

In response to confusion about the scope of activities covered, specifically activities affecting special uses, the final rule clarifies in § 215.1(b) that decisions which affect an authorized use or occupancy of National Forest System lands are subject to appeal procedures in either part 215 or part 251, subpart C, but not both. Also, in response to public comment, the final rule removes the issue preclusion language from paragraph (b); the proposed rule at §§ 215.1 and 215.15 would have limited appeals to those issues raised during the comment period. The reason for this change is discussed further under § 215.15 below.

Proposed section 215.2 clarified and revised definitions for specific terms used in the proposed rule. The proposed revision added six new definitions, removed three definitions, and revised and updated several other definitions from the 1993 rule.

Comment. Several comments were received regarding both the proposed changes and definitions without proposed changes. One definition that generated a number of comments, both supporting and disagreeing with the change, was emergency situation. Those supporting the proposed definition believe that the threat of substantial economic loss to adjacent communities and property owners, as well as the loss of resource value, should be factored into an emergency situation determination. Some of those commenting believed that it minimized the economic burden “shouldered by local communities” that “results from delayed decisions.” Those disagreeing with the proposed definition were unhappy that the definition had been broadened to include substantial loss of economic value as a factor in determining emergency situations. They believe this change places economic interests above environmental and social concerns. Others said that it would lead to increased logging because the definition has been broadened to the point that almost any timber sale would fit the new definition. Others believe that the new definition was arbitrary and capricious, and that it violated the ARA. Some respondents wanted the reference “to the Government” omitted because potential economic losses to anyone should be considered. Others wanted the definition to apply to county- or State-declared emergencies because such actions are aligned with the Department philosophy of cooperation, consideration, and collaboration with local governments.

Response. The ARA does not provide a statutory definition for emergencies nor does it specify particular criteria for

making such determinations. The definition in the 1993 rule attempted to provide the necessary guidance. Experience has shown there is a need for refinement and clarification because of the belief by some that emergencies were limited to those situations included as examples. The result has sometimes been additional taxpayer cost when timber could not be sold, but was still in need of removal for fuel reduction. Fire-impacted forest ecosystems and damaged watersheds impose a variety of environmental and economic costs to communities, particularly when immediate action is not taken. These implementation delays often result in lost opportunities for the Department to address resource problems in an environmentally sound and fiscally responsible manner. The Department believes the intent of an emergency situation determination is to allow immediate implementation of all or part of a proposed action when necessary to remedy these problems.

Comment. In addition to comments related to emergencies discussed above, one commenter suggested changing the definition of the Appeal Deciding Officer to specify that the Appeal Deciding Officer is only one level above the “decisionmaking officer’s” (Responsible Official) position.

Response. After careful consideration, the Department concurs. The Department believes that it is appropriate that the position deciding an appeal should be at the field level. The final rule reflects this change. A corresponding change is made in § 215.8 Appeal Deciding Officer.

Comment. Other commenters believed there was a need for both further clarification and new definitions.

Response. The final rule adds 10 new definitions that did not appear in the 1993 rule. The final rule also revises 13 definitions, removes 4 definitions, and leaves 4 definitions unchanged from the 1993 rule. The Department believes these changes will help clarify the requirements and intent of the rule.

The 10 new definitions are: *Address*, *Appeal disposition*, *Emergency situation*, *Lead appellant*, *Name*, *National Forest System land*, *Newspaper(s) of record*, *Projects and activities implementing a land and resource management plan*, *Substantive comments*, and *Transmittal letter*.

The 13 revised definitions are: *Appeal*, *Appeal Deciding Officer*, *Appeal period*, *Appeal record*, *Appeal Reviewing Officer*, *Appellant*, *Categorically excluded (CE)*, *Comment period*, *Decision documentation*, *Environmental Assessment (EA)*, *Forest*

Service line officer, *Proposed action*, and *Responsible Official*.

The 4 removed definitions are: *Decision document*, *Decision Memo*, *Interested party*, and *Proposed timber harvest categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4*.

The 4 unchanged definitions are: *Decision Notice (DN)*, *Environmental Impact Statement (EIS)*, *Finding of No Significant Impact (FONSI)*, and *Record of Decision (ROD)*.

Proposed section 215.3 discussed projects and activities subject to legal notice and opportunity to comment.

Comment. Respondents questioned the term “nonsignificant amendment to a land and resource management plan” (part 219) and whether “private party actions” are subject to this part.

Response. The term “nonsignificant amendment to a land and resource management plan” is a term used in the Department’s 1982 implementing regulation at part 219 for the National Forest Management Act (as discussed in the **Background** section). Any proposed action implementing a land and resource management plan and resulting in a Decision Notice (DN) or Record of Decision (ROD) is subject to part 215, including those referred to by respondents as “private party actions” and “private projects,” assuming that the respondents were referring to special use authorizations.

Proposed section 215.4 revised current regulatory text concerning actions not subject to legal notice and comment. The proposed rule redefined **paragraph (b)** on categorical exclusions and added **paragraph (d)** addressing determinations by the Responsible Official concerning revision of an environmental assessment. **Proposed paragraph (a)** excluded from notice and comment draft environmental impact statements (EIS) because notice and comment procedures are provided pursuant to CEQ’s regulations at 40 CFR parts 1500–1508.

Comment. Those commenting believed that the rule should state that these documents are subject to notice and comment but clarify that it may be a different mechanism.

Response. After review of the comments, the Department concurs that it may be confusing to say that draft EISs are excluded from notice and comment. In the final rule, proposed paragraph (a) is now § 215.3(b) and the remaining paragraphs in § 215.4 are redesignated accordingly.

Comment. Respondents requested clarity or questioned all of the actions not subject to legal notice and comment.