Predecisional Administrative Review Processes

36 CFR 218
Overview – What’s changed?

- Moves projects documented in an Environmental Assessment (EA)/Decision Notice (DN) or Environmental Impact Statement (EIS)/Record of Decision (ROD) from a post-decisional appeals process (36 CFR 215) to a pre-decisional objection process.

- Appeals process (215s) will continue to apply to categorically excluded (CE) projects documented in a Decision Memo (DM) because of a court order.
Subpart A - Overview

Subpart A

- Key provisions include:
  - Definitions
  - Reviewing Officer
  - Projects not subject to objection
  - Objector/Objection Requirements
  - Time periods (specifies calendar days)
  - Objection notification requirements
  - Objection resolution
  - Timing of decisions
  - Effective dates
Subpart A - allows for one level of review

- Reviewing Officer
  - Next higher level line officer than the responsible official who made the decision
    - District Ranger decision = Forest Supervisor is Reviewing Officer
    - Forest Supervisor decision = Regional Forester is Reviewing Officer
  - OK to talk to IDT/Responsible Official during resolution meetings
Subpart A

- Objectors
  - Must submit timely, specific written comments during *any* designated opportunity for public comment, which can include:
    - Scoping
    - Legal notice and comment periods
    - Any other public involvement opportunities requested by responsible official
Subpart A

Objections – giving notice of objection
- No timely or specific written comments = no objection period
- Must make available final EA or EIS and a draft DN/FONSI or ROD
- Must publish legal notice of opportunity to object in newspaper of record
- Must post legal notice of opportunity to object on web within 4 days of its publication. This is a new requirement!
Subpart A

- Objections
  - Filed with Reviewing Officer in writing
  - Incorporation of documents by references is not allowed, with some exceptions
  - Issues raised must be based on previously submitted specific written comments, unless issue is based on new information that arose after the opportunity for comment
  - Evidence of timely filing is responsibility of objector
  - Objections can be set aside from review for a variety of reasons
Subpart A

Subpart A
- Objections
  - Resolution of objections
    - Meetings can occur at request of objector or Reviewing Officer
    - Reviewing Officer determines if adequate time exists and determines meeting location, logistics, format, etc.
    - Meetings open to public
    - Reviewing Officer must respond to objection in writing
      - Point-by-point response not required
      - Can contain instructions
      - No further review of Reviewing Officer’s response is allowed
Subpart A

- Objections
  - Timing of Decision
  - Responsible Official cannot sign DN or ROD until Reviewing Officer has responded to objections and all concerns or instructions have been addressed
  - No legal notice of decision required
  - Must inform public of decision
  - 5 day wait period if project was subject to objection

Different!
Subpart B

Subpart B For Projects not part of Healthy Forest Restoration Act

- Key provisions include:
  - Emergency situations
  - Legal notice and comment process
  - Notification of opportunity to comment
  - Commenting on proposed projects
  - Objection time periods
Subpart B

- Emergency Situations
  - Granted by Chief or Associate Chief only
  - No objection period required
  - Timeframes for implementation apply according to 36 CFR 220.7(d) for DNs and 40 CFR 1506.10(b)(2) for RODs
  - Public notification required
Subpart B

- Describes the notice and comment process
  - Legal notice of opportunity to comment
    - 30 days for an EA; no extension allowed
    - 45 days for an EIS; extension allowed
  - Must post legal notice of opportunity to comment on web within 4 days of its publication. This is a new requirement!
Subpart B

- Objection time periods
  - 45 day objection period for EAs
  - 45 day objection period for EISs
- Objection response period
  - 45 days for Reviewing Officer to respond
  - Discretion to extend for 30 days
Subpart C

- Applies to HFRA projects only
- Objection time periods
  - 30 day objection period for EAs
  - 30 day objection period for EISs
- Objection response period
  - 30 days for Reviewing Officer to respond
    - No extension of time allowed
Questions & Answers