

Frequently Asked Questions

Interim Final Rule 36 CFR Part 218 Subpart A – Predecisional Administrative Review Process for Projects Authorized Under the Healthy Forests Restoration Act of 2003

AGENCY: USDA, Forest Service

BACKGROUND

Q. Why did we generate the interim rule? What does it do?

A. On December 3, 2003, President Bush signed the Healthy Forests Restoration Act of 2003 (HFRA). This Act directs the Secretary of Agriculture to prepare an interim final rule for a “special administrative review process” for hazardous fuel reduction projects authorized by the HFRA. Further, the Act requires that the special administrative review process occur before a decision on an authorized hazardous fuel reduction project is made. The Forest Service promulgated the interim final rule to comply with direction in the HFRA.

Q. Why create a predecisional objection process rather than following the legislated appeal process? What does it do?

A. The HFRA directs the Forest Service to develop a special predecisional review process for authorized hazardous fuel reduction projects. The agency believes that a predecisional objection process would encourage more upfront participation in the public involvement processes and preserve the opportunity for those that do participate to express concerns about a proposed decision. Public interest is better served through mutual efforts to resolve differences before a decision document is signed rather than by trying to resolve those differences after a decision is made.

Q. What is the intent of the interim rule?

A. The intent of the interim final rule is to provide special administrative review procedures for authorized hazardous fuel reduction projects. Simultaneously, the agency is inviting public comment on the interim final rule which will be considered when finalizing the rule.

Q. When is this rule effective? Is there a transition period?

A The interim final rule is effective upon publication in the Federal Register and applies to all proposed authorized hazardous fuel reduction projects for which scoping began on or after the publication date of the interim final rule in the Federal Register.

Q. How is the objection process different from the appeals process?

A. The objection process (36 CFR part 218, subpart A) occurs after an environmental assessment or final environmental impact statement is completed and before a decision document is signed for an authorized hazardous fuel reduction project. It encourages early participation and collaborative efforts, as well as resolution of concerns before a decision is made. The appeal process (36 CFR part 215) is the administrative review process for projects other than those authorized by the HFRA that require an environmental assessment or final environmental impact statement and is used after a decision has been made.

Q. What changes were made to 36 CFR part 215?

A. 36 CFR part 215 indicated that environmental assessments and environmental impact statements implementing land and resource management plans were subject to appeals. The regulation was amended to say that projects under the HFRA are not subject to the 215 rule.

Q. Does the interim final rule affect the public’s ability to participate in the planning of authorized hazardous fuel reduction projects?

A Nothing in the HFRA or in the interim final regulation affects the ability of the public to participate in project planning. The Forest Service encourages early and effective public participation in the planning of authorized hazardous fuel reduction projects, or any project.

Q. Why is there a distinction between individuals and organizations?

A. An organization is its own entity for purposes of submitting comments or objections on behalf of the organization. Individual members in that organization cannot meet the requirements of the process by in effect attempting to incorporate substantive materials and arguments from others, and therefore are not eligible to file objections by simple virtue of membership in the organization that does have eligibility.

Q. What are “authorized projects?”

A. Authorized hazardous fuel reduction projects are projects conducted under sections 103 and 104 of the HFRA for which an EA or EIS is prepared, and utilizing the measures and methods described in the definition of “appropriate tool” contained in the glossary of the “Implementation Plan for the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment” (May, 2002), as follows.

“Appropriate Tools: Methods for reducing hazardous fuels including prescribed fire, wildland fire use, and various mechanical methods such as crushing, tractor and hand piling, thinning (to produce commercial or pre-commercial products), and pruning. They are selected on a site-specific case and are ecologically appropriate and cost effective” (Implementation Plan, May 2002).

Q. Are meetings between a Reviewing Officer and an objector(s) open to the public?

A. Meetings are open to the public. Their purpose is to create an opportunity for the objector and agency officials to discuss issues raised in the objection and potential resolution. The Reviewing Officer will structure the meeting in a manner to best accomplish this objective.

Q. What is the time frame for the Reviewing Officer to respond to the objection?

A. The interim final rule specifies that a written response will be issued within 30 days following the end of the objection-filing period.

Q. What happens if the Reviewing Officer doesn’t issue a response by the 30th day?

A. The regulation is clear that the Responsible Official may not issue a decision until the Reviewing Officer has responded to all pending objections. Therefore, the project decision would be delayed until the Reviewing Officer responds. While there are no immediate consequences, the Agency has been clear in its intent to not exceed 30 days in order to move forward with projects.

Q. Why are you allowing 90-days to comment on the interim final rule?

A. While the rule is effective upon publication in the Federal Register, the Agency invites comments. Providing 90-days to comment on the interim final rule will allow for a period of time to implement the rule in order to get a better feel for what adjustments might be needed before finalizing.

Q. How does 36 CFR part 218, subpart A compare to 36 CFR part 215?

A.

	36 CFR Part 218, Subpart A	36 CFR Part 215
Authority to implement projects	Only HFRA	General Organic Act and other authorizing statutes
Statute legislating the review process	Healthy Forests Restoration Act of 2003 (HFRA)	Appeal Reform Act (ARA)
Process	Objection before a project decision is made	Appeal after a project decision is made
Eligibility to object/appeal	EA – Must submit specific written comment related to the project during scoping or other public involvement opportunity EIS – Must submit specific written comment related to the project during DEIS comment period	EA – Must submit substantive written or oral comment during 30-day comment period EIS – Must submit substantive written or oral comment during DEIS comment period
Filing Period	30 days	45 days
Response/Resolution	Response to objection within 30 days	Resolution of appeal within 45 days
Emergency Provision	No	Yes
Who takes action on objection/appeal	Next higher-level supervisor	Next higher-level supervisor