

APPENDIX C

HOW TO FILE COMMENTS AND OBJECTIONS UNDER THE 218 OBJECTIONS RULE

This project will be subject to a pre-decisional administrative review process due to direction contained in Section 428 of the consolidated Appropriations Act of 2012. The Department of Agriculture's final rule for the establishment of a pre-decisional administrative review process (36 CFR 218) was published in the Federal Register on March 27, 2013 (Volume 78, No. 59, pp. 18481 to 18504); these regulations can be found at (<http://www.gpo.gov/fdsys/pkg/FR-2013-03-27/pdf/2013-06857.pdf>). The final rule replaces the appeal process (36 CFR 215) with a pre-decisional administrative review process (also referred to as the objection process) for those project decisions made for environmental assessments and environmental impact statements.

The objection process already exists for projects planned under the Healthy Forest Restoration Act (HFRA). The final rule expands the agency's authority to use a pre-decisional objection process for non-HFRA projects, while continuing to be consistent with the notice and comment provisions of the Appeal Reform Act (Public Law 102-381).

Comment Process

Only individuals or entities who submit timely and specific written comments regarding a proposed project or activity during any designated opportunity for public comment may file an objection. Opportunity for public comment on an EA includes during scoping or any other instance where the responsible official seeks written comments (36 CFR 218.5).

Specific written comments are defined by 36 CFR 218.2. This section says "Written comments are those submitted to the responsible official or designee during a designated opportunity for public participation (36 CFR 218.5(a)) provided for a proposed project. Written comments can include submission of transcriptions or other notes for oral statements or presentation. For the purposes of this rule, specific written comments should be within the scope of the proposed actions, have a direct relationship to the proposed action, and must include supporting reasons for the responsible official to consider."

Comments on this EA will be accepted for 30 days beginning on the first day after the date of publication of the legal notice. If the comment period ends on a Saturday, Sunday, or Federal holiday, comments will be accepted until the end of the next Federal working day.

Filing a Comment (see 36 CFR 218.25)

It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner. Written comments must be postmarked by the Postal Service, emailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. in the time zone of the receiving office on the 30th calendar day following publication of the legal notice (36 CFR 215.25 (4)(i)).

- Hand-delivered comments must be time and date imprinted at the correct responsible official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA (36 CFR 215.25 (4)(ii)).
- For emailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means (36 CFR 215.25 (4)(iii)).

Objections Process

Written objections, including any attachments, must be filed with the reviewing officer within 45 days following the publication date of the legal notice of the EA (36 CFR 218.26). A draft decision notice will be sent to those parties who submitted comments or to those who request it.

Eligibility requirements to submit an objection are listed below and can also be found in 36 CFR 218.25 (a)(3). Note, individual members of an entity as defined in 36 CFR 218.2 must submit their own individual comments in order to have eligibility to object as an individual.

A 45-day objection filing period will begin following the publication date of the legal notice of the draft decision notice. To be eligible to submit an objection when the legal for the draft decision notice is published, individuals and entities must have provided the following during any designated comment period (see 36 CFR 218.25 (a)(3)):

- Name and postal address (email address in addition is recommended but not required). Title of the proposed project or activity.
- Specific written comments as defined in 36 CFR 218.2 regarding the proposed project or activity, along with supporting reasons.
- Signature or other verification of identity upon request and identification of the individual or entity who authored the comment(s). Note, for comments listing multiple entities or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each entity and for each individual in the case of multiple names. A scanned signature or other means of verifying the identity

of the individual or entity representative may be used for electronically submitted comments.

Filing an Objection (36 CFR 218.8)

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

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

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

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the proposed project EA or EIS that is subject to objection.

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

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

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

(1) Objector's name and address as defined in 36 CFR 218.2, with a telephone number, if available;

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

(3) When multiple names are listed on an objection, identification of the lead objector as defined in 36 CFR 218.2. Verification of the identity of the lead objector must be provided upon request or the reviewing officer will designate a lead objector as provided in 36 CFR 218.5(d);

(4) The name of the proposed project, the name and title of the responsible official, and the name(s) of the national forest(s) and/or ranger district(s) on which the proposed project will be implemented;

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

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

Objection Time Periods 36 CFR 218.26

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 45 days following the publication date of the legal notice of the draft decision in the newspaper of record. It is the responsibility of objectors to ensure that their objection is received in a timely manner.

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