

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T09–289 to read as follows:

**§ 165.T09–289 Security Zone; Renaissance Center and Cobo Hall, North American International Auto Show, Detroit River, Detroit, MI.**

(a) *Location.* The following is a temporary security zone: All waters and adjacent shoreline encompassed by a line commencing on the shore-side near Cobo Hall, at 42°19'26.6"N, 083°03'06.6"W; then extending offshore at 160°T to the Third St. junction buoy at 42°19'24.2"N, 83°03'4.7"W; then northeast at 073°T to the Griswold St. junction buoy at 42°19'31"N, 83°02'34.1"W; then northeast at 071°T to 42°19'40"N, 083°02'00"W; then north at 000°T to a point on land at 42°19'46.3"N, 083°02'00"W (near Atwater Customs station); then southeast following the shoreline back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Enforcement period.* This security zone will be enforced from 12 p.m. (noon) January 9, 2004, until 8 p.m. on January 19, 2004.

(c) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit.

(2) Persons desiring to transit through security zone must contact the Captain of the Port at telephone number (313) 568–9580/313–568–9524, or on VHF channel 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: December 31, 2003.

**P.G. Gerrity,**

*Commander, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 04–385 Filed 1–8–04; 8:45 am]

**BILLING CODE 4910–15–U**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Parts 215 and 218

**RIN 0596–AC15**

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

**AGENCY:** Forest Service, USDA.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule establishes the sole process by which the public may seek administrative review and file objections to proposed hazardous fuel reduction projects authorized by the Healthy Forests Restoration Act of 2003 (HFRA), Public Law 108–148. Section 105 of the act directs the Secretary of Agriculture to promulgate, within 30 days of HFRA's enactment, interim final regulations to establish a predecisional administrative review process for hazardous fuel reduction projects authorized under the act. The Forest Service invites written comments on this interim final rule. As provided by HFRA, this interim final rule is effective upon publication in the **Federal Register** and will be in effect until the Secretary adopts a final rule.

**DATES:** This interim final rule is effective January 9, 2004. Comments on this interim final rule must be received in writing by April 8, 2004.

**ADDRESSES:** Send written comments to USDA, Forest Service, Healthy Forests Restoration Act Objections, Content Analysis Team, PO Box 22777, Salt Lake City, UT 84122; by electronic mail to [HFRAobjections@fs.fed.us](mailto:HFRAobjections@fs.fed.us); or by fax to (801) 517–1014; or by the electronic process available at Federal eRulemaking portal at <http://www.regulations.gov>. If comments are sent by electronic mail or by fax, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the interim final rule; explain the reasons for any recommended changes; and, where possible, reference the specific section or paragraph being addressed.

All timely and properly submitted comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this interim final rule at the Content Analysis Team Service Center offices in Salt Lake City, Utah between the hours

of 8 a.m. to 4:30 p.m. on business days. Those wishing to inspect comments should call ahead (801) 517–1020 to facilitate an appointment and entrance to the building.

#### **FOR FURTHER INFORMATION CONTACT:**

Steve Segovia, Assistant Director, Appeals and Litigation at (202) 205–1066.

#### **SUPPLEMENTARY INFORMATION:**

On December 3, 2003, 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. The legislation helps further the President's Healthy Forests Initiative pledge to care for America's forests and rangelands, reduce the risk of catastrophic fire to communities, help save the lives of firefighters and citizens, and protect threatened and endangered species.

One of the provisions of the act, (sec. 105) requires that the Secretary of Agriculture (Secretary) issue an interim final rule within 30 days of enactment to establish a predecisional administrative review process for hazardous fuel reduction projects authorized by the HFRA. This interim final satisfies this requirement to establish a predecisional administrative review process. Another provision of the act required the Secretary to provide a reasonable time for public comment. The Secretary is providing a 90-day comment period on the interim final rule. This 90-day provision satisfies the reasonable time requirement in the act.

Prior to passage of the HFRA, public notice and comment for hazardous fuel reduction project proposals, and procedures for appeal of decisions implementing those projects, would have been conducted according to the procedures set out at 36 CFR part 215. This interim final rule amends part 215 to exempt hazardous fuel reduction projects authorized by the HFRA from the notice, comment, and appeal procedures set out at part 215 and establishes separate review and objection procedures specifically for hazardous fuel reduction projects, pursuant to HFRA at the new part 218, subpart A.

## Section-by-Section Description of Interim Final Rule

### *Part 215—Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities*

#### Section 215.3—Proposed Actions Subject to Legal Notice and Opportunity To Comment

Paragraphs (a) and (b) are amended to clarify that the notice and comment provisions of part 215 do not apply to proposed hazardous fuel reduction projects conducted pursuant to the HFRA.

#### Section 215.4—Actions Not Subject to Legal Notice and Opportunity To Comment

Paragraph (f) is added to identify that proposed hazardous fuel reduction projects authorized by the HFRA are not subject to the notice and comment provisions of part 215.

#### Section 215.12—Decisions and Actions Not Subject to Appeal

Paragraph (i) is added to clarify that proposed hazardous fuel reduction projects conducted under the provisions of the HFRA are not subject to appeal procedures in part 215 and that they are subject to the administrative review process found in part 218, subpart A.

## Part 218—Predecisional Administrative Review

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

#### Section 218.1—Purpose and Scope

This section establishes a predecisional administrative review (hereinafter “objection”) process for those proposed hazardous fuel reduction projects authorized by the HFRA.

#### Section 218.2—Definitions

This section defines some of the commonly used terms and phrases in the interim final rule.

#### Section 218.3—Authorized Hazardous Fuel Reduction Projects Subject to the Objection Process

This section describes projects subject to the objection process.

#### Section 218.4—Legal Notice of Objection Process for Proposed Authorized Hazardous Fuel Reduction Projects

This section describes the method to be used when giving notice that an environmental assessment or

environmental impact statement for a proposed authorized hazardous fuel reduction project is available for administrative review and how the proposed authorized hazardous fuel reduction project must be described in this notice.

Paragraph (a) requires that the Responsible Official must mail the final environmental impact statement or the environmental assessment to those who have submitted specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment provided during preparation of the environmental assessment or environmental impact statement.

Paragraph (b) states that the Responsible Official must announce through notice in a previously designated newspaper of record when an environmental assessment or environmental impact statement is available for administrative review, except for proposals of the Chief where **Federal Register** publication is provided in addition to publication in the newspaper of record for the unit where the proposed hazardous fuel reduction project is undertaken. The legal notice begins the 30-day objection-filing period for a proposed authorized hazardous fuel reduction project.

Paragraph (b) further outlines the format and content of the legal notice, including a statement that incorporation of documents by reference is not allowed. This provision ensures that the contents of an objection, including all attachments, are readily available to the Reviewing Officer for timely completion of the objection process. Similarly, objectors cannot meet the requirements of this process by attempting to incorporate substantive materials and arguments from other objectors. The Federal courts have taken a similar view of such procedural maneuvers; see *Swanson v. U.S. Forest Service*, 87 F.3d 339 (9th Cir. 1996).

Paragraph (c) requires annual publication in the **Federal Register** of the newspapers to be used for giving legal notice of proposed authorized hazardous fuel reduction projects subject to this rule. The annual publication of the newspapers to be used for giving legal notice of proposed authorized hazardous fuel reduction projects subject to this rule may occur in tandem with the annual publication requirement found in part 215.

#### Section 218.5—Reviewing Officer

This section provides the Reviewing Officer with the authority to make all procedural determinations not

specifically explained in this subpart, including those procedures necessary to ensure compatibility, to the extent practicable, with the administrative review processes of other Federal agencies when undertaking a joint proposed authorized hazardous fuel reduction project. The section also provides that such procedural determinations are not subject to further review.

#### Section 218.6—Who May File an Objection

This section of the rule identifies the qualifying requirements for who may file an objection under this subpart.

Paragraph (a) provides that those individuals and organizations who have submitted specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment provided during preparation of an environmental assessment or environmental impact statement for the proposed authorized hazardous fuel reduction project, as characterized in section 104(g) of the HFRA are eligible to file an objection. Paragraph (a) further states that for a proposed authorized hazardous fuel reduction project described in an environmental impact statement, the requirements of section 104(g) would be satisfied during the formal comment process for draft environmental impact statements set forth in 40 CFR 1506.10. For proposed authorized hazardous fuel reduction projects described in an environmental assessment, the requirements at section 104(g) will be satisfied by submission of specific written comment related to the proposed authorized hazardous fuel reduction project during scoping and other public involvement opportunities as environmental assessments are not circulated for public comment in draft form.

Paragraph (b) states that when an organization submits comments, eligibility is conferred on that organization only, not on individual members of that organization. The Department believes an organization is its own entity for purposes of submitting comments and that it is appropriate to accord an organization eligibility to file objections as an organization when it submits comments. However, the Department does not believe it is appropriate to allow individual members in that organization eligibility to file individual objections by virtue of membership in an organization that submitted comments. Nothing in this section prohibits an individual member of an organization

from submitting comments on his or her own behalf.

Paragraph (c) clarifies that if an objection is submitted on behalf of a number of named individuals or organizations, each individual or organization listed must meet the eligibility requirement of having submitted comments during scoping or the other opportunity to comment as prescribed by HFRA.

Paragraph (d) states that Federal agencies are not allowed to file an objection. Other avenues are available to Federal agencies for working through concerns regarding a proposed authorized hazardous fuel reduction project. It is expected that the various Federal agencies will work cooperatively during project development.

Paragraph (e) allows Federal employees to file objections as individuals in a manner consistent with Federal conflict of interest requirements.

#### Section 218.7—Filing an Objection

This section provides information on how to file an objection.

Paragraph (a) provides for an objection to be filed with the Reviewing Officer in writing.

Paragraph (b) describes the objector's responsibility.

Paragraph (c) provides that incorporation of documents by reference shall not be allowed. The reasons for not permitting documents by reference are addressed in the discussion in preceding section 218.4(b).

Paragraph (d) provides a detailed list of information that must be included in an objection. The list is comparable to the Department's requirements in appeal regulations for land and resource management plans (part 217) and projects implementing land and resource management plans (part 215).

#### Section 218.8—Objections Set Aside From Review

This section sets out the conditions under which objections shall not be reviewed.

Paragraph (a) specifies when the Reviewing Officer must set aside an objection without review or response on the concerns raised, including when an objection is not filed within the objection period; when the proposed project is not subject to the provisions of the HFRA and, therefore, is not subject to the objections process; when the objector did not submit specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment

provided during preparation of an environmental assessment or environmental impact statement for the proposed authorized hazardous fuel reduction project; and when there is insufficient information to review and respond.

Paragraph (b) states that when an objection is set aside and not processed, the Reviewing Officer shall give written notice to the objector and Responsible Official.

#### Section 218.9—Objection Time Periods and Process

This section describes the various time periods involved in the objection process. One of the purposes of the HFRA is to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during review and planning processes. The time periods established in this section are predicated on that statutory purpose.

Paragraph (a) specifies that the objection-filing period is 30 days following publication of the legal notice.

Paragraph (b) describes how time periods are computed.

Paragraph (c) describes how evidence of timely filing is determined.

Paragraph (d) states that time extensions are not permitted.

Paragraph (e) states that a written response to the objection shall be issued within 30 days following the end of the objection-filing period.

#### Section 218.10—Resolution of Objections

This section describes the objection resolution process.

Paragraph (a) allows for either the Reviewing Officer or the objector to request a meeting to discuss the objection and attempt resolution.

Paragraph (b) provides for a written response to the objection. The Reviewing Officer may issue a single response to multiple objections of the same proposed authorized hazardous fuel reduction project. Paragraph (b) also states that there is no higher level review of the Reviewing Officer's written response to the objection.

#### Section 218.11—Timing of Authorized Hazardous Fuel Reduction Project Decision

This section describes when a Responsible Official may make a final decision regarding a proposed authorized hazardous fuel reduction project pursuant to the HFRA.

Paragraph (a) allows decisions to be made on proposed authorized hazardous fuel reduction projects when the objection period has ended and

when responses have been made to all objections.

To provide reasonable assurance that objections are received before decisionmaking, paragraph (b) states that a decision can be made on a proposed authorized hazardous fuel reduction project on the 5th business day following the close of the filing period when no timely objections are filed. For all environmental impact statements, there must be a minimum of 30 days between notice of the final environmental impact statement and issuance of a Record of Decision.

#### Section 218.12—Secretary's Authority

Paragraph (a) details the Secretary's authority.

Paragraph (b) exempts authorized hazardous fuel reduction projects proposed by the Secretary or Under Secretary of Agriculture from the provisions of this rule. Nothing in the HFRA alters the Secretary's long-established authority to make decisions affecting the Forest Service. The Department's position has always been that Secretarial decisions are not subject to an administrative review or appeal process under any of the Forest Service's administrative review systems and there is no indication that Congress intended to make such a change through the HFRA.

#### Section 218.13—Judicial Proceedings

Section 218.13 reflects the Department's interpretation and implementation of section 105 of the HFRA. Statutory and judicial exhaustion requirements ensure that an agency is able to develop full factual records, to apply technical and managerial expertise to identified problems, to exercise its judgment and discretion, and to correct its own mistakes. Exhaustion requirements are credited with promoting accuracy, efficiency, public participation, agency autonomy, and judicial economy.

Generally, statutory exhaustion requirements are jurisdictional and cannot be waived by courts. The HFRA does permit plaintiffs to undertake the burden of demonstrating that a "futility or inadequacy" exception should be invoked as to a specific plaintiff or claim. The Department understands these provisions are to be read together, narrowly construed, and invoked only in rare instances such as where information becomes available only after the conclusion of the administrative process.

Congress stated that National Environmental Policy Act (NEPA) documents are to be in complete or final form when made available for objection.

The objection process is, therefore, not a second comment period on a draft document, but rather a final opportunity to ensure full understanding of public concerns shortly preceding a decision.

Congress's view on the purpose or intent for the objection process likewise narrows the operation of the futility exemption to those situations where information, which dramatically changes the picture with regard to environmental effects, or the need for the project, comes to light after the NEPA document has been completed.

A contrary reading would be inconsistent with Congress's expectation that the exception provisions are not applicable to information which has not been brought to the attention of the agency. The objection process protects against the possibility of a "futile" appeal due to delay because final decisions on authorized hazardous fuel reduction projects cannot be issued prior to conclusion of the objection process and any issue relevant to the proposed authorized hazardous fuel reduction project can be assessed during the objection process. Similarly, predecisional review of each proposed authorized hazardous fuel reduction project avoids the criticism sometimes leveled against postdecisional appeals that reviewers are unfairly disposed to a particular or predetermined outcome. Instances of futility or inadequacy should be rare indeed as the administrative review is conducted through a process Congress created specifically for this class of actions and occurs prior to the agency's final decision. Moreover, the participatory requirements for these high-priority projects are predicated on Congress's determination, expressed through the statutory scheme, that predecisional collaboration is vital to avoiding potential disputes and that the land managers are in the optimal position to identify and correct any errors and to fine-tune the design of proposed authorized hazardous fuel reduction projects if they are made aware of concerns before final decisions are made. Sweeping exceptions to the participatory requirements are at odds with Congress's intent.

#### Section 218.14—Information Collection Requirements

This section explains that the rule contains information collection requirements as defined in 5 CFR part 1320 by specifying the information that objectors must supply in an objection. The Office of Management and Budget (OMB) Control Number for this

information collection will be included in the final rule.

#### Section 218.15—Applicability and Effective Date

This section sets out the effective date of this interim final rule and provides that all proposed hazardous fuel reduction projects subject to the provisions of the HFRA, for which scoping begins on or after the effective date of this interim final rule, are subject to its provisions.

#### Good Cause Statement

The Healthy Forests Restoration Act of 2003 (HFRA), signed by President Bush on December 3, 2003, directs that within 30 days of enactment the Secretary of Agriculture promulgate a special administrative review process to serve as the sole means by which the public can seek administrative review regarding proposed authorized hazardous fuel reduction projects. The HFRA directs that the interim final rule shall be effective upon publication in the **Federal Register**. Circulation of the interim final rule for public comment prior to the effective date is impractical given the statutory 30-day deadline; furthermore, a 90-day comment period on the interim final rule is provided, and comments will be considered for the subsequent development of the final rule.

#### Regulatory Certifications

##### Regulatory Impact

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

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

#### Environmental Impacts

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

#### Energy Effects

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

#### Controlling Paperwork Burdens on the Public

This interim final rule represents a new information requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501, *et seq.*), the Forest Service has requested emergency approval from the Office of Management and Budget (OMB) for this new information collection. The information to be collected from those who choose to participate in the predecisional administrative review process for hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act of 2003 (HFRA) is the minimum needed for the Reviewing Officer to make an informed decision on an objection filed under the HFRA.

#### Description of Information Collection

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

**OMB Number:** 0596–0172.

**Expiration Date of Approval:** June 30, 2004.

**Type of Request:** The following collection requirements are new and have not previously received approval

by the Office of Management and Budget.

**Abstract:** The information collected is needed for a citizen or organization to explain the nature of the objection being made to a proposed authorized hazardous fuel reduction project undertaken under the authority of the Healthy Forests Restoration Act of 2003, and the reason(s) why the individual or organization objects. Specifically, an objector must provide:

1. A name, mailing address, and if possible, telephone number;
2. Signature or other verification of authorship upon request;
3. The name of the proposed authorized hazardous fuel reduction project, the name and title of the Responsible Official, the National Forest(s) and/or Ranger District(s) on which the proposed authorized hazardous fuel reduction project will be implemented; and

4. Any specific changes that the objector seeks and the rationale for those changes.

**Estimate of Burden:** The public reporting burden to provide information when filing an objection to a proposed authorized hazardous fuel reduction project is estimated to average 8 hours per response.

**Respondents:** Individuals, businesses, not-for-profit institutions, State, local or Tribal Government.

**Estimated Number of Respondents:** 121.

**Estimated Number of Responses per Respondent:** 1 response per year.

**Estimated Total Annual Burden on Respondents:** 968 hours.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Use of Comments:** All comments received in response to this information collection will be summarized and included in the request for final OMB approval. All comments, including names and addresses when provided will become a matter of public record.

## Federalism

The agency has considered this interim final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The agency has made a preliminary assessment that the interim final rule conforms with the federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this interim final rule, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

## Consultation and Coordination With Indian Tribal Governments

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

## No Takings Implications

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

## Civil Justice Reform

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

## Unfunded Mandates

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

## List of Subjects

### 36 CFR Part 215

Administrative practice and procedure, National Forests.

### 36 CFR Part 218

Administrative practice and procedure, National Forests.

■ Therefore, for the reasons set forth in the preamble, amend part 215 and add subpart A to part 218 of title 36 of the Code of Federal Regulations to read as follows:

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

- 1. Amend section 215.3 to revise paragraphs (a) and (b) to read as follows:

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

\* \* \* \* \*

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

(b) Proposed projects and activities described in a draft environmental impact statement (DEIS) for which notice and comment procedures are governed by 40 CFR parts 1500 through 1508, except hazardous fuel reduction projects conducted under provisions of the HFRA, as set out at part 218, subpart A, of this title.

\* \* \* \* \*

- 2. Amend section 215.4 to add paragraph (f) to read as follows:

### § 215.4 Actions not subject to legal notice and opportunity to comment.

\* \* \* \* \*

(f) Hazardous fuel reduction projects conducted under the provisions of section 105 of the HFRA, except as provided in part 218, subpart A, of this title.

- 3. Amend section 215.12 to add paragraph (i) to read as follows:

### § 215.12 Decisions and actions not subject to appeal.

\* \* \* \* \*

(i) Hazardous fuel reduction projects conducted under provisions of the HFRA, as set out at part 218, subpart A, of this title.

- 4. Add part 218, subpart A, to read as follows:

## PART 218—PREDECISIONAL ADMINISTRATIVE REVIEW PROCESSES

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

Sec.

- 218.1 Purpose and scope.
  - 218.2 Definitions.
  - 218.3 Authorized hazardous fuel reduction projects subject to the objection process.
  - 218.4 Legal notice of objection process for proposed authorized hazardous fuel reduction projects.
  - 218.5 Reviewing officer.
  - 218.6 Who may file an objection.
  - 218.7 Filing an objection.
  - 218.8 Objections set aside from review.
  - 218.9 Objection time periods and process.
  - 218.10 Resolution of objections.
  - 218.11 Timing of authorized hazardous fuel reduction project decision.
  - 218.12 Secretary's authority.
  - 218.13 Judicial proceedings.
  - 218.14 Information collection requirements.
  - 218.15 Applicability and effective date.
- Subpart B [Reserved]

**Authority:** Pub. L. 108–148, 117 Stat 1887 (Healthy Forests Restoration Act of 2003).

#### § 218.1 Purpose and scope.

This subpart establishes a predecisional administrative review (hereinafter referred to as “objection”) process for proposed authorized hazardous fuel reduction projects as defined in the Healthy Forests Restoration Act of 2003 (HFRA). The objection process is the sole means by which administrative review of a proposed authorized hazardous fuel reduction project on National Forest System land may be sought. This subpart identifies who may file objections to those proposed authorized hazardous fuel reduction projects, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

#### § 218.2 Definitions.

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

**Authorized hazardous fuel reduction project**—A hazardous fuel reduction project authorized by the HFRA.

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

**Decision Notice (DN)**—A concise written record of a Responsible Official's decision based on an environmental assessment and a finding of no significant impact (FONSI) (40 CFR 1508.13; FSH 1909.15, Chapter 40).

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

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

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

**Lead objector**—For objections submitted with multiple individuals and/or organizations listed, the individual or organization identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

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

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

**Newspaper(s) of record**—Those principal newspapers of general circulation annually identified in a list and published in the **Federal Register** by each Regional Forester to be used for publishing notices of projects and activities implementing land and resource management plans.

**Objection**—The written document filed with a Reviewing Officer by an individual or organization seeking predecisional administrative review of a proposed authorized hazardous fuel reduction project as defined in the Healthy Forests Restoration Act of 2003.

**Objection period**—The 30-calendar-day period following publication of the legal notice in the newspaper of record of an environmental assessment or final environmental impact statement for a proposed authorized hazardous fuel reduction project during which an objection may be filed with the Reviewing Officer.

**Objection process**—Those procedures established for predecisional administrative review of proposed authorized hazardous fuel reduction

projects subject to the Healthy Forests Restoration Act of 2003.

**Objector**—An individual or organization filing an objection who submitted comments specific to the proposed authorized hazardous fuel reduction project during scoping or other opportunity for public comment as described in the Healthy Forests Restoration Act of 2003. The use of the term “objector” applies to all persons that meet eligibility requirements associated with the filed objection.

**Record of Decision (ROD)**—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

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

**Reviewing Officer**—The USDA or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart. The Reviewing Officer is the next higher level supervisor of the Responsible Official.

#### § 218.3 Authorized hazardous fuel reduction projects subject to the objection process.

Only authorized hazardous fuel reduction projects as defined by the Healthy Forests Restoration Act of 2003, section 101(2), occurring on National Forest System lands that have been analyzed in an environmental assessment or environmental impact statement are subject to this subpart. Authorized hazardous fuel reduction projects processed under the provisions of the HFRA are not subject to the notice, comment, and appeal provisions set forth in part 215 of this chapter.

#### § 218.4 Legal notice of objection process for proposed authorized hazardous fuel reduction projects.

(a) The Responsible Official shall promptly mail the final environmental impact statement (FEIS) or the environmental assessment (EA) to those who have previously requested to be included on the proposed authorized hazardous fuel reduction project mailing list or are known to have submitted specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment provided during preparation of the environmental assessment or environmental impact statement.

(b) Upon completion and mailing of the FEIS or EA, legal notice of the

opportunity to object to a proposed authorized hazardous fuel reduction project shall be published in the applicable newspaper of record identified in paragraph (c) 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 legal notice shall:

(1) Include the name of the proposed authorized hazardous fuel reduction project and a concise description of the preferred alternative, name and title of the Responsible Official, name of the Forest and/or District on which the proposed authorized hazardous fuel reduction project will occur, instructions for obtaining a copy of the FEIS or EA, and instructions on how to obtain additional information on the proposed authorized hazardous fuel reduction project.

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

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

(ii) A statement that objections will be accepted only from those who have previously submitted written comments specific to the proposed authorized hazardous fuel reduction project during scoping or other opportunity for public comment (§ 218.6(a)).

(iii) A statement that the publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an objection (§ 218.9(a)) and that those wishing to object should not rely upon dates or timeframe information provided by any other source. A specific date shall not be included in the legal notice.

(iv) A statement that an objection, including attachments, must be filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate Reviewing Officer (§ 218.7) within 30 days of the date of publication of the legal notice for the objection process. Incorporation of documents by reference shall not be allowed.

(v) A statement describing the minimum content requirements of an objection (§ 218.7(b)–(c)).

(vi) A statement that the proposed authorized hazardous fuel reduction project is not subject to the notice,

comment, and appeal procedures found at part 215 of this chapter (§ 218.3).

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

#### **§ 218.5 Reviewing officer.**

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

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

(a) Individuals and organizations who have submitted specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment provided during preparation of an environmental assessment or environmental impact statement for the proposed authorized hazardous fuel reduction project as characterized in section 104(g) of the HFRA may file an objection. For proposed authorized hazardous fuel reduction projects described in a draft environmental impact statement, such opportunity for public comment will be fulfilled by the comment procedures set forth in 40 CFR 1506.10. For proposed authorized hazardous fuel reduction projects described in an environmental assessment, such opportunity for public comment will be fulfilled during scoping or other public involvement opportunities as environmental assessments are not circulated for public comment in draft form.

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

(c) When an objection lists multiple individuals or organizations, each individual or organization shall meet the requirements of paragraph (a) of this section. Individuals or organizations listed on an objection that do not meet eligibility requirements shall not be

considered objectors. Objections from individuals or organizations that do not meet the requirements of paragraph (a) shall not be accepted. This shall be documented in the objection record.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity, shall 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 shall not be on official duty nor use Government property or equipment in the preparation or filing of an objection. Further, employees shall not incorporate information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

#### **§ 218.7 Filing an objection.**

(a) Objections must be filed with the Reviewing Officer in writing. All objections shall be open to public inspection during the objection process.

(b) It is the objector's responsibility to provide sufficient narrative description of those aspects of the proposed authorized hazardous fuel reduction project addressed by the objection, specific issues related to the proposed authorized hazardous fuel reduction project, and suggested remedies which would resolve the objection.

(c) Incorporation of documents by reference shall not be allowed.

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

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

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

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

(4) The name of the proposed authorized hazardous fuel reduction project, the name and title of the Responsible Official, and the name(s) of the National Forest(s) and/or Ranger District(s) on which the proposed authorized hazardous fuel reduction project will be implemented.

#### **§ 218.8 Objections set aside from review.**

(a) The Reviewing Officer shall set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (§ 218.4(b)(2)(iv), § 218.9(c)).



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

(3) The individual or organization did not submit written comments during scoping or other opportunity for public comment (§ 218.6(a)).

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

(5) The objector withdraws the objection.

(6) An objector's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided (§ 218.7(c)(1)).

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

(b) The Reviewing Officer shall give written notice to the objector and the Responsible Official when an objection is set aside from review and shall 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 shall be documented in the project record.

#### **§ 218.9 Objection time periods and process.**

(a) Time to file an objection. Written objections, including any attachments, must be filed with the Reviewing Officer within 30 days following the publication date of the legal notice of the EA or FEIS in the newspaper of record (§ 218.4(b)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) Computation of time periods. (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day as stated in the legal notice or to the end of the calendar day (11:59 p.m.) for objections filed by electronic means such as e-mail or facsimile machine.

(2) The day after publication of the legal notice for this subpart of the EA or FEIS in the newspaper of record (§ 218.4(b)) is the first day of the objection-filing period.

(3) The publication date of the legal notice of the EA or FEIS in the newspaper of record is the exclusive means for calculating the time to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(c) Evidence of timely filing. Timeliness shall be determined by:

(1) The date of the postmark, e-mail, fax, or other means of filing (for example, express delivery service) of an objection and any attachment;

(2) The time and date imprint at the correct Reviewing Officer's office on a hand-delivered objection and any attachments; or

(3) When an objection is electronically mailed, the objector should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the objector does not receive an automated acknowledgment of the receipt of the objection, it is the objector's responsibility to ensure timely receipt by other means.

(d) Extensions. Time extensions are not permitted.

(e) Other timeframes. The Reviewing Officer shall issue a written response to the objector(s) concerning their objection(s) within 30 days following the end of the objection-filing period.

#### **§ 218.10 Resolution of objections.**

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

(b) Response to objections. (1) A written response shall set forth the reasons for the response, but need not be a point-by-point review, and may contain instructions to the Responsible Official, if necessary. In cases involving more than one objection to a proposed authorized hazardous fuel reduction project, the Reviewing Officer may consolidate objections and issue one or more responses.

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

#### **§ 218.11 Timing of authorized hazardous fuel reduction project decision.**

(a) The Responsible Official may not issue a Record of Decision (ROD) or Decision Notice (DN) concerning an authorized hazardous fuel reduction project subject to the provisions of this subpart until the Reviewing Officer has responded to all pending objections.

(b) When no objection is filed within the 30-day time period, the Reviewing Officer shall notify the Responsible Official, and approval of the authorized

hazardous fuel reduction project in a Record of Decision or Decision Notice may occur on, but not before, the fifth business day following the end of the objection-filing period.

#### **§ 218.12 Secretary's authority.**

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

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

#### **§ 218.13 Judicial proceedings.**

The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process for proposed hazardous fuel reduction projects authorized by the HFRA. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions of their positions and contentions. Further, any filing for Federal judicial review of an authorized hazardous fuel reduction project is premature and inappropriate unless the plaintiff has submitted specific written comments relating to the proposed action during scoping or other opportunity for public comment as prescribed by the HFRA, and the plaintiff has challenged the authorized hazardous fuel reduction project by exhausting the administrative review process set out in this subpart. Further, judicial review of hazardous fuel reduction projects that are subject to these procedures is strictly limited to those issues raised by the plaintiff's submission during the objection process, except in exceptional circumstances such as where significant new information bearing on a specific claim only becomes available after conclusion of the administrative review.

#### **§ 218.14 Information collection requirements.**

The rules of this subpart specify the information that objectors must provide in an objection to a proposed authorized hazardous fuel reduction project as defined in the HFRA (§ 218.7). 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.

#### **§ 218.15 Applicability and effective date.**

The provisions of this subpart are effective as of January 9, 2004 and apply to all proposed authorized hazardous fuel reduction projects conducted under the provisions of the HFRA for which scoping begins on or after January 9, 2004.

#### **Subpart B—[Reserved]**

Dated: January 5, 2004.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 04-473 Filed 1-8-04; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[IA 200-1200; FRL-7608-3]

#### **Approval and Promulgation of Implementation Plans; State of Iowa; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correcting amendments.

**SUMMARY:** On October 8, 2003, EPA published a direct final action approving revisions to the Iowa State Implementation Plan (SIP). In the October 8, 2003, rule, EPA inadvertently deleted a clarifying statement in the Comments column for Polk County Board of Health Rules and Regulations Air Pollution Chapter V. We are making a correction in this document.

**DATES:** This action is effective January 9, 2004.

#### **FOR FURTHER INFORMATION CONTACT:**

Heather Hamilton (913) 551-7039, or e-mail her at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

EPA published a SIP revision for Iowa for Polk County Board of Health Rules and Regulations Air Pollution Chapter V, on June 13, 1995 (60 FR 31084). Section 52.820(c), Polk County, included a statement that Article VIII and Article XIII of the Polk County rules are not a part of the SIP. This clarification was inadvertently omitted in the prior rule. Therefore, in this correction notice we are reinserting this information into the table.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),

provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely reinserting an explanation which was included in a previous action. Thus, notice and public procedure are unnecessary.

#### **Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely corrects a table consistent with a prior EPA action, and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely reinserts clarifying language included in a previous action, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), for the reasons stated above, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus

standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of January 9, 2004. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the Iowa SIP table is not a "major rule" as defined by 5 U.S.C. 804 *et seq.* (2).

Dated: December 22, 2003.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows: