

## Frequently Asked Questions USDA Forest Service

### Objection Process Final Rule for the Hazardous Fuel Reduction Projects under the Healthy Forests Restoration Act of 2003 September 17, 2008

#### What's Happening Now?

##### What is the final rule's intent?

The final rule provides pre-decisional administrative review procedures (an objection process) for hazardous fuel reduction projects authorized by the Healthy Forests Restoration Act of 2003 (HFRA).

##### What are the major points of the HFRA objections process?

- The objection process is an opportunity to resolve issues during the analysis phase, before a project decision is made.
- There is a 30-day period to file objections.
- Individuals or organizations that file an objection must have previously submitted written comments.
- The objection is reviewed by the reviewing officer who must issue a response before a decision is signed on a project.
- The reviewing officer is required to respond to all objections, although he or she may consolidate multiple objections into a single response.
- Meetings may be requested to discuss issues and possibly resolve an objection.
- Objections must be *resolved* within a 30-day period.
- The project decision must be consistent with the reviewing officer's response to objections.

##### Why did the Forest Service generate this final rule?

On December 3, 2003, President Bush signed the Healthy Forests Restoration Act of 2003 (HFRA). The Act directed the Secretary of Agriculture to prepare an interim final rule for a "special administrative review process" (objection process) for hazardous fuel reduction projects authorized by the HFRA. That interim rule is now being finalized.

## **The Department of Agriculture issued the interim final rule and received comments in 2004, why has it taken them so long to issue the final rule?**

The final rule considers the 67 public comments received on the interim final rule and the experience gained through the approximately 80 decisions issued for hazardous fuel reduction projects under HFRA. The time since enactment of the interim final rule was necessary to gain sufficient experience on how to use it, improving the final rule, and making it easier to use.

## **Does the final rule affect the public's ability to participate in planning authorized hazardous fuel reduction projects?**

Nothing in the Healthy Forests Restoration Act or in the final rule adversely affects the public's ability to participate in project planning. In fact, the Act and the objection rule are specifically intended to encourage early and effective public participation in planning for authorized hazardous fuel reduction projects.

## **When will the final rule become effective?**

The rule becomes effective 30 days from the date that it is printed in the *Federal Register*. It will apply to all proposed hazardous fuel reduction projects under HFRA with scoping beginning on or after that date (October 17, 2008).

## **What Changes Are Being Made?**

### **What things have changed since the interim final rule?**

The final rule:

- Clarifies procedures, notification requirements, and determining timeliness of objections.
- Better describes projects that are not subject to objection procedures.
- Broadens and clarifies who is eligible to file an objection.
- Adds the ability to incorporate certain documents into objections by reference.

### **Why were the appeal regulations at 36 CFR 215 changed?**

To make decisions on hazardous fuel projects more timely, the interim final rule amended the appeal regulations at part 215 to say that projects authorized under the Healthy Forests Restoration Act are exempt from the more lengthy appeals process applied to other projects.

### **What if only positive or supportive comments are received for a project? Does there still need to be an objection process?**

Even if people have submitted supportive comments, USDA feels they should have the opportunity to file an objection, even though the likelihood of their filing such an objection may be small.

## **What changes have been made to incorporating documents by reference?**

Documents that can now be incorporated by reference are: Federal laws and regulations, Forest Service directives and land management plans, documents referenced by the Forest Service in the project documentation, and written comments previously provided to the Forest Service by the objector during the project comment period.

## **I hear there are changes in how objections can be submitted. What are they?**

Objections can be submitted by:

- Mail (that is, sending via the U.S. Postal Service)
- Electronic transmission (e-mail or facsimile)
- Private carrier, and
- Hand delivery.

## **What is the Objection Process and How Does It Work?**

### **What is the “special administrative review process” that is required by the HFRA?**

This pre-decisional administrative review process is the only way a person can object to an authorized hazardous fuel reduction project on National Forest System land. This process is referred to as the “objection process.”

### **What is an objection?**

An individual or an organization files a written objection to a proposed hazardous fuel reduction project with the decisionmaker’s supervisor before the decision is on that project made.

### **Why do we need a predecisional objection process rather than following the legislated appeal process?**

We believe a predecisional objection process will encourage people to participate up front in the public participation process and give them the opportunity to have their concerns considered at the next higher level of the Forest Service. We want to try to resolve our differences before a decision document is signed on a project.

**How does HFRA objection process compare to 36 CFR part 215 appeal process?**

	<b>36 CFR Part 218, Objection Process</b>	<b>36 CFR Part 215 Appeal Process</b>
Authority to implement projects	Only Healthy Forests Restoration Act (HFRA)	General Organic Act and other authorizing statutes
Statute legislating the review process	Healthy Forests Restoration Act of 2003 (HFRA)	Appeal Reform Act (ARA)
Timing of the Process	Objection filed before a project decision is made.	Appeal filed after a project decision is made.
Eligibility to object/appeal	EA – Must submit specific written comment related to the project during scoping or any other periods public comment is specifically requested.  EIS – Must submit specific written comment related to the project during scoping, the DEIS comment period, or any other periods public comment is specifically requested.	EA – Must submit written or oral comment during 30-day comment period.  EIS – Must submit 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

**Is this the same or a similar objection process as that provided under the 2008 planning rule?**

The objection processes are very similar, but not identical. The HFRA objection process is contained in this final rule; the 2008 planning rule objection process is mentioned in the 2008 planning rule, but most of the direction for it is in the Forest Service’s Directive System.

**If I submit comments as a member of an organization can I file an objection as an individual?**

Any number of members of an organization may submit written comments. If one comment was submitted by one authorized representative of the organization, the organization may object, but the Forest Service will not accept objections from multiple members of the organization who did not participate during the planning process individually.

### **What is the timeframe for filing 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 final EIS in the newspaper of record or, when the Chief is the responsible official, the *Federal Register*. It is the objector's responsibility to see that their objection is filed before the deadline. The deadline for objections cannot be extended for extenuating circumstances.

### **At a minimum, what must an objection include?**

The objection must include:

- The objector's name and address, with a telephone number, if available;
- A signature or other verification of authorship upon request;
- The identification of a lead objector when multiple names are listed on an objection;
- The name of the proposed authorized hazardous fuel reduction project, the name and title of the responsible official (decisionmaker), 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; and,
- Enough narrative to describe those aspects of the proposed authorized hazardous fuel reduction project that the objection addresses, specific issues related to that project, and suggested remedies that would resolve the objection.

### **Are objections limited to only those issues addressed in previously written comments?**

No.

### **When will a reviewing officer not review an objection?**

The reviewing officer must not review an objection when:

- An objection is not received by the deadline.
- The proposed project is not subject to objection procedures.
- The individual or organization did not submit written comments during scoping or other public comment opportunities.
- There is not enough information for the reviewing officer to review.
- The objector withdraws the objection.
- An objector's identity is not provided or cannot be determined from the signature or a reasonable means of contact is not provided.
- The objection is illegible for any reason, including submissions in an electronic format different than the legal notice specifies.

### **How must the reviewing officer respond to objections?**

The reviewing officer is required to respond in writing to all objections. If there are several objections, the reviewing officer may consolidate them in one response.

**Can I get a copy of an environmental document if I request one even if I am not eligible to object? Does receiving the document mean I am now eligible to object?**

Anyone can request and receive a copy of an environmental document. Participants eligible to object will be sent a copy of the environmental document for the proposal they've provided comment to and don't need to request the document. Eligibility to object can only be established by *submitting specific written comments* related to the proposal during opportunities for public comment, and not simply by requesting and receiving a copy of the document.

**What happens if no objection is filed within the 30-day filing period?**

When no objection is filed within the 30-day filing period, the reviewing officer notifies the responsible official that approval of the Record of Decision or Decision Notice may occur on, but not before, the fifth business day following the end of the objection filing period.

**How are objections resolved?**

Either the reviewing officer or the objector may request a meeting to discuss the objection's issues and potentially resolve them. Meetings are open to the public. Any objection issues not resolved through such meetings within 30 days following the end of the objection-filing period will be addressed in a written response from the reviewing officer.

**What are the possible outcomes from the review of an objection?**

Upon review of an objection, one of the following outcomes could occur:

- An objector may withdraw their objection;
- Some or all of the issues are resolved through discussion or meetings, and the reviewing officer writes a response documenting the resolution;
- The responsible official may determine that more analysis needs to be done;
- There are no meetings, or resolution was unable to be reached during meetings, and the reviewing officer completes the review and provides a written response.

**What happens if the reviewing officer doesn't issue a response within the allotted 30-day period?**

The project decision will be delayed until the reviewing officer responds. The Forest Service has been clear in its intent to not exceed 30 days in order to move forward with the HFRA-authorized hazardous fuel reduction projects.

**Can I still appeal after the objection process occurs if I don't feel that my issue was resolved by the objection process?**

No. Hazardous fuel reduction projects conducted under the provisions of the HFRA are not subject to administrative appeal. As far as judicial challenges, the HFRA says that civil action challenging an authorized hazardous fuel reduction project in Federal district court may only be brought if the person has exhausted their administrative remedies by using the objection process.

The rule also specifies that only issues that have been raised in the objection process may be considered during judicial review of an authorized hazardous fuel reduction project.

**When may the responsible official issue a decision document on a hazardous fuel reduction project?**

The objection must be resolved first. The responsible official may not issue a Record of Decision or Decision Notice on an authorized hazardous fuel reduction project until the reviewing officer has provided written response to all pending objection issues.