



## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 218

### RIN 0596-AD69

#### **Project-Level Predecisional Administrative Review Process.**

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Proposed rule; request for public comment.

**SUMMARY:** The U.S. Department of Agriculture's Forest Service is proposing to amend its Project-Level Predecisional Administrative Review Process regulations. These regulations establish the process by which the public may file objections seeking administrative review for projects and activities implementing land management plans on national forests. The Forest Service is amending these regulations to consolidate and streamline processes, increase efficiency, and better align with the Agency's statutory obligations and recent rescissions and revisions to National Environmental Policy Act regulations.

**DATES:** Comments must be received in writing by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Comments, identified by RIN 0596-AD69, should be sent via one of the following methods:

- *Electronically (preferred):* through the Federal eRulemaking Portal:  
<https://www.regulations.gov>; or
- *Mail:* addressed to the Director, Ecosystem Management Coordination, 201 14th Street SW, Mailstop 1108, Washington, DC 20250-1124.

Comments should be confined to issues pertinent to the proposed rule, should explain the reasons for any recommended changes, and should reference the specific

section and wording being addressed, where possible. All timely comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. Comments may be viewed on the Federal eRulemaking Portal at <https://www.regulations.gov> by searching for RIN 0596-AD69. Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Please note that comments containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public, notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Joshua White, Acting Director, Ecosystem Management Coordination, 202-205-0650. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service and then provide the phone number of the person named as a point of contact for further information.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Forest Service is proposing to amend the Project-Level Predecisional Administrative Review Process regulations at 36 CFR part 218 (hereinafter 36 CFR 218). The proposed amendments conform to statutory requirements for predecisional administrative review in the Healthy Forests Restoration Act of 2003 (Pub. L. 108-148; 16 U.S.C. 6515), the Consolidated Appropriations Act of 2012, section 428 (Pub. L. 112-74), and the Consolidated Appropriations Act of 2014, section 431 (Pub. L. No. 113-76). The revised regulations also align the administrative review process with applicable National Environmental Policy Act (NEPA) regulations and simplify and streamline processes to ensure the Forest Service conducts administrative review in a timely and efficient manner.

Certain Forest Service decisions have been subject to an appeal process since 1907 and underwent several changes from that time to the early 1990s. In 1992, Congress enacted the Interior and Related Agencies Appropriation Act of Fiscal Year 1993 (commonly referred to as the “Appeals Reform Act”) (Pub. L. No. 102-381; 106 Stat. 1419). Section 322 of the Appeals Reform Act required the Forest Service to establish a notice and comment process for proposed actions implementing land management plans and modified the Agency’s existing appeals process. In 2003, in response to the Appeals Reform Act, the Healthy Forests Restoration Act (HFRA) required the Secretary of Agriculture to promulgate “regulations to establish a predecisional administrative review process” to “serve as the sole means by which a person can seek administrative review regarding an authorized hazardous fuel reduction project on Forest Service land.” 16 U.S.C. 6515(a)(1). For hazardous fuel reduction projects conducted under HFRA, the HFRA regulations replaced subsections (c), (d), and (e) of section 322 of the Appeals Reform Act that required a notice, comment, and post-decision administrative appeal process for proposed actions of the Forest Service relating to certain land and resource management projects.

Specifically for projects subject to HFRA, section 105 required the Secretary to create a process whereby eligible parties could participate in a predecisional administrative review process “after the completion of the [relevant project’s] environmental assessment or environmental impact statement” but before “the date of the issuance of the final decision approving the project” (16 U.S.C. 6515(a)(2),(3)).

On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act of 2012 (Pub. L. 112-74). Section 428 of the Consolidated Appropriations Act expanded the scope of the HFRA predecisional administrative review process to include projects other than those authorized under HFRA. It requires the Secretary to “apply section 105(a)” of the HFRA, “providing for a predecisional

objection process, to proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974” and “documented with a Record of Decision or Decision Notice...” *Id.*

The 2012 Consolidated Appropriations Act section 428 also directs that HFRA section 105 predecisional administrative review be applied in lieu of subsections (c), (d), and (e) of section 322 of the Appeals Reform Act. Congress formally repealed the Appeals Reform Act in the 2014 Farm Bill (Pub. L. 113-79 title VIII, subpart A (128 Stat. 913, February 7, 2014) at section 8006).

The 2012 Consolidated Appropriations Act further clarified that, “if the Chief of the Forest Service determines an emergency situation exists for which immediate implementation of a proposed action is necessary, 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.” *Id.* The Forest Service thereafter amended its Project-Level Predecisional Administrative Review Process regulations in compliance with section 428 on March 27, 2013 (78 FR 18481).

## **II. Need for Rulemaking**

Since these regulations were last amended in 2013, more recent statutory and regulatory actions require the Forest Service to further amend its administrative review process. The Consolidated Appropriations Act of 2014, section 431 (Pub. L. No. 113-76) exempts projects or activities from the predecisional administrative review process that are categorically excluded from documentation in an environmental assessment or environmental impact statement. The proposed rule adds this provision in section 218.5, *Projects and activities not subject to the objection process.*

On April 11, 2025, the Council for Environmental Quality (CEQ) issued an Interim Final Rule rescinding its NEPA implementing procedures at 40 CFR parts 1500

through 1508. On July 3, 2025, the U.S. Department of Agriculture (USDA) published an Interim Final Rule revising its NEPA regulations at 7 CFR subtitle A part 1b (hereinafter 7 CFR 1b) and rescinding Forest Service NEPA regulations at 36 CFR 220. The 36 CFR 218 administrative review process is inconsistent with applicable NEPA regulations. This proposed rule amending 36 CFR 218 aligns the predecisional administrative review process with the 7 CFR 1b regulations. The Department acknowledges that the final rule for the 7 CFR 1b regulations has not yet been published. To ensure proposed changes align with the final Department NEPA regulations, the effective date for the final rule for proposed revisions to 36 CFR 218 will occur after the 7 CFR 1b final rule has been published. It is the Department's intention that these regulations are to be applied in a manner consistent with the applicable NEPA regulations.

In addition to the updates required by statutory and regulatory changes, the Forest Service is proposing other revisions to 36 CFR 218 to provide for a more efficient and effective administrative review process. Experience in implementing the objection process over the last 12 years has demonstrated that reviewing objection issues is time-consuming for both the public and Agency staff, often resulting in lengthy documents and delays. The current comment and objection processes outlined in the regulations add, at a minimum, 120 to 150 days for an EA and FONSI and 135 to 165 days for an EIS and ROD. This does not account for additional time needed for the responsible official to respond to instructions, if any, provided by the objection reviewing officer. Neither HFRA nor the other statutes governing the administrative review process mandate a specific length for the comment or objection periods. The Forest Service has examined the various timeframes associated with the comment and objection periods and proposes reducing them to a more reasonable length to align with recent statutory and regulatory changes to NEPA and avoid delays in project analysis and environmental review, objection response, and project implementation.

The Forest Service has also noted a lack of consistency in its review of objection issues. To increase efficiency and consistency in the review process, the proposed rule would focus the Agency's objection response on identifying those objections reviewed in whole or in part (meaning some issues were set aside from review), identifying those objections or issues set aside from review and reasons for this, and identifying changes to be made prior to finalizing the finding of no significant impact (FONSI) or record of decision (ROD). The proposed rule also increases consistency by eliminating the process and timeline differences between HFRA and non-HFRA projects. Under the proposed rule, the administrative review process is the same for HFRA and non-HFRA projects, except that there is no emergency authority for HFRA projects. This is because section 428 of the 2012 Consolidated Appropriations Act applies emergency authority only to non-HFRA projects.

The proposed rule would also provide the Forest Service with additional flexibility in the review process. Proposed revisions would remove a required additional level of review above the responsible official and clarify the authority of the Secretary of Agriculture and the Under Secretary for Natural Resources and Environment.

Other proposed changes to 36 CFR 218 include modernizing the Agency's information exchange methods to rely more consistently on technology generally available to the public and addressing information security. The Forest Service would no longer publish comment and objection notices in a newspaper of record, but would publish notices on the USDA website where other project documents are also published. The Forest Service would also no longer accept facsimile submissions or external media (such as CD-ROMs or external hard drives). Objection responses would no longer be mailed to objectors, as is the current process, although not required by 36 CFR 218. Instead, responses would be published on the USDA website where other associated project documents are also published.

### III. Section-by-Section Explanation of the Proposed Rule

This summary describes the proposed amendments for each section, as well as the rationale. Generally, references to rescinded NEPA regulations at 40 CFR parts 1500-1508 and 36 CFR 220 have been removed in all sections. The basic organization of this part has also been modified. Current regulations at 36 CFR 218 are organized into three subparts to clearly delineate the distinct administrative review requirements between HFRA and non-HFRA projects. The administrative review process is the same for HFRA and non-HFRA projects in the proposed rule, with one minor exception, so the three subparts are combined into one part to eliminate redundancy.

#### *218.1 Purpose, applicability, and scope*

This section combines 218.1, 218.20 and 218.30. Section 218.1, paragraphs (a), (b), and (c) are removed. In this section, reference to HFRA or non-HFRA projects is removed and replaced with a single administrative review process for all qualifying projects and activities implementing land management plans documented with a FONSI or ROD.

#### *218.2 Definitions*

Definitions of the following terms are added or amended to align with definitions in NEPA and the applicable NEPA regulations (7 CFR 1b) or to address terminology used in the proposed rule: *Commenter*, *Contact information*, *Environmental assessment*, *Environmental documents*, *Environmental impact statement*, *Finding of no significant impact*, *Issue*, *Mitigations*, *Objection*, *Proposal (or Project)*, *Project record (or Proposal record)*, *Recommendations*, *Record of decision*, *Scope*, and *Substantive*.

“*Address*” is removed and included under “*Contact information*”.

“*Authorized hazardous fuel reduction project*” is removed, as all projects will now apply the same comment and objection processes.

“*Decision notice*” is removed because it is replaced with a finding of no significant impact, in alignment with 7 CFR 1b.

“*Lead objector*” was updated to include *Commenter* in the definition.

“*Newspaper(s) of record*” is removed along with the requirements to publish legal notices.

“*Objection filing period*” is removed because this is covered in 218.7.

“*Objection process*” is removed, as part of the intent of the regulations is to outline this process.

“*Objector*” was updated to provide clarity on how this status is achieved.

“*Responsible official*” is updated to align with the definition in the applicable NEPA regulations.

“*Specific written comments*” was updated to use terminology consistent with 7 CFR 1b (*issue, scope, substantive*).

#### *218.3 Designated Opportunity for Public Comment*

This section is amended to address the designated opportunity for public comment instead of “*Reviewing officer*” (removed). The role of a reviewing officer is eliminated as it is not statutorily required. As the Agency continues to navigate organizational change and streamline processes, it is more efficient and effective to allow the objection process to remain with the responsible official and interdisciplinary team most familiar with the project or activities that are subject to the objection process. Any reference to “reviewing officer” throughout the regulations has been removed and replaced with “responsible official.”

USDA NEPA regulations at 7 CFR 1b.5 do not require a designated opportunity for public comment for an environmental assessment (EA). In addition, NEPA requires the notice of intent to publish an environmental impact statement (EIS) to include a request for public comment; however, publication of a draft EIS is not required in 7 CFR



1b. Section 218.3 clarifies that the responsible official would offer an opportunity for public comment for EAs and EISs when subject to the objection process (as now specified in 218.4) to establish eligibility to participate in objections for eligible projects. The designated opportunity for public comment for an EIS may be combined with the request for comment included in the notice of intent to prepare an EIS, as required by NEPA. This section also establishes: the length of the designated opportunity for public comment (timeframes are reduced and apply differently for EAs and EISs to allow for timely environmental reviews as now statutorily required by NEPA for EAs and EISs); minimum information to be provided by the responsible official for comment (to ensure entities and individuals have adequate information to comment on); requirements for providing timely and specific written comments (to allow for more effective review to inform the decision-making process); and the requirement for the responsible official to consider comments (to effectively inform the decision-making process).

The time to file comments for a proposed action to be documented in an EA has been reduced from 30 days to 10 days, and from 45 days to 20 days for a proposed action to be documented in an EIS. These changes correspond with new statutory page limits for EAs and EISs (75 pages for an EA; 150 pages for an EIS, or 300 pages if the proposed Agency action is of extraordinary complexity). With shorter environmental documents, commenters will require less time to review, comment, or object.

The requirement to publish a legal notice in a newspaper of record (or *Federal Register*) for the opportunity to comment is removed, and a requirement is added to publish notice on the USDA website where the EA or EIS (or information associated with these documents) is published. Newspapers are no longer the primary information source for much of the population. Furthermore, many newspapers have gone to reduced publications, with some smaller papers only publishing once a week, every other week, or once a month, and so forth. This is causing unnecessary project delays while waiting for

legal notices to be published in the newspaper. Additionally, the cost to publish a legal notice in a newspaper has increased significantly over the last decade, with some larger newspapers charging thousands of dollars to publish one legal notice. This is not a responsible use of taxpayer dollars. Furthermore, there is a large administrative workload associated with publishing and paying for legal notices. Finally, with rescission of the CEQ NEPA regulations, there is no longer a requirement to file a draft EIS with the Environmental Protection Agency. Therefore, a notice of availability is no longer published in the *Federal Register* for a draft EIS, which was the mechanism previously used to begin the designated opportunity for public comment for an EIS. The requirement to post notice on a USDA website is a more modern, cost-effective, efficient, and consistent way to inform individuals and entities about the opportunity to comment.

This section addresses how the responsible official would review multiple comment submissions from the same individual or entity (to reduce unnecessary administrative workload for Agency personnel and streamline the review process), limits submission to certain formats (to account for security and software policies and modern technology), and provides limited exceptions for including referenced documents and attachments (to reduce unnecessary review of redundant documentation).

#### *218.4 Projects and activities subject to the objection process.*

This section is amended to specify those projects and activities that are subject to the objection process, as statutorily required, instead of those not subject to the objection process (now moved to 218.5). This section identifies projects and activities implementing land management plans, and proposed project-specific plan amendments to a land management plan included as part of a project or activity, as the actions that are subject to objection. This section also replaces the previous sections 218.22 “*Proposed projects and activities subject to legal notice and opportunity to comment*” and 218.24 “*Notification of opportunity to comment on proposed projects and activities,*” and no

longer includes a reference to proposed research activities as a project or activity that is subject to legal notice and opportunity to comment.

*218.5 Projects and activities not subject to the objection process.*

This section is amended to specify those projects and activities that are not subject to the objection process instead of specifying who may file an objection (now moved to 218.6). This section replaces the previous section 218.23 “*Proposed projects and activities not subject to the objection process.*”

This section is rewritten to clarify when the objection process does not apply. Projects that receive no timely, substantive written comments have been added to this section. It specifies that the objection process does not apply to FONSIIs or RODs updated to incorporate changes from the objection process, or to new FONSIIs or RODs that do not change the Agency’s finding or decision. A reference to projects developed under statutory emergency authorities not subject to objections has been added for clarity, including emergency situations requiring immediate action. An analysis being relied on that has already been through an objection process, a previous Forest Service administrative review process, or another agency’s pre- or post-decisional administrative review process would also not be subject to further review during the objection process. Language has been updated regarding emergency authority projects that would not be subject to objection, as exempted by statute.

*218.6 Who may file an objection.*

This section is amended to specify who may file an objection, which was previously discussed at 218.5. This section replaces the previous section 218.6 “*Computation of time periods*” (moved to 218.3). Discussion of comments received from an authorized representative(s) of an entity has also moved to 218.3. Discussion of objections that list multiple individuals or entities has moved to 218.9. Discussion of how

objections would be processed if the objection does not identify a lead objector has moved to 218.11.

#### *218.7 Objection filing period.*

This section is amended to specify the filing period for the objection process, which was previously discussed at 218.6. This section replaces the previous section 218.7 “*Giving notice of objection process for proposed projects and activities subject to objection*” (moved to 218.8 and now called “*Notice of opportunity to object*”).

Similar to the designated opportunity for public comment, the objection filing period is different for an EA versus an EIS. The filing period was 45 days for objections filed for a draft decision notice (now FONSI) and draft ROD. The proposed filing period for an objection filed in response to a draft FONSI is now 10 days, and 20 days for an objection filed in response to a draft ROD. Issues raised in objection must be tied to issues previously raised in specific written comments, except for the limited reasons provided, so objectors should not need more time to submit objections than they needed to submit comments.

Paragraphs (b) and (c) are updated to remove references to legal notice and publication in the *Federal Register*, which are no longer required. Updated language removes paragraph (d), related to extensions, and specifies that objection periods would not be extended (to facilitate timely decision-making and implementation). The objection filing period is updated (timeframes are reduced and apply differently for EAs and EISs to allow for timely environmental reviews and implementation of the project or activities).

#### *218.8 Notice of opportunity to object.*

This section is amended to specify the requirements for giving notice of the objection process for projects and activities subject to objection, which was previously

discussed at 218.7. This section replaces the previous section 218.8 “*Filing an objection*” (moved to 218.9).

See the discussion above, under 218.3 “*Designated opportunity for public comment*,” regarding the removal of the requirement to publish legal notices in newspapers of record or notice in the *Federal Register* for the opportunity to comment. The same rationale is applied to how notification would be provided for opportunities to object. Notice would be provided on the USDA website where the EA and draft FONSI, or the EIS and draft ROD, are published.

This section also specifies that objection periods would not be extended (to facilitate timely decision-making and implementation).

#### *218.9 Filing an objection.*

This section is amended to specify the requirements for filing an objection and replaces the previous section 218.8 “*Filing an objection*” (moved to 218.9).

The revised language adds a page limit on the length of objections, with different lengths allotted for objections to an EA (15 pages) or an EIS (30 pages). Page is defined for both attachments and objections submitted via web-based forms. The Fiscal Responsibility Act of 2023 amended NEPA to include page limits for EAs and EISs and convey Congress’s intent that environmental documents not be excessive in length. Limiting the length of objections ensures a more focused and effective objection review process and is not unreasonable now that EAs and EISs must also meet a maximum page limit. Limiting the length of objections also encourages objectors to submit issue-based objections as outlined in the requirements in this section.

Similar to the comment process, this section addresses how the responsible official would review multiple objection submissions from the same individual or entity (to reduce unnecessary administrative workload for Agency personnel and streamline the

review process), limits submission to certain formats, and provides limited exceptions for including documents and attachments.

The minimum requirements for filing an objection are defined to ensure that objections are focused and issue-based. This includes demonstrating the connection between prior specific written comments for each issue and providing specific recommended actions for the responsible official to consider for each issue. Limited exceptions are provided for raising issues not tied to previous comments.

#### *218.10 Evidence of timely filing.*

This section is amended to specify the requirements for evidence of timely filing, which was previously discussed at 218.9. This section replaces the previous section 218.10 “*Objections set aside from review*” (moved to 218.11).

This section removes former paragraph (b), (the requirement for the Agency to acknowledge receipt of objections) and addresses only contemporary methods of objection delivery (removes the use of facsimile submissions).

#### *218.11 Objections or issues set aside from review.*

This section is amended to specify the reasons objections would be set aside from review, which was previously discussed at 218.10. This section replaces the previous section 218.11 “*Resolution of objections*” (218.11(a) removed and 218.11(b) moved to 218.12).

Language from section 218.10(b) concerning written notice to objectors when an objection is set aside from review has been moved to 218.12 “*Review of objections*”, with notice only provided in the objection response published on a USDA website. This section more clearly defines the elements that would cause an objection to be set aside from review in whole (218.11(a)), or in part when some issues are set aside from review (218.11(b)). The responsible official would be required to set aside objections or issues that meet one or more of the criteria in section 218.11. Additional criteria for setting

aside objections in whole include objections that only restate previous comments, objections that, as a whole, refer to the wrong project or activity or national forest, and submissions received during the objection filing period that are only supportive in nature. To increase the efficiency of the objection review process, the proposed rule adds criteria for setting aside specific issues from review when an objection includes some issues that lack specificity or relevancy but contains other issues that warrant review and response.

The revised language removes “*Meetings*” (previously found at 218.11(a)) because resolution meetings are not statutorily required as part of the objection process and created additional administrative burdens and unnecessary delays; however, this does not preclude a responsible official from holding public hearings, public meetings, or other opportunities for public involvement (in alignment with 7 CFR 1b.9(k)) as deemed useful to inform the decision-making process.

#### *218.12 Review of objections.*

This section is amended to specify the requirements for reviewing objections. This section replaces the previous section 218.12 “*Timing of project decision*” (moved to 218.13).

This section updates language previously in 218.11(b) regarding the reviewing officer’s (now responsible official’s) response to objections. The proposed rule would establish a reduced response deadline after the end of the objection filing period, with no opportunity to extend the response period (to ensure efficient progress towards project implementation). The response timeline was 45 days for objections filed on both draft FONSI and draft RODs, with the option to extend the response period by 30 days. The proposed response period would differ for EAs (15 days) and EISs (20 days). The response would be limited to five pages and state: the objections reviewed in whole or in part (in part if some issues were set aside from review), objections or issues set aside from review (if any), and reasons for this, and/or changes (if any) the responsible official

will make before publishing the final FONSI or ROD. Defining the requirements for responding to objections would ensure a timely response to objectors that focuses on clarifying those objections that were reviewed in whole or in part and appropriately highlights changes made in response to the objections and issues reviewed.

To increase consistency with the Agency's distribution of other project-related documents, this section clarifies that publication of the responsible official's response on a USDA website would be the sole requirement for distributing the objection response. This section also retains the language that no further review of the responsible official's written response to an objection is available from any USDA official.

*218.13 Timing of finding or decision.*

This section is amended to specify the requirements for publishing the final FONSI or ROD. This section replaces the previous section 218.13 "*Secretary's authority*" (moved to 218.15).

This section updates requirements previously found at 218.12 "*Timing of project decision.*" It adds language for promptly finalizing the FONSI or ROD after any changes included in the objection response are completed. It removes the requirement for the reviewing officer to notify the responsible official, as the responsible official would be the line officer completing the review. Additionally, it removes references to a decision notice (DN) and rescinded NEPA regulations. It adds notification requirements (publication of the final FONSI or ROD to a USDA website) for various scenarios to align with 7 CFR 1b.

*218.14 Emergency situations.*

This section is amended to specify how the procedures set forth in these regulations would apply to emergency situations requiring immediate actions, as determined by the Chief or Associate Chief. This section replaces the previous section 218.14 "*Judicial proceedings*" (moved to 218.16).



#### *218.15 Secretary and Undersecretary authority*

This section is amended to specify how the procedures set forth in these regulations would apply to the authority of the Secretary and the Under Secretary. This section replaces the previous section 218.15 “*Information collection requirements*” (removed).

This section retains the authority of the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment (NRE). The phrase “projects and activities proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment” is updated to remove the word “proposed” and clarifies that projects and activities finalized, authorized, or approved by the Secretary of Agriculture or the Under Secretary for NRE are not subject to the procedures set forth in this part. This provides necessary flexibility for projects or activities initially proposed by the Forest Service, for which the Secretary or the Under Secretary chooses to retain the decision authority to authorize or approve the projects or activities.

#### *218.16 Judicial proceedings*

This section is amended to specify judicial proceedings. This section replaces the previous section 218.16 “*Effective dates*” (removed).

Paragraph (a) is deleted to remove extraneous information not related to judicial proceedings, and paragraph (b) is retained.

#### *218.17 Severability*

This is a new section added to clarify that the sections of these regulations are separate and severable from one another. It describes how other sections or portions may remain valid if another section or portion is stayed or determined to be invalid.

### **IV. Transition**

It is anticipated that a final rule amending the objection process at 36 CFR 218 will be published and made effective within a reasonable time after publication of this

proposed rule. The following transition guidelines will apply to projects already underway on the effective date of the final rule.

When a proposed action that is subject to 36 CFR 218 has already provided a designated opportunity for public comment prior to the publication of this proposed rule, the objection process as it was established prior to the proposed rule will apply.

Projects subject to 36 CFR 218 that initiate the designated opportunity for public comment after the publication of this proposed rule may include a statement in the notice for opportunity to comment that the FONSI or ROD may be subject to the revised objection process if the final 36 CFR 218 rule is published before the project's objection period.

When a proposed action that is subject to 36 CFR 218 has not initiated a designated opportunity for public comment prior to the final rule publishing, at such time that a notice of opportunity to comment is published, it shall apply the final rule.

## **V. Regulatory Certifications**

### *Regulatory Planning and Review*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this proposed rule is not significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Department has developed the proposed rule consistent with E.O. 13563.

### *Congressional Review Act*

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness

Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), OIRA has designated this proposed rule as not a major rule as defined by 5 U.S.C. 804(2).

#### *National Environmental Policy Act*

The proposed rule would update, consolidate, and streamline the process by which the public may file objections seeking administrative review for proposed projects and activities implementing land management plans on national forests. Departmental regulations at 7 CFR 1b.4(c)(20) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.” The Department’s preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

#### *Regulatory Flexibility Act*

The Department has considered this proposed rule under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This proposed rule would not have any direct effect on small entities as defined by the Regulatory Flexibility Act. This proposed rule would not impose recordkeeping requirements on small entities; would not affect their competitive position in relation to large entities; and would not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

#### *Federalism*

The Department has considered this proposed rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the proposed rule conforms with the federalism principles set out in this E.O. and would not impose compliance costs on

the States; and would 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 has concluded that this proposed rule would not have federalism implications.

#### *Consultation and Coordination with Indian Tribal Governments*

E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This proposed rule would update, consolidate, and streamline the process by which the public may file objections seeking administrative review for proposed projects and activities implementing land management plans on national forests. The Department has reviewed this proposed rule in accordance with the requirements of E.O. 13175 and has determined that this proposed rule could have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments are required for this proposed rule.

Tribal Summary Impact Statement: On September 29, 2025, Tribes and Alaska Native Corporations were notified by email about the opportunity to consult on proposed changes to regulations at 36 CFR part 218. The Forest Service provided a National Policy Summary Analysis describing the proposal and identifying how implementation may affect Tribal governments, Alaska Native Corporations, and the citizens they represent.

This information was also available on the Forest Service National Consultation webpage at <https://www.fs.usda.gov/working-with-us/tribal-relations/national-consultation>. As of the publication of this notice, the Forest Service has not received any requests for consultation or other feedback on this proposed rule from Tribes or Alaska Native Corporations.

#### *Family Policymaking Assessment*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for a rule that may affect family well-being. The proposed rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment for the proposed rule.

#### *Takings Implications*

The Department has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*. The Department has determined that the proposed rule would not pose the risk of a taking of private property.

#### *Energy Effects*

The Department has reviewed the proposed rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Department has determined that the proposed rule would not constitute a significant energy action as defined in E.O. 13211.

#### *Civil Justice Reform*

The Department has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform*. Upon publication of the proposed rule, (1) all State and local laws and regulations that conflict with the proposed rule or that

impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

#### *Unfunded Mandates*

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of the proposed rule on State, local, and Tribal governments and the private sector. The proposed rule would not compel the expenditure of \$100 million or more, adjusted annually for inflation, in any 1 year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required.

#### *Paperwork Reduction Act*

The proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### **List of Subjects in 36 CFR part 218**

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth in the preamble, the Department proposes to amend chapter II of title 36 of the Code of Federal Regulations as follows:

1. Revise part 218 to read as follows:

## **Part 218 – PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW**

### **PROCESS**

#### **Sec.**

- 218.1 Purpose, applicability, and scope.
- 218.2 Definitions.
- 218.3 Designated opportunity for public comment.
- 218.4 Projects and activities subject to the objection process.
- 218.5 Projects and activities not subject to the objection process.
- 218.6 Who may file an objection.
- 218.7 Objection filing period.
- 218.8 Notice of opportunity to object.
- 218.9 Filing an objection.
- 218.10 Evidence of timely filing.
- 218.11 Objections or issues set aside from review.
- 218.12 Review of objections.
- 218.13 Timing of finding or decision.
- 218.14 Emergency situations.
- 218.15 Secretary and Under Secretary authority.
- 218.16 Judicial proceedings.
- 218.17 Severability.

**Authority:** Pub. L. 108-148, 117 Stat. 1887 (16 U.S.C. 6515); Sec. 428, Pub. L. 112-74, 125 Stat. 1046 (16 U.S.C. 6515 note); Sec. 431, Pub. L. 113-76; Sec. 8006, Pub. L. 113-79.

#### **§ 218.1 Purpose, applicability, and scope.**

This regulation establishes an administrative review process (hereinafter referred to as “objection process”) for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a finding of no significant impact (FONSI) or a record of decision (ROD). The objection process is the sole means of administrative review for qualifying projects.

#### **§ 218.2 Definitions.**

The following definitions apply to this part:

*Commenter.* An individual or entity that submits timely, specific written comments that meet the requirements outlined in § 218.3.

*Contact information.* For comments submitted electronically, this is a current email address at which an entity or individual may be reached. For comments not submitted electronically, this is a current phone number or a current physical mailing

address where an entity or individual may be reached.

*Entity.* For purposes of eligibility to file an objection (§ 218.6), an entity includes non-governmental organizations, businesses, partnerships, state and local governments, Alaska Native Corporations, and Indian Tribes.

*Environmental assessment (EA).* See NEPA section 111(4), 42 U.S.C. 4336e(4).

*Environmental documents.* See NEPA section 111(5), 42 U.S.C. 4336e(5).

*Environmental impact statement (EIS).* See NEPA section 111(6), 42 U.S.C. 4336e(6).

*Finding of no significant impact (FONSI).* See NEPA section 111(7), 42 U.S.C. 4336e(7).

*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.

*Issue.* A logical cause-and-effect relationship between the actions proposed (cause) and the reasonably foreseeable impacts (effect) on resources found in the affected environment.

*Lead commenter or objector.* The individual or entity identified to represent all other commenters or objectors (for comments or objections submitted with multiple individuals and/or entities listed) for the purposes of communication, written or otherwise, regarding the comments or objections. (Also see definitions for *Commenter* and *Objector*.)

*Mitigations.* Constraints or requirements that avoid, minimize, or compensate for adverse impacts caused by a proposed action or selected alternative, which are documented in a FONSI or ROD and are determined by the responsible official, in accordance with statutory or regulatory authority, in reaction to the effects described in an EA or EIS.

*Name.* The first and last name of an individual or the complete name of an entity.



(An electronic username is insufficient for the identification of an individual or entity.)

*National Forest System land.* All lands, waters, or interests therein administered by the Forest Service (16 U.S.C. 1609).

*Objection.* The written document filed with a responsible official by an individual or entity seeking administrative review of a project or activity implementing a land management plan and documented with a FONSI or ROD.

*Objector.* An individual or entity filing an objection who meets the eligibility requirements associated with the filed objection (§ 218.6).

*Proposal (or Project or Activities).* (See NEPA section 111(12), 42 U.S.C. 4336e(12)).

*Project record (or proposal record).* All relevant documentation and records, including all environmental analysis documents and comment submissions, that contain information the responsible official relies on to make iterative decisions throughout the NEPA process or to determine if and how the action will be approved.

*Recommendations.* Actions the responsible official should consider taking to resolve an issue. Actions may include: choosing not to take action; modifying alternatives, including the proposed action; developing and evaluating alternatives that have not been previously given serious consideration by the responsible official; supplementing, improving, or modifying analyses; considering science or literature that has not been previously considered; or making factual corrections.

*Record of decision (ROD).* A documented determination by the responsible official on how to proceed with respect to a proposed action and action alternatives that have reasonably foreseeable significant impacts on the quality of the human environment, as described in an environmental impact statement.

*Responsible official.* The Forest Service employee who has the authority to determine: when NEPA applies, what level of NEPA review is appropriate, the extent of

environmental review, the final NEPA finding, and compliance with other applicable laws, regulations, and executive orders; and how to proceed for a proposed action or action alternative(s).

*Scope.* The range of actions and alternatives developed for a proposal, or the issues and impacts to be considered in an environmental analysis.

*Specific written comments.* A written statement that identifies a substantive issue that is within the scope of the proposed action. See the definitions provided for *issue*, *scope*, and *substantive*.

*Substantive.* Information that meaningfully informs the consideration of reasonably foreseeable impacts on the human environment, the resulting significance determination or decisions on how to proceed (that is, alternatives to be considered or analyzed or the alternative selected for implementation), or compliance with applicable laws and regulations.

### **§ 218.3 Designated opportunity for public comment.**

(a) *Designated opportunity.* The responsible official shall provide notice of a designated opportunity for public comment for projects and activities subject to the objection process (see § 218.4). EAs or EISs for which an opportunity for public comment or an objection process has already been provided and that are updated to include changes stemming from the designated opportunity for public comment or objection review process, or when issuing updated or supplemental environmental documents in response to court orders, shall not be subject to another opportunity for comment.

(b) *Notice of opportunity.* Notice of the opportunity to comment will be published on the USDA website where the EA or EIS, or preliminary information associated with these documents, is published. The notice shall:

(1) Disclose that the project or activity is subject to the objection process (§ 218.4) unless at any point in the development and analysis process the project or activity is no longer subject to the objection process (§ 218.5 or § 218.15).

(2) Specify how comments will be submitted (for example, mailing address, email address, web platform);

(3) State the name and title of the responsible official to whom the comments are to be addressed;

(4) Specify where the information for comments can be located electronically;

(5) State the date the notice of opportunity is published on a USDA website and the dates the designated opportunity for public comment begins and ends (see paragraphs (c)(2) and (3) of this section); and

(6) Include the requirements for filing comments as found in paragraphs (e) through (h) of this section or include a link to the requirements as provided in the Electronic Code of Federal Regulations.

(c) *Time to file comments.* The length of the designated opportunity for public comment for a proposed action that is to be documented in an EA is 10 days, or 20 days for a proposed action that is to be documented in an EIS, with no extension. Notice of the opportunity to comment will be published on the USDA website where the EA or EIS, or preliminary information associated with these project documents, is published.

(1) *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 (11:59 p.m. in the time zone of the receiving office for comments filed by electronic means such as email).

(2) *Start date.* The date after a notice of an opportunity for comment is published on a USDA website is the first day of the designated opportunity for public comment.

(3) *End date.* The date specified as the last day of the designated opportunity for public comment, as stated in the notice of opportunity for comment.

(d) *Providing information for comment.* The timing of the notice of a designated opportunity for public comment will be determined by the responsible official. For an EIS, the opportunity for comment may be combined with the request for comment included in the notice of intent to publish an EIS, as required by NEPA § 107(c); 42 U.S.C. 4336a(c) and the applicable NEPA regulations, and the notice of intent may be referenced as the place to find the information for comment. The information provided for comment shall include, at a minimum:

(1) A detailed description of the purpose and need and proposed action;

(2) Alternatives, if any, already being considered for detailed analysis, with sufficient description to indicate how each alternative differs from the proposed action. Discussion may include alternatives already considered but not carried forward for detailed analysis, and the rationale for this;

(3) Issues to be analyzed in detail. Discussion may include preliminary anticipated effects associated with issues to be analyzed in detail, and may also identify those issues considered but not carried forward for detailed analysis, and the rationale for this; and

(4) Preliminary applicable laws and regulations that the responsible official will consider for compliance during the environmental review process.

(e) *Comment requirements.* To be eligible to submit an objection, individuals and entities must provide the following in writing during the designated opportunity for public comment:

(1) Commenter's name and contact information;

(2) The name of the project or activity and the name(s) of the national forest(s) on which the project or activity will be implemented;

(3) Specific written comments, along with supporting reasons. Commenters should also provide recommendations for the responsible official to consider that would remedy the issues raised; and

(4) Identification of the individual or entity who authored the comment(s) and, when multiple names are listed on a comment, identification of the lead commenter.

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

(f) *Timeliness.* It is the commenter's responsibility to ensure the timely filing of a comment in accordance with the notice. Timeliness must be determined by the following indicators:

(1) The date of the U.S. Postal Service postmark for a hard-copy comment received before the close of the fifth business day after the designated opportunity for public comment,

(2) The shipping date for delivery by private carrier for a hard-copy comment received before the close of the fifth business day after the designated opportunity for public comment, or

(3) The Agency's electronically generated date and time for email and web-based platforms.

(g) *Submission format.* Comments submitted on or via electronic external media (such as CD-ROMs or external hard drives) shall not be accepted due to computer security policies. If comments from the same entity or individual are submitted in more than one format (for example, hard-copy, email, and electronically through web-based platforms), the responsible official will accept and review only one submission at their discretion. Objections submitted electronically must be in .doc, .docx, .pdf, or .txt document formats or provided on an Agency web-based platform. Documents must not

have permission restrictions for printing, copying, or accessing text by screen reader devices.

(h) *References and attachments.* The following documents may be incorporated by reference in the comments submitted. Other documents, attachments, or website links are not allowed except as specified.

(1) All or part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the information provided for comment.

(4) Science or literature may be considered if the commenter clearly identifies the cause-and-effect issues relating literature to the environmental analysis. Science or literature must be included as an attachment in portable document format (.pdf) that does not have permission restrictions for printing, copying, or accessing text by screen reader devices. Website links will not be accepted.

(i) *Comment consideration.* The responsible official shall consider all specific written comments to identify the substantive issues raised and the recommendations made to remedy the issues. All written comments received by the responsible official shall be placed in the project record and shall become a matter of public record.

#### **§ 218.4 Projects and activities subject to the objection process.**

The objection process applies to:

(a) Projects and activities implementing land management plans for which an EA is prepared, including Healthy Forests Restoration Act (HFRA) projects;

(b) Projects and activities implementing land management plans for which an EIS is prepared, including HFRA projects; and

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

that project or activity.

**§ 218.5 Projects and activities not subject to the objection process.**

(a) The objection process does not apply when:

(1) No timely, specific written comments regarding the project or activity are received during the designated opportunity for public comment (see § 218.3);

(2) Any project or activity is categorically excluded from documentation in an EA or EIS;

(3) Proposed land management plans, plan revisions, and plan amendments are subject to the objection process set forth in part 219, subpart B of this chapter;

(4) A FONSI or ROD is updated to incorporate changes stemming from the objection review process or when otherwise issuing an updated FONSI or ROD that does not change the Agency's original finding or decision;

(5) Rules are 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); or

(6) Authorizing the following:

(i) Emergency Situation Determinations issued under section 40807 of the Infrastructure and Investment Jobs Act of 2021 or determinations of emergency situations pursuant to any applicable emergency authorities.

(ii) Emergency situations pursuant to § 218.14.

(b) For projects or components of projects that rely on other environmental analyses that have already been through the objection process of this part, a previous Forest Service administrative review process, or another agency's pre- or post-decisional administrative review process, the environmental analysis relied upon shall not be subject to objection review.

**§ 218.6 Who may file an objection.**

(a) Individuals and entities, including Federally recognized Indian Tribes and Alaska Native Corporations, that submitted comments in response to the designated opportunity to comment as required in § 218.3 and in accordance with § 218.3(e) through (h) for a project or activity subject to this part may file an objection. Objections from one or more individuals or entities must identify a lead objector (§ 218.9(d)(2)).

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

(c) Federal agencies may not file objections.

(d) Federal employees who otherwise meet the requirements of this regulation 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.

#### **§ 218.7 Objection filing period.**

(a) *Time to file an objection.* Written objections must be filed with the responsible official within 10 days following the publication of the draft FONSI or 20 days following the publication of the draft ROD on a USDA website. The objection filing period will not be extended. Computation will follow § 218.3(c)(1).

(b) *Start date.* The day after publication of the draft FONSI (for an EA) or draft ROD (for an EIS) required by paragraph (c) of this section is the first day of the objection filing period.

(c) *Publication date.* The publication date of the draft FONSI or draft ROD on a USDA website is the exclusive means for calculating the time to file an objection. The most recent version of the applicable EA or EIS may be published prior to publication of the draft FONSI or draft ROD, but it must be available to the public at the time the draft FONSI or draft ROD is published. The responsible official shall ensure the term “draft”



is included in the title of the FONSI or ROD for purposes of publishing the documents for the objection process.

(d) *End date*. The date specified as the last day of the objection period as stated in the notice of opportunity to object (§ 218.8(b)(5)). Objectors may not rely on dates or timeframe information provided by any other source.

#### **§ 218.8 Notice of opportunity to object.**

(a) For projects and activities subject to the objection process (see § 218.4), the responsible official shall offer eligible individuals and entities (see § 218.6) an opportunity to object. Notice of the opportunity to object will be published on the USDA website where the applicable EA and draft FONSI or EIS and draft ROD are published.

(b) The notice shall be posted on a USDA website on the same day as the draft FONSI or draft ROD and must:

(1) Specify how objections will be submitted (for example, mailing address, email address, web platform);

(2) State the name and title of the responsible official offering the opportunity to object);

(3) Specify where the EA and draft FONSI, or the EIS and draft ROD, can be located electronically;

(4) Identify the date the draft FONSI or draft ROD was published on a USDA website and specify the start date of the objection filing period, as determined in accordance with § 218.7(b);

(5) Identify the objection filing period end date, as determined in accordance with § 218.7(d); and

(6) Include the requirements for filing an objection as found in § 218.9 or include a link to the requirements as provided in the Electronic Code of Federal Regulations.

#### **§ 218.9 Filing an objection.**

(a) Objections must be filed with the responsible official in writing and shall be formatted to be no longer than 15 pages for an EA and draft FONSI or 30 pages for an EIS and draft ROD (not including documents and attachments as permitted in paragraph (b) of this section).

(1) For objections submitted electronically, a page is defined as 8.5 by 11 inches with one-inch margins, in at least 12-point proportionally spaced font, and single-spaced. Electronic documents must be in .doc, .docx, .pdf, or .txt document formats and must not have permission restrictions for printing, copying, or accessing text by screen reader devices. For objections submitted via web-based forms (not uploaded as an electronic document), a page is defined as 500 words.

(2) Objections submitted on or via electronic external media (such as CD-ROMs or external hard drives) shall not be accepted due to computer security policies. If objections from the same entity or individual are submitted in more than one format (for example, hard-copy, email, and electronically through web-based platforms), the responsible official will accept and review only one submission at their discretion.

(b) The following documents may be incorporated by reference. Other documents, attachments, or website links are not allowed except as specified.

(1) All or part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the project EA or EIS, or the draft FONSI or draft ROD, that are subject to objection.

(4) Comments previously provided to the Forest Service by the objector during the opportunity for public comment.

(5) Science or literature not previously considered that was published or otherwise made available after the designated opportunity for public comment may be considered at the responsible official's discretion if the objector clearly identifies the cause-and-effect

issues relating the literature to the environmental analysis. The science or literature must be included as an attachment in portable document format (.pdf) that does not have permission restrictions for printing, copying, or accessing text by screen reader devices. Website links will not be accepted.

(c) Issues raised in objections must be based on previously submitted specific written comments provided by the objector during the designated opportunity for public comment (see § 218.3(e), *Comment requirements*) unless based on:

(1) Modified alternatives, including the proposed action;

(2) Alternatives not previously analyzed;

(3) Supplemental or modified analyses;

(4) Consideration of science or literature not previously considered because it was published after the designated opportunity to comment, and the objector clearly identifies cause-and-effect issues relating the literature to the environmental analysis.

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

(1) Objector's name and contact information;

(2) When multiple names are listed on an objection, identification of the lead objector;

(3) The name of the project or activity and the name(s) of the national forest(s) on which the project or activity will be implemented;

(4) Clearly stated issues, and for each issue:

(i) A statement that demonstrates the connection between the issue included in the objection and the issue as it was included in prior specific written comments or a statement indicating the issue is based on one or more of the exceptions in paragraph (c); and

(ii) Clearly articulated recommendations for the responsible official to consider taking and/or clearly stated specific mitigations for the responsible official to consider

(with statutory or regulatory authority for the mitigation specified) when finalizing the FONSI or ROD.

**§ 218.10 Evidence of timely filing.**

It is the objector's responsibility to ensure the timely filing of a written objection with the responsible official. Timeliness will be determined by the following indicators:

(a) 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;

(b) 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

(c) The Agency's electronically generated posted date and time for email and web-based platforms.

**§ 218.11 Objections or issues set aside from review.**

(a) The responsible official must set aside as a whole and not review an objection when one or more of the following apply:

(1) Objections are not filed in a timely manner (see § 218.10);

(2) The project or activity is not subject to the objection process (see § 218.5);

(3) The individual or entity submitting the objection did not submit specific written comments regarding the project or activity during the designated opportunity for public comment in accordance with § 218.3(e) through (h);

(4) The objection only restates or cites previously submitted comments;

(5) The objection, as a whole, refers to the wrong proposal or national forest (or other applicable administrative unit);

(6) The objection does not meet all the requirements of § 218.9;

(7) The objector withdraws their objection;

(8) The responsible official cancels the objection process for the project or activity or withdraws the project or activity; and/or

(9) The document is labeled or submitted as an “objection” but is entirely supportive in nature.

(b) The responsible official must set aside objections in part (not review certain issues in the objection) when one or more of the following apply to the issue(s) raised:

(1) Not within the scope of the project or activity, or is not within the responsible official’s decision authority (that is, the responsible official does not have discretion to change certain aspects of the project or does not have statutory authority to require certain outcomes);

(2) Refers to the wrong project or national forest (or other applicable administrative unit);

(3) Contains no statement, or the statement is determined to be inaccurate, that demonstrates the connection between the issue included in the objection and the issue as it was included in prior specific written comments for the project, or indicates the issue is based on one or more of the exceptions in § 218.9(c); and/or

(4) Contains no clearly articulated recommendations for the responsible official to consider taking, and/or no clearly stated mitigation for the responsible official to consider including (with statutory authority for the mitigation specified), when finalizing the FONSI or ROD.

#### **§ 218.12 Review of objections.**

(a) The responsible official shall review the objections and issue a single written response that does not exceed five pages. A page is defined as 8.5 by 11 inches with one-inch margins, in at least 12-point proportionally spaced font, and single-spaced.

(b) The written response shall be issued after the close of the objection filing period; within no more than 15 days for objections filed on a FONSI, or 20 days for objections filed on a ROD. The objection response will be posted on the USDA website where the EA and draft FONSI, or the EIS and draft ROD, are published.

(1) *Computation.* All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period begins or expires on a Saturday, Sunday, or Federal holiday, the start or end date is extended to the next Federal working day.

(2) *Start date.* The starting date for the objection response period is the day after the objection filing period ends.

(3) *End date.* The ending date for the objection response period is the close of business, 30 calendar days from the start date.

(c) The response shall state the following at a minimum:

(1) The objections that were reviewed in whole or in part (meaning some issues were set aside from review);

(2) Objections, if any, that were set aside in whole or in part from review and the reasons for this (see § 218.11(a) and (b)); and

(3) Changes the responsible official will make prior to finalizing the FONSI or ROD, if any, in response to the issues raised or recommendations made in the objections that were reviewed in whole or in part.

(d) No further review within the USDA, to include the Forest Service, is available for the response to an objection.

### **§ 218.13 Timing of finding or decision.**

(a) *When an objection response is issued.* Upon publishing the response required in § 218.12, and unless withdrawing the project or activity, the responsible official shall promptly make any changes as communicated in the response (§ 218.12(b)) and, once complete, finalize and republish the FONSI or ROD and ensure the term “draft” is removed. Notification of the availability of the FONSI or ROD shall be provided in accordance with the applicable NEPA regulations and also include notification to any

individuals or entities that have filed an objection, if they are not already included in the notification process.

(b) *When no objections are subject to review.* If there are no eligible objectors or all objections filed are set aside from review (§ 218.11(a) and (b)), the responsible official shall, unless withdrawing the project or activity, promptly publish the final FONSI or ROD to a USDA website and provide notification of the availability of the final FONSI or ROD in accordance with the applicable NEPA regulations. Unless other statutes or regulations require otherwise, implementation of the Agency action may occur on, but not before, the fifth business day following the end of the objection filing period.

(c) *When a project is not subject to objection.* When a project or activity is not subject to the objection process (§ 218.5), notification of the availability of the FONSI or ROD shall be provided in accordance with the applicable NEPA regulations.

#### **§ 218.14 Emergency situations.**

(a) *Circumstances requiring immediate implementation.* A situation may arise where immediate implementation of a proposed project or activity is needed, such as to provide relief from hazards threatening human health and safety, mitigate threats to natural resources on National Forest System or adjacent lands, or avoid a loss of commodity value sufficient to jeopardize the Agency's ability to accomplish project objectives directly related to resource protection or restoration. The determination that immediate implementation is needed shall be made by the Chief or Associate Chief based on an examination of the relevant information. When a determination is made by the Chief or Associate Chief that an emergency situation exists for which immediate implementation of a proposed project or activity, or portion thereof, is necessary, the project or activity, or portion thereof, shall not be subject to the pre-decisional objection process under this part, and implementation may proceed as follows:

(1) Immediately after notification, when the action is documented in a FONSI or

ROD.

(2) The responsible official shall identify the immediate action determination made for a project or activity in the notification of the FONSI or ROD.

(b) *Authorized hazardous fuel reduction projects.* Determinations made under this section shall not apply to an authorized hazardous fuel reduction project under title I of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 *et seq.*).

**§ 218.15 Secretary and Under Secretary authority.**

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

(b) Projects and activities finalized, authorized, or approved by the Secretary of Agriculture or the Under Secretary for 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.

**§ 218.16 Judicial proceedings.**

Any filing for Federal judicial review of a decision 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)).

**§ 218.17 Severability.**

(a) *Severability.* The sections of this part are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the agency's intention that the validity of the remainder of those parts will not be affected, with the remaining sections and all applications thereof to continue in effect.



**Courtney Stevens,**  
*Acting Deputy Under Secretary,*  
*Natural Resources and Environment.*

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