[3410-11-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 218

RIN 0596-AD07

Project-Level Predecisional Administrative Review Process

AGENCY: Forest Service, USDA

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (the Department) is issuing this final rule to establish the sole process by which the public may file objections seeking predecisional administrative review for proposed projects and activities implementing land management plans and documented with a Record of Decision (ROD) or Decision Notice (DN). The final rule carries out the direction in the Consolidated Appropriations Act of 2012, section 428, which directs the Secretary of Agriculture, acting through the Chief of the Forest Service, to apply section 105(a) of the Healthy Forests Restoration Act of 2003 (HFRA) to provide for a predecisional objection process. Section 428 further directs the Secretary to apply these procedures in lieu of the procedures required by the Appeal Reform Act (ARA) sections that provided for a postdecisional administrative appeal process for project decisions. This rule revises Forest Service regulations to implement the direction of section 428 and also includes predecisional administrative review procedures applicable to projects authorized pursuant to the Healthy Forests Restoration Act of 2003 (HFRA).

DATES: This rule is effective **[insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Deb Beighley, Assistant Director, Judicial and Administrative Reviews, Ecosystem Management Coordination Staff, 202-205-1277, or Kevin Lawrence, Administrative Review Specialist, Ecosystem Management Coordination Staff, 202-205-2613.

SUPPLEMENTARY INFORMATION:

Background and Need for the Final Rule

On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act of 2012. Section 428 of the Act (hereafter "Section 428") directs the Secretary of Agriculture (Secretary), acting through the Chief of the Forest Service (Chief), to provide for a predecisional objection process based on Section 105(a) of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6515(a), for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a Record of Decision or Decision Notice. The Act further directs that these procedures be applied in lieu of subsections (c), (d), and (e) of Section 322 of Public Law 102-381 (16 U.S.C. 1612 note) (Appeal Reform Act or ARA) that collectively provide for a postdecisional administrative appeal process for projects and activities implementing land management plans. The Department has developed this final rule to: (1) preserve the predecisional objection process already in place for proposed hazardous fuel reduction projects authorized under the HFRA; (2) expand the scope of that objection process to include other covered actions; and (3) establish a process for providing the notice and comment provisions of the ARA.

President 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 (sec.105) required the Secretary to issue an interim final rule establishing a predecisional administrative review process for hazardous fuel reduction projects authorized by the HFRA. The interim final rule was promulgated at 36 CFR part 218 on January 9, 2004 (69 FR 1529), followed by a final rule on September 17, 2008 (73 FR 53705), that incorporated the results of public comment and the knowledge gained through the Agency's experience with implementing the rule.

Congress enacted the ARA in 1992. The ARA states that "the Secretary of Agriculture, acting through the Chief of the Forest Service, shall establish a notice and comment process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans. . .and shall modify the procedure for appeals of decisions concerning such projects." ARA section 322(a), 106 Stat. 1419. The ARA (ARA section 322(c), 106 Stat. 1419) further provided that qualifying individuals may file an appeal "[n]ot later than 45 days after the date of issuance of a decision of the Forest Service concerning actions referred to in subsection (a)...." The Department promulgated implementing regulations for the ARA at 36 CFR part 215 in 1993 and revised them in 2003.

Prior to passage of the HFRA, public notice and comment for hazardous fuel reduction project proposals, and appeal of the decisions, would have been conducted according to the procedures set out at 36 CFR part 215. The HFRA objection rule exempts qualifying hazardous fuel reduction projects from the notice, comment, and

appeal procedures set out at part 215 and establishes separate objection procedures specifically for hazardous fuel reduction projects, pursuant to 36 CFR part 218.

Now, through Section 428, Congress has directed the Secretary to apply the predecisional objection established in part 218, in place of the appeal provisions at part 215, for proposed actions regarding projects and activities implementing land management plans and documented with a Record of Decision (ROD) or Decision Notice (DN). The Department has determined the most appropriate way to carry out this direction is to revise part 218, by amending subparts A and B, and creating subpart C.

Subpart A includes general provisions applicable to HFRA and non-HFRA covered projects and activities.

Subpart B provides additional direction that is specific to proposed actions not authorized under the HFRA. This subpart includes the notice and comment requirements directed by subsection (b) of the ARA and the emergency situation provisions directed by Section 428.

Subpart C provides additional direction that is specific to proposed hazardous fuel reduction projects authorized under the HFRA.

PUBLIC INVOLVEMENT AND RESPONSE TO PUBLIC COMMENTS:

Proposed part 218 was published in the **Federal Register** on August 8, 2012 (77 FR 47337). The 30-day public comment period ended September 7, 2012. The Forest Service received comments from 63 respondents. The Agency analyzed the comments and considered them in developing this final rule. The discussion of public comments below is divided between general comments and those that involve specific sections of the proposed rule. A summary of changes made to the proposed rule is included with the

responses.

General Comments

The Department received the following comments not specifically tied to a particular section of the 2012 proposed rule.

Comment: A number of respondents commented on the need to include a requirement in the final rule that a draft environmental assessment (EA) be circulated for public review and comment prior to the beginning of the objection filing period. Some of these respondents asserted that providing an opportunity for public comment on a draft EA is a requirement of National Environmental Policy Act (NEPA), its implementing regulations, and case law. "…FS regulations do not give the Forest Service authority to ignore the CEQ [Council on Environmental Quality] regulations and voluminous case law which requires all federal agencies to provide public comment on Environmental Assessments." One respondent requested that EAs be released for 45 days of public comment prior to the objection filing period and another suggested 30 days.

Respondents concerned about the availability of a draft EA ahead of the objection filing period also commented on the limited information that might be available for public comment if a draft EA is not circulated. "Scoping generally provides only basic information about the project, and does not allow the public to review and comment on the requisite environmental analysis and proposed alternatives. Precluding public comments on the potential environmental effects and alternatives in a draft EA would therefore short-circuit NEPA." Some of these respondents also related this concern to the direction in the proposed rule that issues raised in objection must be based on previously submitted specific written comments regarding the proposed project or activity and

attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. "[W]ithout a draft EA to comment on, interested parties must throw every possible claim in scoping comments to ensure that they have exhausted issues they may wish to raise in objection."

Response: Direction regarding circulation of NEPA analysis documents is found in the NEPA, the CEQ implementing regulations, and Forest Service implementing regulations. The notice and comment provisions of the Appeal Reform Act (ARA), for which implementation procedures are included in this rule, direct only the requirements by which the public is notified of an opportunity to comment and the length of the comment period. The statute does not specify what information or documentation, other than the required notice, is to be made available as part of the required comment opportunity. For these reasons, any consideration of a requirement to make a draft EA available for public comment is outside the scope of this rule and is appropriately addressed by the Department in Forest Service NEPA regulations at 36 CFR part 220. At this time the Department is not proposing to revise the NEPA regulations at part 220.

Regarding the respondents' concern about the limited information that may be available for comment if a draft EA is not circulated for public comment and how that may affect the ability to raise issues in objection, the direction of the proposed and final rules provides an appropriate response. Section 218.8, paragraph (c) specifies that "[i]ssues raised in objections must be based on previously submitted specific written comments regarding the proposed project and activity and attributed to the objector, *unless the issue is based on new information that arose after the opportunities for comment*." [italics added] Thus, when objection issues are based on information in a final

EA that is made available at the beginning of an objection filing period, and where that information was not made available during any prior opportunity to comment, those issues will be accepted for review by the reviewing officer.

Comment: Several respondents expressed support for the proposed rule and the predecisional administrative review process that it promulgates. One of these respondents noted specifically that replacing the appeal process with a predecisional objection process would be a welcome change and should result in greater efficiencies.

A few other respondents expressed a preference for the post-decisional appeal process. One respondent stated that "It is an important check and balance mechanism to guard against summary dismissal action by decision makers."

Response: The Department believes that considering public concerns early on, before a decision is made aligns with the Forest Service's collaborative approach to forest management and increases the likelihood of resolving those concerns resulting in better, more informed decisions.

Comment: Several respondents provided a number of comments related to direction that is associated, directly or indirectly, with the NEPA and its implementing regulations. These comments encompassed such topics as availability of the Finding of No Significant Impact for public review, content of the Schedule of Proposed Actions, requirements for scoping, and the availability of the project record.

Response: Although a predecisional administrative review process such as the one established through this rule necessarily integrates with implementation of NEPA-related direction and function, nothing in this rule subverts or circumvents applicable requirements found in the NEPA implementing regulations. Additionally, consideration

of changes to these NEPA requirements is outside the purpose and scope of this rule.

Comment: The preamble to the proposed rule described the circumstances and uncertainties concerning administrative review of categorically excluded projects, including ongoing litigation in the U.S. Court of Appeals for the Ninth Circuit concerning the applicability of the Appeal Reform Act to categorically excluded (CE) projects implementing land management plans. The Department invited the public to provide written comments concerning treatment of CE projects in the future by the Forest Service.

A sizeable number of respondents provided comment on the treatment of CE projects in administrative review processes. Preferences ranged from no administrative review opportunity for CE projects, to either post-decisional or predecisional administrative review opportunities. Nearly all those who indicated a preference to have CE projects subject to some form of administrative review, suggested the requirements be made applicable to CEs documented with a Decision Memo. Some respondents suggested that if the Appeal Reform Act is repealed through legislative action, the Forest Service should preserve the notice and comment provisions for CE projects.

Response: The Department appreciates all of the input provided on this important subject. Since the proposed rule was published, little has changed with the judicial or legislative environment associated with this question. The Government's appeal to the Ninth Circuit in the *Sequoia ForestKeeper* v. *Tidwell* case remains pending. The Forest Service continues to comply with the nationwide injunction subjecting certain CE projects from the notice, comment, and appeal provisions of the Appeal Reform Act, issued by the U.S. District Court for the Eastern District of California on March 19, 2012.

Although several pieces of legislation regarding this question have been introduced in Congress, nothing has been enacted. Therefore, the Department is not yet prepared to make any regulatory changes through this or any other rulemaking. The public responses received in comment on the proposed rule that pertain to this question will be retained for consideration at an appropriate time in the future.

Comment: The preamble to the proposed rule included a description of the history and circumstances associated with the use of legal notices as part of administrative review procedures to provide public notification of opportunities to comment and file appeals or objections. The description also noted that the publication dates of these legal notices is typically used to start the associated comment, appeal, or objection filing periods. The preamble explained that the proposed rule did not vary from the standard practice regarding the use of legal notices, but did request comments and suggestions concerning their use.

Nearly all the respondents who commented on this subject expressed support for the continued use of legal notices to provide public notification of comment and objection opportunities, although many also described problems with their use. As a means of notification, few if any respondents thought that legal notices should be the sole means of notification. Limitations of legal notices were described as including newspapers that have limited distribution and little or no Internet presence.

A common point of concern for respondents is the difficulty in determining the publication date for legal notices. Current administrative review regulations use the publication date of legal notices to establish the beginning date for associated comment, appeal, and objection filing opportunities. These regulations also prohibit the inclusion of

a publication date in the legal notices to avoid the complications of sometimes erratic publication schedules.

Most respondents to this question recommended the use of supplemental notification mechanisms, especially email and Web postings on the Internet.

Response: The Department agrees that the system of notifications or administrative review procedures needs improvement. The changes possible at this time are somewhat limited, but the final rule does include some modifications in response to the comments received.

One constraint on changing the method of notification is the Appeal Reform Act (ARA). Section 322(b)(1)(ii) directs the Secretary to give notice of the availability of a covered action for public comment by "publishing notice of the action in a newspaper of general circulation…." Section 322(b)(2) directs the Secretary to accept comments within 30 days "after publication of the notice…," effectively precluding the use of another mechanism to initiate the start of the comment filing period. Although these requirements do not extend to notifications of the opportunity to file an objection, the Department is reluctant to add confusion by introducing a method of notification of the opportunity to file an objection that is different than that used to notify the public of an opportunity to comment. Also, because the same notification procedures are used for all of the Forest Service's administrative review procedures, introducing a change solely in this rule could introduce confusion.

The Department does believe that direction in this rule supplementing the legal notice publication as a means of notification is appropriate and can address some of the concerns expressed by respondents. Therefore, a direction has been added to the final rule

at § 218.7(d) and § 218.24(c)(3).

Although a delay in notification of up to 4 calendar days may reduce the amount of time available to comment or object for some people, the Department believes it is necessary to provide a measure of flexibility for the agency.

Comment: In the preamble to the proposed rule the Department requested public comment on the question of whether the final rule should include specific limitation for the page length of objections. A number of respondents commented on this question and the recommendations were generally evenly split between those who supported a page limit and those who were opposed. The supporters of page limits generally recommended either a 20- or 30-page limit on objections. Those opposed to page limits most commonly referred to the informality of the objection process and the sometimes complex and voluminous environmental documents produced by the Forest Service. Also mentioned was the potential complication of enforcement of page limits without also specifying typographic and style standards to prevent inventive objectors from trying to squeeze more words on a limited number of pages.

Response: After careful consideration, the Department has decided not to include a page limit for objections in the final rule. The establishment of this predecisional administrative review process is an opportunity to create a more open, collaborative approach to administrative reviews and the imposition of a page limit on objections would run counter to that approach. Additionally, the Department prefers, where appropriate, to reduce or otherwise minimize differences between its various administrative review processes. Imposing a page limitation on objections in this final rule would introduce an inconsistency with the other Forest Service administrative review

regulations, none of which include a page limit for objections or appeals.

Comments Related to Specific Sections of the Proposed Rule

Subpart A—General Provisions

Section 218.1 – Purpose and scope.

Comment: Some respondents expressed concern related to the purpose and scope of the proposed rule. For example, one respondent commented, "The underlying assumption that appears as a thread throughout this rule is that the only important decision regarding the use of National Forests is the environmental impact decisions. There are multiple other uses which must be considered in a balanced way when determinations for use of public lands are made. For instance, mining, cattle grazing, logging, recreation, etc." Another respondent is concerned the rule may disenfranchise members of the local community by "muting their voices relative to the powerful interests that quite often assert themselves in the Forest Service's land management plans." This individual went on to request that the rule work to ensure that the people who live and work in the national forests are provided the greatest opportunity for input as possible.

Response: As described in this section, the general provisions of subpart A establish a predecisional administrative review process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans and documented with a Record of Decision (ROD) or Decision Notice (DN). This reflects the direction in Section 428 of the Consolidated Appropriations Act of 2012, and consequently the focus of the administrative review procedures in this rule are project proposals that will be subject to the NEPA environmental analysis and documentation

requirements, including the requirements for a ROD or DN. Such project proposals will encompass the full range of natural resources and most public uses managed by the Forest Service. Decisions regarding the mix of uses and activities that take place on National Forest System lands are made as part of land management planning that occurs before, and results in, the specific project proposals that are the subject of this rule.

The Department has designed the provisions of this rule to provide a fair and equitable opportunity to have unresolved public concerns regarding project proposals considered by a higher-level Forest Service line officer. The procedures related to notification, comment, and objection review and response are intended to be applied the same across all interest areas and geographic locations.

Section 218.2 – Definitions.

Comment: Several respondents addressed the definition of "comments." One respondent asserted that omitting the ability to submit oral comments was in violation of the Appeal Reform Act (ARA) at section 322(b) and "is just another means by which the Forest Service is discouraging and limiting public involvement."

Response: Section 322(b) of the ARA, which is cited by the respondent, states, in part, "The Secretary shall accept comments on the proposed action…." This subsection specifies neither written nor oral comments. Subsection (c) of the ARA does state, in part, "…a person who was involved in the public comment process under subsection (b) through submission of *written or oral comments*…may file an appeal." [italics added] However, Section 428 of the Consolidated Appropriations Act of 2012, directs the Secretary of Agriculture, Acting through the Chief of the Forest Service, to apply section 105(a) of the HFRA *in lieu of* subsections (c), (d), and (e) of the ARA. Thus, with

promulgation of this final rule, subsection (c) of the ARA with its reference to submission of written or oral comments does not control the new procedures; while section 105(a) of the HFRA does. Section 105(a)(3) describes the eligibility requirements for predecisional objection as "a person shall submit…, during scoping or the public comment period for the draft environmental analysis for the project, specific *written* comments that relate to the proposed action." [italics added] This is the reason the definition of comments, for purposes of this rule, does not include oral comments, because oral comments cannot be considered for purposes of eligibility under the applicable statute.

The Department recognizes the inability to utilize oral comments to establish eligibility to object could be a burden and impediment to full involvment in the objection process for some citizens. Consequently, the definition of "comments" (now "specific written comments" in the final rule) has been modified to suggest how comments made verbally could still be used to gain eligibility to object while meeting the applicable statutes. The relevant sentence added to the definition states, "Written comments can include submission of transcriptions or other notes from oral statements or presentations."

Comment: Others who expressed concerns with the definition of "comments" cited the phrases "designated opportunity for public participation" and "specific" as too vague or uncertain. One respondent questioned whether comments provided by those who may have opportunities to comment that are not available to the general public, such as collaborative groups, would meet the definition. Another respondent questioned whether a commenter who states that they do not like a proposed project but does not

explain what it is they do not like about the project would be considered to have submitted a "specific" comment under the definition.

Response: The definition of "comments" (now "specific written comments" in the final rule) has been modified to address these concerns.

Comment: Many respondents commented on the definition of "emergency situation." Most of the comments addressed the part of the definition that states, "…avoiding a loss of economic value sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration" and none of those who commented were supportive of that passage as written. However, the concerns were fairly equally divided along somewhat opposing viewpoints. One group of respondents generally did not like the inclusion of "commodity values" as a criterion for an emergency situation, stating that emergencies should be reserved for "true emergencies" such as action needed to reduce catastrophic damage from floods, windstorms, and ice storms. Another group of respondents generally were not opposed to the inclusion of "loss of commodity values" as a criterion, but felt the qualifying clause "sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration" is too limiting. This group believes tieing the definition to resource protection and restoration objectives "reflects the Forest Service's current focus on forest restoration, rather than on the long-standing concepts of multiple use."

Response: The definition in the proposed rule modified the long standing definition of emergency situation in the 36 CFR 215 appeal procedures. The new

definition primarily modified a passage in the original definition that had been controversial and somewhat problematic: "substantial economic loss to the federal government." Arguments have been made, in and outside the courts, about whether economic loss to the federal government is an appropriate consideration for determining whether an emergency situation exists, and what constitutes a "substantial" economic loss to the government in general or in particular instances. The court's have generally sided with the Forest Service in such disputes.

The reality is that although emergency situation determinations (ESDs) have been a relatively uncommon occurrence over the years, the predominant basis for those determinations has been the potential for substantial economic loss to the Federal government. For twenty years, Forest Service Chiefs have concluded that in carefully evaluated situations the potential for substantial economic loss to the Federal government was an appropriate and necessary reason to make an ESD that would permit the expedited implementation of a project. Yet the controversy has continued, in spite of, or perhaps because of, its application.

In nearly all instances that substantial economic loss to the Federal government has been used as the basis for an ESD, the potential or actual loss has been the result of a loss of commodity value, generally wood products declining in value as insects and decay move into dead and dying trees. This is why the new definition references loss of commodity values, rather than substantial economic loss. Additionally, in nearly all instances, the greater concern of the Forest

Service has been how that loss of economic value would translate into the loss of the ability to accomplish project objectives. Project objectives include both salvaging wood products and the ability to accomplish other project goals including hazard removal, fuel reduction, site preparation, habitat and watershed improvement, and forest restoration. These goals are addressed in the new definition as "project objectives directly related to resource protection or restoration."

For the reasons described above the Department has carefully considered the concerns regarding the scope and function of the ESD definition and has elected to maintain the language of the proposed regulation.

Comment: Two respondents noted that the definition of "objection period" in the proposed rule (now "objection filing period" in the final for greater consistency in how it is used throughout the rule) incorrectly indicated the objection filing period is 30 days for projects documented with an EA and 45 days for projects documented with an EIS.

Response: The respondents are correct and the definition has been corrected in the final rule to read "The period following publication of the legal notice in the newspaper or record of an environmental assessment and draft Decision Notice, or final environmental impact statement and draft Record of Decision, for a proposed project or activity during which an objection may be filed with the reviewing officer (§ 218.7(c)(2)(iii) and § 218.6(a) and (b))."

Comment: One respondent expressed the opinion that the definition of "objector" in the proposed rule inappropriately suggests some projects will not

have a public comment period on a complete NEPA document. Several other respondents expressed support for the definition because it provides an incentive for early public participation and prevents tardy objections.

Response: The definition in the proposed rule states that an objector is an individual or entity filing an objection who submitted comments specific to the proposed project or activity "during scoping or other opportunity for public comment." The Department sees nothing in that definition to suggest one way or the other what documentation or information will be made available for project comment opportunities.

Section 218.3 – Reviewing Officer.

Comment: One respondent expressed support for the clarification that Associate Deputy Chiefs, Deputy Regional Foresters, and Deputy Forest Supervisors can be reviewing officers.

Response: The Department appreciates the expression of support for the clarification. These positions routinely have delegations of authority that are consistent with serving as an objection reviewing officer.

Section 218.4 – Proposed projects and activities not subject to objection.

Comment: One respondent commented to request the first sentence of this section be edited to read, "Proposed projects and activities are not subject to objection when no specific and timely written comments regarding the proposed project or activity (see § 218.2) are received during a designated opportunity for public comment (see § 218.5(a)) *and when the draft decision does not modify the proposed action*." [text to be added is in italics]

Response: The Department disagrees with the requested edit. The decision made for a project or activity documented with an EA or EIS reflects a choice made by the responsible official from a range of alternatives considered in detail and documented in the analysis document. The proposed action will generally be one of the alternatives considered. Whether the alternative selected in the decision is the proposed action should have no bearing on whether a proposed project or activity is subject to objection when no specific written comments are received during a designated opportunity for public comment.

Section 218.5 – Who may file an objection.

Comment: A respondent requested that paragraph (a) be edited to clarify that comment does not have to be submitted during all public comment opportunities by changing the word "and" to "or" in the sentence that begins "For proposed projects and activities described in a draft EIS…."

Response: The Department agrees with the request and the edit is made in the final rule.

Comment: One respondent commented as follows:

> As written in HFRA, Indian Tribes (if classified as a 'person') would not be allowed to appeal [sic] based on pre-scoping consultation interactions or any other communication that is transmitted through the Federal-Tribal relationship unless such Tribe submitted to being considered a public 'person'. This could be interpreted as an unintended diminishment of tribal sovereignty….

Response: As suggested by the respondent, it is not the intent of the Department

to diminish tribal sovereignty in the objection eligibility provisions of this rule. Federal statutory and regulatory requirements that recognize tribal sovereignty and the Federal government's responsibility regarding sovereignty create the potential for Federal-Tribal consultation to occur prior to opportunities for public comment and during which specific written comments could be provided to the responsible official. Consequently, paragraph (b) has been added to this section and states, "Federally-recognized Indian Tribes and Alaska Native Corporations are also eligible to file an objection when specific written comments as defined in § 218.2 are provided during Federal-Tribal consultations."

Comment: Two respondents provided comments disagreeing with paragraph (b), which directs that comments received from an authorized representative of an entity are considered those of the entity only, and that a member of an entity must submit specific written comments independently in order to be eligible to file an objection in an individual capacity. No specific rationale was provided for the disagreement. One respondent commented in support of the paragraph.

Response: The Department disagrees with the opinion of the two respondents and believes that when comments conveying eligibility to object are submitted on behalf of, and by a representative of, an entity, the eligibility is appropriately conveyed only to that entity.

Comment: One respondent commented in support of paragraph (c) and one commented that the requirement for multiple individuals and entities listed on an objection to each meet the eligibility requirements puts an unreasonable burden on the public and prevents parties that want to object from joining another, properly filed objection. The respondent requests the requirement be removed.

Response: The Department disagrees the requirement is an unreasonable burden. The primary purpose of the eligibility requirement is to encourage early and helpful involvement in project planning and analysis. To allow individuals who have not established their eligibility by submitting specific written comments during an opportunity for comment to then sign-on to another's objection circumvents the very purpose of the eligibility requirements.

Section 218.6 – Computation of time periods.

Comment. A few comments were received requesting that paragraph (c) include a requirement to publish on the Internet the required legal notices of an EA or final EIS subject to the objection procedures.

Response. The Department agrees with this request and it is addressed more fully in the General Comments section of this preamble.

Comment: Several respondents commented that extensions of time to file an objection should be permitted, generally by request and at the discretion of the responsible official. The respondents assert that extensions are especially necessary when the proposed projects are especially controversial or the analysis documents are complex.

Response: Neither the administrative appeal process under 36 CFR part 215 nor the HFRA administrative objection process at 36 CFR part 218 have included a provision allowing for extension of time to file appeals or objections. These procedures have been in place for many years—20 years in the case of the appeal procedures at part 215—and the Department does not believe the lack of a filing time extension provision has been a signficant problem or burden to the public. In many instances appellants have been able to file quite lengthy and complex project post-decisional appeals within the same

timeframe as provided in this final rule for predecisional objections.

Section 218.7 – Giving notice of objection process for proposed projects and activities subject to objection.

Comment: Several comments were provided regarding the requirement in paragraph (b) for the responsible official to promptly make available the EIS or the EA, and a draft Record of Decision or Decision Notice, to those who have requested the documents or are eligible to file an objection. Most of these comments were supportive of the requirement. A few comments recommended that the project record be made available for review by the public, preferably online.

Response: The Department appreciates the expressions of support for the provision. Management of the project record is covered under the Forest Service NEPA regulations at 36 CFR part 220. While there is currently no requirement to make a project record available online, responsible officials have the discretion to do so and it is becoming more common for responsible officials to post project analysis and supporting documentation to a project Web page.

Comment: Some respondents commented on the direction in paragraph (c)(2)(iii) regarding the use of a legal notice publication date as the exclusive means to calculate the time to file an objection and that a specific date must not be included in the notice.

Response: This comment is addressed in the General Comments section of this preamble.

Section 218.8 – Filing an objection.

Comment: Although one respondent was supportive of the constraint in the proposed rule on incorporating supporting material by reference in objections, a number

of respondents were critical of this provision. Many of these comments recommended that the final rule permit an objector to incorporate by reference any document reasonably available to the Forest Service. Some noted that Forest Service NEPA procedures at 36 CFR 220.4(h) permit incorporation by reference in NEPA analysis documents when the material is reasonably available to the public.

Response: The Department appreciates the concern expressed regarding the limitations on incorporating supporting materials by reference in objections, but believes the limitation is appropriate. Incorporation by reference potentially places a burden on the reviewing officer to locate and retrieve supporting materials that are already in the possession of the objector and can be readily included with the objection as necessary.

Comment: Paragraph (c) of this section directs that issues raised in objection must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. This direction generated mixed reaction from respondents. Comments expressed primary concern that a constraint on issues raised in objections will lead to comment letters raising every possible issue and "comments on 'everything but the kitchen sink', in order to reserve rights to future objections." One respondent asserts that NEPA does not allow the Forest Service to exclude consideration of issues raised prior to the final decision simply because they were not raised previously. Another contends the constraint exceeds the Forest Service's statutory authority for this rulemaking and notes that such a constraint is not part of the HFRA implementing regulations currently at part 218.

Response: Both the objection eligibility requirement and the constraint on issues

raised in objection are included in the proposed and final rule to encourage early and active involvement by the public in project planning and analysis. Neither is intended to be used primarily as a mechanism to exclude public involvement or the consideration of important issues. The earlier relevant concerns and information are brought to the attention of the responsible official, the more effective consideration can be ensured. This same approach is reflected in the direction pertaining to the predecisional objection process in the recently promulgated regulations for land management planning at 36 CFR part 219. Including the constraint on issues raised in objection in this rule provides greater consistency between the two applications of a predecisional objection process.

To maintain an appropriate degree of flexibility, the constraint on issues raised in objection includes an exception, that issues not raised in prior comment by the objector may still be raised in objection if they are based on new information that arose after the last opportunity for comment. This exception accommodates the variability in documentation and information that are made available at the time of project comment opportunities. For example, if a draft EA is not circulated for public review and comment prior to the objection filing period, and an interested party identifies an issue with information in the final EA that was not previously available, the exception in this rule allows that issue to be raised in objection.

The Department disagrees with the contention that the lack of a similar issue constraint in the current part 218 indicates inclusion of the constraint in this revision of that same rule exceeds the Department's statutory authority under the HFRA. The fact that an issue constraint was not included in the initial implementation regulation does not mean the Department interpreted the HFRA as precluding it. It simply means that in the

time since the promulgation of the final part 218 in 2008, the Department has come to recognize the value in its application.

Comment: Some comment was received concerning the requirements at § 218.8(d)(1) and (2) regarding the inclusion of name and address with objections and providing a signature or other verification of authorship upon request. The respondents expressed concern with the potential release of private information and the potential burden of providing a verification of authorship.

Response: The objection process is intended to be an open and transparent process for considering and seeking resolution of lingering issues. The documents produced as part of the process are necessarily public records. Names and addresses are necessary to the process so that the Forest Service can verify elgibility, extend meeting invitations, and provide written responses to the objections. Based on past experience with both pre- and post-decisional administrative reviews, the Forest Service has rarely needed to request verification of authorship and does not expected this requirement to be a burden to objectors in the future.

Comment: Several respondents questioned the requirement, at paragraph (d)(5), to include in an objection, if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy. Some of these comments questioned the inclusion of alleged violations of policy, stating that interpretations of policy are subjective and that issues concerning adherence to policy often take the form of unsubstantiated opinions.

Response: Forest Service policy is codified in the agency's directives, specifically the Forest Service Manual and Forest Service Handbook in the form of both

direction and guidance. The public should have a reasonable expection that proposed projects and activities are consistent with the agency's policy documents or explanation is given for variances. Therefore, issues associated with agency policy are appropriate for consideration in a predecisional administrative review as long as the objector is specific in the description of the alleged violation. Although one respondent read this paragraph as indicating an objection will only be accepted if it includes alleged violations of law, regulation or policy, the phrase "if applicable" renders this content element as optional.

Comment: One respondent expressed support for the requirement in paragraph (d)(6) to include in objections a statement that demonstrates the link between prior written comments on the proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment.

Response: The Department appreciates the expression of support for this provision.

Section 218.9 – Evidence of timely filing.

Comment: A respondent commented that the Forest Service needs to establish a system for timely notification of receipt of objections and comments filed electronically.

Response: The Department agrees with the respondent and has added a new paragraph (b) to this section of the final rule that states "For e-mailed objections, the sender should receive an automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgement of receipt of the objection, it is the sender's responsibility to ensure timely receipt by other means." The same direction is already present at § 218.25(a)(4)(iii) of the final rule,

applicable to comments sent by e-mail.

Comment: A respondent noted that use of the phrase "objection filing date" is unique within the rule and confusing. The respondent recommends replacing the word "date" with "period."

Response: The Department agrees and has made the change in the final rule.

Comment: A respondent commented regarding paragraph (a)(2) that date and time for faxes is set up by the fax machine owner and is therefore subject to error. Another respondent recommends clarifying that the objection filing period ends at 11:59 p.m. local time on its final day.

Response: The respondent is correct that the time stamping provided by fax machines is subject to error, but this is also true of other automated and even hand stamping methods for recording time of receipt. It is incumbent on the reviewing officer to assure that automated systems used as part of the objection process are functioning correctly and recording accurate dates and times. That said, timely filing is ultimately the responsibility of the individual or entity filing the objection. The final rule has been edited to clarify that comments or objections submitted electronically must be received by 11:59 p.m. in the time zone of the receiving office on the last day of the filing period.

Section 218.10 – Objections set aside from review.

Comment: One respondent expressed support for parapgraph (a)(4), which directs setting aside an objection from review when none of the issues included in the objection are based on previously submitted written comments unless one or more of those issues arose after the opportunities for comment. Another respondent recommended adding a ninth item under paragraph (a): "When the responsible official withdraws the proposed

decision notice or proposed record of decision for the respective project or activity."

Response: The Department appreciates the expression of support for paragraph (a)(4) and agrees with the need to include the scenario described by the second respondent, though not with the exact wording suggested. Paragraph (a)(9) has been added to this section in the final rule to read as follows: "The responsible official cancels the objection process underway to reinitiate the objection procedures at a later date or withdraw the proposed project or activity."

Comment: Regarding paragraph (b) of this section, a respondent suggested the public should be provided an opportunity to correct deficiencies in an objection and refile, even if the filing period has closed.

Response: The Department does not agree with this suggestion. To include this provision would in effect leave the objection filing period open-ended, and would complicate both the efforts to resolve issues and to develop a written response to unresolved objections if objections could be modified in some fashion at any time.

Section 218.11 – Resolution of objections.

Comment: Several respondents provided comment regarding the conduct of resolution meetings. Among these were recommendations around where meetings must take place and when, or whether, they can be denied. One respondent recommended that a first resolution meeting take place within 15 days of the close of the objection filing period. Another respondent expressed concern that the reviewing officer has the discretion to deny a meeting requested by an objector and a third respondent recommended that reviewing officers be permitted to deny meeting requests only within 15 days of the end of the objection review period, and that otherwise meeting requests

from objectors must be accepted.

Response: Resolution meetings are an important element of the objection procedures and can be very valuable in finding opportunities to resolve issues and for the reviewing officer to gain additional understanding of the issues. Nevertheless, the objection process is designed to be carried out within a specified timeframe (30 days for project proposals authorized under HFRA, with no option for extension; 45 days for non-HFRA project proposals, with an option for the reviewing officer to extend for up to 30 days), so it is in the interest of the Forest Service and objectors to retain an appropriate degree of flexibility for carrying out the basic components of the process. It is also in the interest of the Forest Service and objectors to meet as early as can be arranged and to make the meetings as efficient and productive as possible. The number of objectors, number of objection issues, and schedules of the objectors, reviewing officer, and responsible official can all affect whether and how quickly a resolution meeting can be arranged. Consequently, the final rule does not include the respondents' recommendations for the timing of meetings or for whether or when meeting requests can be denied.

Comment: One respondent commented on the involvement of the reviewing officer in resolution meetings, stating that "The presence of the reviewing officer may inhibit the process of resolution and prejudice the review of the responsible official's decision." The respondent recommended that the presence of the reviewing officer at objection resolution meetings should be at the discretion of the responsible official.

Response: Unlike the administrative appeal process at 36 CFR part 215, where the responsible official is required to offer to meet with appellants and neither the appeal

reviewing officer nor the appeal deciding officer may attend, under these predecisional objection procedures resolution meetings are intended as an opportunity for the reviewing officer to communicate directly with objectors. Appropriate public involvement and collaboration initiated by the responsible official are expected to have already occurred by the time the objection procedures are set into motion. The Department sees objection resolution meetings as an opportunity for the reviewing officer to communicate directly with objectors, ask questions, gain a more complete understanding of objection issues, and explore opportunities to resolve issues with the proposal that still remain. The responsible official will generally be present at objection resolution meetings to answer questions as necessary and assist with identifying any opportunities for issue resolution.

Comment: One respondent expressed concern that use of the plural "meetings" in this section implies that not all objections can be resolved in a single meeting. The respondent suggested revising the sentence to "The responsible official should be a participant in any objection resolution meeting."

Response: The Department agrees with the respondent and the sentence has been edited as suggested.

Comment: One respondent suggested the final rule include requirements for notifying other interested parties of objections filed, making objections available to interested parties, and allowing interested parties to file statements with the reviewing officer and participate in objection resolution meetings.

Response: The limited timeframes for the objection review period in this rule preclude a broader involvement of interested parties. While the Department encourages a collaborative approach to project planning, the administrative review process, by its very

nature, does not lend itself to being fully collaborative. That being said, the very fact the objection review process occurs before a final decision has been made increases the opportunities for a more collaborative approach to problem solving. Nothing in the rule prevents interested parties from 1) participating in project planning in such a way that they are eligible to object and therefore are notified directly when an objection filing period begins; 2) requesting copies of objections from the reviewing officer; 3) asking about a schedule of any objection resolution meetings; 4) attending objection resolution meetings and participating at the discretion of the reviewing officer; and 5) obtaining a copy of objection responses.

Comment: A respondent commented that the reviewing officer should not be an "agency employed staff person" because such an individual would not have the appearance of providing a fair and impartial review of the issues.

Response: The Forest Service has utilized agency line officers as deciding officials for administrative reviews as long as it has offered administrative reviews. The Department believes this arrangement has worked well and that issues under administrative review are considered fairly. If a designated reviewing officer finds a need to recuse himself or herself from an objection review because previous engagement with the project in question might result in a perceived bias, a provision added to the final rule at § 218.3(a) directs that the Forest Service line officer at the next higher administrative level above that reviewing officer shall assume the reviewing officer responsibilities.

Comment: Paragraph (b)(1) of this section directs that "A written response must set forth the reasons for the response, but need not be a point-by-point response…." Some respondents commented that written responses by the reviewing officer should address all

major points in an objection, including the rationale for his or her decision, and the rule should not "provide the reviewing officers the discretion to ignore controversial or complicated issues raised by objectors."

Response: The Department believes the reviewing officer should have the flexibility and discretion to provide a written response that is appropriate for the objections filed and the issues raised in those objections. The Forest Service's experience with administrative reviews has demonstrated that project issues are presented in a wide range of completeness, specificity, and clarity. This paragraph gives the reviewing officer the flexibility to tailor the written response to the nature of the project, objections, and objection issues. By setting forth the reasons for the response, the reviewing officer will be providing his or her rationale, and although the response does not have to be point-by-point, reviewing officers are generally expected to address issues that are considered central to the objections filed.

Comment: A respondent noted that the proposed rule does not address what happens when the reviewing officer fails to provide a written response to an objection within the alloted timeframe. The respondent suggests that a provision similar to that found in the 36 CFR part 215 appeal regulations be included for instances where this occurs.

Response: The rule provides at § 218.12(a) that the responsible official may not sign a ROD or DN concerning a proposed project or activity until the reviewing officer has responded in writing to all pending objections. Thus, it is in the interest of the reviewing officer and the agency that objection responses be made within the time allowed for the review. For this reason the Department does not believe any additional

provision is needed regarding failure to provide a timely written response to objections.

Section 218.12 – Timing of project decision.

Comment: A number of respondents commented on the need for additional direction in the proposed rule regarding what should happen if changes are made to the draft decision document that is made available at the beginning of an objection filing period. One respondent suggested the only differences permitted in the signed decision should be those that "present fewer and less intense negative environmental impacts than those presented in the proposed decision." Most of the respondents commenting on this section requested a requirement be added to the rule that additional public review and opportunity for comment be provided when "substantial" changes are made to the project decision document. The suggestion was also made that an additional comment opportunity be provided if significant or substantial changes are made to a project proposal between the last public comment opportunity and the beginning of the objection filing period.

Response: The Department agrees with respondents that major changes should generally not be made to draft decision documents without good cause or without an opportunity for additional public involvement before decisions are signed. The Department's intent is that draft decision documents reflect the responsible official's intended decision, unless circumstances generally related to the objection review process warrant a change. Appropriate response and documentation when a responsible official is presented with new information or changed circumstances is guided by Forest Service NEPA directives.

Comment: A few respondents commented on the implementation of projects

following an objection and the signing of the project decision document. One comment suggested there should be a mandatory and temporary (but unspecified) stay of implementation after approval of a DN. Another comment was that projects should be permitted to be implemented immediately after approval of a DN or ROD if no one is eligible to file an objection.

Response: Provisions pertaining to implementation of project decisions made subsequent to an objection process are outside the scope of the rule. The Department does recognize that the proposed rule lacked direction pertaining to the timing of a project decision when the proposal is not subject to objection because no individual or entity is eligible to object. Therefore, the final rule includes the addition of paragraph (d) in this section to direct that when a project or activity is not subject to objection because no specific and timely written comments were received during a designated opportunity for public comment, the approval of the project or activity must be in accordance with the relevant CEQ and Forest Service NEPA regulations.

Section 218.14 – Judicial proceedings.

Comment: A few respondents commented on the section of the proposed rule that states the Department's position regarding Federal judicial review of decisions covered by the rule. The respondents found the section either complicated and "onerous," or confusing. One comment questioned whether an exhaustion of administrative remedies requirement is applicable in the case of predecisional administrative reviews because "final agency action" does not occur until the objection period ends and the Forest Service issues a NEPA decision. Another respondent recommended including a specific reference to statutory exhaustion requirements of 7 U.S.C. 6912(e).

Response: The Department believes the section as it was published in the proposed rule correctly and clearly states its position regarding the need to exhaust the administrative review process set out in part 218 before filing for Federal judicial review of a decision covered by the rule. The Department agrees the suggested citation to U.S. Code is relevant to this position and it has been included in the final rule. The HFRA directs that a person may bring a civil action challenging an authorized hazardous fuel reduction project in a Federal district court only if the person has challenged the authorized hazardous fuel reduction project by exhausting the administrative review process established by the Secretary of Agriculture under the HFRA. The Department of Agriculture Reorganization Act of 1994 provides that "notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against—(1) the Secretary; (2) the Department; or (3) an agency, office, officer, or employee of the Department."

Comment: One respondent contends an Indian tribe by definition in the language of the Consolidated Appropriations Act of 2012 is not a "person," and that therefore it should be acknowledged in the regulation that "Indian tribes" are exempt from exhaustion of administrative review requirements and can initiate judicial review or legislative remedy at any point in time.

Response: The 218.14 Judical Proceedings provision represents the Department's informed understanding and interpretation of Congressional requirements concerning exhaustion of administrative remedies under the 1994 Reorganization Act and the Healthy Forests Restoration Act. Read as a whole, these statutes do not evidence an intent

to exempt Tribes from exhausting administrative remedies prior to seeking judicial review.

Section 218.16 – Effective dates.

Comment: A respondent commented that applying the predecisional objection process to projects for which the scoping comment period has already passed would be unjust because some citizens may have waited to comment on the draft EA to submit comments and therefore would not be eligible to object if no draft EA is circulated for comment.

Response: Those interested in a particular project proposal are encouraged to provide specific comment at the earliest opportunity. Early feedback can provide the most helpful assistance to the Forest Service as project planning and environmental analysis proceeds. Direction pertaining to public involvement as part of the NEPA process is found in NEPA implementing regulations at 40 CFR parts 1500-1508 and 36 CFR part 220. Although responsible officials have the discretion to circulate draft analysis documentation, including draft EAs, there is not currently, nor has there ever been, a requirement to do so.

Comment: A respondent commented that the "grace period" should be much shorter than 6 months and suggested 3 months as a more appropriate period of time to transition to the new administrative review process.

Response: The proposed rule directs that if the legal notice of an opportunity to comment on a proposed project or activity subject to the rule has already been published and the decision document (DN or ROD) is signed within 6 months of the effective date of the rule, the decision will be subject to the administrative appeal process under 36 CFR

215. If the decision will be signed more than 6 months after the effective date of the rule, the project proposal will be subject to the requirements of the rule.

Hundreds of project proposals are made and project decisions signed by the Forest Service each year. When the final rule at part 218 becomes effective there will be project proposals at all stages of development and public involvement. The Department considered a range of possible lengths of time for transitioning to use of the new rule and believes that 6 months provides for the best combination of a smooth, equitable, and efficient transition.

Subpart B—Provisions Specific to Project-level Proposals Not Authorized Under Heatlthy Forests Restoration Act

Section 218.21 – Emergency situations.

Comment: The proposed rule directs that the Chief and Associate Chief are authorized to make the determination that an emergency situation as defined in the rule exists relative to a proposed project or activity. A respondent suggests that the Chief should be able to delegate emergency situation determination (ESD) authority to the Deputy Chief for National Forest Systems and Regional Foresters.

Response: Forest Service administrative appeal regulations at part 215 include an ESD provision similar to that in the proposed rule. Under part 215, when an ESD is made for a project, the normal stay of implementation during the administrative appeal process is lifted and the project may be implemented as soon as the decision has been signed. Under this rule, when an ESD is made the proposed project is not subject to the predecisional objection process and may be implemented immediately after providing the required notification of the decision.

Agency experience with the ESD provision of part 215 has shown that given the uncommon occurrence of such emergency situations and the significance of the procedural effect of an ESD, it is in the best interest of the Forest Service and the public for ESD authority to rest solely with the Chief and Associate Chief.

Comment: Some respondents suggest the public be provided an opportunity to comment on a request for an ESD, including requiring a statement of intent to seek an ESD in scoping notices. One suggestion is that the responsible official be required to "provide a certification or explanation as to why the agency has authority to seek emergency status in that particular situation."

Response: By its nature an emergency situation requires a more rapid response than a non-emergency situation. Responsible officials will be alert to the potential for an emergency situation; however, the conditions that contribute to an emergency situation may not exist from the very beginning of a project proposal. Once the need for an ESD has been identified, it is necessary that project planning, decision making, and implementation proceed as quickly as possible. Projects found to be emergency situations under the provisions of this rule are still subject to the public involvment and other requirements of the NEPA and its implementing regulations, yet the imperative nature of an emergency situation is not compatible with an additional opportunity for public involvement related to the ESD itself. The responsible official's request to the Chief to make an ESD will describe the reasons for the request and any ESDs made by the Chief will include the rationale. These documents are public records and are available upon request.

Comment: A respondent suggests the decision and implementation be stayed 10

days following an ESD to allow the public an opportunity to seek injunctive relief.

Response: Section 428 of the Consolidated Appropriations Act of 2012 directs that when the Chief of the Forest Service determines that an emergency situation exists the proposed action shall not be subject to the predecisional objection process, and implementation shall begin immediately after the Forest Service gives notice of the final decision for the proposed action. Staying implementation of a decision following an ESD would not be consistent with the direction of Congress.

Section 218.22 – Proposed projects and activities subject to legal notice and opportunity to comment.

Comment: A respondent suggested, regarding paragraph (e), that research activities should not be subject to objection because they are exempt from an EA or EIS under Departmental regulations at 7 CFR 1b.3(a)(7).

Response: The correct reference is 7 CFR 1b.3(a)(3), which directs that among the category of activities which have been determined not to have a significant individual or cumulative effect on the human environment and are excluded from the preparation of EA's or EIS's are "Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity." The regulation only categorically excludes research activities when they are limited in context and intensity; therefore, research activities that are not limited in context and intensity or are not as otherwise described in the regulation may require preparation of an EA or EIS and would appropriately be subject to the provisions of part 218. To clarify this point, paragraph (e) in the final rule has been edited to read "Proposed research activities to be conducted on National Forest System land for which

an EA or EIS is prepared."

Section 218.23 – Proposed projects and activities not subject to legal notice and opportunity to comment.

Comment: One respondent, in reference to paragraph (b), commented "This section claims that 'Land Management Proposals' are separate and apart from property projects. And thus should 'Not be subject to public involvement.'" A similar comment was made with regard to hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act (HFRA) as described at paragraph (g) of this section.

Response: The respondents misunderstand the paragraphs. Section 218.23 describes proposed projects and activities that are not subject to the legal notice and opportunity to comment procedures *of this subpart*. Paragraph (b) lists proposed land management plans, plan revisions, and plan amendments that are made separately from any proposed projects, and paragraph (g) lists hazardous fuel reduction projects authorized under the HFRA. Therefore, the land management plan and HFRA-authorized proposals are not subject to the opportunity to comment provisions of this rule; however, they are still subject to the public involvement requirements of NEPA regulations at 40 CFR 1500-1508 and 36 CFR 220. In addtion, the plan proposals are subject to public involvement and notification requirements of the Forest Service planning regulations at 36 CFR 219 and the HFRA-authorized projects are subject to public involvement and collaboration requirements under section 104 of the HFRA.

Comment: Paragraph (d) of this section describes proposed projects and activities not subject to the provisions of the NEPA and its implementing regulations as not being subject to the legal notice and opportunity to comment on procedures of subpart B. One

respondent requested that the rule provide either a comprehensive list of projects and activities not subject to NEPA or reference to another regulation for a better description of what is included or excluded.

Response: Because of the very broad range of actions taken and decisions made by the Forest Service a comprehensive list of projects and activities not subject to the NEPA would not be reasonable. The references listed in paragraph (d) provide a more complete description of actions subject and not subject to the NEPA, descriptions that are not appropriate to repeat in this rule.

Section 218.24 – Notification of opportunity to comment on proposed projects and activities.

Comment: Paragraph (b) of this section lists the content requirements of the legal notice of an opportunity to comment. One comment requested the addition of a description of the potential issues and concerns of the proposed project and a Web link to a location map.

Response: Paragraph (a)(2) of this section directs the responsible official to determine the most effective timing for publishing the legal notice. Because the amount and type of information developed for a proposal will vary as the planning and environmental analysis process progresses, a more specific description of information to be made available in the legal notice is not feasible. Responsible officials are guided by Forest Service NEPA regulations and directives in determining what project information to make available to the public and when. Paragraph (b)(2) of this section directs that the legal notice shall include sufficient information about the location of a proposed project or activity to allow the interested public to identify the location. A Web link to a map is

one possible way to make this information available for those who have access to the Internet.

Comment: A respondent commented that it is unclear if paragraphs (b)(4) and (5), which describe timeframes for commenting on EAs and EISs, applies to emergency situations. The respondent asks, once an emergency situation determination is made, do the notice and comment provisions of the rule still apply?

Response: Section 428 of the Consolidated Appropriations Act of 2012 ("Section 428") directs that if the Chief of the Forest Service determines an emergency situation exists, the proposed action "shall not be subject to the pre-decisional objection process…." The notice and comment requirements of subpart B of this rule implement the direction of the Appeal Reform Act, sections 322(a) and (b). Although the notice and comment requirements of the ARA and subpart B of this rule are integrated with the predecisional objection process directed by Congress in Section 428 and promulgated in this rule, the Department does not consider them part of the pre-decisional objection process in the context of ESDs. This is demonstrated in paragraph (b)(3) of this section, which directs the responsible official to include in the legal notice a statement, when applicable, that the responsible official is requesting an ESD or that an ESD has been made. If a project proposal was exempt from the notice and comment requirements after an ESD has been made by the Chief or Associate Chief, there would be no reason to require notification of that determination in the legal notice. Thus, the legal notice and opportunity to comment are still required if an ESD is made.

Comment: Some respondents commented that this section should include a requirement that the required legal notice be published at the same time a draft EA is

made available for public review and comment.

Response: This comment is addressed in the General Comments section of this preamble.

Section 218.25 – Comments on proposed projects and activities.

Comment: Several respondents requested that paragraph (a)(1)(iv) of this section include a provision for extensions of time to comment on an EA, for example when the documentation is complex or controversial. One respondent recommended that extensions of up to 15 days be permitted if they are requested by individuals or entities within 15 days of the start of the comment period.

Response: A comment period of 30 days is directed by Congress in Section 322(b)(2) of the Appeal Reform Act and does not provide the Forest Service the opportunity to consider an extension of the comment period.

Comment: Several respondents commented on the different notice and comment requirements regarding EAs for non-HFRA (subpart B of the rule) and HFRA (subpart C of the rule). These comments suggest there is no compelling reason that HFRA and non-HFRA projects should be treated differently under this rule with regard to comments on EAs. "The Forest Service's new notice-comment-objection regulations attempt to seriously undermine public participation because it fails to use of [sic] a consistent public involvement process that the public can understand and follow."

Response: Section 428 of the Consolidated Appropriations Act of 2012 ("Section 428") directs the Secretary of Agriculture, Acting through the Chief of the Forest Service, to apply section 105(a) of the HFRA to provide a pre-decisional objection process to a specified category of projects in lieu of subsections (c), (d), and (e) of the Appeal Reform

Act. Because section 105(a) of the HFRA has no specific notice and comment requirements, the implementing regulations for that section, first promulgated as an interim final rule in 2004 and then as a final rule in 2008, have had no specific notice and comment requirements. Direction pertaining to public involvement for HFRA projects has always come from section 104 of the HFRA, and NEPA implementing regulations at 40 CFR parts 1500 through 1508 and 36 CFR part 220.

Notice and comment requirements for projects under the authority of the Appeal Reform Act are found in section 322(a) and (b) of that statute and are unchanged by the direction of Section 428. Therefore, the Department has to develop implementing regulations for two statutes that are related and not in conflict, but result in a potentially confusing combination of requirements, especially pertaining to notice and comment for proposed projects and activities. The Department determined that the most appropriate way to organize implementing regulations under these circumstances was to establish subparts with the requirements specific to each, non-HFRA and HFRA proposed projects and activities.

Comment: Several respondents suggested that paragraph (b) of this section should require the responsible official to respond to all comments in the final EIS or EA or "an appendix thereto."

Response: NEPA implementing regulations at 40 CFR 1503.4 require federal agencies to include a response to comments received on a draft EIS in the final EIS. There is no corresponding requirement in Council on Environmental Quality or Forest Service NEPA regulations for EAs. The Department has determined it to be most appropriate to rely on the long-established NEPA direction regarding the use of public

comments. Therefore, the final rule requires consideration of public comments received during the required comment opportunity, but appropriately leaves the subject of disposition of those comments to the relevant NEPA regulations.

Section 218.26 – Objection time periods.

A number of respondents provided comment on the timeframes for filing objections and for responding to objections.

Comment: Regarding the time for filing an objection, some of the respondents commenting supported the 45-day filing period for non-HFRA projects in the proposed rule, while others asserted the time should be shortened to 30 days because it would be consistent with the filing time set for HFRA projects and because, in respondents' opinion, it would be more in keeping with Congress' intent to speed management and reduce project delays.

Response: The time period for filing administrative appeals of covered projects has been 45 days since the rule at part 215 was first promulgated in 1993. The Department believes this amount of time has worked reasonably well and provides an appropriate balance between the need to move forward efficiently toward a project decision while offering a reasonable opportunity for review of environmental documents and documenting unresolved issues. The time for filing objections of non-HFRA projects is left at 45 days in the final rule.

Comment: Most of those who commented on the time to respond to objections of non-HFRA projects believed the time should be shortened from 45 days to 30 days. One respondent stated, "There is nothing in the legislative history of Section 428 to suggest that Congress wanted the HFRA objection process to apply in anything less than the

expeditious manner that it is applied to hazardous fuels reduction projects."

Response: Again, the time for responding to an administrative appeal has also been 45 days since the rule at part 215 was first promulgated in 1993 and this amount of time has generally worked well. Respondents asserted that there is nothing in the legislative history of Section 428 to suggest that Congress wanted different timeframes than are provided under the HFRA objection process, but conversely, neither Section 428 nor the HFRA directs a specific number of days for resolving and responding to objections. The Department chose to use 30 days when the interim final rule implementing the HFRA predecisional objection process was promulgated in 2004, largely in recognition that the type of hazardous fuel reduction projects covered by the act carried an inherent degree of urgency for their accomplishment. Resources, property, and sometimes lives may be at stake when there is a need to reduce hazardous fuels.

For the reasons described above, the Department believes that a difference in the time required to respond to objections of non-HFRA and HFRA projects is appropriate. The final rule retains a response period for non-HFRA objections for which both the public and the Forest Service are familiar, and provides a reasonable opportunity to explore options for resolving objection issues. It should be noted that the amount of time by which the reviewing officer has the discretion to extend the time for responding to objections has been increased in the final rule from up to 10 days to up to 30 days. The reason for this change is provided in the section of this preamble titled Summary of Changes to the Proposed Rule.

Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

Section 218.31 – Authorized hazardous fuel reduction projects subject to objection.

Comment: Several respondents commented that the rule must include specific provisions for notice and public comment opportunities on proposed hazardous fuel reduction projects authorized under the HFRA, of the same nature as are included in the rule for non-HFRA projects. The concern expressed by these respondents is that without such notice and comment provisions in this rule the potential exists for those interested in a particular proposal to have no means to gain eligibility to object and the project would be in violation of the NEPA and HFRA.

Response: The projects and activities that are subject to the provisions of this rule, both HFRA-authorized and non-HFRA projects, are also subject to the requirements of the NEPA and its Council on Environmental Quality implementing regulations (40 CFR parts 1500-1508) and Forest Service implementing regulations (36 CFR part 220). The statute and the two regulations include specific provisions for notifying the public of proposed projects and activities, and for providing opportunities for public involvement in the environmental analysis that is conducted for them.

Section 104, paragraphs (e), (f), and (g) of the HFRA also include provisions for public notice, collaboration, and public comment associated with applicable hazardous fuel reduction projects. This final rule provides implementing direction for section 105 of the HFRA, and although implementing regulations for section 104 of the statute are not promulgated in this or any other rule, the statutory requirements of that section are applicable to the same hazardous fuel reduction projects that are subject to this final rule.

This final rule does include additional specific notice and comment requirements for non-HFRA projects and activities because of the statutory direction in the Appeal

Reform Act (ARA). Congress enacted the ARA in 1992 and the statute states that the Secretary of Agriculture, acting through the Chief of the Forest Service, shall establish a notice and comment process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans (ARA section 322(a), 106 Stat. 1419).

The HFRA was enacted in 2003 and section 105 of that act requires the Secretary to promulgate regulations establishing a predecisional administrative review process that would be the sole means by which a person can seek administrative review regarding hazardous fuel reduction projects authorized by the HFRA. Final implementing regulations were published in 2008 at part 218 and it is that part that is now being revised in this final rule.

Section 428 of the Consolidated Appropriations Act of 2012 directs the Secretary of Agriculture, acting through the Chief of the Forest Service, to provide for a predecisional objection process based on Section 105(a) of the HFRA, for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a Record of Decision or Decision Notice. Section 428 further directs that these procedures be applied in lieu of subsections (c), (d), and (e) of the ARA, but makes no express reference to subsections (a) and (b). Therefore, the Department interprets subsections (a) and (b), which contain the notice and comment provisions of the ARA, as remaining in effect and is therefore promulgating this rule for non-HFRA projects and activities documented in an EA or EIS.

SUMMARY OF CHANGES TO THE PROPOSED RULE

Unless otherwise noted, the section numbers listed below reflect the numbering system of the final rule.

Subpart A—General Provisions

Section 218.2 Definitions.

Address. The word "alone" was added to clarify that while an objector's email address is desirable to aid in communication, the objector's physical mailing address is a minimum requirement when an address is requested.

Decision notice (DN). The definition was edited to improve consistency with the definition provided in the Forest Service NEPA regulations at 36 CFR part 220.

Emergency situation. The definition was moved to § 218.21(b).

Environmental assessment. The definition was edited to improve consistency with the definition provided in the Forest Service NEPA regulations at 36 CFR part 220.

Environmental impact statement. An incorrect citation was removed.

Forest Service line officer. The phrase "and who has the delegated authority to make and execute decisions approving projects subject to this part" has been removed because the phase more accurately describes the responsible official than it does a Forest Service line officer.

Name. The word "complete" was added to clarify that partial names of entities are not sufficient to establish identity.

Objection filing period. The word "filing" was added to provide consistency with how the phrase is used in the rule text. The references to a specified number of calendar days were removed because they were not entirely correct. The phrase "and draft Decision Notice" was added after "environmental assessment" and the phrase "and draft

Record of Decision" was added after "environmental impact statement" to clarify the documentation that will be made available when an objection filing period is initiated. Appropriate citations to relevant sections of the rule were added. The statement "The objection filing period closes at 11:59 p.m. in the time zone of the receiving office on the last day of the filing period (§ 218.6(a))" was added at the end of the definition to provide a more complete definition.

Record of Decision (ROD). An incorrect citation was removed.

Responsible official. The definition was edited to improve consistency with the definition provided in the Forest Service NEPA regulations at 36 CFR part 220.

Specific written comments. The phrase being defined was changed from "comments" in the proposed rule to "specific written comments" to be more consistent with its usage in the rule text.

Two clarifying sentences were added to the definition. One sentence was added to describe how oral comments could be considered within the parameters of the definition. Another sentence was added to better describe the desired elements of a specific written comment—"within the scope of the proposed action, have a direct relationship to the proposed action, and include comment rationale for the responsible official to consider."

Section 218.3 Reviewing Officer.

In paragraph (a) the phrase "The reviewing officer is a Forest Service line officer" was changed to "The reviewing officer is the Forest Service line officer" to provide clarification that the reviewing officer may not be just any line officer at the next higher administrative level, but must be the line officer (including the respective Deputy

Regional Forester, Deputy Forest Supervisor, or Associate Deputy Chief) directly above the responsible official in the Forest Service organizational structure.

Additionally, paragraph (a) was edited to state that in instances where a project or activity proposal is made by the Chief, the reviewing officer will be the Secretary of Agriculture or Under Secretary, Natural Resources and Environment.

Section 218.5 Who may file an objection.

Paragraph (a) was edited to clarify that opportunities for public comment from which eligibility to object may be established are those where comment is specifically requested by the responsible official. Also in paragraph (a), the phrase "and any other periods public comment is specifically requested" was changed to "or other public involvement opportunity where written comments are requested by the responsible official" to more correctly convey that, in the case of multiple opportunities for public comment on a project proposal, specific written comments must be provided during any one of those opportunities to gain eligibility to object.

A new paragraph (b) was added to specify that Federally-recognized Indian Tribes and Alaska Native Corporations may also gain eligibility to file objections by submitting specific written comments during Federal-Tribal consultations conducted pursuant to Executive Order 13175 and 25 U.S.C. 450 note. Such government-to-government consultation often occurs outside of comment opportunities available to the general public.

Paragraph designations (b) through (e) in the proposed rule were changed to (c) through (f) because of the addition of a new paragraph (b).

Section 218.6 Computation of time periods.

The subtitle of paragraph (b) was changed from "Objection filing period" to "Starting date" to more accurately reflect the content of the paragraph.

Section 218.7 Giving notice of objection process for proposed projects and activities subject to objection.

Paragraph (b) was edited to more fully and accurately describe the documents that must be made available as part of giving notice of an opportunity to file an objection when an environmental assessment (EA) has been prepared. In addition to the EA, a draft Decision Notice and Finding of No Significant Impact must be made available to those who have requested the documents or are eligible to file an objection to that proposed project or activity.

The second sentence of paragraph (c)(2)(ii) was edited to add the words "and timely" in front of "written comments" to clarify that specific written comments must be timely, i.e., received before the close of a comment opportunity, to be a basis for gaining eligibility to object.

Paragraph (c)(2)(iv) was removed and the requirement to identify whether the special procedures of subpart B or subpart C is applicable was added at paragraph (c)(2). Paragraph designations (c)(2)(v) and (c)(2)(vi) in the proposed rule were changed to (iv) and (v) because of the removal of the proposed rule's paragraph (iv).

The sentence "The statement must also describe the evidence of timely filing in § 218.9" was added to paragraph (c)(2)(v) to require a more complete disclosure of timeliness requirements when giving notice of an opportunity to file an objection. Also in this paragraph, the last sentence beginning with "It should also be stated that …" was

moved to the end of paragraph (c)(2)(vi) because it pertained more to the content of objections than the time period for filing objections.

A new paragraph (d) was added that describes the requirement for posting a copy of the legal notice or Federal Register notice of the opportunity to object on the Web. The requirement was added to provide another means for informing those interested in objection filing opportunities. The Web postings must be made within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the Federal Register. With the addition of the new paragraph (d), the paragraph designated (d) in the proposed rule has been changed to paragraph (e) in this final rule.

Section 218.8 Filing an objection.

The passage "or the reviewing officer will designate a lead objector as defined at § 218.5(d)" was added to the end of paragraph (d)(3) to clarify how the lead objector will be designated when an objection lists multiple names as the filers and no lead objector is identified by the filers.

Paragraph (d)(5) was edited to include the objection content requirement of supporting reasons for the reviewing officer to consider.

Section 218.9 Evidence of timely filing.

The opening paragraph, which had no designation in the proposed rule, has been designated paragraph (a) and paragraphs (a) through (d) have been redesignated as paragraphs (a)(1) through (4).

A new paragraph (b) has been added that specifies for e-mailed objections, the sender should receive an automated electronic acknowledgement from the agency as confirmation of receipt. The paragraph further states that if the sender does not receive an

automated acknowledgement of receipt of the objection, it is the sender's responsibility to ensure timely receipt by other means. This provision mirrors the provision at § 218.25(a)(4)(iii), which pertains to comments submitted for project-level proposals not subject to the Healthy Forests Restoration Act.

Section 218.10 Objections set aside from review.

The word "specific" was added before "written comments" in paragraph (a)(4) to make the usage of the phrase consistent throughout the rule and a clarifying citation to § 218.8(c) was added to the end of the paragraph.

Paragraph (a)(4) was edited to instruct that the reviewing officer must set aside and not review an objection when, except for issues that arose after the opportunities for comment, none of the issues included in the objection are based on previously submitted specific written comments and the objector has not provided a statement demonstrating a connection between the comments and objection issues.

A new sub-paragraph (9) has been added to paragraph (a) to include an additional instance when objections may be set aside from review. The new provision permits setting aside objections from review when the responsible official cancels the objection process underway with the intention of reinitiating the objection procedures at a later date or withdrawing the proposed project or activity from further consideration.

Section 218.11 Resolution of objections.

Paragraph (a) has been edited to clarify the extent of responsibility and discretion held by the reviewing officer as it pertains to meetings with objectors. The description of the discretion available to the reviewing officer now reads, "The reviewing officer has the discretion to determine whether adequate time remains in the review period to make a

meeting with the objector practical, the appropriate time and location for any meetings, and how the meetings will be conducted to facilitate the most beneficial dialogue; e.g., face-to-face office meeting, project site visit, teleconference, video conference, etc." The edit clarifies that the reviewing officer is responsible for all aspects of any meetings with objectors. The paragraph further clarifies that "[a]ll meetings are not required to be noticed but are open to attendance by the public, and the reviewing officer will determine whether those other than objectors may participate." This clarification is consistent with the Agency's policy regarding informal disposition meetings conducted under the administrative appeal process (part 215) that is being replaced by the procedures in this rule.

Section 218.12 Timing of project decision.

Paragraph (b) has been edited to clarify that the responsible official may not sign a ROD or DN until all concerns and instructions identified by the reviewing officer in the objection response have been addressed.

The proposed rule failed to include a provision for signing a project decision when a proposed project or activity is not subject to objection because no specific and timely written comments were received during a designated opportunity for public comment. Paragraph (d) has been added in the final rule to address such an occurrence and specifies that when a proposed project or activity is to be documented in a ROD its approval must be in accordance with NEPA implementing regulations at 40 CFR 1506.10 and Forest Service NEPA regulations at 36 CFR 220.5(g); and when the proposed project or activity will be documented in a DN its approval must be in accordance with Forest Service NEPA regulations at 36 CFR 220.7(c) and (d).

Section 218.14 Judicial review.

Citations to 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c) have been added to the end of the paragraph.

Subpart B—Provisions Specific to Project-level Proposals Not Authorized Under Healthy Forests Restoration Act

Section 218.21 Emergency situations.

The definition of an emergency situation has been moved from § 218.2 to paragraph (b) of this section. Paragraphs (b) through (d) of the proposed rule have been re-designated as paragraphs (c) through (e) with the inclusion of a new paragraph (b) in the final rule.

Paragraph (c) has been edited to clarify that when the Chief or Associate Chief of the Forest Service has determined that an emergency situation exists with respect to all or part of a proposed project or activity, the proposed action is not subject to the predecisional objection process. This clarification is consistent with the statutory direction at Section 428 of the Consolidated Appropriations Act of 2012.

Section 218.22 Proposed projects and activities subject to legal notice and opportunity to comment.

The phrase "for which an EA or EIS is prepared" has been added to paragraph (e) because under Forest Service policy not all research activities conducted on National Forest System land require preparation of an EA or EIS.

Section 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.

A new paragraph (c) was added in the final rule to provide necessary consistency with Forest Service land management planning regulations at 36 CFR 219.59(b). With the addition, proposed projects and activities not subject to legal notice and opportunity to comment under the final rule include plan amendments approved in a decision document also approving a project or activity where the amendment applies not just to the included project or activity but to all future projects and activities. Under the land management planning regulations cited above, such proposed projects and activities are subject to the notification and public involvement requirements of those regulations.

With the addition of the new paragraph (c), paragraphs designated (c) through (f) in the proposed rule have been changed to paragraphs (d) through (g) in the final rule.

Section 218.24 Notification of opportunity to comment on proposed projects and activities.

Paragraph (a)(5) has been removed because the action it describes, identifying all specific written comments, is not a direct function of providing notification of an opportunity to comment on a proposed project or activity. It is an administrative function associated with implementing the procedures of this rule and, as such, will be addressed in the relevant Forest Service directives.

Paragraph (a)(6) has been edited to add specific reference to the § 218.2 where the definition of "specific written comments" is found and to add the phrase "is specifically requested by the responsible official" to provide improved clarity and greater consistency with the description at § 218.5(a) of the comment opportunities when eligibility to object can be established.

A new paragraph (c)(3) was added that describes the requirement for posting a copy of the legal notice or Federal Register notice of the opportunity to object on the Web. The requirement was added to provide another means for those interested in objection filing opportunities to learn about them. The Web postings must be made within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the Federal Register.

Section 218.25 Comments on proposed projects and activities.

Paragraph (a)(2) has been edited to add the phrase "in the time zone of the receiving office for comments filed by electronic means such as e-mail or facsimile" to provide a more complete description of how the end of the comment period will be determined and to add consistency with how the closing of objection filing periods will be determined in the final rule.

Paragraphs (a)(2)(i) and (a)(2)(ii) have been removed because the instruction duplicates that found in paragraphs (a)(1)(i) and (a)(1)(ii).

Paragraph (a)(3)(i) has been edited to clarify that a postal mailing address must be provided with specific written comments by individuals and entities wanting to be eligible to object, and that an e-mail address is recommended but not required.

Paragraphs (a)(3)(iv)(A) and (a)(3)(iv)(B) have been collapsed into paragraph (a)(3)(iv) and the word "comments" was added in place of the word "objections" to correct an error in the proposed rule.

The phrase "in the time zone of the receiving office" was added after the time 11:59 p.m. in paragraph (a)(4)(i) to clarify when the comment period ends for those wanting to establish their eligibility to object.

Section 218.26 Objection time periods.

The opportunity to resolve concerns associated with a proposed project or activity is an important component of the predecisional administrative review process. For this reason, the proposed rule in paragraph (b) of this section directed that the reviewing officer would have the discretion to extend the time available for responding to objections for up to 10 days when he or she determines that additional time is necessary to provide adequate response to objections or to participate in resolution discussions with the objector(s). In giving further consideration to the logistics and scheduling issues that can occur regarding objection resolution meetings, the Department has determined that a discretionary extension of up to 30 days is more appropriate to ensure a reasonable opportunity for convening meetings and preparing a written response. This paragraph has been edited accordingly in the final rule.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866, 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 will the final rule adversely affect productivity, competition, jobs, the environment, public health or safety, or State and local governments. This final rule will not interfere with any action taken or planned by another agency or raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs.

Moreover, the Department has considered this final rule in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.). The Department has determined that the final rule 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 Impact

This final rule revises the procedures and requirements for the administrative review of proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instruction." The Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

Energy Effects

The Department has reviewed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Forest Service requested and received approval of a new information collection

requirement for part 218: *OMB Number*: 0596-0172. During the public comment period for proposed part 218, comments were sought on the information collection requirement associated with the predecisional administrative objection process in part 218; no comments on the information collection requirement were received.

Federalism

The Department has considered this final rule under Executive Order 13132 on federalism. The Department has determined that this final rule conforms with the federalism principles set out in this executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that this final rule does not have federalism implications.

Consultation and Coordination with Indian Tribal Governments

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," to the extent practicable and permitted by law, the Forest Service is required to consult with federally recognized Indian Tribes before promulgating a regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute. Pursuant to Executive Order 13175, the Forest Service determined that this rule would not have Tribal implications requiring advance notification. Yet the Forest Service maintains its strong commitment to government-to-government consultation on Agency policies that may substantial affect federally-recognized Indian Tribes, and to consulting with Alaska Native Corporations. In that spirit, information about the proposed rule was

sent to the Forest Service Regional Offices on March 21, 2012, with instructions to distribute the information to tribes in their region by April 2, 2012, and to follow up with visits to tribes if requests for consultation were received. The information about the proposed rule included a copy of the current (at that time) regulation at 36 CFR 218, annotated to show the key revisions contemplated by the Forest Service to promulgate the requirements of the Consolidated Appropriations Act for 2012, Section 428. On July 13, 2012, the Forest Service Regional Offices were notified that due to changes in the timeline for publication of the proposed rule, the tribal consultation period was being extended and that tribes were to be notified of this extension by July 31, 2012. Finally, the proposed rule was published in the **Federal Register** on August 8, 2012, beginning a 30-day public comment period to coincide with the end of the tribal consultation period. As a result of this consultation effort, a total of 159 days—April 2, 2012 to September 7, 2012—was provided for an opportunity to formally consult on the proposed rule.

Comments from two tribes were received, and no requests for government-to-government consultation were made. One Tribe expressed concern about the amount of time provided for formal consultation on the proposed rule and the amount of information made available during that time. The Tribe asserted that the formal consultation offered was not in compliance with a July 2012 Interim Directive requiring a minimum 120 days of formal consultation on proposed national-level actions. The Tribe expressed its belief that to be consistent with Forest Service policy, the Forest Service should, *prior* to issuing the final rule, provide an additional 90 days for tribes to consult formally with the Forest Service.

As described above, a total of 159 days was provided for formal consultation with Federally-recognized Indian Tribes and Alaska Native Corporations on the proposed rule at part 218. The formal consultation period of 159 days was fully consistent with the Interim Directive to Forest Service Handbook 1509.13, issued on July 17, 2012, while the opportunity for formal consultation on the proposed rule was already underway. Because the consultation on the proposed rule complies with Forest Service policy, no additional time for formal consultation on the final rule at part 218 is necessary.

Comments provided by another Tribe asserted "…interdepartmental fund transfers could be supplied to fund tribes in the operation of mutually beneficial programs and projects. This should be clarified in the regulation so as to facilitate and expedite planning implementation, research, monitoring and continued consultation to further the effectiveness of the Federal-Tribal Relationship in regards to wildland fire management and programs." Funding mechanisms for project planning and implementation are outside the scope of the rule at part 218 and therefore not addressed in this final rule. This same Tribe also provided several comments specific to certain sections of the proposed rule, including § 218.5 – Who May File an Objection and § 218.14 – Judicial Proceedings. The responses to those comments, including changes made to the proposed rule as part of comment response, are included in the preceding section of this preamble, titled Public Involvement and Response to Public Comments.

The Department has determined that this final rule does not have substantial direct or unique effects on Indian tribes. This final rule is revising predecisional administrative review regulations for proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice. Tribal

governments may participate in the administrative objection process by establishing eligibility as provided at §218.5 and then filing a timely objection in accordance with the requirements at §218.8.

No Takings Implications

The Department has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Department has determined that this final rule will not pose the risk of a taking of private property.

Civil Justice Reform

The Department has reviewed this final rule under Executive Order 12988 on civil justice reform. Upon adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede full implementation of the rule will be preempted; (2) no retroactive effect will be given to this final rule; and (3) this final rule will not require the use of administrative proceedings before parties could 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), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 218

Administrative practice and procedure, National forests.

For the reasons set forth in the preamble, 36 CFR part 218 is revised to read as follows:

PART 218–PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

Subpart A – General Provisions

Sec.

Subpart B – Provisions Specific to Project-level Proposals Not Authorized Under the Healthy Forests Restoration Act

Subpart C – Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

Authority: Pub. L. 108-148, 117 Stat 1887 (16 U.S.C. 6515 note); Sec. 428, Pub. L. 112-74 125 Stat 1046.

Subpart A—General Provisions

§**218.1 Purpose and scope.**

This subpart establishes a predecisional administrative review (hereinafter referred to as "objection") process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans documented

with a Record of Decision or Decision Notice, including 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 qualifying projects.

(a) This subpart A provides the general provisions of the objection process, including who may file objections to proposed projects and activities, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

(b) Subpart B of this part includes provisions that are specific to proposed projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice, except those authorized under the HFRA.

(c) Subpart C of this part includes provisions that are specific to proposed hazardous fuel reduction projects authorized under the HFRA.

§**218.2 Definitions.**

The following definitions apply to this part:

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

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

Decision notice (DN). A concise written record of a responsible official's decision when an environmental assessment and a finding of no significant impact (FONSI) have been prepared (36 CFR 220.3). The draft decision notice made available pursuant to §

218.7(b) will include a draft FONSI unless an environmental impact statement is expected to be prepared.

Entity. For purposes of eligibility to file an objection (§ 218.5), an entity includes non-governmental organizations, businesses, partnerships, state and local governments, Alaska Native Corporations, and Indian Tribes.

Environmental assessment (EA). A concise public document for which a Federal agency is responsible 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(a)).

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).

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in the direct line of command from the Chief.

Lead objector. For an objection submitted with multiple individuals and/or entities listed, the individual or entity 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 complete name of an entity. An electronic username is insufficient for identification of an individual or entity.

National Forest System land. All lands, waters, or interests therein administered by the Forest Service (36 CFR 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 entity seeking predecisional administrative review of a proposed project or activity implementing a land management plan, including proposed HFRA-authorized hazardous fuel reduction projects, and documented with an environmental assessment or environmental impact statement.

Objection filing period. The period following publication of the legal notice in the newspaper of record of an environmental assessment and draft Decision Notice, or final environmental impact statement and draft Record of Decision, for a proposed project or activity during which an objection may be filed with the reviewing officer (§ 218.7(c)(2)(iii) and § 218.6(a) and (b)). When the Chief is the responsible official the objection period begins following publication of a notice in the **Federal Register** (§ 218.7(c)(2)(iii)). The objection filing period closes at 11:59 p.m. in the time zone of the receiving office on the last day of the filing period (§ 218.6(a)).

Objection process. The procedures established in this subpart for predecisional administrative review of proposed projects or activities implementing land management plans, including proposed HFRA-authorized hazardous fuel reduction projects.

Objector. An individual or entity filing an objection who submitted written comments specific to the proposed project or activity during scoping or other opportunity

for public comment. The use of the term "objector" applies to all persons or entities who meet eligibility requirements associated with the filed objection (§ 218.5).

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) (see 40 CFR 1505.2).

Responsible official. The Agency employee who has the authority to make and implement a decision on a proposed action subject to this part.

Specific written comments. Written comments are those submitted to the responsible official or designee during a designated opportunity for public participation (§ 218.5(a)) provided for a proposed project. Written comments can include submission of transcriptions or other notes from oral statements or presentation. For the purposes of this rule, specific written comments should be within the scope of the proposed action, have a direct relationship to the proposed action, and must include supporting reasons for the responsible official to consider.

§218.3 Reviewing officer.

(a) The reviewing officer is the U. S. Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this part. For project or activity proposals made below the level of the Chief, the reviewing officer is the Forest Service line officer at the next higher administrative level above the responsible official, or the respective Associate Deputy Chief, Deputy Regional Forester, or Deputy Forest Supervisor with the delegation of authority relevant to the provisions of this part. When a project or activity proposal is

made by the Chief, the Secretary of Agriculture or Under Secretary, Natural Resources and Environment is the reviewing officer.

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

§218.4 Proposed projects and activities not subject to objection.

Proposed projects and activities are not subject to objection when no timely, specific written comments regarding the proposed project or activity (see § 218.2) are received during any designated opportunity for public comment (see § 218.5(a)). The responsible official must issue a statement in the Record of Decision or Decision Notice that the project or activity was not subject to objection.

§218.5 Who may file an objection.

(a) Individuals and entities as defined in § 218.2 who have submitted timely, specific written comments regarding a proposed project or activity that is subject to these regulations during any designated opportunity for public comment may file an objection. Opportunity for public comment on a draft EIS includes request for comments during scoping, the 40 CFR 1506.10 comment period, or other public involvement opportunity where written comments are requested by the responsible official. Opportunity for public comment on an EA includes during scoping or any other instance where the responsible official seeks written comments.

(b) Federally-recognized Indian Tribes and Alaska Native Corporations are also eligible to file an objection when specific written comments as defined in § 218.2 are provided during Federal-Tribal consultations.

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

(d) When an objection lists multiple individuals or entities, each individual or entity must meet the requirements of paragraph (a) of this section. If the objection does not identify a lead objector as required at § 218.8(d)(3), the reviewing officer will delegate the first eligible objector on the list as the lead objector. Individuals or entities listed on an objection that do not meet eligibility requirements will not be considered objectors. Objections from individuals or entities that do not meet the requirements of paragraph (a) of this section will not be accepted and will be documented as such in the objection record.

(e) Federal agencies may not file objections.

(f) 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 use or otherwise 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)).

§218.6 Computation of time periods.

(a) *Computation*. 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 (11:59 p.m. in the time zone of the receiving office for objections filed by electronic means such as e-mail or facsimile).

(b) *Starting date*. The day after publication of the legal notice required by § 218.7(c) is the first day of the objection-filing period.

(c) *Publication date*. 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.

(d) *Extensions.* Time extensions are not permitted except as provided at paragraph (a) of this section, and § 218.26(b).

§218.7 Giving notice of objection process for proposed projects and activities subject to objection.

(a) In addition to the notification required in paragraph (c) of this section, the responsible official must disclose during scoping and in the EA or EIS that the proposed project or activity is:

(1) A hazardous fuel reduction project as defined by the HFRA, section 101(2), that is subject to subparts A and C of this part, or

(2) A project or activity implementing a land management plan and not authorized under the HFRA, that is subject to subparts A and B of this part.

(b) The responsible official must promptly make available the final EIS or the EA, and a draft Record of Decision (ROD) or draft Decision Notice (DN) and Finding of No Significant Impact (FONSI), to those who have requested the documents or are eligible to file an objection in accordance with § 218.5(a).

(c) Upon distribution, legal notice of the opportunity to object to a proposed project or activity must be published in the applicable newspaper of record identified as defined in § 218.2 for the 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 project or activity, a concise description of the draft decision 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 project or activity will occur, instructions for obtaining a copy of the final EIS or EA and draft ROD or DN as defined in § 218.2, and instructions on how to obtain additional information on the proposed project or activity.

(2) State that the proposed project or activity is subject to the objection process pursuant to 36 CFR part 218; identify whether the special procedures of subpart B or subpart C of this part are applicable; 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 business hours for those filing hand-delivered objections.

(ii) A statement that objections will be accepted only from those who have previously submitted specific written comments regarding the proposed project during scoping or other designated opportunity for public comment in accordance with § 218.5(a). The statement must also specify that issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after designated opportunities.

(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 (see §§ 218.26(a) and 218.32(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 (see §§ 218.3 and 218.8) within 30 days of the date of publication of the legal notice for the objection process if the proposal is an authorized hazardous fuel reduction project, or within 45 days if the proposal is otherwise a project or activity implementing a land management plan. The statement must also describe the evidence of timely filing in § 218.9.

(v) A statement describing the minimum content requirements of an objection (see § 218.8(d)) and identify that incorporation of documents by reference is permitted only as provided for at § 218.8(b).

(d) Within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the **Federal Register**, a digital image of the legal notice or **Federal Register** publication, or the exact text of the notice, must be made available on the Web. Such postings must clearly indicate the date the notice was published in the newspaper of record or **Federal Register,** and the name of the publication.

(e) 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 part.

§218.8 Filing an objection.

(a) Objections must be filed with the reviewing officer in writing. All objections are available for public inspection during and after the objection process.

(b) Incorporation of documents by reference is not allowed, except for the following list of items that may be referenced by including date, page, and section of the cited document, along with a description of its content and applicability to the objection. 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 project EA or EIS that is subject to objection.

(4) Comments previously provided to the Forest Service by the objector during public involvement opportunities for the proposed project where written comments were requested by the responsible official.

(c) Issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. The burden is on the objector to demonstrate compliance with this requirement for objection issues (see paragraph (d)(6) of this section).

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

(1) Objector's name and address as defined in § 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 as defined in § 218.2. Verification of the identity of the lead objector must be provided upon request or the reviewing officer will designate a lead objector as provided in § 218.5(d);

(4) The name of the proposed 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 project will be implemented;

(5) A description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and

(6) A statement that demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment (see paragraph (c) of this section).

§218.9 Evidence of timely filing.

(a) It is the objector's responsibility to ensure timely filing of a written objection with the reviewing officer. Timeliness must be determined by the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing period;

(2) The agency's electronically generated posted date and time for e-mail and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing period; or

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

(b) For e-mailed objections, the sender should receive an automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of receipt of the objection, it is the sender's responsibility to ensure timely filing by other means.

§218.10 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 (see §§ 218.7(c)(2)(v) and 218.9).

(2) The proposed project is not subject to the objection procedures in §§ 218.1, 218.4, 218.20, and 218.31.

(3) The individual or entity did not submit timely and specific written comments regarding the proposed project or activity during scoping or another designated opportunity for public comment (see § 218.5(a)).

(4) Except for issues that arose after the opportunities for comment, none of the issues included in the objection are based on previously submitted specific written comments and the objector has not provided a statement demonstrating a connection between the comments and objection issues (see §§ 218.8(c) and 218.8(d)(6)).

(5) The objection does not provide sufficient information as required by § 218.8(d)(5) and (6) for the reviewing officer to review.

(6) The objector withdraws the objection.

(7) 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 (see § 218.8(d)(1) and (2)).

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

(9) The responsible official cancels the objection process underway to reinitiate the objection procedures at a later date or withdraw the proposed project or activity.

(b) The reviewing officer must give prompt 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 and a copy placed in the objection record.

§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 adequate time remains in the review period to make a meeting with the objector practical, the appropriate date, duration, agenda, and location for any meeting, and how the meeting will be conducted to facilitate the most beneficial dialogue; e.g., face-to-face office meeting, project site visit, teleconference, video conference, etc. The responsible official should be a participant along with the reviewing officer in any objection resolution meeting. Meetings are not required to be noticed but are open to attendance by the public, and the reviewing officer will determine whether those other than objectors may participate.

(b) *Reviewing officer's 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 project or activity, the reviewing officer may consolidate objections and issue one or more responses.

(2) No further review from any other Forest Service or USDA official of the reviewing officer's written response to an objection is available.

§218.12 Timing of project decision.

(a) The responsible official may not sign a ROD or DN subject to the provisions of this part until the reviewing officer has responded in writing to all pending objections (see § 218.11(b)(1)).

(b) The responsible official may not sign a ROD or DN subject to the provisions of this part until all concerns and instructions identified by the reviewing officer in the objection response have been addressed.

(c) When no objection is filed within the objection filing period (see §§ 218.26 and 218.32):

(1) The reviewing officer must notify the responsible official.

(2) Approval of the proposed project or activity documented in a ROD in accordance with 40 CFR 1506.10, or in a DN may occur on, but not before, the fifth business day following the end of the objection filing period**.**

(d) When a proposed project or activity is not subject to objection because no timely, specific written comments regarding the proposal were received during a designated opportunity for public comment (see § 218.4), the approval of a proposed project or activity documented in a ROD must be in accordance with 40 CFR 1506.10 and 36 CFR 220.5(g), and the approval of a proposed project or activity documented in a DN must be made in accordance with 36 CFR 220.7(c) and (d).

§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) Projects and activities proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

§218.14 Judicial proceedings.

(a) The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process. 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.

(b) Any filing for Federal judicial review of a decisions covered by this subpart is premature and inappropriate unless the plaintiff has exhausted the administrative review process set forth in this part (see 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c)).

§218.15 Information collection requirements.

The rules of this part specify the information that objectors must provide in an objection to a proposed project (see § 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 Effective dates.

(a) *Effective dates for HFRA-authorized projects.* (1) Provisions of this part that are applicable to hazardous fuel reduction projects authorized under the HFRA are in

effect as of [INSERT DATE OF PUBLICATION OF THIS FINAL RULE IN THE **FEDERAL REGISTER**] for projects where scoping begins on or after this date.

(2) Hazardous fuel reduction project proposals under the HFRA for which public scoping began prior to [INSERT DATE OF PUBLICATION OF THIS FINAL RULE IN THE **FEDERAL REGISTER**] may use the predecisional objection procedures posted at http://www.fs.fed.us/objections.

(3) Hazardous fuel reduction project proposals that are re-scoped with the public or re-issued for notice and comment after [INSERT DATE OF PUBLICATION OF THIS FINAL RULE IN THE **FEDERAL REGISTER**] are subject to this part.

(b) *Effective dates for non-HFRA-authorized projects*. (1) Project proposals with public scoping completed, but that have not had legal notice published. The applicable provisions of this part are in effect as of [INSERT DATE OF PUBLICATION OF THIS FINAL RULE IN THE **FEDERAL REGISTER**] where public scoping was previously initiated for project proposals, but legal notice of the opportunity to comment has not yet been published; unless scoping or other public notification of the project (e.g. Schedule of Proposed Actions) has clearly indicated the project to be under the former 36 CFR part 215 appeal process.

(2) Project proposals which have legal notice published, but a Decision Notice or Record of Decision has not been signed. If a Decision Notice or Record of Decision is signed within 6 months of [INSERT DATE OF PUBLICATION OF THIS FINAL RULE IN THE **FEDERAL REGISTER**], it will be subject to the 36 CFR part 215 appeal process. If the Decision Notice or Record of Decision is to be signed more than 6 months beyond [INSERT DATE OF PUBLICATION OF THIS FINAL RULE IN THE

FEDERAL REGISTER], the project proposal will be subject to the requirements of this part. In this case, the responsible official will notify all interested and affected parties who participated during scoping or provided specific written comment regarding the proposed project or activity during the comment period initiated with a legal notice that the project proposal will be subject to the predecisional objection regulations at 36 CFR part 218. All interested and affected parties who provided written comment as defined in § 218.2 during scoping or the comment period will be eligible to participate in the objection process.

(3) Project proposals are subject to the requirements of this part when initial public scoping, re-scoping with the public, or re-issuance of notice and comment begins on or after [INSERT DATE OF PUBLICATION OF THIS FINAL RULE IN THE **FEDERAL REGISTER**].

Subpart B—Provisions Specific to Project-level Proposals Not Authorized Under Healthy Forests Restoration Act

§218.20 Applicability and scope.

This subpart includes provisions that are specific to proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, except those authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A of this part for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

§218.21 Emergency situations.

(a) *Authority*. The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation exists as defined in this section.

(b) *Emergency situation definition.* A situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary to achieve one or more of the following: relief from hazards threatening human health and safety; mitigation of threats to natural resources on NFS or adjacent lands; avoiding a loss of commodity value sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration.

(c) *Determination*. The determination that an emergency situation exists shall be based on an examination of the relevant information. During the consideration by the Chief or Associate Chief, additional information may be requested from the responsible official. The determination that an emergency situation does or does not exist is not subject to administrative review under this part.

(d) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the proposed project or activity, the proposed action shall not be subject to the predecisional objection process and implementation may proceed as follows:

(1) Immediately after notification (see 36 CFR 220.7(d)) when the decision is documented in a Decision Notice (DN).

(2) Immediately after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2) when the decision is documented in a Record of Decision (ROD).

(e) *Notification.* The responsible official shall identify any emergency situation determination made for a project or activity in the notification of the decision (see 36 CFR 220.5(g) and 220.7(d)).

§218.22 Proposed projects and activities subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures of this subpart apply only to:

(a) Proposed projects and activities implementing land management plans for which an environmental assessment (EA) is prepared;

(b) Proposed projects and activities implementing land management plans for which a draft or supplemental environmental impact statement (EIS) is prepared and notice and comment procedures are governed by 40 CFR parts 1500 through 1508;

(c) Proposed amendments to a land management plan that are included as part of a proposed project or activity covered in paragraphs (a) or (b) of this section which are applicable only to that proposed project or activity;

(d) A proposed project or activity for which a supplemental or revised EA or EIS is prepared based on consideration of new information or changed circumstances; and

(e) Proposed research activities to be conducted on National Forest System land for which an EA or EIS is prepared.

§218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures of this subpart do not apply to:

(a) [Reserved];

(b) Proposed land management plans, plan revisions, and plan amendments that are subject to the objection process set out in 36 CFR part 219, subpart B;

(c) Proposed plan amendments associated with a project or activity where the amendment applies not just to the particular project or activity but to all future projects and activities (see 36 CFR 219.59(b));

(d) Proposed projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500 through 1508 and 36 CFR part 220;

(e) Determinations by the responsible official, after consideration of new information or changed circumstances, that a correction, supplement, or revision of the EA or EIS is not required;

(f) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR part 216); and

(g) Proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act.

§218.24 Notification of opportunity to comment on proposed projects and activities.

(a) *Responsible official.* The responsible official shall:

(1) Provide legal notice of the opportunity to comment on a proposed project or activity implementing a land management plan.

(2) Determine the most effective timing and then publish the legal notice of the opportunity to comment as provided for in paragraph (c)(2) of this section.

(3) Promptly provide notice about the proposed project or activity to any individual or entity who has requested it and to those who have participated in planning for that project.

(4) Accept all written comments on the proposed project or activity as provided for in § 218.25(a)(4).

(b) *Content of legal notice.* All legal notices shall include the following:

(1) The title and brief description of the proposed project or activity.

(2) A general description of the proposed project or activity's location with sufficient information to allow the interested public to identify the location.

(3) When applicable, a statement that the responsible official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the proposed project or activity as provided for in § 218.21.

(4) For a proposed project or activity to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (see § 218.25(a)(2)); as newspaper publication dates may vary, legal notices shall not contain the specific date.

(5) For a proposed project or activity that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the **Federal Register** (see § 218.25(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(6) A statement that only those who submit timely and specific written comments regarding the proposed project or activity during a public comment period established by the responsible official are eligible to file an objection.

(7) The responsible official's name, title, telephone number, and addresses (street, postal, facsimile, and e-mail) to whom comments are to be submitted and the responsible official's office business hours for those submitting hand-delivered comments (see § 218.25(a)(4)(ii)).

(8) A statement indicating that for objection eligibility each individual or representative from each entity submitting timely and specific written comments regarding the proposed project or activity must either sign the comments or verify identity upon request.

(9) The acceptable format(s) for electronic comments.

(10) Instructions on how to obtain additional information on the proposed project or activity.

(c) *Publication*. (1) Through notice published annually in the **Federal Register**, each Regional Forester shall advise the public of the newspaper(s) of record used for publishing legal notices required by this part.

(2) Legal notice of the opportunity to comment on a proposed project or activity shall be published in the applicable newspaper of record identified in paragraph (c)(1) of this section for each National Forest System unit. When the Chief is the responsible official, notice shall also be published in the **Federal Register**. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit written comments on a proposed project or activity to be analyzed and

documented in an EA. The publication date of the NOA in the **Federal Register** is the exclusive means for calculating the time to submit written comments on a proposed project or activity that is analyzed and documented in a draft EIS.

(3) Within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the **Federal Register**, a digital image of the legal notice or **Federal Register** publication, or the exact text of the notice, must be made available on the Web. Such postings must clearly indicate the date the notice was published in the newspaper of record or **Federal Register,** and the name of the publication.

§218.25 Comments on proposed projects and activities.

(a) *Opportunity to comment*. (1) *Time period for submission of comments—*

(i) Comments on a proposed project or activity to be documented in an environmental assessment shall be accepted for 30 days beginning on the first day after the date of publication of the legal notice.

(ii) Comments on a proposed project or activity to be documented in an environmental impact statement shall be accepted for a minimum of 45 days beginning on the first day after the date of publication in the **Federal Register** of the notice of availability of the draft EIS.

(iii) *Comments*. It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4) of this section.

(iv) *Extension*. The time period for the opportunity to comment on a proposed project or activity to be documented with an environmental assessment shall not be extended.

(2) *Computation of the comment period.* The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m. in the time zone of the receiving office for comments filed by electronic means such as e-mail or facsimile).

(3) *Requirements.* To be eligible to submit an objection, individuals and entities must have provided the following during the comment period:

(i) Name and postal address. Email address in addition is recommended but not required.

(ii) Title of the proposed project or activity.

(iii) Specific written comments as defined in § 218.2 regarding the proposed project or activity, along with supporting reasons.

(iv) Signature or other verification of identity upon request and identification of the individual or entity who authored the comment(s). For comments listing multiple entities or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each entity and for each individual in the case of multiple names. A scanned signature or other means of verifying the identity of the individual or entity representative may be used for electronically submitted comments.

(v) Individual members of an entity must submit their own comments to establish personal eligibility; comments received on behalf of an entity are considered as those of the entity only.

(4) Evidence of timely submission. When there is a question about timely submission of comments, timeliness shall be determined as follows:

(i) Written comments must be postmarked by the Postal Service, emailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. in the time zone of the receiving office on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(ii) Hand-delivered comments must be time and date imprinted at the correct responsible official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(iii) For emailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

(b) *Consideration of comments*. (1) The responsible official shall consider all written comments submitted in compliance with paragraph (a) of this section.

(2) All written comments received by the responsible official shall be placed in the project file and shall become a matter of public record.

§218.26 Objection time periods.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 45 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 (see § 218.7(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 45 days following the end of the objection filing period. The reviewing officer has the discretion to extend the time for up to 30 days when he or she determines that additional time is necessary to provide adequate response to objections or to participate in resolution discussions with the objector(s).

Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

§218.30 Applicability and scope.

This subpart includes provisions that are specific to proposed hazardous fuel reduction projects documented with a Record of Decision or Decision Notice, and authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A of

this part for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

§218.31 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 land 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 requirements in subpart B of this part.

(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 subpart applies to both the plan amendment and the project.

§218.32 Objection time periods.

(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 (see § 218.6(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* 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.

March 20, 2013
Date

Harris D. Sherman,
Under Secretary, Natural Resources and Environment (NRE).

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