

The 2013 Supporting Statement for OMB 0596-0172
Project Level Pre-decisional Administrative Review Process
(Final Rule)

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Forest Service has had some form of objection process for over 8 years. In this case for revised 36 CFR 218, the Agency would provide a process by which the public may file objections to seek administrative review of proposed projects and activities issued by a Responsible Official involving implementation of land and resource management plans, and documented with a Record of Decision or Decision Notice. An objection process has been in place since 2004 under 36 CFR 218 for projects authorized under the Healthy Forests Restoration Act (HFRA) of 2003. This information collection is in support of a final rule revising the current 218 regulation that would replace the sections of the Appeal Reform Act covering Right to Appeal, Disposition of an Appeal, and Stay with section 105(a) of the HFRA, which directs the Secretary to establish a pre-decisional objection process. Section 428 of the Consolidated Appropriations Act for 2012 directs the agency to establish a pre-decisional objection process for projects and activities implementing land and resource management plans.

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title36/36cfr218_main_02.tpl

<http://www.fs.fed.us/emc/applit/includes/93appreform.pdf>

<http://georgewbush-whitehouse.archives.gov/infocus/healthyforests/>

Background information contained in the Supporting Statement for the revision of OMB 0596-0172 cited the following Laws, Statutes, and Regulations:

- Healthy Forests Restoration Act of 2003 (December 3, 2003, HFRA); Public Law No. 108-148, § 105; 117 Stat 1887
- Title 36 CFR, parts 215 and 218
- Interior and Related Agencies Appropriation Act of Fiscal Year 1993 (Appeals Reform Act or ARA); Public Law 102-381, § 322; 106 Stat. 1419; 36 CFR part 215

On December 3, 2003, President Bush signed into law the Healthy Forests Restoration Act of 2003 to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during review and planning processes. The legislation is based on sound science and helped further the President's Healthy Forests Initiative pledge to care for America's forests and rangelands, to reduce the risk of catastrophic fire to communities, to help save the lives of firefighters and citizens, and to protect threatened and endangered species.

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One of the provisions of the act, in Section 105, requires that “...not later than 30 days after the date of the enactment of this Act, the Secretary of Agriculture shall promulgate interim final regulations to establish a pre-decisional administrative review process.” This process “...serves as the sole means by which a person can seek administrative review regarding an authorized hazardous fuel reduction project on Forest Service land.” Those choosing to participate in the pre-decisional administrative review process must provide information to the Forest Service which the agency must respond to. This information needs to include, as a minimum, the objector’s name, address, phone number (if available); the name of the project for which they are filing an objection; and the specific changes in the authorized project they seek and the rationale for those changes.

The Forest Service, at its own discretion, provides processes by which persons or organizations may appeal or object to significant amendment, revision, or approval of a land management plan (36 CFR part 219). A separate process for notice, comment, and appeal of National Forest System projects and activities was mandated by section 322 of Interior and Related Agencies Appropriation Act of Fiscal Year 1993, P.L. 102-381, 106 Stat. 1419 (hereinafter “Appeals Reform Act” (ARA)) and codified in 1993 as 36 CFR part 215 (58 FR 58905). With enactment of the Healthy Forests Restoration Act of 2003, P.L. No. 108-148, 117 Stat 1887 (Dec. 3, 2003) (HFRA), a new process has been mandated for administrative review of certain hazardous fuel restoration projects. Implementing regulations for that process have been promulgated at 36 CFR parts 215 and 218.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**
 - a. What information will be collected - reported or recorded? (If there are pieces of information that are especially burdensome in the collection, a specific explanation should be provided.)**

Objections must be filed with the Reviewing Officer in writing. The objector must provide: the objector’s name, mailing address, and if available a telephone number. They must provide a signature or other verification of authorship upon request. When multiple names are listed on an objection, they must provide identification of the lead objector. Verification of the identity of the lead objector must be provided upon request. They must also provide 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; and, a sufficient narrative description of those aspects of the proposed project addressed by the objection, and suggested remedies that would resolve the objection. They must also provide a statement that demonstrates the link between prior 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.

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- b. From whom will the information be collected? If there are different respondent categories (e.g., loan applicant versus a bank versus an appraiser), each should be described along with the type of collection activity that applies.**

The information (objections) will be collected (submitted) from individuals and entities who have submitted specific and timely written comments related to the proposed project or activity during a designated opportunity for public comment provided during preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The objector voluntarily participates if they seek a pre-decisional administrative review of a proposed project.

- c. What will this information be used for - provide ALL uses?**

The information is used to review issues raised by the objector concerning Agency proposed projects and activities implementing land and resource management plans to discuss potential resolutions.

- d. How will the information be collected (e.g., forms, non-forms, electronically, face-to-face, over the phone, over the Internet)? Does the respondent have multiple options for providing the information? If so, what are they?**

The information (objection) is collected (submitted) through the objection process and may be delivered in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. There are no forms associated with the objection process. For those who choose to participate as an objector, the responsible official will provide his/her name, title, telephone number, addresses (street, postal, facsimile, and e-mail), and office business hours.

- e. How frequently will the information be collected?**

There is no regular schedule for this type of information collection.

- f. Will the information be shared with any other organizations inside or outside USDA or the government?**

All objections are available for public inspection during and after the objection process.

<http://www.justice.gov/opcl/privstat.htm>

- g. If this is an ongoing collection, how have the collection requirements changed over time?**

This is a revision of a current information collection (to include not only proposed Healthy Forests Restoration Act (HFRA) projects, but to also include all projects and activities implementing land and resource management plans, documented with a Record of Decision or Decision Notice). The final rule for the 36 CFR 218 objection process for projects authorized under Healthy Forests Restoration Act (HFRA) was published on September 17, 2008. It was stated that 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 at HFRA. The revision of 36 CFR 218 now also includes the pre-decisional objection process for all projects and

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activities implementing land and resource management plans.

<http://www.fs.fed.us/emc/applit/includes/fedreg36cfr218a.pdf>

http://www.fs.fed.us/emc/applit/includes/36CFR218_final_rule_20080917.pdf

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The collected information (objection) may be submitted in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. By offering multiple options for submitting an objection, including electronic, the agency's intent is to reduce the burden on the public.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The information collected during the objection process is specific to those who have submitted specific written comments related to the proposed project during the opportunity for public comment provided during preparation of an Environmental Assessment or Environmental Impact Statement. Therefore, this information is unique and not already available.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

Small businesses or other small entities that are interested or may become interested in projects and activities implementing land and resource management plans have the opportunity to object to those projects or activities. The Agency's intent to minimize burden on these entities is the same as for individuals that are interested in projects and activities implementing land and resource management plans, which is to offer multiple methods to submit an objection, including via electronic means.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The Forest Service was directed to promulgate regulation establishing a pre-decisional objection process for projects and activities implementing land and resource management plans, and documented with a Record of Decision or Decision Notice. The agency could not meet the intent of Congress without collecting this information.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **Requiring respondents to report information to the agency more often than quarterly;**

There is no limit to the number of projects that a respondent may voluntarily respond to in any given period.

The currently approved information collection is specific to projects

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authorized under the Healthy Forests Restoration Act (HFRA) of 2003 which was signed into law to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during review and planning processes.

The revision of this information collection is in support of a final rule revising the current 218 regulation that would replace the sections of the Appeal Reform Act covering Right to Appeal, Disposition of an Appeal, and Stay with section 105(a) of the HFRA, which directs the Secretary to establish a pre-decisional objection process. Section 428 of the Consolidated Appropriations Act for 2012 directs the agency to establish a pre-decisional objection process for projects and activities implementing land and resource management plans, documented with a Record of Decision or Decision Notice.

- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

The final rule states that for an Environmental Assessment, comments on the proposed project or activity will be accepted for 30 days following the date of publication of the legal notice, and 45 days for a draft Environmental Impact Statement.

- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no other special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received**

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on cost and hour burden.

A copy of the proposed rule Federal Register notice has been included in the documentation packages as a pdf file. The page date of publication is August 8, 2012. The page number soliciting comments on the information collection is 47337. A summary of the public comments received in response to that notice is attached to this document as Appendix A. No comments were received on the information collection.

<https://federalregister.gov/a/2012-19302>

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

For various reasons the agency has not issued many decisions that are subject to the pre-decisional objection process. Therefore the agency believes it would be appropriate to consult with people outside the Federal government to obtain their views on their experience with the 36 CFR 215 Appeal Process.

The 36 CFR 215 Appeal process contains similar needed information as the objection process such as the name, mailing address, and telephone number of the person filing the appeal/objection so that agency employees can respond to the person or entity appealing/objecting. The agency has consulted with 4 individuals who have filed 36 CFR 215 Appeals. (*see Table 1. Consultation*)

Consultation with representatives or those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Forest Service seeks to reduce burden on individuals choosing to voluntarily participate in the objection process. Even though the Agency has been using the objection process since 2004, the objection process was limited to projects authorized under the Healthy Forests Restoration Act (HFRA) of 2003. Because of that limitation, the 36 CFR 215 Appeals records were used as a reference to estimate the burden placed on those individuals and non-federal entities that chose to participate in the objection process.

Consultation was conducted May 2012 with four individuals that have filed a 36 CFR 215 Appeal with the Forest Service, the estimated time spent to file an appeal ranged from 2-3 hours to 30-40 hours. The following questions were asked of all individuals (*see Table 1. Consultation*):

- (1) How would you rate the availability of the data needed to file an appeal?
- (2) How many responses would you say you average per year?
- (3) Were the instructions for filing an appeal clear?
- (4) What are your thoughts on the format for the responses?
- (5) How many hours did it take to file the appeal?

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Table 1. Consultation

	Question 1	Question 2	Question 3	Question 4	Question 5
Individual 1	Readily Available	Only 2 appeals filed in total	Yes	Fine. No problem with the format	Including background research 30-40 hours
Individual 2	Easy to find	Average 1 per year	Yes	Good	Including background research 2-3 hours
Individual 3	Easy to find	Only 1 appeal filed in total	Yes	Fine	Including background research 2-3 hours
Individual 4	Fine	Less than 1 per year	Yes	Fine	Including background research 30-40 hours

Based on the above, the Forest Service estimates that the respondent spends 8 hours preparing and filing an appeal and relates this experience to preparing and filing an objection. Also taken into consideration was the amount of research that each individual conducted prior to filing the appeal. One individual that estimated it took 30 to 40 hours to prepare and file an appeal noted that some of his time was spent walking around the area because his property was backed up to Forest Service property. He also accounted for time that he spent calling other agencies and private specialists gathering information. The other individual represented an environmental firm who, in most cases, represent several individuals when filing an appeal.

9. Explain any decision to provide any payment or gift to respondents, other than re-enumeration of contractors or grantees.

There is no payment or gift provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No assurance of confidentiality is provided. The objection record, which includes the objector's submitted objection, is open for public inspection.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No information is collected that would be considered sensitive or personal in nature.

12. Provide estimates of the hour burden of the collection of

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information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

Table 2. Average number of Appeals received

Region	Number of Projects	Total Number of 215 Appeals Responded to (12/23/2008 thru 12/31/2011)	Average Respondent per project
R1	60	129	2
R2	45	101	2
R3	63	132	2
R4	60	194	3
R5	67	176	3
R6	76	160	2
R8	41	91	2
R9	34	62	2
R10	9	26	3
Totals (3 years):	455	1071	2
Annual Totals (Average):	152	357	2

Table 3. Estimated Burden

Collection Activity (a)	Form Number (b)	Estimated Annual Number of Respondents ¹ (c)	Number of Responses Per Respondent (d)	Total Average Response ² (e)	Estimated Hours Per Response ³ (f)	Total Annual Burden Hours (g)
Filing of Objection	N/A	375	1	375	8	3,000

¹ Due to the voluntary and subjective nature of such objections, it is difficult to estimate the number of respondents because members of the public may or may not chose to object to projects and activities implementing land and resource management plans that are documented with a Record of Decision or Decision Notice. This revision of an information collection will not only include a pre-decisional objection process for Healthy Forests Restoration Act (HFRA) projects, but will also include a pre-decisional objection process for projects and activities implementing land and resource management plans.

A comparison can be made between the revised 36 CFR 218 Objection Process and the 36 CFR 215 Appeal Process. Based on the 36 CFR 215 Appeal Outcome Statistics Report (Planning, Appeals, and Litigation System http://fsweb.wo.fs.fed.us/em/pals/pals_doc_search.htm) a total number of 1,071 CFR 215 appeals were responded to for 455 projects between December 31, 2008 and December 31, 2011. See Table 2, *Average Number of Appeals received*.

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This report contains the best available information. Based on this data there is an estimated expectant average of 2 respondents per projects and activities implementing land and resource management plans, documented with a Record of Decision or Decision Notice.

² An estimated total of 375 annual responses. This estimate is derived by dividing 1,071 (total responses) by 3 (number of years) and adding 5% to the total of 357 to account for the estimated additional projects and activities that will collect information under this control number.

³ An estimated 8 hours per response. This is an estimate based on the consultation of previous respondents and by reviewing previously received appeals.

- **Record keeping burden should be addressed separately:**

There are no recordkeeping requirements placed upon the respondents.

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

(a) Description of the Collection Activity	(b) Annual Burden Hours	(c) X Hourly Rate ¹	(d) = Annual Cost to Respondents
Filing of Objection to Projects and Activities Implementing Land and Resource Management Plans	3,000	\$10.20	\$30,600

¹ Due to the fact that any citizen may appeal any project or activity implementing land and resource management plans documented by a Record of Decision or Decision Notice, and since any person from any background and occupation can file such objection, the estimated annual cost to respondents is derived by taking the average national hourly earnings of all workers (taken from Real Earnings 2012, Bureau of Labor Statistics <http://www.bls.gov/news.release/pdf/realer.pdf>) and multiplying that number by the total annual burden hours.

- 13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.**

There are no capital operation and maintenance costs.

- 14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this**

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collection of information.

The estimates were derived from talking to those who have experience with the 36 CFR 215 appeal process and the some who have experience with the objection process. Information was also considered from the estimates for the 36 CFR 218 HFRA objection process and the 36 CFR 215 Appeal process.

Table 5. Estimated Annual Cost to the Government

Activity	Total Average Responses	Personnel	GS-Level	Hourly Rate	Estimated Hours Per Objection	Estimated Cost to Government
Receiving collected information and analyzing issues		Forest Program Specialist	GS-11	\$29.93	40	\$1,197.20
Summarizing, reviewing, and preparing responses to collected information		Regional Program Specialist	GS-12	\$35.88	32	\$1,148.16
Summarizing, reviewing, and		National Program	GS-	\$50.4	24	\$1,209.84

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presenting collected information		Specialist	14	1		
Issuing Final Decision		Deciding Officer	GS-15	\$59.30	4	\$\$237.20
Total						\$3,792.40
Overall Estimated Average Total	375					\$1,422,150.00

Estimated agency labor costs for analyzing, evaluating, summarizing, reviewing, and issuing an objection response on the collected information (objection). The estimated responses were obtained through the Planning, Appeals, and Litigation System database. The daily costs per day were obtained from the OPM salary table for 2011.

http://www.opm.gov/oca/11tables/html/dcb_h.asp. The daily costs were calculated using the hourly rates to capture the cost of agency benefits. Estimates are based on the 36 CFR 215 appeals process. Revision of this information collection in the Final regulation will include data associated with the revised CFR 218 Pre-decisional Administrative Review Process.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of OMB form 83-I.

The burden estimate has increased from 968 to 3,000 hours due to an increase in the estimated number of respondents. The estimated number of respondents has increased from 121 to 375 per year due to a program change whereby responses will now include not only objections to projects authorized by HFRA, but will now also include the objection process for all projects and activities implementing land and resource management plans, documented with a Record of Decision or Decision Notice.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

The collected information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Due to the fact that there are no associated documents or forms with this Information Collection, displaying OMB approval and expiration date is not applicable.

18. Explain each exception to the certification statement identified in item 19, "Certification Requirement for Paperwork Reduction Act."

No exceptions are requested to the certification statement identified in Item 19 of the OMB 83-I.

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Appendix A.

Summary of the comments and Agency responses:

A complete list of all the individual comments is included in the attached spreadsheet. A number of the comments stem from confusion over the scope and intent of the rule and will be addressed by providing clarifications in the preamble or in specific passages in the rule when possible. Following is a summary of the key comments and the Forest Service's response, including areas of agreement or disagreement, and whether changes will be made to the rule as a result:

Definitions

Some commented that the definition for "comments" needed more clarification, both around what is meant by "specific" written comments and "a designated opportunity for public comment." The definition will be clarified in the final rule by

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including a reference to the section that describes the designated opportunities for public comment and elaborating on what should be included in a comment to make it specific and of greatest utility to the Forest Service.

Many respondents did not like the definition of “emergency situation.” All of the criticism was associated with the part of the definition that includes “avoiding a loss of commodity value sufficient to jeopardize the agency’s ability to accomplish project objectives directly related to resource protection or restoration.” Some of the criticism was directed toward the consideration of commodity values in determining an emergency, asserting that emergencies should be limited to threats to human health and safety, and natural resources. Others contended that commodity values were an important consideration and should not be limited to project objectives related to resource protection or restoration. Because the criticisms of the definition were evenly divided along interest lines and were based on opposing opinions and rationale, the agency will leave the definition unchanged in the final rule.

Who May File an Objection

Limiting objection eligibility to those who submitted specific and timely comments during a designated opportunity for public comment received both support and criticism in the comments on the proposed rule. Those in favor of the criterion liked that it encouraged early involvement in project planning and provides an opportunity for the agency to be notified of important concerns as analysis is being developed. Others felt the requirement is too limiting, especially if comment opportunities come at a time in the planning process when only limited project information is made available for comment. The preamble to the final rule will reiterate the importance of early public involvement in project planning and how the objection eligibility requirements provide an important encouragement or inducement to raise concerns earlier rather than later. It will also point out that the eligibility requirement is very similar to that included in the agency’s other administrative review processes.

A number of respondents asserted that when a project is to be documented in an environmental assessment (EA), it is imperative and, in fact NEPA requires, that a draft EA is circulated for public review and comment prior to initiation of an objection filing period. The proposed rule did not have such a requirement and these respondents contend that without having first circulated a draft EA there is usually insufficient information available for the public to provide meaningful comment. The Forest Service disagrees that NEPA requires the circulation of a draft EA for public review and comment. The preamble to the final rule will explain that disagreement and the fact that requirements for preparation and circulation of NEPA documents are outside the scope of this particular rule. The agency’s NEPA regulations (36 CFR part 220), along with those of the Council on Environmental Quality (40 CFR parts 1500-1508), provide the relevant direction for public involvement associated with NEPA compliance.

Several comments contended that oral comments should be accepted in addition to written comments when considering eligibility to object. The proposed rule limited

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eligibility to those submitting written comments because under Section 428, the controlling statutory authority for eligibility to object is Section 105(a)(3) of HFRA, which states that to be eligible to participate in the administrative review process a person shall submit “specific written comments that relate to the proposed action.” This statutory constraint will be explained in the preamble.

Filing an Objection

A few comments were critical of the limitations placed on incorporation of documents by reference in objections. These respondents generally contended that any document to which the Agency could reasonably be expected to have access should be permitted to be incorporated by reference. Some of these comments pointed out that Forest Service NEPA regulations permit the agency to incorporate supporting documents by reference in its NEPA documents when the referenced documents are reasonably available to the public. The final rule language will be changed to allow incorporation of documents by reference in objections under circumstances similar to those provided in the agency’s NEPA regulations.

Several commented that the objection requirement to include a narrative description, if applicable, of how the objector believes the environmental analysis or draft decision document violates law, regulation, or policy, should not include issues of policy. They contended that objection issues should be limited only to alleged violations of law or regulation. The agency disagrees with this and the preamble will explain that while alleged violations of law or regulation are important concerns to be addressed in an administrative review, alleged violations of agency policy—especially policy that is codified in the Forest Service directives—are also important and ripe for review as part of a pre-decisional administrative review.

Objection Time Periods

Some comments were received that asserted the objection filing period should be set at 30 days for all project proposals, not just those authorized under HFRA. Other comments asserted the filing period should be 45 days for all projects. Many of these respondents also believe that reviewing officers should have the discretion to extend filing periods when it is appropriate because of the great length of analysis documents or the complexity of a project proposal. The preamble to the final rule will explain that when the agency developed the pre-decisional administrative review process used for hazardous fuel reduction projects authorized under HFRA, the objection filing period was set at 30 days, as opposed to the 45 days allotted for filing appeals of other non-HFRA projects, because of the greater degree of urgency that is typical for projects of that nature. The agency believes that distinction is still applicable, and hence the final rule will retain a 30-day objection filing period for HFRA projects and provide a 45-day objection filing period for non-HFRA projects.

Resolution of Objections

The proposed rule directs that the reviewing officer’s response to objections must set forth the reasons for the response but need not be point-by-point. Some of those commenting contended that all objection responses must be required to address all unresolved objection issues. The preamble to the final rule will explain that it is the

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agency's intent that all issues raised through objection will be reviewed, although the responses may not necessarily address them individually. It will further explain that in setting forth the reasons for the response, the reviewing officer cannot just state whether a particular objection issue will lead to a change, but must also explain why.

Tribal Consultation

One comment contended that the 30-day public comment period for the proposed rule was insufficient for formal consultation and violated agency interim directives. The Tribe believes the Forest Service should, prior to issuing the final rule; provide an additional 90 days for tribes to consult formally with the Forest Service. The Forest Service initiated formal consultation and provided all Federally-recognized Indian Tribes and Native Alaskan Corporations with information regarding intended changes to the regulations at 36 CFR part 218 in April 2012. These same entities were then provided the preamble and proposed rule in August 2012 and requested to provide feedback or otherwise request specific consultation during the 30-day public comment period. The consultation period extended from April to September, 2012, well in excess of the 120 days required by executive order and agency directives.

Coordination With Local Agencies

One respondent contends the Forest Service is required by statute to coordinate with local agencies prior to seeking public comment on its proposals and that the agency violated this direction by failing to provide any advance notice to the County. The respondent also contends that the final rule should include the requirement that individual national forest staffs must coordinate with their local agencies and Tribes before the final rule becomes locally effective. The Forest Service disagrees that there is a statutory requirement to coordinate on rulemaking with local agencies prior to seeking public comment. The preamble to the final rule will explain that disagreement and the fact that local line officers (District Rangers and Forest Supervisors) are encouraged to make direct contact with local agencies to explain the final rule and any implications to those agencies.

The preamble to the proposed rule solicited public comment on three specific topics associated with the rule: administrative review of categorically excluded projects, use of legal notices to initiate opportunities to comment and object, and page limits for objections. All three of these topics received comment.

Categorical Exclusions

Some respondents supported not providing administrative reviews for categorically excluded (CE) projects, where possible. Others asserted that administrative reviews for CE projects documented with a Decision Memo must be provided using a post-decisional appeal process under the authority of the ARA or, if its direction is removed by judicial or legislative action, using the same pre-decisional administrative review process being afforded projects documented with a ROD or DN. The preamble to the final rule will explain that the Forest Service, in the

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preamble to the proposed rule, requested comment regarding administrative reviews for CE projects with the expectation that it would be considered when the agency is in a position to act on it. However, the nationwide injunction against the exclusion of CE projects from the notice, comment, and appeal provisions of 36 CFR part 215 (*Sequoia ForestKeeper v. Tidwell*) is still in effect and that case has been appealed by the government to the 9th Circuit Court of Appeals. Consequently, the preamble will state that the agency is unable to take any further rulemaking action regarding administrative reviews for CE projects and will continue to comply with the injunction pending the final outcome of the case.

Notification Through Legal Notices

Nearly all of the comments on the use of legal notices to notify the public of, and establish the time period for, certain comment opportunities and the objection filing period supported the continued use of notices in the newspapers of record for these purposes. However, the same comments also advocated for the use of additional notification methods, including e-mailings and web postings. Most of these respondents also felt that the closing date for these opportunities needs to be clearly and explicitly published, rather than left to members of the public to calculate themselves.

The notice and comment provisions of the Appeal Reform Act (section 322(b)) require the publication of a notice of the availability of a proposed project for public comment in a newspaper of general circulation and that comments be accepted for 30 days after that publication. Consequently, the final rule will still require publication of legal notices for the required comment period and for the opportunity to file objections. The comment periods and objection filing periods will also still begin with the publication date of the legal notices. However, in order to provide better notification using electronic media, the final rule will also include a requirement to publish the legal notice to the project's web page within 3-4 calendar days of its publication in the newspaper of record, and to include the newspaper publication date with that web posting.

Page Limitations

Roughly equal numbers of comments were received in favor of imposing page limitations on objections and opposed to any limitations. Comments in favor of the limitation generally cited the value in keeping objections focused, and concise, while maintaining consistency in requirements between agencies, specifically DOI's Interior Board of Land Appeals, which imposes a 30-page limit. Comments opposed to page limits often described lengthy environmental analysis documents and complex project proposals for which a constraint such as 30 pages would be unfairly limiting. The preamble to the final rule will explain that the Forest Service agrees with those who feel it is impractical, if not unfair, to impose page limits on objections to project proposals when the associated NEPA documentation can vary greatly in length and complexity. Consequently, the final rule will not include page limits for objections.