



United States
Department of
Agriculture

Forest
Service

Region 1

200 East Broadway
P. O. Box 7669
Missoula, MT 59807

File Code: 1570 (215)
Route To:

Date: March 14, 2001

Subject: Appeal Reviewing Officer Designation for Appeals Filed Under 36 CFR 215

To: Deputy Director, WWF&RP

Based on previous consultation, and in accordance with 36 CFR 215.19, you are hereby designated as Appeal Reviewing Officer for appeals filed under 36 CFR 215 for the Northern Region. Your roles and responsibilities are outlined in the enclosed December 15, 1993, and June 26, 1997, letters from the Chief.

Your signature block as Appeal Reviewing Officer should be as follows:

ERIC P. JOHNSTON
Appeal Reviewing Officer
Deputy Director, Watershed, Wildlife, Fisheries
and Rare Plants

The Interregional NEPA, Appeals and Litigation Leader (Ecosystem Assessment and Planning) will provide the necessary coordination and staffing.

/s/ Dale N. Bosworth

DALE N. BOSWORTH
Regional Forester

Enclosures (2)





File 1570
Code:

Date: December 15, 1993

Subject: Request to Designate Appeal Reviewing Officer

To: WO Staff Directors, Regional Foresters, and Deputy Chiefs

REPLY DUE DECEMBER 17

On January 3, the notice and comment portion of the new appeal rule will become effective. This new rule will change the manner in which we process and review appeals. One of the more important changes in the new rule is the creation of an Appeal Reviewing Officer (ARO). Based on conversation with people inside and outside the organization we think there needs to be an explanation of the role of the ARO. We hope the following explanation of the roles of the Reviewing Officer, the Deciding Officer, and the Deciding Officer's Staff will help clarify responsibilities and assist you in determining the Appeal Reviewing Officer(s).

According to 36 CFR 215.19(a), the Chief of the Forest Service will designate the Appeal Reviewing Officers. In order to meet the effective date, we would like to have a list of your suggested Appeal Reviewing Officer(s) by December 17.

The following explanation clarifies the respective roles of the Reviewing Officer, the Deciding Officer, the Deciding Officer's staff, and the difference between their responsibilities under the old 36 CFR 217 and the new 36 CFR 215 appeal processes.

We have also included what we consider to be the substantive elements of the new standard of review that Congress and others now expect for appeal decisions.

Appeal Reviewing Officer (ARO). This is a new position created by Section 322(d)(2) that enhances the previous appeal review function, and adds responsibility for reviewing the appeal record and making a recommendation to the Appeal Deciding Officer (ADO) on how the appeal should be decided. This review and recommendation should focus on the substantive quality and correctness, or appropriateness, of the project decision, as opposed to just its procedural and legal adequacy in complying with regulations and laws (i.e., testing for "arbitrary and capricious" action. For instance, this official should consider how well does the Responsible Official's decision respond to the issues, public needs, and fit in with overall management objectives and national policy on such matters as ecosystem management, etc.? In other words, the ARO should literally stand in the shoes of the Responsible Official and from an impartial standpoint determine whether or not the ARO would have made the same decision. The ARO's recommendation in most cases will likely be a consolidated recommendation on multiple appeals of a decision. Therefore, in most cases, the ARO response and recommendation need not be a response to each specific issue raised in a single appeal. Rather it would reflect a thoughtful review of the policy aspects and implications of one issue raised in appeals on a specific project, and whether or not those issues were addressed in an appropriate manner, and whether or not this project, if implemented, makes sense when viewed within the total framework of Forest Service policy, law and regulation.



Appeal Deciding Officer (ADO). The ADO is responsible for making a final decision on the appeal. This should be based on a review of the legal and technical sufficiency of the project decision as well as of the quality of the decision. That is, is it appropriate and correct? How well does it [the decision] respond to the issues, public needs, agency policy, and national goals, etc. This may be an issue-by-issue response to appellants, depending on the complexity of the appeal. The ADO may or may not issue a consolidated decision for multiple appeals, depending on the issues and technical review and analysis of documents by the appeal staff.

Appeal Deciding Officer's Staff. The "appeal staff" conducts the review to determine legal and technical review including all applicable laws and policies. This should include but not be limited to NEPA sufficiency of the documents. The overall responsibility of the staff is to provide support for completing a timely review of an appeal and managing the appeal record. This was the role and responsibility of the appeal coordinators and their staffs in the past and that role and process will continue under the new regulations.

Currently, most Regional Offices and the Chief's Office have a designated Reviewing Officer for appeals. However, this position is different from the Appeal Reviewing Officer described above. This position, under the 36 CFR 217 regulations, serves as the appeal deciding officer. There will continue to be a need for this position (albeit a different title) to perform this function in the future. The Appeal Coordinators will continue to provide the staff support for this position. The Appeal Reviewing Officer under 36 CFR 215 regulations will serve a different function, as described above.

At the WO level, Staff Directors will serve as the Appeals Reviewing Officers for all Regional Office project decisions. Regional Foresters may want to recommend their Staff Directors as ARO's as well. This will allow flexibility in meeting the regulation requirement that the Appeal Reviewing Officer "be an officer at least at the level of the agency official who made the initial decision" and who "has not participated in the initial decision and will not be responsible for implementing the initial decision after the appeal is decided."

If you have questions concerning this request, please call Susan Yonts-Shepard (S.Shepard:W01C) at 205-1519 or Vern Fleisher (V.Fleisher:W01C) at 205-1741.

/s/ David G. Unger for

JACK WARD THOMAS
Chief

Enclosure