Subpart B—OPA 90 Limits of Liability (Vessels and Deepwater Ports)

§ 138.200 Scope.

This subpart sets forth the limits of liability for vessels and deepwater ports under section 1004 of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2704) (OPA 90), including adjustments pursuant to section 1004(d) of OPA 90 (33 U.S.C. 2704(d)).

§ 138.210 Applicability.

This subpart applies to you if you are a responsible party for a vessel as defined under Section 1001(37) of OPA 90 (33 U.S.C. 2701(37)) or a deepwater port as defined under Section 1001(6) of OPA 90 (33 U.S.C. 2701(6)), unless your OPA 90 liability is unlimited under Section 1004(c) of OPA 90 (33 U.S.C. 2704(c)).

§ 138.220 Limits of liability.

(a) Vessels. (1) The OPA 90 limits of liability for vessels are—

(i) For a tank vessel greater than 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of $3,000 per gross ton or $22,000,000;

(ii) For a tank vessel greater than 3,000 gross tons with a double hull, the greater of $1,900 per gross ton or $16,000,000.

(iii) For a tank vessel less than or equal to 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of $3,000 per gross ton or $6,000,000.

(iv) For a tank vessel less than or equal to 3,000 gross tons with a double hull, the greater of $1,900 per gross ton or $4,000,000.

(v) For any other vessel, the greater of $950 per gross ton or $800,000.

(2) As used in this paragraph (a), the term *double hull* has the meaning set forth in 33 CFR part 157 and the term *single hull* means any hull other than a double hull.

(b) Deepwater ports. The OPA 90 limits of liability for deepwater ports are—

(1) Generally. For any deepwater port other than a deepwater port with a limit of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)) and set forth in paragraph (b)(2) of this section, $350,000,000; and

(2) For deepwater ports with limits of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)):

(i) For the Louisiana Offshore Oil Port (LOOP), $62,000,000;

(ii) [Reserved].

(c) [Reserved].

Dated: September 3, 2008.

Craig A. Bennett,

Director, National Pollution Funds Center, United States Coast Guard.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 215 and 218

RIN 0596–AC15

Predecisional Administrative Review Process for Hazardous Fuel Reduction Projects Authorized Under the Healthy Forests Restoration Act of 2003

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This document makes final the interim rule that was published on January 9, 2004, with minor changes to both parts 215 and 218. This rule establishes a process by which the public may file objections to seek administrative review of proposed hazardous fuel reduction projects authorized by the Healthy Forests Restoration Act of 2003 (HFRA), Public Law 108–148. Section 105 of the act directs the Secretary of Agriculture to publish final regulations following public comment on the interim final regulations. This final rule refines the HFRA objection procedures based on public comment and agency experience applying the interim final rule. These changes add clarity to the procedural direction, describe authorized hazardous fuel reduction projects not subject to objection, clarify notification requirements, clarify the eligibility criteria for who may file an objection, provide for the incorporation of certain documents into objections by reference, and clarify how timeliness of objection filing will be determined.

DATE: *Effective Date:* This rule is effective October 17, 2008.

ADDRESSES: The Forest Service objection procedures for proposed hazardous fuel reduction projects authorized by the HFRA are set out in 36 CFR part 218, which is available electronically on the World Wide Web at *http://www.fs.fed.us/objections/objections_related.php#app_work* . Single paper copies are available by contacting Kevin Lawrence, Forest Service-USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250–1104. Additional information can be found at *http://www.fs.fed.us/emc/applit/.*

FOR FURTHER INFORMATION CONTACT: Assistant Director for Appeals and Litigation Deborah Beighley at (202) 205–1277 or Appeal Specialist Kevin Lawrence at (202) 205–2613. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On December 3, 2003, President George W. Bush signed into law the Healthy Forests Restoration Act of 2003 (HFRA) to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during planning processes.

One of the provisions of the Act (section 105) required the Secretary of Agriculture to issue an interim final rule to establish a predecisional administrative review process for hazardous fuel reduction projects authorized by the HFRA and to promulgate final regulations after providing for public comments.

On January 9, 2004, the Forest Service published an interim final rule and request for comments (69 FR 1529). The interim final rule established a predecisional administrative review process at 36 CFR part 218, subpart A, and 36 CFR part 215 was amended to exempt hazardous fuel reduction projects authorized by the HFRA from the notice, comment, and appeal procedures set out at part 215.

In giving direct notice of the interim final rule, the Department also set a 90-day comment period and invited comments from individuals, industry, national organizations, and Federal agencies. A total of 67 comment letters were received from individuals, representatives of State government agencies, environmental groups, professional organizations, and industry. Each comment received consideration in the development of the final rule.

The Department has also used the intervening time since the comment period on the interim final rule to gain additional experience with its implementation. Forest Service records indicate approximately 80 decisions have been issued for fuels reduction projects under HFRA Title I authority since the beginning of 2005. The Agency's application of the pre-decisional objection process to these projects has provided valuable insight to

how the interim final rule functions in practice, including where it might be improved. The lessons learned from this experience are reflected in several of the changes made in the final rule.

The following is a summary of public comments and the Department's responses, including changes from the interim final rule.

General Comments

The Forest Service received some comments related to support for, or opposition to, the HFRA. These comments are not directly relevant to this rulemaking. They were read and considered, but are not being discussed in this notice.

Comments in Response to Specific Sections

Set out below are discussions and responses to public comments received on specific sections in 36 CFR part 218 during the comment period on the interim final rule. The discussion identifies differences between the interim final rule and the final rule and why these changes were made. The final rule has been reorganized and, for the reader's convenience, new titles and new designations are set out in the table below. In addition, references to ''land and resource management plans'' in part 218 and the amended section 215.3(a) of the interim final rule have been shortened to ''land management plans'' to reflect the wording in the recently published 36 CFR part 219 final rule for National Forest System Land Management Planning (73 FR 21468).

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

Section 218.1 Purpose and scope. This section describes the purpose and scope of the rule. There were no comments on section 218.1, and no changes were made to this section in the final rule.

Section 218.2 Definitions. This section defines some of the commonly used terms and phrases in the final rule. In addition to the changes made in response to public comment as described below, a sentence has been added to the end of the definition for ''objection period'' to specify that when the Chief is the responsible official the objection period begins following publication of a notice in the **Federal Register**. This addition reflects a change made at section 218.5(c) of the final rule.

Comment: Definition of Lead Objector. One respondent stated the section 218.2 definition for lead objector, under which the objection reviewing officer could choose one person to represent all parties participating in a multi-party objection, is ill advised. The respondent believed all objectors should have the right to communicate with the Forest Service during the informal disposition process and at any other time when communication between objectors and the Forest Service is appropriate or necessary.

Response: The interim final rule does not state that the lead objector is appointed by the objection reviewing officer. Section 218.7(d) of the interim final rule (section 218.8(c) in the final rule) describes the minimum content requirements of an objection and one of those requirements is ''(3) When multiple names are listed on an objection, identification of the lead objector (§ 218.2).'' This is required by the Department so that a lead objector speaks for one objection filed by multiple parties. A lead objector has been so defined at section 218.2.

Identification of a lead objector is important for timely and effective communication. The regulations also state that the objector may request to meet to discuss issues raised in the objection, and the regulations state that all meetings are open to the public. If the lead objector of a multi-party objection requests a meeting, the meeting would be open to all the parties.

Comment: Definition of Objector. Some respondents commented that the rules for who could object were not consistent throughout part 218. They felt terminology should be used that would clarify whether objectors had to comment during scoping or during a comment period.

Response: The criteria for qualifying as an objector have been clarified in section 218.7(a) of the final rule, and that section is now specifically referenced in the definition of an objector in section 218.2. For proposed authorized hazardous fuel reduction projects described in a draft environmental impact statement (EIS), such opportunity for public comment will be fulfilled during scoping, the comment period on the draft EIS in accordance with procedures in 40 CFR 1506.10, or any other periods where public comment is specifically requested. For proposed authorized hazardous fuel reduction projects described in an environmental assessment (EA), such opportunity for public comment will be fulfilled during scoping or any other periods where public comment is specifically requested.

Comment: Definition of Reviewing Officer. Some respondents commented that the reviewing officer should be someone other than an agency employee who they allege may have a conflict of interest or financial bias in the decision. Some respondents felt that the reviewing officer should have some ''distance'' from the decision. They felt a reviewing officer for a district ranger decision should be at the regional level and not a forest supervisor who has a supervisory interest in the district ranger decision. Other respondents felt the reviewing officer should be an independent administrative law judge appointed by the Secretary of Agriculture.

Response: Those alleging a potential for financial bias on the part of a higher-level agency official contend that hazardous fuel reduction projects may result in revenue retained by the Forest Service (e.g., deposits made to the Salvage Sale Fund, Knutson-Vandenberg Fund, Brush-Disposal Fund, or other Forest Service account), and that the Constitution requires that adjudicators employed independently of the Forest Service decide objections to this class of projects. It is correct that receipts generated from the sale of timber products generated by hazardous fuel reduction projects may be directed into any of a number of special fund accounts. The Forest Service annually reports to Congress, as part of the President's Budget, all its receipts, including those from timber sales, and how those receipts are disbursed—disbursed to the states and counties where National Forest System lands are located, returned to the U.S. Treasury, or deposited to the Knutson-Vandenberg Fund, the Brush-Disposal Fund, etc. The Forest Service must use the receipts that it keeps from timber sales for tightly defined purposes, as required by the statutes authorizing the special fund accounts. This information is available to Congress as it develops the annual budget appropriation for the Forest Service. The statutes authorizing collection of these funds and the budget process clearly demonstrate that Congress understands that money is generated from the sale of timber from the national forests, and that a portion of that money may be used for specific forest management purposes.

This issue is closely related to one discussed in the final rule at 36 CFR 215, Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities (60 FR 33582, June 4, 2003). The Department decided for project-level appeals that it was appropriate that the position deciding an appeal should be at the field level. With the Agency's decentralized organization, review by the decisionmaker's direct supervisor creates a healthy relationship in the chain of command and creates incentives for collaboration at the decisionmaking level. The Department feels that this level of review has been successful in the part 215 rule for administrative appeals and; therefore, the part 218 rule for a predecisional administrative review process follows the same procedure.

Section 218.3 Authorized hazardous fuel reduction projects subject to objection. This section describes hazardous fuel reduction projects subject to the objection process. In addition to the change made in response to public comment as described below, the title of the section has been changed slightly to be more concise and consistent with the corresponding section in the part 215 rule for administrative appeals of project decisions.

Comment: Some respondents commented that non-significant amendments to a land management plan for HFRA projects should also use the objection process.

Response: The Department agrees that non-significant amendments to a land management plan, when approved for a specific HFRA project at the same time the project decision is made, should be subject to the predecisional review process. This is consistent with the administrative review of non-significant amendments associated with non-HFRA projects (36 CFR part 215) and the objection process under the planning regulations at 36 CFR part 219. Section 218.3(b) has been added to the final rule to clarify that such amendments are subject to the objection process.

New Section 218.4 Authorized hazardous fuel reduction projects not subject to objection. This section has been added in response to public comment. It explains when authorized hazardous fuel reduction projects are not subject to objection.

Comment: A comment was received that a project does not need to be subject to objection if there were no written comments or if written comments were supportive, similar to administrative appeal regulations at part 215.

Response: The Department agrees that the objection process is not needed when written comments were not received. Clearly, if no one has established their eligibility to object pursuant to section 218.7, there is no need to provide an opportunity to file objections.

The Department does not agree that the objection process is not needed if only supportive comments were received. The HFRA (section 105(a)(3)) directs that those who submit specific written comments that relate to the proposed action are eligible to participate in the objection process. No distinction is made between supportive and critical comments; eligibility is extended in either case. Because eligibility to participate can be gained through the proper submittal of supportive comments, it is appropriate to preserve the procedural opportunity for those who participated in project planning, even where the filing of objections may be unlikely.

A provision has been added at section 218.4 for making authorized hazardous fuel reduction projects not subject to objection when no written comments were received.

Section 218.5 (was section 218.4 in interim final rule) Giving notice of proposed authorized hazardous fuel reduction projects subject to objection. This section establishes the requirements for giving public notice of the opportunity to file an objection to a proposed authorized hazardous fuel reduction project. In addition to the changes made in response to public comment as described below, several changes were made based on additional agency review of the interim final rule and the Agency's experience with implementing that rule.

The title of the section was modified to more clearly reflect its purpose and content.

Section 218.5(b) was reworded to specify that the responsible official must promptly ''distribute'' the final EIS or EA, rather than ''mail'' the documents as stated in the interim final rule. The change was made to more clearly allow for dissemination of the documents by means other than just the mail, for example by e-mail. The description of who should be provided the documents was also changed to remove the reference to those on a project mailing list and to provide specific reference to the section of the rule describing who may file an objection. The reference to a project mailing list was removed so as not to imply that such a list must be maintained.

An addition was made at section 218.5(c)(1) to require, as part of the objection content, a concise description of any proposed land management plan amendments that were proposed along with the project. This wording was added to provide more consistency with the change at section 218.3(b) that makes authorized hazardous fuel reduction projects approved contemporaneously with a plan amendment subject to objection.

An addition was made in section 218.5(c)(2)(iv) requiring notices of objection opportunities to specify that incorporation of documents by reference is permitted only as provided for at section 218.8(b).

Comment: Some respondents commented that it would be hard for interested parties to know the objection deadline because it is published in local newspapers. Some respondents commented that notices of HFRA projects should be published and publicly available on stable Web sites on the internet, as well as in newspapers of record.

Response: The requirement for publishing the legal notice in the newspaper of record is consistent with how notification under the project-level appeal regulations at 36 CFR part 215 has been conducted since 1993. The Department believes the rule as stated is the most accurate method for potential appellants to know the filing end date.

One portion of this section was found upon further review to be potentially confusing. Section 218.5(b) of the interim final rule included a requirement, upon completion and mailing of a final EIS or EA for an authorized hazardous fuel project, to publish legal notice of the opportunity to object in the applicable newspaper of record. The section went on to state, ''When the Chief is the Responsible Official, notice shall also be published in the **Federal Register**.'' The use of the word ''also'' suggests in these instances a notice is to be published in a newspaper of record and the **Federal Register** even though there is no provision in the rule for the Chief establishing a newspaper of record. Furthermore, given the broad geographic scope of interest in many decisions made by the Chief, it makes little sense to rely on any one newspaper for providing public notice. This requirement has, therefore, been modified to remove the word ''also'' so that the **Federal Register** will be the only required location for published notice of an opportunity to object when the Chief is the responsible official. The option to publish additional notices in one or more newspapers, as appropriate, will always exist.

At one time, the part 215 rule for project-level appeals directed that the deadline for filing appeals be published with the notice. As a result, the Agency had to estimate the date of publication when preparing notices. Although the Agency can request that newspapers publish notices on a certain date, a publication date is not guaranteed. When publication occurs on a different date than estimated, the result has been conflicting dates and confusion. The Department believes that removing this requirement resolved the potential for conflicts and leaves all parties with the same information. The Department believes that the matter is best addressed by having the appellant calculate the appeal filing deadline from the published notice.

The Department also recognizes that those participants eligible to object to a given decision will be made aware of that opportunity when they receive a copy of the final EIS or EA that must be distributed (section 218.5(b) of the final rule; section 218.4(a) of the interim final rule).

Comment: Some respondents stated that for an EA the public would not have the opportunity to review and comment on a draft EA, and that commenting during scoping is difficult because the project plans are vague. The first time the public would see the EA is when it is distributed for the 30-day objection process.

Response: Section 104 of the HFRA requires public notice of each project, a public meeting during the preparation stage of each project, and collaboration in order to ''encourage meaningful public participation during preparation of projects.'' The Department believes these requirements serve to assure ample opportunities for involvement are provided for those interested in HFRA projects.

There is no precedent for a requirement to take comment on a draft EA because circulation of a draft EA is not required for projects falling outside HFRA authority. It is not required by the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq.*), the Appeal Reform Act (Pub. L. 102–381, 106 Stat. 419), or their implementing regulations (40 CFR parts 1500 through 1508 and 36 CFR part 215, respectively). Section 218.5 of the final rule does require the responsible official to distribute a final EIS or EA prior to making a decision so that those eligible to file an objection (section 218.7) have an opportunity to do so.

Given these factors, the Department does not feel that requiring circulation of a draft EA for HFRA-authorized projects is warranted. Responsible officials have the option of circulating a draft EA if they deem it appropriate, but it is not required.

Comment: Some respondents commented that the public must be informed at the beginning of a project whether it is an HFRA project and falls under the objection procedure set out in part 218. The public needs and deserves to know in advance what opportunities will be available for further comment after scoping.

Response: The final rule requires notification that an authorized hazardous fuel reduction project is subject to the objection process in the required newspaper legal notice or **Federal Register** notice. However, the public notices, public meetings, and collaboration required under HFRA will also provide multiple opportunities for public involvement that will inform the participants early in the process that the project is an HFRA project. The Department believes an additional requirement to provide early disclosure that a proposed project is authorized under HFRA is not warranted; however, paragraph (a) has been added in the final rule at section 218.5 to clarify that it is advisable that such disclosure be made during scoping and in the EIS or EA.

Section 218.6 (was section 218.5 in interim final rule) Reviewing officer. This section describes the role and authority of the reviewing officer. No comments were received on section 218.5 of the interim final rule and no changes were made other than the section designation.

Section 218.7 (was section 218.6 in interim final rule) Who may file an objection. This section describes who may file an objection, including the type and timing of participation in the project planning process that is required to be recognized as an objector.

Comment: Some respondents commented that not allowing the public to comment on draft EAs violates NEPA.

Response: This assertion is incorrect. NEPA does not require a draft EA or a comment opportunity on a draft EA. Implementing regulations for NEPA merely require agencies to ''involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments'' (40 CFR 1501.4(b)).

Comment: Some respondents commented that prohibiting individuals of an organization from filing an objection as a member of that organization undermines case law regarding organizational standing.

Response: Caselaw on organizational standing defines when an organization may sue in court and assert the rights of the organization's members in accordance with Article III of the Constitution. This rule defines the prerequisites for an administrative review under the HFRA. The two concepts are related, but have separate legal foundations and need not be identical.

Any number of members of an organization can submit written

comments. Under this rule, if one comment was submitted by one authorized representative of the organization, the organization may object, but the Agency will not accept objections from multiple members of the organization who did not participate during the process. An organization represents all its members but does not give standing to each member to file individual objections. This is the same approach used with project-level appeal regulations at 36 CFR part 215 that state, ''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 appeal eligibility solely on the basis of membership in an organization; the member(s) must submit substantive comments as an individual in order to meet appeal eligibility'' (36 CFR 215.13(a)).

Comment: Some respondents commented that anyone should be able to file an objection. Restricting who can object seems to be an attempt on the part of the Agency to shortchange the public.

Response: The HFRA specifically states that to be eligible to participate in the administrative review process for an authorized hazardous fuels reduction project a person must submit specific written comments that relate to the proposed action (section 105(a)(3)). Congress intended for interested persons to participate early in the project planning process and not wait until the documentation has been finalized or after the decision has been issued to become involved. Although the administrative review process is an opportunity to voice concerns, it is more advantageous to both the responsible official and the public when those who have helpful and important information that could affect a decision bring it forward during project planning.

Section 218.8 (was section 218.7 in interim final rule) Filing an objection. This section describes how to file an objection, including content requirements and limitations. In addition to the change made in response to public comment as described below, another change was made based on additional Agency review of the interim final rule. The direction in the interim final rule at section 218.7(b) describing the objector's responsibility for including sufficient narrative in an objection has been moved to section 218.8(c)(5) in the final rule because it is more appropriately included with the other content requirements for an objection.

Comment: Some respondents commented that objections should be limited to issues raised in specifically written comments. They believe the Agency should have a fair chance to address and document significant issues prior to the initiation of administrative review.

Response: The Department interprets HFRA's requirements to provide an opportunity for public comment, conduct a public meeting, and facilitate collaboration during preparation of the project as sufficient to insure issues surface early in the planning process. While it is most effective to the planning effort if issues are surfaced early in the process, it is most important that they be identified and addressed before the decision is made. Therefore, the Department believes it is unnecessary to limit objections to issues previously raised in written comments.

Comment: Several respondents commented that the provision that ''incorporation of documents by reference shall not be allowed'' exceeds what is reasonable. Most respondents to this section recommended that the regulation be revised to prohibit incorporation by reference of documents outside the existing record. They assert the requirement in the interim final rule would necessitate the submittal of large volumes of material and could make faxing or e-mailing comments difficult or impossible if they could not incorporate relevant documents by reference. The respondents contend objectors who have submitted certain documents with previous comments on the project would have to re-submit them with the objection, even though incorporation by reference is a standard writing technique in both the scientific and legal professions and is standard practice by the agencies of the Federal Government, including the Forest Service.

Response: The Department agrees that there is no need to receive volumes of information already in the project record, but experience shows there have also been examples of reference made to studies or documents that the Agency could not locate or are not readily available to the reviewing officials. The Department has made changes at section 218.8(b) to list exceptions to the limitation on incorporating documents by reference, including Federal laws and regulations, Forest Service directives and land management plans, documents referenced by the Forest Service in the project documentation, and written comments previously provided to the Forest Service by the objector during the project comment period.

Comment: Some respondents requested a provision that allows for third-party intervention during the objection process so that those persons who were satisfied with the HFRA project as proposed remain involved and aware of possible changes that might occur through the objection process.

Response: Section 218.11 states that all meetings with objectors are open to the public. Anyone may attend these meetings and remain informed.

Section 218.9 (was section 218.8 in interim final rule) Objections set aside from review. This section defines what criteria allow the objection to be set aside and not reviewed.

Comment: Section 218.8(a)(6) errantly refers to section 218.7(c)(1) instead of section 218.7(d)(2).

Response: This error has been corrected.

Section 218.10 (was section 218.9 in interim final rule) Objection time periods and process. This section describes the time period when objections must be filed, how those time periods are computed, what evidence will be used to determine timely filing, extensions of time periods, and the timeframe for issuing written responses to objectors. In addition to the changes made in response to public comment as described below, several changes were made for consistency with changes made elsewhere in the final rule. Specifically, changes were made at sections 218.10(a), (b)(2), and (b)(3) to reflect the fact that when the Chief is the responsible official notice of the EA or final EIS is to be published in the **Federal Register** (sec. 218.5(c)).

The description of methods for determining timeliness, listed at section 218.10(c) has been changed to avoid confusion. The rule now lists four methods of submittal: By mail (that is, sending via the U.S. Postal Service), electronic transmission (e-mail or facsimile), private carrier, and hand delivery. For the methods listed at (c)(1)–(3), the date the objection is sent will be determinative; for hand delivery ((c)(4)), the Agency's date stamp of receipt will be determinative.

It should be noted that, in reference to the method listed at (c)(1), the term ''postmark'' is a term that only applies to the date stamp applied by the U.S. Postal Service, but to be abundantly clear and avoid confusion for those who may not be aware of the narrow definition of the term, the rule refers to ''U.S. Postal Service postmark.''

Comment: Several respondents commented on the difficulty in obtaining the newspaper of record to calculate the end of the objection

period, asserting that the newspaper of record is sometimes a very small local or rural paper that is unfamiliar or has limited distribution. Some suggested that the appropriate forest office provide a copy of the formal legal notice to anyone requesting it in an immediate and timely fashion. Some suggested that the rule require the Forest Service to notify the public of due dates. Some respondents supported the requirement.

Response: The approach for publishing the legal notice in the newspaper of record is consistent with the Agency practice for administrative appeals. The Department believes a consistent approach will lead to less potential for confusion and provide the most accurate method for potential objectors to know the filing deadline.

The final rule at section 218.5(b) requires the responsible official to ''promptly distribute the final environmental impact statement (FEIS) or the environmental assessment (EA) to those who have requested the document or are eligible to file an objection in accordance with § 218.7(a).'' Participants eligible to object will receive the documents and be made aware of the process and timeframe for objecting.

Comment: Some respondents commented that the rule states there are no time extensions for objections, yet the precedent has always been that in extenuating circumstances the public has been allowed to request an extension of the comment deadline. Some respondents felt the objection period should be 120 days long.

Response: One of the purposes of the HFRA is to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during review and planning processes. The time periods were set to keep the analysis process timely. The intent is for interested persons to participate early in the project planning process and not wait until after the decision has been issued to become involved.

Comment: Some respondents felt that the objector should not be required to ensure receipt of their electronically submitted objections. They expressed frustration with failures in the electronic filing system in various locations. One suggestion was that the Forest Service should acknowledge receipt of electronically submitted comments or objections.

Response: As a general practice, e-mail inboxes set up to receive appeals and objections are configured to provide an automated return receipt; however, as the respondents noted in their comments, these systems are not infallible and confusion has sometimes resulted. Because the Agency cannot know when an objection has been e-mailed but not received, the reference to automated electronic acknowledgement of e-mailed objections has been removed in the final rule. A statement is added at section 218.10(c) emphasizing that the responsibility for assuring timely submittal of an objection is with the objector.

Section 218.11 (was section 218.10 in interim final rule) Resolution of objections. This section describes the objection resolution process, including resolution meetings and written responses to objections.

Comment: Some respondents commented that the reviewing officer's response should reply to every point made by the citizens; that a point-by-point review of an objection should be required. Some felt that allowing the officer to only ''set forth the reasons for the response'' and consolidate multiple objections to answer with a single response will not meet the intent of having meaningful public participation.

Response: It is the intent of the Department that all issues raised through objection will be reviewed, although the responses may not necessarily address them individually. To clarify this intent the wording at section 218.11(b)(1) has been changed to specify a ''point-by-point response'' is not necessary, rather than a ''point-by-point review'' as stated in section 218.10(b)(1) of the interim final rule.

The provision stating that the reviewing officer shall ''set forth the reasons for the response'' means that the response cannot just say whether or not the objection will lead to a change, but must also explain why. Consolidating multiple objections and answering with a single response is appropriate for objections of a similar nature. One response to all objectors can be entirely appropriate. Consolidated responses allow same or similar issues to be examined and reported on efficiently. Duplicating the same response to several objectors is inefficient and not necessary.

Comment: Some respondents stated section 218.10 of the interim final rule allows the reviewing officer to give instructions to the responsible official that could, in effect, change the original decision. This change could have serious consequences that are not analyzed in the NEPA document, so this changed decision must be sent back for NEPA review and a new decision.

Response: The objection process provides a pre-decisional opportunity for administrative review. There is no ''original'' decision and, therefore, no ''new'' decision that could be issued as a result of instructions given to the responsible official. The respondents overlook that Congress selected a pre-decisional review model to encourage early participation and assure that the Agency has the flexibility to make changes and accommodations before a decision is made.

Comment: Some respondents commented that there is nothing in the interim final regulations to prevent the reviewing officer consolidating two divergent appeals, appointing a representative with interests quite antithetical to one or the other party, and then deciding the consolidated objections based on the participation of the appointed representative.

Response: Part 218 does not state that the lead objector is appointed by the reviewing officer. The Department requires, in instances where multiple names are listed on a single objection, that the objectors identify their lead objector. This requirement is found at section 218.8(c)(3) of the final rule. For communication efficiency, a lead objector is the point of contact for one objection that has been signed by multiple parties. Separate objections from different parties may be consolidated for purposes of the Agency response, but are not represented by one lead objector.

Comment: A respondent commented that section 218.10(b)(2) of the interim final rule appears to disallow any review of the Forest Service's response to objections. This appears to conflict with the Inspector General laws, whistleblower protection laws, and the Data Quality Act.

Response: This rule only defines the administrative review permitted under the HFRA. It does not affect rights under any other statutory or regulatory structure.

Section 218.12 (was section 218.11 in interim final rule) Timing of authorized hazardous fuel reduction project decision. This section describes when a responsible official may make a final decision regarding a proposed authorized hazardous fuel reduction project pursuant to the HFRA.

Comment: A respondent commented that section 218.11 should be specific about when implementation may begin.

Response: The part 218 regulations establish a pre-decisional administrative review process as required by the HFRA. Direction pertaining to implementation of a decision once it is made will be found in the NEPA regulations and Agency directives. To clarify the relationship with the NEPA regulation requirements for decisions made after preparation of a final EIS, a

reference to the relevant section of those regulations has been added at section 218.12(b) of the final rule.

Comment: A respondent commented that section 218.11(a) provides that the Forest Service ''may not issue a Record of Decision (ROD) or Decision Notice (DN) concerning an authorized hazardous fuels reduction project until the Reviewing Officer has responded to all pending objections.'' However, section 218.9(e) states that the ''Reviewing Officer shall issue a written response to the objector(s) within 30 days following the end of the objection-filing period.'' The respondent was concerned that the combined effect of these two provisions could be to delay issuance of a final decision of the project if the ''written response'' is not a decision on the objection and urged clarification that a ''written response'' is the final resolution of the objection.

Response: The ROD and DN are decision documents prepared in accordance with the NEPA, are signed by the responsible official, and are directly related to the project itself and how it will be implemented. The written objection response is the final resolution of the objection and is written by the reviewing officer. The objection process is predecisional, meaning it occurs before the project decision is written by the responsible official. This differs from the project appeal process at part 215 where appeals are made after the project decision is made. Under this rule, the EIS or EA is noticed and distributed, followed by a 30-day period for eligible parties to file objections. Objections are then resolved within 30 days through a written response, and then the project decision can be signed by the responsible official.

Section 218.13 (was section 218.12 in interim final rule) Secretary's authority. This section describes the Secretary's authority and establishes that authorized hazardous fuel reduction projects proposed by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment are not subject to the objection procedures of this part.

Comment: Several respondents were opposed to the exemption of hazardous fuel reduction projects proposed by the Secretary or Under Secretary of Agriculture from the provisions of this rule saying this provision is not authorized by the HFRA and ignores judicial rulings including interpretations of the Appeal Reform Act. Some respondents felt that fuel reduction projects are in relatively small local areas and approval by the Secretary or Under Secretary, in other words, an officer several levels above the local district ranger or forest supervisor, would be inappropriate.

Response: Nothing in the HFRA alters the Secretary's long-established authority to make decisions affecting the Forest Service. The Department's position has always been that secretarial decisions are not subject to an administrative review or appeal process under any of the Forest Service's administrative review systems, and there is no indication that Congress intended to make such a change through the HFRA.

Comment: A respondent stated that section 218.12 of the interim final rule is not clear because it states that authorized hazardous fuel reduction projects ''proposed'' by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment are not subject to the objection procedures of part 218. The respondent questioned whether it means that a project is exempt from the objection procedure if the Under Secretary merely proposes a project but does not make the final decision.

Response: The Secretary or Under Secretary would be the responsible official for any authorized hazardous fuel reduction projects they propose and would, therefore, be the decisionmaker for those proposals.

Section 218.14 (was section 218.13 in interim final rule) Judicial proceedings. This section describes when judicial proceedings are appropriate.

Comment: A respondent commented that judicial review must not be artificially limited, that the scope of judicial review should be for Congress and the courts to decide, and that Congress did not create any new limitations with the HFRA.

Response: For purposes of these regulations, section 105(c)(1) of the HFRA provides that civil action challenging an authorized hazardous fuel reduction project in Federal district court may only be brought if the person has exhausted their administrative remedies by using the administrative review process established in the Act and part 218. The Act also specifies (105(c)(2)) that an issue may be considered during the judicial review of an authorized hazardous fuel reduction project only if the issue was raised in the administrative review processes previously described. Exceptions to the requirement of exhausting the administrative review process before seeking judicial review are provided in the act at section 105(c)(3). Section 218.13 of the interim final rule is fully consistent with the exhaustion requirements established by Congress when it enacted the HFRA.

Section 218.15 (was section 218.14 in interim final rule) Information collection requirements. This section explains that the rule contains information collection requirements as defined in 5 CFR part 1320 by specifying the information that objectors must supply in an objection.

Comment: A respondent suggested that this section should also contain a stipulation that all Agency records on any of these projects must be immediately available for public inspection and investigation.

Response: Federal regulations at 5 CFR part 1320, Controlling Paperwork Burdens on the Public, implement the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501, *et seq.*) concerning collections of information from the public. The regulation is designed to reduce, minimize, and control the burden on the public associated with public information collections. The Office of Management and Budget (OMB) approves qualifying collections of information from the public, and the purpose of section 218.15 is simply to disclose that the information collection requirements associated with filing objections are subject to the requirements of 5 CFR part 1320 and have been assigned a control number by OMB.

The availability to the public of records associated with the planning and analysis of HFRA-authorized projects are governed by the requirements of the NEPA regulations (40 CFR parts 1500–1508), these regulations (36 CFR part 218), and the Freedom of Information Act.

Section 218.16 (was section 218.15 in interim final rule) Applicability and effective date. This section sets out the effective date of this final rule. There were no comments on this section.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This final rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary

impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. Therefore, a regulatory flexibility analysis is not required for this final rule.

Environmental Impacts

This final rule establishes a predecisional administrative review process for authorized hazardous fuel reduction projects on National Forest System lands pursuant to section 105 of the Healthy Forests Restoration Act of 2003. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an EA or EIS ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction.'' This final rule clearly falls within this category of actions, and no extraordinary circumstances exist that would require preparation of an EA or an EIS.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this rule does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

This final rule represents an information collection requirement as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501, *et seq.*), the Forest Service was granted approval from the Office of Management and Budget (OMB) on December 18, 2003, for the new information collection required by the interim final rule. That approval has been extended twice, most recently on December 28, 2007. The current approval expires on December 31, 2010. The information to be collected from those who choose to participate in the predecisional administrative review process for hazardous fuel reduction projects authorized under the HFRA is the minimum needed for the reviewing officer to make an informed decision on an objection filed under the HFRA.

Federalism

The Agency has considered this final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Agency has made a preliminary assessment that the final rule conforms with the federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Comments received on the interim final rule were considered, and the Agency determined that no additional consultation was needed with State and local governments prior to adopting the final rule.

Consultation and Coordination With Indian Tribal Governments

This final rule does not have Tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the final rule does not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects

36 CFR Part 215

Administrative practice and procedure, National forests.

36 CFR Part 218

Administrative practice and procedure, National forests.

■ Therefore, for the reasons set forth in the preamble, the Forest Service adopts as final the interim final rule published at 69 FR 1529, January 9, 2004, with the following changes:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

■ 1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 472, 551; sec. 322, Public Law 102–381 (Appeals Reform Act), 106 Stat. 1419 (16 U.S.C. 1612 note).

■ 2. Amended § 215.3 by revising paragraph (a) to read as follows:

§ 215.3 Proposed actions subject to legal notice and opportunity to comment.

* * * * *

(a) Proposed projects and activities implementing land management plans (§ 215.2) for which an environmental assessment (EA) is prepared, except hazardous fuel reduction projects conducted under provisions of the Healthy Forests Restoration Act (HFRA), as set out at part 218, subpart A, of this title.

* * * * *

PART 218—PREDECISIONAL ADMINISTRATIVE REVIEW PROCESSES

■ 3. The authority citation for part 218 continues to read as follows:

Authority: Public Law 108–148, 117 Stat. 1887 (Healthy Forests Restoration Act of 2003).

■ 4. Revise subpart A to part 218 to read as follows:

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.

§ 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 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).

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 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, 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 objections 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)).

(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 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 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.

Dated: September 10, 2008.

Mark Rey,

Under Secretary, NRE.

[FR Doc. E8–21751 Filed 9–16–08; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0867; FRL–8715–7]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Texas State Implementation Plan (SIP), submitted by the Texas Commission on Environmental Quality (TCEQ) on October 9, 2006. The SIP revision EPA is approving would require decreased newspaper notice for proposed air quality Standard Permits with statewide applicability to the following metropolitan areas: Austin, Dallas, Houston, and any other regional newspapers the TCEQ Executive Director designates on a case-by-case basis. TCEQ will publish notice of a proposed air quality Standard Permit in the *Texas Register* and will issue a press release. In addition, TCEQ may also use electronic means to inform state and local officials of a proposed air quality Standard Permit. EPA is approving this revision pursuant to section 110 of the Federal Clean Air Act (Act).

DATES: This rule is effective on *October 17, 2008*.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R06–OAR–2006–0867. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?
II. Final Action
III. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is approving a revision to 30 Texas Administrative Code (TAC), Chapter 116 (Control of Air Pollution by Permits for New Construction or Modification), Subchapter F (Standard Permits), section 116.603 (Public Participation in Issuance of Standard Permits). TCEQ adopted a revision to this section on September 20, 2006, and submitted the proposed SIP revision to EPA on October 9, 2006 for approval.

The SIP revision requires that any proposed air quality Standard Permit with statewide applicability be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Austin, Dallas, Houston, and any other regional newspaper designated by the Executive Director on a case-by-case basis. The proposed revision also requires TCEQ to publish notice of a proposed Standard Permit in the *Texas Register* and issue a press release. However, the proposed revision changes the current EPA SIP-approved rule as it no longer requires TCEQ to issue newspaper notices for proposed Standard Permits with statewide applicability in the following metropolitan areas: Amarillo, Corpus Christi, El Paso, the Lower Rio Grande Valley, Lubbock, the Permian Basin, or Tyler. EPA approves the revision as meeting the federal requirements of the Act, Public Availability of Information, which requires ''. . . [n]otice by prominent advertisement in the area affected * * *.''

On May 15, 2008 (73 FR 28071), we published our proposed approval of this SIP revision. The proposal provided detailed information about the Texas SIP revision that we are approving today. The proposal also provided a detailed analysis of our rationale for approving the Texas SIP revision. In the proposal, we provided opportunity for public comment on the proposed action. The comment period for this proposed rulemaking ended June 16, 2008. We received no comments, adverse or otherwise, on the proposed rulemaking. We are therefore finalizing our proposed approval without changes. For more details on this submittal, please refer to the proposed rulemaking and to the Technical Support Document, which is in the docket for this action.

For the reasons discussed in the proposed rulemaking and in the Technical Support Document, EPA believes that the revision to Section