “cancelled.” “Cancellation” and “cancel,” rather than “revocation” and “revoke,” will be used in these provisions because they involve contracts, and the former terms are more appropriate in that context. In addition, “cancellation” and “cancel” are used in corresponding § 228.55.

In § 241.22(e), which governs determinations that proposed activities are consistent with the conservation of fish, wildlife, and their habitat in the Chugach National Forest, “terminate” will be changed to “revoke.”

In § 251.15(a)(2)(iv) and (a)(3), which govern exercise of mineral rights reserved in conveyances to the United States, “termination” will be changed to “revocation,” and minor, nonsubstantive revisions for clarity will be made. When permits governing the exercise of reserved mineral rights are issued, a copy of the regulations at 36 CFR part 251, subpart A, is attached to the permit. For any of these permits issued before the effective date of the final rule, the Agency will interpret “termination” in the regulations attached to the permit to mean “revocation” under 36 CFR part 214, which will be appealable under that part.

In § 254.15(c)(2), which governs land exchanges, “terminating” will be changed to “revoking,” and minor changes will be made for consistency with the corresponding revocation authority in § 251.60(a)(2)(i)(D).

In § 292.18(f), which governs operating plans for mineral activities on Federal lands in the Sawtooth National Recreation Area, “terminate” will be changed to “revoke,” and minor, nonsubstantive revisions will be made.

## 5. Regulatory Certifications

### *Regulatory Impact*

This proposed rule has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant rule. This proposed rule will not have an annual effect of \$100 million or more on the economy, nor will the proposed rule adversely affect productivity, competition, jobs, the environment, public health or safety, or State and local governments. This proposed rule will not interfere with any action taken or planned by another agency or raise new legal or policy issues. Finally, this proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Agency has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this proposed rule.

### *Environmental Impact*

This proposed rule will revise the procedures and requirements for the administrative appeal of certain decisions related to written authorizations for the occupancy or use of NFS lands and resources. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instruction.” The Agency’s preliminary determination is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

### *Energy Effects*

This proposed rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that this proposed rule will not constitute a significant energy action as defined in the Executive Order.

### *Controlling Paperwork Burdens on the Public*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Forest Service is requesting approval of the new information collection requirement associated with this proposed rule.

*Title:* Appeal of Decisions Relating to Occupancy or Use of National Forest System Lands and Resources.

*OMB Number:* 0596—New.

*Expiration Date of Approval:* 3 years from approval date.

*Type of Request:* New information collection.

*Abstract:* This appeal process modifies, renames, and relocates to a new part in the CFR the appeal process for decisions related to occupancy or use of NFS lands and resources. This updated regulation will simplify the appeal process, shorten the appeal period, and reduce the cost of appeal for certain types of Forest Service decisions affecting occupancy or use of NFS lands and resources. The information collected will be used by the Forest Service to determine if the decision that was appealed should be affirmed or reversed in whole or in part.

These appeal procedures are limited to holders, operators, and solicited applicants as defined in the proposed rule, who therefore are the only individuals or entities subject to the information collection requirement.

The information collection required for the administrative appeal process in 36 CFR part 214 is approved and assigned OMB Control No. 0596—New.

*Estimated Number of Respondents:* 160.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 160.

*Estimated Total Annual Burden on Respondents:* 1,280 hours.

*Comments:* Comments are invited on (1) Whether the proposed information collection requirement is necessary for proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency’s estimate of the burden of the proposed information collection requirement,

including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection requirement on those who will respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### *Federalism*

The Agency has considered this proposed rule under Executive Order 13132 on federalism. The Agency has determined that the proposed rule conforms with the federalism principles set out in this executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has concluded that this proposed rule does not have federalism implications.

#### *Consultation and Coordination With Indian Tribal Governments*

Pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the Forest Service is committed to government-to-government consultation on Agency policy that could have an impact on tribes. In that spirit, information about the proposed rule was sent to the Regional Offices, with guidance to distribute the information to tribes in their region and to follow up with visits to tribes if requests for consultation were received. A total of 120 days was provided for this process.

No requests for government-to-government consultation were made, and a small number of comments was received. A few respondents asked for early notification and consultation on actions affecting tribal treaty or other legal rights. No changes were made to the proposed rule as a result of the comments received.

This proposed rule does not have substantial direct or unique effects on Indian tribes. This proposed rule is revising administrative appeal regulations for decisions relating to occupancy or use of NFS lands and resources. Tribal governments may participate in the administrative appeal process by requesting to intervene in an appeal of a decision that may adversely affect tribal rights.

#### *No Takings Implications*

The Agency has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Agency has determined that this proposed rule will not pose the risk of a taking of private property.

#### *Civil Justice Reform*

This proposed rule has been reviewed under Executive Order 12988 on civil justice reform. Upon adoption of this proposed rule, (1) All State and local laws and regulations that conflict with this rule or that impede full implementation of the rule will be preempted; (2) no retroactive effect will be given to this proposed rule; and (3) this proposed rule will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

#### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### **List of Subjects**

##### *36 CFR Part 122*

Highways and roads, National forests, Public lands—rights-of-way, and Transportation.

##### *36 CFR Part 14*

Administrative practice and procedure, National forests.

##### *36 CFR Part 215*

Administrative practice and procedure, National forests.

##### *36 CFR Part 218*

Administrative practice and procedure, National forests.

##### *36 CFR Part 222*

Range management, National forests, National grassland.

##### *36 CFR Part 228*

Environmental protection, Mines, National forests, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping

requirements, Surety bonds, Wilderness areas.

##### *36 CFR Part 241*

Fish, Intergovernmental relations, National forests, Wildlife, Wildlife refuges.

##### *36 CFR Part 251*

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

##### *36 CFR Part 254*

Community facilities, National forests.

##### *36 CFR Part 292*

Mineral resources, Recreation and recreation areas.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend Title 36 Chapter II of the CFR to read as follows:

#### **PART 212—ADMINISTRATION OF THE FOREST TRANSPORTATION SYSTEM**

1. The authority citation for Part 212 continues to read as follows:

**Authority:** 16 U.S.C. 551, 23 U.S.C. 205.

2. In § 212.8, revise paragraph (d)(5) to read as follows:

#### **§ 212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.**

\* \* \* \* \*

(d) \* \* \*

(5)(i) The Chief may revoke any easement granted under the provisions of the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 534):

(A) By consent of the owner of the easement;

(B) By condemnation; or

(C) Upon abandonment after a 5-year period of nonuse by the owner of the easement.

(ii) Before any easement is revoked upon abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, shall be given an appeal in accordance with the provisions of 36 CFR part 214.

3. Add a new part 214 to read as follows:

#### **PART 214—APPEAL OF DECISIONS RELATING TO OCCUPANCY OR USE OF NATIONAL FOREST SYSTEM LANDS AND RESOURCES**

Sec.

214.1 Purpose and scope.

214.2 Definitions.

214.3 Parties to an appeal.

- 214.4 Decisions that are appealable.
- 214.5 Decisions that are not appealable.
- 214.6 Election of appeal process.
- 214.7 Notice of an appealable decision.
- 214.8 Levels of review.
- 214.9 Appeal content.
- 214.10 Dismissal of an appeal.
- 214.11 Intervention.
- 214.12 Responsive statement and reply.
- 214.13 Stays.
- 214.14 Conduct of an appeal.
- 214.15 Resolution of issues prior to an appeal decision.
- 214.16 Oral presentation.
- 214.17 Appeal record.
- 214.18 Appeal decision.
- 214.19 Procedures for discretionary review.
- 214.20 Exhaustion of administrative remedies.
- 214.21 Information collection requirements.
- 214.22 Applicability and effective date.

**Authority:** 7 U.S.C. 1011(f); 16 U.S.C. 472, 551.

#### § 214.1 Purpose and scope.

(a) *Purpose.* This part provides a fair and deliberate process by which holders, operators, and solicited applicants may appeal certain written decisions issued by Responsible Officials involving written instruments authorizing the occupancy or use of National Forest System lands and resources.

(b) *Scope.* This part specifies who may appeal, decisions that are appealable and not appealable, the responsibilities of parties to an appeal, and the time periods and procedures that govern the conduct of appeals under this part.

#### § 214.2 Definitions.

*Appeal.* A document filed with an Appeal Deciding Officer in which an individual or entity seeks review of a Forest Service decision under this part.

*Appeal Deciding Officer.* The Forest Service employee who is one organizational level above the Responsible Official and who is authorized to issue an appeal decision under this part.

*Appeal decision.* The final written decision issued by an Appeal Deciding Officer on an appeal filed under this part which affirms or reverses a Responsible Official's appealable decision in whole or in part, explains the basis for the decision, and provides additional instructions to the parties as necessary.

*Appeal record.* Documentation and other information filed with the Appeal Deciding Officer within the relevant time period by parties to the appeal and upon which review of an appeal is conducted.

*Appellant.* An individual or entity that has filed an appeal under this part.

*Cancellation.* The invalidation, in whole or in part, of a term grazing permit or an instrument for the disposal of mineral materials.

*Discretionary Reviewing Officer.* The U.S. Department of Agriculture (USDA) or Forest Service employee authorized to review an appeal decision by an Appeal Deciding Officer or a decision by the Chief under this part.

*Holder.* An individual or entity that holds a valid written authorization.

*Intervenor.* An individual or entity whose request to intervene has been granted by the Appeal Deciding Officer.

*Modification.* A Responsible Official's written revision of the terms and conditions of a written authorization.

*Operator.* An individual or entity conducting or proposing to conduct mineral operations.

*Oral presentation.* An informal meeting conducted by the Appeal Deciding Officer during which parties to an appeal may present information in support of their position.

*Prospectus.* An announcement published by the Forest Service soliciting competitive applications for a written authorization.

*Responsible Official.* The Forest Service employee who issued a decision that may be appealed under this part.

*Responsive statement.* The document filed by the Responsible Official with the Appeal Deciding Officer that addresses the issues raised and relief requested in an appeal.

*Revocation.* The cessation, in whole or in part, of a written authorization, other than a grazing permit or an instrument for the disposal of mineral materials, by a Responsible Official before the end of the specified period of occupancy or use.

*Solicited applicant.* An individual or entity that has submitted a competitive application in response to a prospectus.

*Suspension.* A temporary revocation or cancellation of a written authorization.

*Termination.* The cessation of a written authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in the authorization, which does not require a decision by a Responsible Official to take effect.

*Written authorization.* A term grazing permit, plan of operations, special use authorization, mineral material contract or permit, or other type of written instrument issued by the Forest Service or a lease or permit for leasable minerals issued by the U.S. Department of the Interior that authorizes the occupancy or use of National Forest System lands or resources and specifies the terms and

conditions under which the occupancy or use may occur.

#### § 214.3 Parties to an appeal.

Parties to an appeal under this part are limited to holders, operators, solicited applicants, intervenors, and the Responsible Official.

#### § 214.4 Decisions that are appealable.

To be appealable under this part, a decision must be issued by a Responsible Official in writing and must fall into one of the following categories:

(a) *Livestock grazing.*

(1) Modification of a term grazing permit issued under 36 CFR part 222, subpart A. Issuance of annual operating instructions does not constitute a permit modification and is not an appealable decision;

(2) Suspension or cancellation, other than cancellation resulting from the permittee's waiver to the United States, of a term grazing permit issued under 36 CFR part 222, subpart A;

(3) Denial of reauthorization of livestock grazing under a term grazing permit if the holder files an application for a new permit before the existing permit expires; or

(4) Denial of a term grazing permit to a solicited applicant under 36 CFR part 222, subpart C.

(b) *Minerals.* (1) Approval or denial of an initial, modified, or supplemental plan of operations or operating plan; requirement of an increase in bond coverage; requirement of measures to avoid irreparable injury, loss, or damage to surface resources pending modification of a plan of operations or operating plan; or issuance of a notice of noncompliance pursuant to 36 CFR part 228, subpart A or D, or part 292, subpart D, F, or G;

(2) Approval or denial of an operating plan, issuance of a notice of noncompliance, extension, suspension, or cancellation, other than cancellation by mutual agreement, for contracts, permits, or prospecting permits for mineral materials issued under 36 CFR part 228, subpart C;

(3) Approval or denial of a surface use plan of operations, request to supplement a surface use plan of operations, suspension of oil and gas operations, or issuance of a notice of noncompliance pursuant to 36 CFR part 228, subpart E;

(4) Consent or denial of consent to the U.S. Department of the Interior's administration of previously issued leases or permits for leasable minerals other than oil and gas resources;

(5) Suspension or revocation of an operating plan for Federal lands within the Sawtooth National Recreation Area pursuant to 36 CFR part 292, subpart D;

(6) Suspension of locatable mineral operations on National Forest System lands within the Hells Canyon National Recreation Area pursuant to 36 CFR part 292, subpart F;

(7) Suspension of locatable mineral operations on National Forest System lands within the Smith River National Recreation Area or approval of an initial or amended operating plan for exercise of outstanding mineral rights on National Forest System lands within the Smith River National Recreation Area pursuant to 36 CFR part 292, subpart G;

(8) Except as provided in paragraph (7), determinations of the acceptability of an initial or amended operating plan for exercise of outstanding mineral rights on National Forest System lands; or

(9) Determinations of the acceptability of an initial or amended operating plan for exercise of reserved mineral rights located on National Forest System lands.

(c) *Special uses.* (1) Modification, suspension, or revocation of a special use authorization, other than acceptance of an operating plan, including:

(i) A special use authorization issued under 36 CFR part 251, subpart B or D, other than modification, suspension, or revocation of a noncommercial group use permit, suspension or revocation of an easement issued pursuant to 36 CFR 251.53(e) or 251.53(l), or revocation with the consent of the holder;

(ii) A special use authorization for ingress and egress to intermingled and adjacent private lands across National Forest System lands issued under 36 CFR part 212, subpart A;

(iii) A special use authorization issued under 36 CFR part 251, subpart A, that authorizes the exercise of rights reserved in conveyances to the United States;

(iv) A permit and occupancy agreement issued under 36 CFR 213.3 for national grasslands and other lands administered under Title III of the Bankhead-Jones Farm Tenant Act;

(v) A permit issued under 36 CFR 293.13 for access to valid occupancies entirely within a wilderness in the National Forest System.

(vi) A permit issued under the Archaeological Resources Protection Act of 1979 and 36 CFR part 296 for excavation or removal of archaeological resources; and

(vii) A special use authorization governing surface use associated with the exercise of outstanding mineral rights;

(2) Denial of a special use authorization to a solicited applicant based on the process used to select a successful applicant;

(3) Implementation of new land use fees for a special use authorization, other than:

(i) Revision or replacement of a land use fee system or schedule that is implemented through public notice and comment; and

(ii) Annual land use fee adjustments based on an inflation factor that are calculated under an established fee system or schedule in accordance with the terms and conditions of a written authorization;

(4) Assignment of a performance rating that affects reissuance or extension of a special use authorization; or

(5) Denial of renewal of a special use authorization if it specifically provides for renewal and if the holder requests renewal of the authorization before it expires.

(d) *Other land uses.* Denial or revocation of a certification of compliance issued under 36 CFR part 292, subpart C, related to the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area.

#### **§ 214.5 Decisions that are not appealable.**

Holders, operators, and solicited applicants may not appeal any decisions issued by a Responsible Official that are not expressly set forth in § 214.4.

#### **§ 214.6 Election of appeal process.**

Decisions may not be appealed by an appellant under more than one part of this chapter. Parties eligible to appeal a decision under more than one part in this chapter must elect the part under which they will pursue their appeal. Once an election is made, parties may not appeal the decision under the parts they did not elect.

#### **§ 214.7 Notice of an appealable decision.**

(a) The Responsible Official shall include language in each written decision which notifies the affected holder, operator, or solicited applicant whether an opportunity to appeal the decision exists.

(b) If the decision is appealable, the notice must specify the regulations under which an appeal may be filed, the contents of an appeal, the name and mailing address of the Appeal Deciding Officer, and the filing deadline. The notice shall also include a statement indicating the Responsible Official's willingness to meet with the affected holder, operator, or solicited applicant to discuss the decision and, where applicable, informing term grazing permit holders of the opportunity to request mediation in accordance with 36 CFR 222.60–222.66.

(c) If the decision is not appealable, the Responsible Official must include a statement in the written decision informing the affected holder, operator, or solicited applicant that further administrative review of the decision is not available.

#### **§ 214.8 Levels of review.**

(a) *Appeal.* (1) One level of appeal is available for appealable decisions made by District Rangers, Forest or Grassland Supervisors, and Regional Foresters. If a District Ranger is the Responsible Official, the appeal is filed with the Forest or Grassland Supervisor. If a Forest or Grassland Supervisor is the Responsible Official, the appeal is filed with the Regional Forester. If a Regional Forester is the Responsible Official, the appeal is filed with the Chief of the Forest Service.

(2) No appeal is available for decisions made by the Chief.

(b) *Discretionary review.* (1) Appeal decisions issued by Forest or Grassland Supervisors, Regional Foresters, or the Chief are eligible for discretionary review. If a Forest or Grassland Supervisor is the Appeal Deciding Officer, discretionary review is conducted by the Regional Forester. If a Regional Forester is the Appeal Deciding Officer, discretionary review is conducted by the Chief. If the Chief is the Appeal Deciding Officer, discretionary review is conducted by the Under Secretary for Natural Resources and Environment.

(2) Decisions made by the Chief that fall into one of the categories enumerated in 36 CFR 214.4 are eligible for discretionary review by the Under Secretary for Natural Resources and Environment.

#### **§ 214.9 Appeal content.**

(a) *General requirements for the contents of an appeal.* All appeals must include:

(1) The appellant's name, mailing address, daytime telephone number, and e-mail address, if any;

(2) A copy of the decision being appealed;

(3) The title or type of written authorization and the date of application for or issuance of the written authorization, if applicable;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the relevant facts underlying the decision being appealed;

(6) A discussion of issues raised by the decision being appealed, including identification of any laws, regulations, or policies that were allegedly violated in reaching the decision being appealed;

(7) A statement as to whether and how the appellant has attempted to resolve the issues under appeal with the Responsible Official and the date and outcome of those efforts;

(8) A statement of the relief sought;

(9) Any documents and other information upon which the appellant relies; and

(10) The signature of the appellant and the date.

(b) *Specific requirements for the contents of an appeal.* In addition to the general requirements in § 214.9(a), the following specific requirements must be included in an appeal, where applicable:

(1) A request for an oral presentation under § 214.16;

(2) A request for a stay under § 214.13;

(3) A request to participate in a state mediation program regarding certain term grazing permit disputes under 36 CFR part 222, subpart D; and

(4) The regulation under which the appeal is being filed if there is an option to file under more than one.

(c) *Time frame for filing an appeal.* An appeal must be filed with the Appeal Deciding Officer within 30 days of the date of the decision, except that an appeal of a decision revoking an easement for abandonment pursuant to the Act of October 13, 1964, 16 U.S.C. 534, must be filed within 60 days of the date of the decision.

#### § 214.10 Dismissal of an appeal.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:

(1) The appeal is not filed within the required time period.

(2) The person or entity that filed the appeal is not a holder, an operator, or a solicited applicant of a written authorization that is the subject of the appealable decision.

(3) The decision is not appealable under this part.

(4) The appeal does not meet the content requirements specified in § 214.9(a), provided that an appeal may not be dismissed for failure to include an appraisal report which has not been completed by the filing deadline.

(5) The appellant withdraws the appeal.

(6) The Responsible Official withdraws the written decision that was appealed.

(7) An informal resolution of the dispute is reached pursuant to § 214.15 or a mediated agreement of a term grazing dispute is achieved pursuant to 36 CFR part 222, subpart D.

(8) The requested relief cannot be granted under applicable facts, laws, regulations, or policies.

(b) The Appeal Deciding Officer shall give written notice of the dismissal of an appeal and shall set forth the reasons for dismissal.

#### § 214.11 Intervention.

(a) *Eligibility to intervene.* To participate as an intervenor in appeals under this part, a party must:

(1) Be a holder, a solicited applicant, or an operator who claims an interest relating to the subject matter of the decision being appealed and is so situated that disposition of the appeal may impair that interest; and

(2) File a written request to intervene with the Appeal Deciding Officer within 15 days after an appeal has been filed.

(b) *Request to intervene.* A request to intervene must include:

(1) A description of the requester's interest in the appeal and how disposition of the appeal may impair that interest;

(2) A discussion of the factual and legal allegations in the appeal with which the requester agrees or disagrees;

(3) A description of additional facts and issues that are not raised in the appeal that the requester believes are relevant and should be considered;

(4) A description of the relief sought, particularly as it differs from the relief sought by the appellant;

(5) Where applicable, a response to the appellant's request for a stay of the decision being appealed;

(6) Where applicable, a response to the appellant's request for an oral presentation;

(7) Where applicable, a response to the appellant's request for mediation of a term grazing permit dispute under 36 CFR part 222, subpart D; and

(8) The requester's signature and the date.

(c) *Response to a request to intervene.* The appellant and Responsible Official shall have 5 days from receipt of a request to intervene to file a written response with the Appeal Deciding Officer.

(d) *Intervention decision.* The Appeal Deciding Officer shall have 5 days after the date a response to a request to intervene is due to issue a decision granting or denying the request. The Appeal Deciding Officer's decision shall be in writing and shall briefly explain the basis for granting or denying the request. The Appeal Deciding Officer shall deny a request to intervene or shall withdraw a decision granting intervenor status as moot if the corresponding appeal is dismissed under § 214.10.

#### § 214.12 Responsive statement and reply.

(a) *Responsive statement.* The Responsible Official shall prepare a

responsive statement addressing the factual and legal allegations in the appeal. The responsive statement and any supporting documentation shall be filed with the Appeal Deciding Officer within 20 days of receipt of the appeal or the unsuccessful conclusion of mediation conducted pursuant to 36 part 222, subpart D, whichever is later.

(b) *Reply.* Within 10 days of receipt of the responsive statement, the appellant and intervenors, if any, may file a reply with the Appeal Deciding Officer addressing the contentions in the responsive statement.

#### § 214.13 Stays.

(a) An appealable decision shall be implemented unless an authorized stay is granted under § 214.13(b) or an automatic stay goes into effect under § 214.13(c).

(b) *Authorized stays.* Except where a stay automatically goes into effect under § 214.13(c), the Appeal Deciding Officer may grant a written request to stay the decision that is the subject of an appeal under this part.

(1) *Stay request.* To obtain a stay, an appellant must include a request for a stay in the appeal pursuant to § 214.9(b)(2) and a statement explaining the need for a stay. The statement must include, at a minimum:

(i) A description of the adverse impact to the appellant if a stay is not granted;

(ii) A description of the adverse impact to National Forest System lands and resources if a stay is not granted; or

(iii) An explanation as to how a meaningful decision on the merits of the appeal could not be achieved if a stay is not granted.

(2) *Stay response.* The Responsible Official may support, oppose, or take no position in the responsive statement regarding the appellant's stay request. Intervenors may support, oppose, or take no position in the intervention request regarding the appellant's stay request.

(3) *Stay decision.* The Appeal Deciding Officer shall issue a decision granting or denying the stay request within 10 days after a responsive statement or an intervention request is filed, whichever is later. The stay decision shall be in writing and shall briefly explain the basis for granting or denying the stay request.

(c) *Automatic stays.* The following decisions are automatically stayed once an appeal is filed by a holder, operator, or solicited applicant:

(1) Decisions to issue a written authorization pursuant to a prospectus;

(2) Decisions to recalculate revenue-based land use fees for a special use

authorization pursuant to an audit issued after November 10, 2011; and

(3) Decisions to cancel or suspend a term grazing permit subject to mediation under 36 CFR 222.60 and for which mediation is requested in accordance with that provision.

(d) *Stay duration.* Authorized stays and automatic stays under § 214.13(c)(1) and (c)(2) shall remain in effect until a final administrative decision is issued in the appeal, unless they are modified or lifted in accordance with § 214.13(e). Automatic stays under § 214.13(c)(3) shall remain in effect for the duration of the mediation period as provided in 36 CFR 222.62.

(e) *Modification or lifting of a stay.* The Appeal Deciding Officer or a Discretionary Reviewing Officer may modify or lift an authorized stay based upon a written request by a party who demonstrates that the circumstances have changed since the stay was granted and that it is unduly burdensome or unfair to maintain the stay.

#### § 214.14 Conduct of an appeal.

(a) *Method of filing.* Appeal documents may be filed in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail.

(b) *Evidence of timely filing.* Parties to an appeal are responsible for ensuring timely filing of appeal documents. Questions regarding whether an appeal document has been timely filed shall be resolved by the Appeal Deciding Officer based on the following indicators:

(1) The date of the U.S. Postal Service postmark for an appeal received before the close of the fifth business day after the appeal filing date;

(2) The electronically generated posted date and time for e-mail and facsimiles;

(3) The shipping date for delivery by private carrier for an appeal received before the close of the fifth business day after the appeal filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

(c) *Computation of time.* (1) A time period in this part begins on the first day following the event or action triggering the time period.

(2) All time periods shall be computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, if a time period ends on a Saturday, Sunday, or Federal holiday, the time period is extended to the end of the next Federal business day.

(d) *Extensions of time.* (1) *In general.* Parties, Appeal Deciding Officers, and Discretionary Reviewing Officers shall meet the time periods specified in this

part, unless an extension of time has been granted under this section.

Extension requests from parties shall be made in writing, shall explain the need for the extension, and shall be transmitted to the Appeal Deciding Officer.

(2) *Time periods that may not be extended.* The following time periods may not be extended:

(i) The time period for filing an appeal;

(ii) The time period to decide whether to conduct discretionary review of an appeal decision or a Chief's decision; and

(iii) The time period to issue a discretionary review decision.

(3) *Time periods that may be extended.* Except as provided in § 214.14(d)(2), all time periods in this part may be extended upon written request by a party and a finding of good cause for the extension by the Appeal Deciding Officer. Written requests for extensions of time will be automatically granted by the Appeal Deciding Officer where the parties represent that they are working in good faith to resolve the dispute and that additional time would facilitate negotiation of a mutually agreeable resolution.

(4) *Decision.* The Appeal Deciding Officer shall have 10 days to issue a decision granting or denying the extension request. The decision shall be in writing and shall briefly explain the basis for granting or denying the request.

(5) *Duration.* Ordinarily extensions that add more than 60 days to the appeal period should not be granted.

(e) *Procedural orders.* The Appeal Deciding Officer may issue procedural orders as necessary for the orderly, expeditious, and fair conduct of an appeal under this part.

(f) *Consolidation of appeals.* (1) The Appeal Deciding Officer may issue an order consolidating multiple appeals of the same decision or of similar decisions involving common issues of fact and law and issue one appeal decision.

(2) The Appeal Deciding Officer may issue one decision for appeals filed under this part and other parts of this chapter that involve common issues of fact and law.

(3) The Responsible Official may prepare one responsive statement for consolidated appeals.

(g) *Requests for additional information.* The Appeal Deciding Officer may ask a party for additional information to clarify appeal issues. If necessary, the Appeal Deciding Officer may extend appeal time periods to allow for submission of the additional

information and to give the other parties an opportunity to review and comment on it.

(h) *Service of documents.* (1) Parties shall send copies of all documents filed in an appeal to all other parties to the appeal at the same time the original is filed with the Appeal Deciding Officer, including the appellant's sending a copy of the appeal to the Responsible Official. Each party is responsible for identifying other parties to the appeal and may contact the Appeal Deciding Officer for assistance regarding their names and addresses. Documents shall not be considered by the Appeal Deciding Officer until they have been sent to all parties to the appeal.

(2) All decisions and orders issued by the Appeal Deciding Officer and the Discretionary Reviewing Officer related to the appeal shall be sent to all parties to the appeal.

(i) *Posting of Final Decisions.* Once a final appeal decision or discretionary review decision has been issued, it shall be posted on the Web site of the national forest or national grassland or region that issued the appealable decision or on the Web site of the Washington Office for Chief's decisions.

(j) *Expenses.* Each party to an appeal shall bear its own expenses, including costs associated with preparing the appeal, participating in an oral presentation, obtaining information regarding the appeal, and retaining professional consultants or counsel.

#### § 214.15 Resolution of issues prior to an appeal decision.

(a) The Responsible Official may discuss an appeal with a party or parties to narrow issues, agree on facts, and explore opportunities to resolve one or more of the issues in dispute by means other than issuance of an appeal decision.

(b) The Responsible Official who issued a decision under appeal may withdraw the decision, in whole or in part, during an appeal to resolve one or more issues in dispute. The Responsible Official shall notify the parties to the appeal and the Appeal Deciding Officer of the withdrawal. If the withdrawal of the decision eliminates all the issues in dispute in the appeal, the Appeal Deciding Officer shall dismiss the appeal under § 214.10.

#### § 214.16 Oral presentation.

(a) *Purpose.* The purpose of an oral presentation is to provide parties to an appeal with an opportunity to present their arguments regarding the appeal to the Appeal Deciding Officer.

(b) *Scope.* Oral presentations shall be limited to clarifying or elaborating upon

information that has already been filed with the Appeal Deciding Officer. New information may be presented only if it could not have been raised earlier in the appeal and if it would be unfair and prejudicial to exclude it.

(c) *Requests.* A request for an oral presentation included in an appeal shall be granted by the Appeal Deciding Officer unless the appeal has been dismissed under § 214.10.

(d) *Availability.* Oral presentations may be conducted during appeal of a decision, but not during discretionary review.

(e) *Scheduling and rules.* The Appeal Deciding Officer shall conduct the oral presentation within 10 days of the date a reply to the responsive statement is due. The Appeal Deciding Officer shall notify the parties of the date, time, and location of the oral presentation and the procedures to be followed.

(f) *Participation.* All parties to an appeal are eligible to participate in the oral presentation. At the discretion of the Appeal Deciding Officer, non-parties may observe the oral presentation, but are not eligible to participate.

(g) *Summaries and transcripts.* A summary of an oral presentation may be included in the appeal record only if it is submitted to the Appeal Deciding Officer by a party at the end of the oral presentation. A transcript of an oral presentation prepared by a certified court reporter may be included in the appeal record if the transcript is filed with the Appeal Deciding Officer within 10 days of the date of the oral presentation and if the transcript is paid for by those who requested it.

#### **§ 214.17 Appeal record.**

(a) *Location.* The Appeal Deciding Officer shall maintain the appeal record in one location.

(b) *Contents.* The appeal record shall consist of information filed with the Appeal Deciding Officer, including the appealable decision, appeal, intervention request, responsive statement, reply, oral presentation summary or transcript, procedural orders and other rulings, and any correspondence or other documentation related to the appeal as determined by the Appeal Deciding Officer.

(c) *Closing of the record.*

(1) The Appeal Deciding Officer shall close the appeal record on:

(i) The day after the date the reply to the responsive statement is due if no oral presentation is conducted;

(ii) The day after the oral presentation is conducted if no transcript of the oral presentation is being prepared; or

(iii) The day after a transcript of the oral presentation is due if one is being prepared.

(2) The Appeal Deciding Officer shall notify all parties to the appeal of closing of the record.

(d) *Inspection by the public.* The appeal record is open for public inspection in accordance with the Freedom of Information Act, the Privacy Act, and 7 CFR part 1.

#### **§ 214.18 Appeal decision.**

(a) Appeal decisions made by the Appeal Deciding Officer shall be issued within 30 days of the date the appeal record is closed.

(b) The appeal decision shall be based solely on the appeal record and oral presentation, if one is conducted.

(c) The appeal decision shall conform to all applicable laws, regulations, policies, and procedures.

(d) The appeal decision may affirm or reverse the appealable decision, in whole or in part. The appeal decision must specify the basis for affirmation or reversal and may include instructions for further action by the Responsible Official.

(e) Except where a decision to conduct discretionary review has been made and a discretionary review decision has been issued, the appeal decision shall constitute USDA's final administrative decision.

#### **§ 214.19 Procedures for discretionary review.**

(a) *Initiation.* (1) One day after issuance of an appeal decision, the Appeal Deciding Officer shall send a copy of the appeal decision, appeal, and appealable decision to the Discretionary Reviewing Officer to determine whether discretionary review of the appeal decision should be conducted.

(2) One day after issuance of a Chief's decision that is eligible for discretionary review under § 214.8(b)(2), the Chief shall send the decision to the Discretionary Reviewing Officer to determine whether discretionary review should be conducted.

(b) *Criteria for determining whether to conduct discretionary review.* In deciding whether to conduct discretionary review, the Discretionary Reviewing Officer should, at a minimum, consider the degree of controversy surrounding the decision, the potential for litigation, and the extent to which the decision establishes precedent or new policy.

(c) *Time period.* Upon receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the Discretionary Reviewing Officer shall have 30 days to determine whether to

conduct discretionary review and may request the appeal record or the record related to the Chief's decision during that time to assist in making that determination. If a request for the record is made, it must be transmitted to the Discretionary Reviewing Officer within 5 days.

(d) *Notification.* The Discretionary Reviewing Officer shall notify the parties and the Appeal Deciding Officer in writing of a decision to conduct discretionary review. The Discretionary Reviewing Officer may notify the parties and the Appeal Deciding Officer of a decision not to conduct discretionary review within 30 days. If the Discretionary Reviewing Officer takes no action within 30 days of receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

(e) *Issuance of a discretionary review decision.* The Discretionary Reviewing Officer shall have 30 days to issue a discretionary review decision after notification of the parties and Appeal Deciding Officer has occurred pursuant to § 214.19(d). Discretionary review shall be limited to the record. No additional information shall be considered by the Discretionary Reviewing Officer. The Discretionary Reviewing Officer's decision shall constitute USDA's final administrative decision. If a discretionary review decision is not issued within 30 days following the notification of the decision to conduct discretionary review, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

#### **§ 214.20 Exhaustion of administrative remedies.**

Judicial review of a decision that is appealable under this part is premature unless the plaintiff has exhausted the administrative remedies under this part.

#### **§ 214.21 Information collection requirements.**

The rules of this part governing appeal of decisions relating to occupancy or use of National Forest System lands and resources specify the information that an appellant must provide in an appeal. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. These information collection requirements are assigned Office of Management and Budget Control Number 0596–New.

#### **§ 214.22 Applicability and effective date.**

This part prescribes the procedure for administrative review of appealable

decisions and Chief's decisions set forth in § 214.4 issued on or after [Date 30 days from date of publication of the final rule in the FEDERAL REGISTER].

## PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

4. The authority citation for part 215 continues to read as follows:

**Authority:** 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381 (Appeals Reform Act), 106 Stat. 1419 (16 U.S.C. 1612 note).

5. In § 215.1, revise paragraph (b) to read as follows:

### § 215.1 Purpose and scope.

(b) *Scope.* Notice of proposed actions and opportunity to comment provide an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land management plans. The rules of this part complement other opportunities to participate in the Forest Service's project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations at 40 CFR parts 1500–1508 and 36 CFR part 220; the National Forest Management Act (NFMA) and its implementing regulations at 36 CFR part 219; and the regulations at 36 CFR part 216 governing public notice and comment for certain Forest Service directives.

6. In § 215.2, revise the definitions for “Appeal,” “Appeal Deciding Officer,” “Appeal Record,” “Appellant,” and “Responsible Official” to read as follows:

### § 215.2 Definitions.

*Appeal*—A document filed with an Appeal Deciding Officer in which an individual or entity seeks review of a Forest Service decision under this part.

*Appeal Deciding Officer*—The U.S. Department of Agriculture (USDA) or Forest Service employee who is one organizational level above the Responsible Official and who is authorized to issue an appeal decision under this part.

*Appeal Record*—Documentation and other information filed with the Appeal Deciding Officer within the relevant time period by parties to an appeal and upon which review of an appeal is conducted.

*Appellant*—An individual or entity that has filed an appeal of a decision under this part.

*Responsible Official*—The Forest Service employee who issued a decision that may be appealed under this part.

7. In § 215.11, revise paragraph (d) to read as follows:

### § 215.11 Decisions subject to appeal.

(d) Decisions may not be appealed by an appellant under more than one part of this chapter. Parties eligible to appeal a decision under more than one part in this chapter must elect the part under which they will pursue their appeal. Once an election is made, parties may not appeal the decision under the parts they did not elect.

8. In § 215.14, revise paragraph (b)(5) to read as follows:

### § 215.14 Appeal content.

(5) The regulation under which the appeal is being filed if there is an option to file under more than one;

9. In § 215.15, revise paragraph (c) to read as follows:

### § 215.15 Appeal time periods and process.

(c) *Evidence of timely filing.* Parties to an appeal are responsible for ensuring timely filing of appeal documents. Questions regarding whether an appeal document has been timely filed shall be resolved by the Appeal Deciding Officer based on the following indicators:

(1) The date of the U.S. Postal Service postmark for an appeal received before the close of the fifth business day after the appeal filing date;

(2) The electronically generated posted date and time for e-mail and facsimiles;

(3) The shipping date for delivery by private carrier for an appeal received before the close of the fifth business day after the appeal filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

## PART 218—PREDECISIONAL ADMINISTRATIVE REVIEW PROCESSES

10. The authority citation for part 218 continues to read as follows:

**Authority:** Pub. L. 108–148; 117 Stat. 1887 (Healthy Forests Restoration Act of 2003).

11. In § 218.2, revise the definitions for “*Objection*,” “*Objector*,”

“*Responsible official*,” and “*Reviewing officer*” to read as follows:

### § 218.2 Definitions.

*Objection:* A document filed with a reviewing officer by an individual or entity seeking predecisional administrative review of a proposed authorized hazardous fuel reduction project as defined in the HFRA.

*Objector:* An individual or entity that has filed an objection to a proposed authorized hazardous fuel reduction project.

*Responsible official:* The Forest Service employee who may approve proposed authorized hazardous fuel reduction projects subject to objections under this part.

*Reviewing officer:* The U.S. Department of Agriculture (USDA) or Forest Service employee who is one organizational level above the responsible official and who is authorized to review objections filed under this part.

12. In § 218.10, revise paragraph (c) to read as follows:

### § 218.10 Objection time periods and process.

(c) *Evidence of timely filing.* Participants in the objection process are responsible for ensuring timely filing of objection documents. Questions regarding whether an objection document has been timely filed shall be resolved by the reviewing officer based on the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing date;

(2) The electronically generated posted date and time for e-mail and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

## PART 222—RANGE MANAGEMENT

13. The authority citation for part 222 is revised to read as follows:

**Authority:** 7 U.S.C. 1010–1012; 7 U.S.C. 5101–5106; 16 U.S.C. 551, 572, 580l; 31 U.S.C. 9701; 43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR 5985).

14. The authority citation for subpart C of part 222 is revised to read as follows:

Authority: 16 U.S.C. 551; 31 U.S.C. 9701; 43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR 5985).

15. Add a new subpart D to Part 222 to read as follows:

Subpart D—Mediation of Term Grazing Permit Disputes

- Sec.
222.60 Decisions subject to mediation
222.61 Parties.
222.62 Stay of appeal.
222.63 Confidentiality.
222.64 Records.
222.65 Costs.
222.66 Ex parte communications.

Authority: 7 U.S.C. 5101–5106; 16 U.S.C. 472,551.

Subpart D—Mediation of Term Grazing Permit Disputes

§ 222.60 Decisions subject to mediation.

The holder of a term grazing permit issued in a State with a mediation program certified by the U.S. Department of Agriculture may request mediation of a dispute relating to a decision to suspend or cancel the permit as authorized by 36 CFR 222.4(a)(2)(i), (ii), (iv), and (v) and (a)(3) through (a)(6). Any request for mediation must be included in an appeal of the decision to suspend or cancel the permit filed in accordance with 36 CFR part 214.

§ 222.61 Parties.

Only the following may be parties to mediation of a term grazing permit dispute:

- (a) A mediator authorized to mediate under a State mediation program certified by the U.S. Department of Agriculture;
(b) The Chief, Forest Service, or other Forest Service employee who made the decision being mediated or his or her designee;
(c) The holder whose term grazing permit is the subject of the decision and who has requested mediation in an appeal filed in accordance with the procedures at 36 CFR part 214;
(d) That holder’s creditors, if applicable; and
(e) Legal counsel, if retained. The Forest Service will have legal representation in the mediation only if the holder has legal representation in the mediation.

(c) The holder whose term grazing permit is the subject of the decision and who has requested mediation in an appeal filed in accordance with the procedures at 36 CFR part 214;

(d) That holder’s creditors, if applicable; and

(e) Legal counsel, if retained. The Forest Service will have legal representation in the mediation only if the holder has legal representation in the mediation.

§ 222.62 Stay of appeal.

If an appellant requests mediation of a decision subject to mediation under § 222.60 in an appeal filed under 36 CFR part 214, the Appeal Deciding Officer shall immediately notify all parties to the appeal that all appeal deadlines are automatically stayed for

45 days to allow for mediation. If a mediated agreement is not reached in 45 days, the Appeal Deciding Officer may extend the automatic stay for another 15 days if there is a reasonable possibility that a mediated agreement can be achieved within that timeframe. If an agreement is not achieved at the end of the 45- or 60-day mediation process, the Appeal Deciding Officer shall immediately notify all parties to the appeal that mediation was unsuccessful, that the stay has expired, and that the time periods and procedures applicable to an appeal under 36 CFR part 214 are reinstated.

§ 222.63 Confidentiality.

Mediation sessions and dispute resolution communications as defined in 5 U.S.C. 571(5) shall be confidential. Any mediation agreement signed by a Forest Service official and the holder of a term grazing permit is subject to public disclosure.

§ 222.64 Records.

Notes taken or factual material shared during mediation sessions shall not be included in the appeal record prepared in accordance with the procedures at 36 CFR part 214.

§ 222.65 Costs.

The Forest Service shall cover only those costs incurred by its own employees in mediation sessions.

§ 222.66 Ex parte communications.

The Chief, Forest Service, or other Forest Service employee who made the decision being mediated or his or her designee shall not discuss mediation with the Appeal Deciding Officer, except to request an extension of time or to communicate the results of mediation.

PART 228—MINERALS

16. The authority citation for part 228 is revised to read as follows:

Authority: 16 U.S.C. 478, 551; 30 U.S.C. 226, 352, 601, 611; 94 Stat. 2400.

Subpart A—Locatable Minerals

17. Revise § 228.14 to read as follows:

§ 228.14 Appeals.

Appeal of decisions of an authorized officer made pursuant to this subpart is governed by 36 CFR part 214 or 215.

Subpart C—Disposal of Mineral Materials

18. In § 228.65, revise paragraph (b)(4) to read as follows:

§ 228.65 Payment for sales.

\* \* \* \* \*

(b) \* \* \*

(4) If the purchaser fails to make payments when due, the contract will be considered breached, the authorized officer will cancel the contract, and all previous payments will be forfeited without prejudice to any other rights and remedies of the United States.

\* \* \* \* \*

19. In § 228.66 revise paragraph (c) to read as follows:

§ 228.66 Refunds.

\* \* \* \* \*

(c) Cancellation. (1) If the contract is cancelled by the authorized officer for reasons which are beyond the purchaser’s control; or

(2) If the contract is cancelled by mutual agreement. This refund provision is not a warranty that a specific quantity of material exists in the sale area.

Subpart E—Oil and Gas Resources

20. In § 228.107, revise paragraph (c) to read as follows:

§ 228.107 Review of surface use plan of operations.

\* \* \* \* \*

(c) Notice of decision. The authorized Forest officer shall give public notice of the decision on a surface use plan of operations and include in the notice that the decision is subject to appeal under 36 CFR part 214 or 215.

\* \* \* \* \*

PART 241—FISH AND WILDLIFE

21. The authority citation for Part 241 continues to read as follows:

Authority: 16 U.S.C. 472, 539, 551, 683.

Subpart B—Conservation of Fish, Wildlife, and Their Habitat, Chugach National Forest, Alaska

22. In § 241.22, revise paragraphs (e) and (f) to read as follows:

§ 241.22 Consistency determinations.

\* \* \* \* \*

(e) Subject to valid existing rights, the responsible Forest Officer may revoke, suspend, restrict, or require modification of any activity if it is determined that such measures are required to conserve wildlife, fish, or their habitat within areas of the Chugach National Forest subject to this subpart. Prior to taking action to revoke, suspend, restrict, or require modification of an activity under this section, the responsible Forest Officer shall give affected parties reasonable prior notice and an opportunity to comment, unless it is determined that

doing so would likely result in irreparable harm to conservation of fish, wildlife, and their habitat.

(f) Decisions made pursuant to this section are subject to appeal only as provided in 36 CFR part 214.

\* \* \* \* \*

## PART 251—LAND USES

23. The authority citation for part 251 continues to read as follows:

**Authority:** 16 U.S.C. 472, 479b, 551, 1134, 3210, 6201–13; 30 U.S.C. 1740, 1761–1771.

### Subpart A—Miscellaneous Land Uses

24. The authority citation for part 251, subpart A, continues to read as follows:

**Authority:** 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Pub. L. 76–867, 54 Stat. 1197.

25. Amend § 251.15 to revise paragraphs (a)(2)(iv) and (a)(3) to read as follows:

#### § 251.15 Conditions, rules, and regulations to govern exercise of mineral rights reserved in conveyances to the United States.

(a) \* \* \*

(2) \* \* \*

(iv) Failure to comply with the terms and conditions of the permit shall be cause for revocation of all rights to use, occupy, or disturb the surface of the lands covered by the permit, but in the event of revocation, a new permit shall be issued upon application when the causes for revocation of the preceding permit have been satisfactorily remedied and the United States has been reimbursed for any damages it has incurred from the noncompliance.

(3) All structures, other improvements, and materials shall be removed from the lands within one year after the date of revocation of the permit.

\* \* \* \* \*

### Subpart B—Special Uses

26. The authority citation for part 251, subpart B, continues to read as follows:

**Authority:** 16 U.S.C. 460l–6a, 460l–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

27. In § 251.51, revise the definitions for “Holder,” “Revocation,” “*Special use authorization*,” and “*Termination*” to read as follows:

#### § 251.51 Definitions.

\* \* \* \* \*

**Holder**—an individual or entity that holds a valid special use authorization.

\* \* \* \* \*

**Revocation**—the cessation, in whole or in part, of a special use authorization

by action of an authorized officer before the end of the specified period of use or occupancy for reasons set forth in § 251.60(a)(1)(i), (a)(2)(i), (g), and (h) of this subpart.

\* \* \* \* \*

**Special use authorization**—a written permit, term permit, lease, or easement that authorizes use or occupancy of National Forest System lands and specifies the terms and conditions under which the use or occupancy may occur.

\* \* \* \* \*

**Termination**—the cessation of a special use authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in the authorization, which does not require a decision by an authorized officer to take effect, such as expiration of the authorized term; change in ownership or control of the authorized improvements; or change in ownership or control of the holder of the authorization.

\* \* \* \* \*

28. In § 251.54, revise the last sentence of paragraph (g)(3)(iii) to read as follows:

#### § 251.54 Proposal and application requirements and procedures.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(iii) \* \* \* A denial of an application in paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section constitutes final agency action, is not subject to administrative appeal, and is immediately subject to judicial review.

\* \* \* \* \*

29. In § 251.60, revise paragraphs (a)(1)(ii), (a)(2)(ii), and (h)(2) to read as follows:

#### § 251.60 Termination, revocation, and suspension.

(a) \* \* \*

(1) \* \* \*

(ii) **Judicial review.** Revocation or suspension of a special use authorization under this paragraph constitutes final agency action, is not subject to administrative appeal, and is immediately subject to judicial review.

\* \* \* \* \*

(2) \* \* \*

(ii) **Administrative review.** Except for revocation or suspension of an easement issued pursuant to § 251.53(e) or § 251.53(l) of this subpart, revocation or suspension of a special use authorization under this paragraph is subject to appeal pursuant to 36 CFR part 214.

\* \* \* \* \*

(h) \* \* \*

(2) Before any such easement is revoked upon abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, shall be given an appeal in accordance with the provisions of 36 CFR part 214.

\* \* \* \* \*

### Subpart C—[Removed and Reserved]

30. Remove and reserve subpart C of part 251.

### Subpart E—Revenue-Producing Visitor Services in Alaska

31. The authority citation for part 251, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 3197.

32. Revise § 251.126 to read as follows:

#### § 251.126 Appeals.

Decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service under this subpart or related to the modification of special use authorizations to reflect historical use are subject to administrative appeal under 36 CFR part 214.

## PART 254—LANDOWNERSHIP ADJUSTMENTS

### Subpart A—Land Exchanges

33. The authority citation for part 254, subpart A, is revised to read as follows:

**Authority:** 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 485, 486, 516, 551, 555a; 43 U.S.C. 1701, 1715, 1716, 1740.

34. In § 254.4, revise paragraph (g) to read as follows:

#### § 254.4 Agreement to initiate an exchange.

\* \* \* \* \*

(g) The withdrawal from an exchange proposal by the authorized officer at any time prior to the notice of decision pursuant to § 254.13 of this subpart is not appealable under 36 CFR part 214 or 215.

35. In § 254.13, revise paragraph (b) to read as follows:

#### § 254.13 Approval of exchanges; notice of decision.

\* \* \* \* \*

(b) The decision to approve or disapprove an exchange proposal shall be subject to appeal as provided under 36 CFR part 214 or 215 for 45 days after the date of publication of a notice of availability of the decision.

36. In § 254.14, revise paragraph (b)(6) to read as follows:

**§ 254.14 Exchange agreement.**

\* \* \* \* \*

(b) \* \* \*

(6) In the event of an appeal under 36 CFR part 214 or 215, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

\* \* \* \* \*

37. In § 254.15, revise the last sentence of paragraph (c)(2) to read as follows:

**§ 254.15 Title standards.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether there are specific and compelling reasons in the public interest for revoking the authorization for that use pursuant to 36 CFR 251.60.

**PART 292—NATIONAL RECREATION AREAS****Subpart C—Sawtooth National Recreation Area—Private Lands**

38. The authority citation for part 292, subpart C, continues to read as follows:

**Authority:** Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

39. In § 292.15, revise paragraph (l) to read as follows:

**§ 292.15 General provisions—procedures.**

\* \* \* \* \*

(l) Denial or revocation of a certification of compliance under this subpart is subject to appeal under 36 CFR part 214.

**Subpart D—Sawtooth National Recreation Area—Federal Lands**

40. The authority citation for part 292, subpart D, is revised to read as follows:

**Authority:** 16 U.S.C. 460aa–10, 478, 551.

41. In § 292.18, revise paragraph (f) to read as follows:

**§ 292.18 Mineral resources.**

\* \* \* \* \*

(f) *Operating plans—suspension, revocation, or modification.* The authorized officer may suspend or revoke authorization to operate in whole or in part where such operations are causing substantial impairment which cannot be mitigated. At any time during operations under an approved operating plan, the operator may be required to modify the operating plan to minimize

or avoid substantial impairment of the values of the SNRA.

\* \* \* \* \*

Dated: September 16, 2011.

**Thomas L. Tidwell,**

*Chief, Forest Service.*

[FR Doc. 2011–24366 Filed 10–7–11; 8:45 am]

**BILLING CODE 3410–11–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****46 CFR Part 160**

[USCG–2010–0048]

RIN 1625–AB46

**Lifesaving Equipment: Production Testing and Harmonization With International Standards**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the interim rule addressing lifesaving equipment published in this same issue of the **Federal Register** to harmonize Coast Guard regulations for inflatable liferafts and inflatable buoyant apparatuses with recently adopted international standards affecting capacity requirements for such lifesaving equipment. The Coast Guard seeks comments on this proposal.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before November 25, 2011 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2010–0048 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments.

*Viewing incorporation by reference material:* You may inspect the material proposed for incorporation by reference at U.S. Coast Guard Headquarters, 2100 Second Street, SW., STOP 7126, Washington, DC 20593–7126 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1385. Copies of the material are available as indicated in the “Incorporation by Reference” section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Mr. Kurt Heinz, Commercial Regulations and Standards Directorate, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–5214), Coast Guard, telephone 202–372–1395, or e-mail [Kurt.J.Heinz@uscg.mil](mailto:Kurt.J.Heinz@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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  - L. Technical Standards
  - M. Coast Guard Authorization Act Sec. 608 (46 U.S.C. 2118(a))
  - N. Environment

**I. Public Participation and Request for Comments**

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.