



Forest Service National Forest System

March 27, 2013

Talking Points

Final Rule for 36 CFR Part 218, Project-Level Predecisional Administrative Review Process

- On March 27, 2013, a final rule revising 36 CFR Part 218 was published in the Federal Register and became effective upon that publication date.
- Section 428 of the Consolidated Appropriations Act, 2012 directs the agency to establish a pre-decisional objection process for projects and activities documented with a Decision Notice or Record of Decision in lieu of the post-decisional appeal process used since 1993.
- A proposed rule was published in the Federal Register on August 8, 2012, initiating a 30-day public comment period. The Forest Service received input from a total of 62 respondents during that time. The respondents represented a broad range of interests.
- An offer of Tribal consultation on the rulemaking began on April 2, 2012, and concluded at the end of the 30-day public comment period on September 7, 2012.
- The final rule expands the use of the current predecisional objection process promulgated in 2004 for projects authorized under the Healthy Forests Restoration Act (HFRA) of 2003 to include projects and activities implementing land and resource management plans.
- To meet the statutory requirements of HFRA, the notice and comment requirements of the Appeal Reform Act, and the direction of Section 428, the final rule establishes 3 subparts as follows:
 - Subpart A**, General Provisions applicable to all proposed projects subject to Part 218;
 - Subpart B**, Provisions Specific to Project-Level Proposals Not Authorized Under the Healthy Forests Restoration Act; and
 - Subpart C**, Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act.
- Public comment on the proposed rule resulted in a number of changes included in the final rule:
 - Clarification and strengthening of the definition for “specific written comments” in determining eligibility to object.
 - Addition of a provision stating that Indian Tribes and Alaska Native Corporations may become eligible to object by providing specific written comments during Federal-Tribal consultation that may precede public comment opportunities.
 - Addition of a requirement to post a copy of legal notices of opportunities to comment and object to the Web within 4 calendar days after the legal notice is published in the newspaper of record.
 - Clarification of the discretion available to the reviewing officer in conducting meetings with objectors.
- The Forest Service believes that considering public concerns before a decision is made aligns with our collaborative approach to forest management and increases the likelihood of resolving those concerns resulting in better, more informed decisions. The Agency also believes the predecisional

objections process will aid efforts to be more efficient with documenting environmental effects (NEPA).

- Engaging diverse perspectives and potential contributions of the American people across the country early and throughout the planning process is essential to 21st Century forest conservation management. Collaboration is bringing divergent viewpoints together to foster conservation designed by and accomplished in partnership with the American people.
- Agency policy encourages collaboration around project planning between the responsible official and interested publics. What sets the project-level objection process apart from the collaborative efforts that precede it during project planning, is the involvement of the reviewing officer in reviewing, helping to resolve, and otherwise responding to objection issues.
- The final rule fosters active engagement of line officers with the public by reserving the reviewing officer responsibilities to a Forest Service line officer at the next higher administrative level above the responsible official, while clarifying that Deputy Regional Foresters and Deputy Forest Supervisors could serve as reviewing officers as well.
- Since the statutory direction in Section 428 was specific to proposed projects documented with a Record of Decision or a Decision Notice, at this time projects that are documented with a Decision Memo and categorically excluded from documentation in an environmental impact statement and environmental assessment will remain subject to the notice, comment, and post-decisional appeal procedures of 36 CFR 215.
- The rule becomes effective upon publication, but there are transition provisions at § 218.16. The fact that non-HFRA projects are still subject to the notice and comment requirements of the ARA made it necessary to have separate transition provisions for HFRA and non-HFRA projects:
 - For HFRA projects –
 - New rule procedures are effective immediately (upon rule publication) when public scoping begins on or after date of publication.
 - Prior 218 procedures may be used for projects where public scoping began prior to publication date.
 - If projects are re-scoped with the public or re-issued for notice and comment after date of publication, the new rule must be used.
 - For non-HFRA projects –
 - When public scoping has been completed but the required legal notice of opportunity to comment has not been published at the time the rule becomes effective, the procedures of the new rule must be used, unless the scoping or other public notification of the project clearly indicated the project would be subject to the 215 appeal process.
 - When the required legal notice of opportunity to comment has already been published prior to the rule becoming effective, the project will be subject to the 215 appeal procedures as long as the DN or ROD is signed within 6 months of rule publication. If the decision is to be signed more than 6 months beyond the rule's effective date, the project will be subject to the new rule (objection) and the responsible official is required to notify all interested and affected parties who participated during scoping or provided specific written comment during the required opportunity to comment.

- When initial public scoping, re-scoping with the public, or re-issuance of the required notice of opportunity to comment begins on or after the rule publication date, the new objection procedures are to be used.

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