Forest Service Emergency Situation Determination (ESD) Process

What is an emergency situation determination or ESD?
The determination that an emergency situation exists exempts the project from the objection process, as described in Section 428 of the Consolidated Appropriations Act of 2012 for the Department of Interior and Related Agencies and the implementing regulations at 36 CFR 218.21.

Emergency situations remain subject to public notice and comment and all other environmental review (NEPA) procedures, regardless of whether an ESD is granted. An ESD only exempts projects documented in an EA or EIS from the objection filing and reviewing requirements of the pre-decisional objection process (36 CFR 218).

Who makes this determination?
Only the Chief and Associate Chief of the Forest Service are authorized to make the determination that an emergency situation exists (36 CFR 218.21(a)).

What is an “emergency” for purposes of making this determination?
An emergency situation in 36 CFR 218.21(b) is defined as follows.

A situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary to achieve one or more of the following:

1. Relief from hazards threatening human health and safety
2. Mitigation of threats to natural resources on NFS or adjacent lands
3. Avoiding a loss of commodity value sufficient to jeopardize the agency’s ability to accomplish project objectives directly related to resource protection or restoration.

What is the process for requesting an ESD?
The Responsible Official coordinates with the Regional Office (RO) to review the situation and determine if an ESD should be pursued. If the decision is made to pursue an ESD, RO staff will then take the lead in coordinating the review and determination with the Washington Office (WO). This typically involves preparation of a briefing paper that outlines the emergency event and factors that the Chief/Associate Chief will likely consider in determining whether to grant the ESD, including whether health, human safety or natural resources are threatened and if the loss of commodity value by delaying implementation would inhibit the agency’s ability to accomplish project objectives related to protecting or restoring natural resources.

What happens if an ESD is granted?
If the ESD is granted, implementation may begin immediately after the decision is signed and the public has been notified. Notification that an ESD has been granted must be included in the final decision.

What happens if an ESD is not granted?
If the ESD is not granted, the Responsible Official must comply with the objection regulations (36 CFR 218). If specific written comments were received, then the final environmental analysis document and draft decision are circulated for a 45-day objection period. Any objections that are received from eligible objectors are reviewed and responded to in writing by the objection reviewing officer. The review period is 45-days, with a 30-day extension of time allowed if needed to complete the review.