

PART 218—PREDECISIONAL ADMINISTRATIVE REVIEW PROCESSES

Subpart A—Predecisional Administrative Review Process for Hazardous Fuel Reduction Projects Authorized by the Healthy Forests Restoration Act of 2003

- Sec.
- 218.1 Purpose and scope.
- 218.2 Definitions.
- 218.3 Authorized hazardous fuel reduction projects subject to objection.
- 218.4 Authorized hazardous fuel reduction projects not subject to objection.
- 218.5 Giving notice of proposed authorized hazardous fuel reduction projects subject to objection.
- 218.6 Reviewing officer.
- 218.7 Who may file an objection.
- 218.8 Filing an objection.
- 218.9 Objections set aside from review.
- 218.10 Objection time periods and process.
- 218.11 Resolution of objections.
- 218.12 Timing of authorized hazardous fuel reduction project decision.
- 218.13 Secretary's authority.
- 218.14 Judicial proceedings.
- 218.15 Information collection requirements.
- 218.16 Applicability and effective date.

Subpart B [Reserved]

AUTHORITY: Pub. L. 108-148, 117 Stat 1887 (Healthy Forests Restoration Act of 2003).

SOURCE: 69 FR 1533, Jan. 9, 2004, unless otherwise noted.

Subpart A—Predecisional Administrative Review Process for Hazardous Fuel Reduction Projects Authorized by the Healthy Forests Restoration Act of 2003

SOURCE: 73 FR 53712, Sept. 17, 2008, unless otherwise noted.

§ 218.1 Purpose and scope.

This subpart establishes a predecisional administrative review (hereinafter referred to as "objection") process for proposed authorized hazardous fuel reduction projects as defined in the Healthy Forests Restoration Act of 2003 (HFRA). The objection process is the sole means by which administrative review of a proposed authorized hazardous fuel reduction project on National Forest System

land may be sought. This subpart identifies who may file objections to those proposed authorized hazardous fuel reduction projects, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

§ 218.2 Definitions.

Address: An individual's or organization's current physical mailing address. An e-mail address is not sufficient.

Authorized hazardous fuel reduction project: A hazardous fuel reduction project authorized by the Healthy Forests Restoration Act of 2003 (HFRA).

Comments: Specific written comments related to a proposed authorized hazardous fuel reduction project pursuant to the HFRA.

Decision notice (DN): A concise written record of a responsible official's decision based on an environmental assessment and a finding of no significant impact (FONSI) (40 CFR 1508.13; Forest Service Handbook (FSH) 1909.15, chapter 40).

Environmental assessment (EA): A public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (FONSI), aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Environmental impact statement (EIS): A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Forest Service line officer: A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions approving hazardous fuel reduction projects subject to this subpart.

Lead objector: For an objection submitted with multiple individuals and/or organizations listed, the individual or organization identified to represent all other objectors for the purposes of

§218.3

communication, written or otherwise, regarding the objection.

Name: The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

National Forest System land: All lands, water, or interests therein administered by the Forest Service (§251.51).

Newspaper(s) of record: Those principal newspapers of general circulation annually identified in a list and published in the FEDERAL REGISTER by each regional forester to be used for publishing notices of projects and activities implementing land management plans.

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

Objection period: The 30-calendar-day period following publication of the legal notice in the newspaper of record of an environmental assessment (EA) or final environmental impact statement (EIS) for a proposed authorized hazardous fuel reduction project during which an objection may be filed with the reviewing officer. When the Chief is the responsible official the objection period begins following publication of a notice in the FEDERAL REGISTER.

Objection process: Those procedures established for predecisional administrative review of proposed authorized hazardous fuel reduction projects subject to the HFRA.

Objector: An individual or organization filing an objection who submitted comments specific to the proposed authorized hazardous fuel reduction project during scoping or other opportunity for public comment as described in the HFRA. The use of the term “objector” applies to all persons who meet eligibility requirements associated with the filed objection (§218.7(a)).

Record of decision (ROD): A document signed by a responsible official recording a decision that was preceded by preparation of an environmental impact statement (EIS) (40 CFR 1505.2; FSH 1909.15, Chapter 20).

36 CFR Ch. II (7–1–11 Edition)

Responsible official: The Forest Service employee who has the delegated authority to make and implement a decision approving proposed authorized hazardous fuel reduction projects subject to this subpart.

Reviewing officer: The United States Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart. The reviewing officer is the next higher level supervisor of the responsible official.

§218.3 Authorized hazardous fuel reduction projects subject to objection.

(a) Only authorized hazardous fuel reduction projects as defined by the HFRA, section 101(2), occurring on National Forest System lands that have been analyzed in an EA or EIS are subject to this subpart. Authorized hazardous fuel reduction projects processed under the provisions of the HFRA are not subject to the notice, comment, and appeal provisions set forth in part 215 of this chapter.

(b) When authorized hazardous fuel reduction projects are approved contemporaneously with a plan amendment that applies only to that project, the objection process of this part applies to both the plan amendment and the project.

§218.4 Authorized hazardous fuel reduction projects not subject to objection.

Projects are not subject to objection when no comments (§218.2) are received during the opportunity for public comment (§218.7(a)). The responsible official must issue an explanation with the record of decision (ROD) or decision notice (DN) that the project was not subject to objection.

§218.5 Giving notice of proposed authorized hazardous fuel reduction projects subject to objection.

(a) In addition to the notification required in paragraph (c) of this section, the responsible official should disclose during scoping and in the EA or EIS that the project is authorized under the HFRA and will therefore be subject to the objection procedure at 36 CFR

Forest Service, USDA

§218.7

218, in lieu of the appeal procedure at 36 CFR 215.

(b) The responsible official must promptly distribute the final EIS or the EA to those who have requested the document or are eligible to file an objection in accordance with §218.7(a).

(c) Upon completion and distribution mailing of the final EIS or EA, legal notice of the opportunity to object to a proposed authorized hazardous fuel reduction project must be published in the applicable newspaper of record identified (218.2) for each National Forest System unit. When the Chief is the responsible official, notice must be published in the FEDERAL REGISTER. The legal notice or FEDERAL REGISTER notice must

(1) Include the name of the proposed authorized hazardous fuel reduction project, a concise description of the preferred alternative and any proposed land management plan amendments, name and title of the responsible official, name of the forest and/or district on which the proposed authorized hazardous fuel reduction project will occur, instructions for obtaining a copy of the final EIS or EA, and instructions on how to obtain additional information on the proposed authorized hazardous fuel reduction project.

(2) State that the proposed authorized hazardous fuel reduction project is subject to the objection process pursuant to 36 CFR part 218, subpart A, and include the following:

(i) Name and address of the reviewing officer with whom an objection is to be filed. The notice must specify a street, postal, fax, and e-mail address, the acceptable format(s) for objections filed electronically, and the reviewing officer's office business hours for those filing hand-delivered objections.

(ii) A statement that objections will be accepted only from those who have previously submitted written comments specific to the proposed authorized hazardous fuel reduction project during scoping or other opportunity for public comment in accordance with §218.7(a).

(iii) A statement that the publication date of the legal notice in the newspaper of record or FEDERAL REGISTER notice is the exclusive means for calculating the time to file an objection

(§218.10(a)), and that those wishing to object should not rely upon dates or timeframe information provided by any other source. A specific date must not be included in the notice.

(iv) A statement that an objection, including attachments, must be filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate reviewing officer (§218.8) within 30 days of the date of publication of the legal notice for the objection process. It should also be stated that incorporation of documents by reference is permitted only as provided for at §218.8(b).

(v) A statement describing the minimum content requirements of an objection (§218.8(c)).

(vi) A statement that the proposed authorized hazardous fuel reduction project is not subject to the notice, comment, and appeal procedures found at part 215 of this chapter (§218.3).

(d) *Publication.* Through notice published annually in the FEDERAL REGISTER, each regional forester must advise the public of the newspaper(s) of record utilized for publishing legal notice required by this subpart.

§218.6 Reviewing officer.

The reviewing officer determines procedures to be used for processing objections when the procedures are not specifically described in this subpart, including such procedures as needed to be compatible to the extent practicable, with the administrative review processes of other Federal agencies, for authorized hazardous fuel reduction projects proposed jointly with other agencies. Such determinations are not subject to further administrative review.

§218.7 Who may file an objection.

(a) Individuals and organizations who have submitted specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment provided during preparation of an EA or EIS for the proposed authorized hazardous fuel reduction project as characterized in section 104(g) of the HFRA may file an objection. For proposed authorized hazardous fuel reduction projects described in a draft EIS,

§218.8

such opportunity for public comment will be fulfilled during scoping, by the comment period on the draft EIS in accordance with procedures in 40 CFR 1506.10, and any other periods public comment is specifically requested. For proposed authorized hazardous fuel reduction projects described in an EA, such opportunity for public comment will be fulfilled during scoping or any other periods public comment is specifically requested.

(b) Comments received from an authorized representative(s) of an organization are considered those of the organization only. Individual members of that organization do not meet objection eligibility requirements solely on the basis of membership in an organization. A member or an individual must submit comments independently in order to be eligible to file an objection in an individual capacity.

(c) When an objection lists multiple individuals or organizations, each individual or organization must meet the requirements of paragraph (a) of this section. Individuals or organizations listed on an objection that do not meet eligibility requirements must not be considered objectors. Objections from individuals or organizations that do not meet the requirements of paragraph (a) must not be accepted. This must be documented in the objection record.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202-209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees must not be on official duty nor use Government property or equipment in the preparation or filing of an objection. Further, employees must not incorporate information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)).

§218.8 Filing an objection.

(a) Objections must be filed with the reviewing officer in writing. All objec-

36 CFR Ch. II (7-1-11 Edition)

tions must be open to public inspection during the objection process.

(b) Incorporation of documents by reference is not allowed, except for the following list of items which may be provided by including date, page, and section of the cited document. All other documents must be included with the objection.

(1) All or any part of a Federal law or regulation,

(2) Forest Service directives and land management plans,

(3) Documents referenced by the Forest Service in the proposed HFRA project subject to objection,

(4) Comments previously provided to the Forest Service by the objector during the proposed HFRA project comment period.

(c) At a minimum, an objection must include the following:

(1) Objector's name and address (§218.2), with a telephone number, if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) When multiple names are listed on an objection, identification of the lead objector (§218.2). Verification of the identity of the lead objector must be provided upon request;

(4) The name of the proposed authorized hazardous fuel reduction project, the name and title of the responsible official, and the name(s) of the national forest(s) and/or ranger district(s) on which the proposed authorized hazardous fuel reduction project will be implemented; and,

(5) Sufficient narrative description of those aspects of the proposed authorized hazardous fuel reduction project addressed by the objection, specific issues related to the proposed authorized hazardous fuel reduction project, and suggested remedies that would resolve the objection.

§218.9 Objections set aside from review.

(a) The reviewing officer must set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (§§218.5(c)(2)(iv), 218.10(c)).

Forest Service, USDA

§218.11

(2) The proposed project is not subject to the objection procedures of this subpart (§§218.3, 218.4).

(3) The individual or organization did not submit written comments during scoping or other opportunity for public comment (§218.7(a)).

(4) The objection does not provide sufficient information as required by §218.7(b) through (d) for the reviewing officer to review.

(5) The objector withdraws the objection.

(6) An objector's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided (§218.8(c)(2)).

(7) The objection is illegible for any reason, including submissions in an electronic format different from that specified in the legal notice.

(b) The reviewing officer must give written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented in the project record.

§218.10 Objection time periods and process.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 30 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the FEDERAL REGISTER when the Chief is the responsible official (§218.5(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day as stated in the legal notice or to the end of the calendar day (11:59 p.m. in the time zone of the receiving office) for objections

filed by electronic means such as e-mail or facsimile machine.

(2) The day after publication of the legal notice for this subpart of the EA or final EIS in the newspaper of record or FEDERAL REGISTER (§218.5(c)) is the first day of the objection-filing period.

(3) The publication date of the legal notice of the EA or final EIS in the newspaper of record or, when the Chief is the responsible official, the FEDERAL REGISTER, is the exclusive means for calculating the time to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* It is the objector's responsibility to ensure timely filing of an objection. Timeliness must be determined by the following indicators:

(1) The date of the U.S. Postal Service postmark;

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

(3) The shipping date for delivery by private carrier; or

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

(d) *Extensions.* Time extensions are not permitted.

(e) *Other timeframes.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 30 days following the end of the objection-filing period.

§218.11 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer has the discretion to determine whether or not adequate time remains in the review period to make a meeting with the objector practical." All meetings are open to the public.

(b) *Response to objections.* (1) A written response must set forth the reasons for the response, but need not be a point-by-point response and may contain instructions to the responsible official, if necessary. In cases involving more than one objection to a proposed authorized hazardous fuel reduction

§218.12

project, the reviewing officer may consolidate objections and issue one or more responses.

(2) There must be no further review from any other Forest Service or USDA official of the reviewing officer's written response to an objection.

§218.12 Timing of authorized hazardous fuel reduction project decision.

(a) The responsible official may not issue a ROD or DN concerning an authorized hazardous fuel reduction project subject to the provisions of this subpart until the reviewing officer has responded to all pending objections.

(b) When no objection is filed within the 30-day time period, the reviewing officer must notify the responsible official and approval of the authorized hazardous fuel reduction project in a ROD in accordance with 40 CFR 1506.10, or DN may occur on, but not before, the fifth business day following the end of the objection-filing period.

§218.13 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Authorized hazardous fuel reduction projects proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this subpart. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

§218.14 Judicial proceedings.

The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process for proposed hazardous fuel reduction projects authorized by the HFRA. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions

36 CFR Ch. II (7-1-11 Edition)

of their positions and contentions. Further, any filing for Federal judicial review of an authorized hazardous fuel reduction project is premature and inappropriate unless the plaintiff has submitted specific written comments relating to the proposed action during scoping or other opportunity for public comment as prescribed by the HFRA, and the plaintiff has challenged the authorized hazardous fuel reduction project by exhausting the administrative review process set out in this subpart. Further, judicial review of hazardous fuel reduction projects that are subject to these procedures is strictly limited to those issues raised by the plaintiff's submission during the objection process, except in exceptional circumstances such as where significant new information bearing on a specific claim only becomes available after conclusion of the administrative review.

§218.15 Information collection requirements.

The rules of this subpart specify the information that objectors must provide in an objection to a proposed authorized hazardous fuel reduction project as defined in the HFRA (§218.8). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596-0172.

§218.16 Applicability and effective date.

The provisions of this subpart are effective as of October 17, 2008 and apply to all proposed authorized hazardous fuel reduction projects conducted under the provisions of the HFRA for which scoping begins on or after October 17, 2008.

Subpart B [Reserved]

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

PURPOSE AND PRINCIPLES

Sec.

219.1 Purpose.

219.2 Principles.