

that the legal notice shall include the business hours for the Responsible Official's office for those wishing to hand-deliver their comments. The final rule also modifies paragraph (b)(2)(ii) to state that if the proposed action is a Regional Forester or Chief's decision, notice shall be given in the appropriate newspaper(s) of record for the affected Forest Service unit(s) and to explicitly state that the newspaper of record is the exclusive means for calculating the time to submit comments for EAs and the Notice of Availability in the **Federal Register** is the exclusive means for calculating the time to submit comments for EISs. Here and throughout the rule, the term "principal newspaper" is changed to "newspaper of record." While the term "principal newspaper" has been used since the rule was promulgated, the Department believes the term "newspaper of record" better defines this concept.

Proposed section 215.5, paragraph (c) described the requirements regarding the content of comments, including the submission of substantive comments. Other changes included requiring signatures and clarifying where and how oral comments will be accepted. Also included was a provision noting that if an organization provides comments, then only the organization is eligible to appeal. Individual members of the organization would not be eligible to appeal simply by membership in that organization.

Comment. Those supporting the changes thought they would be instrumental in ensuring the Forest Service is aware of who is providing comments and their specific issues. Those disagreeing with the changes expressed concerns regarding the signature requirement and oral commenters. Several respondents questioned why an organization's comments did not apply to an individual member's appeal.

Response. Because appeal eligibility is linked to commenting, the Department must be able to verify who submitted substantive comments. However, after reviewing the public comment on the proposal to require a signature, the final rule clarifies that verification of the commenter's identity is required for appeal eligibility but that a signature will normally satisfy that requirement. If a signature is not provided or is illegible, the commenter may be asked to verify authorship. With regard to those who provide oral comments, the final rule addresses the concern of verification in the same manner as those providing comments by other means.

Concerning the comments about why an organization's comments did not apply to an individual member's appeal eligibility, the ARA discusses "a person who was involved in the public comment process though submission * * * of written or oral comments."

The Department believes an organization is its own entity for purposes of submitting comments. There is nothing in this section that prohibits individual members of an organization from submitting the same or similar comments.

After additional review of the proposed rule, the Department determined it would add clarity if the requirements for legal notice were separate from the requirements for commenting. Therefore, in the final rule this section is now titled "Legal notice of proposed actions" and is reorganized. Paragraph (a) outlines the Responsible Official's duties and paragraph (b) describes legal notice procedures. While paragraph (a) is new, the contents are not. Proposed paragraph (c) is moved to § 215.6.

Proposed section 215.6 set out procedures for the consideration of comments, emphasizing that while the Responsible Office accepts all comments, only substantive comments would be considered for project planning purposes.

Comment. The proposed requirement that comments must be substantive generated a number of comments. While some were supportive, "a must to have responsible and constructive comments," the majority did not support this change. Those disagreeing gave a variety of reasons, including: The definition for "substantive comment" was too vague; it limited the public's ability to participate; substantive issues may arise after the comment period is past; the Department would label comments in opposition to the proposed action as non-substantive and therefore unfairly limit the public's ability to appeal; and the Department wants to reduce the number of comments it has to consider. The question of who would decide whether or not a comment was substantive was also asked.

Response. As discussed in a Congressional colloquy during enactment of the ARA and in the **Federal Register** notice announcing the proposed revision to this rule (67 FR 77451), the notice and comment period is intended to solicit information, concerns, and any issues specific to the proposed action and to provide such comments to the Responsible Official before the decision is made. Experience has shown that when comments are received that are not within the scope of

the proposed action or are not specific to the proposed action, or do not include supporting reasons for concerns, they are not useful for consideration in project planning. The intent in requiring substantive comments is to obtain meaningful and useful information from individuals about their concerns and issues, and use it to enhance project analysis and project planning. If new information comes to light after the decision, the agency provides guidance for this eventuality in FSH 1909.15, Chapter 10, section 18.

In the final rule, this section is now titled "Comments on proposed actions." Paragraph (a) discusses the opportunity to comment in terms of time period, computation of the time period, comment requirements, and evidence of timely submission (proposed § 215.5(b)(5)). In conjunction with the changes discussed in proposed § 215.4 and § 215.5 concerning draft environmental impact statements (EIS), the final rule modifies paragraph (a)(1)(i), addressing only environmental assessments (EAs); adds a new paragraph (a)(1)(ii) addressing draft EISs; and redesignates the remaining paragraphs accordingly. Paragraph (a)(2) is modified to accommodate computation of both time periods. Paragraph (a)(4)(i) is rewritten to clarify the difference between EAs and EISs as discussed earlier and to indicate that the end of the calendar day is 11:59 p.m.; paragraph (4)(ii) is clarified to indicate that for hand-delivered comments the end of the calendar day is the close of the business day; and paragraph (4)(iii) is rewritten to be consistent with the e-mail provisions in § 215.15(c), clarifying that when comments are submitted electronically, the sender should receive an automatic acknowledgment. This was an oversight in the proposed rule. The final rule revises the definition of the term "substantive comments" (§ 215.2) to clarify the meaning and address the concerns about this definition. And, § 215.5(a)(6) clarifies that it is the Responsible Official's responsibility to determine if comments received meet the definition of "substantive comments." Paragraph (b) discusses consideration of comments (proposed § 215.6).

Proposed section 215.7 detailed the content of the legal notice for the decision. **Proposed paragraph (a)** changes included a provision that the ending date for the appeal period would not be stated in the legal notice and a provision for acceptance of electronic appeals.

Comment. Concerns similar to those expressed for § 215.5 regarding legal