

notice, were expressed in regard to not having the deadline to file an appeal stated in the legal notice. Those wanting the deadline published said it is just as easy for the Forest Service to calculate as it is for members of the public and that not publishing it places an undue burden on potential appellants. Some respondents stated that the appeal period should start when the appeal decision is made; others wanted it to state that a dated photocopy of the legal notice is an exception to not using information provided by any other source. Some commenters objected to what they described as the Forest Service requiring them to subscribe to each newspaper of record for every Forest for which they have an interest. Some respondents stated that the appeal period should start when the appeal decision is made.

Response. While the Department is sympathetic to those having to subscribe to several different newspapers of record, the requirement for publishing the legal notice in the newspaper of record is not a change. The Department believes the rule as stated is the most accurate method for potential appellants to know the filing end date. The Department made the decision to link the appeal period to publication of a legal notice when the final rule was promulgated in 1993 to give those wishing to appeal the benefit of a level playing field, even though the ARA does not require a notice as it does for requesting comments. There is no need to address acceptance of a dated photocopy of the legal notice because nothing in this paragraph prohibits it. In fact, the legal notice is the exclusive means for calculating the time to file an appeal. The reasons for not stating the date of publication in the legal notice are addressed in the response to § 215.5. The Department believes that past inconsistencies in informing the public of the correct date resulted in more problems than will occur with having the appellant calculate the appeal filing deadline.

Proposed section 215.7, paragraph (b) required the decision documentation to be mailed to those who requested it and those who commented.

Comment. Respondents questioned when the mailing of the decision document would occur, being of the opinion that it should occur before the legal notice so that time would not be lost within the 45-day appeal period. Other respondents wanted a requirement that each unit keep a list of persons who are interested in Forest Service decisionmaking and mail them a copy of all decisions.

Response. Inadvertently, the order of the paragraphs made it appear that the notice would be published prior to mailing the decision notice. In the final rule, proposed paragraphs (a) and (b) are reversed to indicate that the documents should be mailed prior to the legal notice being published. New paragraph (b)(2)(i) is modified to include the business hours for the Deciding Officer's office for those wishing to hand-deliver their appeals and paragraph (b)(2)(ii) now states that the newspaper of record is the exclusive means for calculating the time to submit comments. Maintaining a list of persons interested in Forest Service project planning is outside the scope of this rulemaking. However, some units may choose to maintain such a list.

Proposed section 215.8 discussed decision implementation.

Comment. Comments were received on proposed paragraph (b), opposing automatic stays of projects during the appeal process.

Response. The stay provisions in paragraph (b) implement a statutory requirement of the ARA and cannot be changed. In the final rule, paragraph (a) is rewritten for clarity and proposed § 215.8 is now § 215.9.

Proposed section 215.9 set out procedures for emergency situations in a separate section for ease of use in finding all pertinent information quickly. Additionally, the proposed rule clarified that an emergency situation determination can be delegated to the Regional Forester or Station Director, and the examples were removed.

Comment. Those supporting the proposed change stated that it made sense to place the decision at the local level with those familiar with the situation and that it would improve the Forest Service's ability to address emergency situations in a timely manner. Some of those not supporting this change said they believed that it was not allowed by the ARA and expressed the concern that it may not be equally applied and could be abused. Some of those commenting asked that some of the examples be retained.

Response. Authorities granted by statute to the Chief may be delegated to subordinate officials within the Forest Service to carry out, unless the Chief specifically reserves the authority or is prohibited by law, regulation, or order from delegating the authority. The ARA does not prohibit delegation of the authority granted by this act. Delegations of authority and responsibility to Forest Service officials are provided in the agency's regulations and directives, with the broad delegations set out in Forest Service

Manual (FSM) Chapter 1230. This chapter delegates to the Associate Chief the authority to perform all duties and exercise all functions vested in the Chief (except for those the Chief reserves or is prohibited from delegating). The final rule has been revised to acknowledge that the Associate Chief, by virtue of the authority inherent in this position, is authorized to carry out the Chief's responsibilities related to determinations of emergency situations. The final rule also identifies the officials to whom the Chief or Associate Chief may delegate the authority for emergency situation determinations. The Secretary of Agriculture and the Chief expect those responsible for making emergency situation determinations as provided in this rule do so in a judicious manner, applying the provisions of this rule in a professional and equitable way.

The final rule clarifies that the Chief or the Associate Chief may delegate the authority for making emergency situation determinations and that this authority may be delegated only to the Deputy Chief for National Forest System and Regional Foresters. The rule also clarifies that persons acting in these positions may exercise this authority for making emergency situation determinations only when they are filling vacant positions and have been formally delegated full acting authority for the positions; persons acting in positions during temporary absences of the incumbents shall not be delegated this authority. Station Directors were inadvertently included in the proposed rule, and this reference is removed in the final rule. Also, proposed § 215.9 is redesignated § 215.10 in the final rule; paragraph (a) is split in the final rule into paragraph (a), titled Authority, and paragraph (b), titled Determination.

Comment. Some of those commenting wanted clear standards established for making emergency situation determinations. Some respondents thought that the determination should be subject to appeal, while other respondents suggested that appeals should not be allowed when an emergency situation determination has been made. Some respondents commented that when an emergency situation is not stayed it should be declared the final agency action so that the appellant is free to go to court.

Response. There is no indication that Congress intended that the determination itself would be subject to appeal. The final rule sets out the procedures and criteria by which agency officials will determine whether an emergency situation exists. The ARA itself makes an exception to the