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Part III

Department of Agriculture

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning; Extension of Compliance Deadline; Interim Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning; Extension of Compliance Deadline

AGENCY: Forest Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Department is issuing an interim final rule to extend for one year the date specified in 36 CFR 219.35(b) by which all land and resource management plan amendments and revisions would be subject to the new planning regulations adopted November 9, 2000. The Department has determined that the Forest Service is not sufficiently prepared to fully implement the rule agencywide. Without relief from the dates established in 36 CFR 219.35(b), the agency will experience serious disruption in its planning processes with attendant confusion of employees and the public. Such disruption and confusion would be contrary to the public interest. In addition, serious concerns have arisen regarding some of the provisions of the new planning rule, and an extension of the compliance date will allow the Department to review these provisions carefully and to identify any adjustments that may be necessary. While an interim final rule is necessary, the Department also believes that the public should have an opportunity to comment on the advisability and effects of extending the compliance date. To provide this opportunity, the Department is simultaneously publishing a proposed rule elsewhere in this part of today's **Federal Register**. The Department's intent is that the interim final rule will remain in effect until the Department completes the corollary rulemaking process initiated by the proposed rule.

EFFECTIVE DATE: This interim final rule is effective May 17, 2001.

ADDRESSES: Written inquiries about or comments on this rule may be sent to the Director, Ecosystem Management Coordination Staff, USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090 or by facsimile to (202) 205–1012.

FOR FURTHER INFORMATION CONTACT: Dave Barone, Planning Specialist, Forest Service, USDA; Telephone (202) 205–1019.

SUPPLEMENTARY INFORMATION: On November 9, 2000, the Secretary of Agriculture adopted a final rule, which revised the land and resource management planning rules at 36 CFR part 219 (65 FR 67514). The new rule established requirements for the implementation, monitoring, evaluation, amendment, and revision of land and resource management plans. Under the requirements of § 219.35, all amendments and revisions to land and resource management plans must be prepared pursuant to the new planning rules, unless those amendments and revisions were initiated before November 9, 2000, and a notice of availability of the required environmental disclosure document (that is, a draft environmental impact statement or an environmental assessment) is published before May 9, 2001.

The Need for Immediate Action

Approximately 34 forests are currently revising land and resource management plans under the 1982 planning regulations (47 FR 43026, September 30, 1982) as amended (48 FR 29122; June 24, 1983 and 48 FR 40383; September 7, 1983). About 20 of these forests have conducted extensive public involvement activities under the 1982 planning regulations, but are not able to complete the necessary environmental disclosure documents by May 9, 2001. The new planning regulations require substantially different analyses to be completed prior to initiating revisions and engaging the public in the revision process. The November 2000 regulations also require different procedures for collaborating with the public in the revision process. Unless the May 9, 2001, date is extended, these ongoing revision efforts must be halted, and these forests then will have to re-engage the public using the different procedures and analyses of the new rule. The Department believes the resulting confusion, disruption of the agency's programs, and additional expenditure of public funds are unreasonable, unnecessary, and contrary to the public interest.

Another immediate concern is that many forests need to amend their land and resource management plans within the next few months to implement site-specific projects that support the objectives of the National Fire Plan, which was developed in response to the catastrophic wildfires of last summer. These projects include activities to reduce high-hazard fuels near urban and suburban areas and to restore and rehabilitate areas burned last year. Because the new regulations are less well understood, and, in some respects, more complicated than the 1982 regulations, the Department is concerned that it may not be possible for forests to complete the necessary amendments in time to implement those projects before this year's fire season begins.

Agency Readiness To Implement New Rule

In addition to the foregoing pressing concerns, the Department has determined that, despite diligent efforts, the Forest Service is not sufficiently prepared to fully implement the new planning rule agencywide. Many employees, retirees, elected officials, and representatives of external organizations interested in National Forest System management have expressed serious concerns to the new Administration regarding the agency's ability to implement some of the provisions of the new planning rule, such as ecological sustainability and species viability. The agency's ability to promptly implement the planning regulations has also been called into question through pending litigation. A coalition of environmental organizations (*Citizens for Better Forestry et al.* v. *USFS* (N.D. Calif.)) and a coalition of timber and grazing interests (*American Forest & Paper Association et al.* v. *Veneman* (D. D.C.)) have filed separate lawsuits challenging the legality of the new planning regulations on a variety of grounds.

Many of the topics addressed by the new rule are complex; many new analytical requirements are imposed; several new terms are incorporated into the planning process, some with little explanation of their meaning or use, such as critical watersheds. As a result, additional implementing direction, new training programs, and new types of technical support and skills are needed to ensure consistent and efficient implementation of the new rule. While the agency has undertaken significant efforts to develop the policies, procedures, and training programs needed to implement the new rule, these tasks not only have not been completed, but they also require substantial additional work before they are sufficient to guide the workforce in implementing the new planning rule. Accordingly, an extension of the date in § 219.35(b) is necessary for the agency to complete policies, training, and tools needed to effectively implement the new planning rule, and for the Department to have adequate opportunity to review these provisions carefully and to identify any adjustments that may be needed.

In light of these findings, the Department has directed the agency to review the new planning rule and

recommend ways to address these and any other concerns. If the agency determines that additional revisions are needed, a proposed rule incorporating the recommended changes will be published in the **Federal Register** for public comment at a later date. Given the likelihood of additional change to the November 2000 rule, it would be unreasonable to halt amendments and revisions already begun under the 1982 rule, resume those efforts under the new procedures of the November 2000 regulations, and then change the process again if revisions to the new rule are subsequently proposed and adopted.

Option To Implement New Rule

While most units are not prepared to implement fully the November 2000 rule, this interim final rule does not prohibit forests from preparing amendments or revisions of land and resource management plans under the November 2000 rule. In fact, there are several forests that have begun revisions to their land and resource management plans under the November 2000 rule, and these planning efforts not only may continue, but also may provide valuable information about the feasibility of implementing the new rule.

Exemption From Notice and Comment

The Administrative Procedure Act (the ''APA'') generally requires agencies to provide advance notice and an opportunity to comment on agency rulemakings. However, APA allows agencies to promulgate rules without notice and comment when an agency, for good cause, finds that notice and public comment are ''impracticable, unnecessary, or contrary to the public interest.'' (5 U.S.C. 553(b)(3)(B)). Furthermore, the APA exempts certain rulemakings from its notice and comment requirements, including rulemakings involving ''public property'' and ''rules of agency organization, procedure, or practice'' (5 U.S.C. 553(a)(2) and (b)(3)(A)).

In 1971, Secretary of Agriculture Hardin announced a voluntary partial waiver from the APA notice and comment rulemaking exemptions. (July 24, 1971; 36 FR 13804). Thus, USDA agencies proposing rules generally provide notice and an opportunity to comment on proposed rules. However, the Hardin policy permits agencies to publish final rules without prior notice and comment when an agency finds for good cause that notice and comment procedures would be impracticable, unnecessary, or contrary to the public interest. The courts have recognized this good cause exception of the Hardin policy and have indicated that since the publication requirement was adopted voluntarily, the Secretary should be afforded ''more latitude'' in making a good cause determination. See *Alcaraz* v. *Block,* 746 F.2d 593, 612 (9th Cir. 1984).

To the extent that 5 U.S.C. section 553 applies to this interim final rule, good cause exists to exempt this rulemaking from advance notice and comment. (5 U.S.C. 553(b)(B) and 553(d)(3)). In view of these factors, the Department has determined that delaying an extension of the compliance date in § 219.35(b) in order to obtain public comment is impracticable, unnecessary, and contrary to the public interest. In the preceding parts of this preamble, the Department has made a clear showing that an extension of the compliance date is necessary to allow amendments and revisions to land and resource management plans to continue and to help ensure, among other things, timely implementation of the National Fire Plan as directed by Congress. Given the agency's inability to complete all the actions necessary to meet the May 9, 2001, deadline, it is impracticable to provide for prior public comment on this extension. The public interest is best served by extending the compliance date and avoiding the loss and duplication of agency analysis and public involvement efforts for amendments and revisions prepared pursuant to the 1982 rule.

Conclusion

For the reasons identified in this preamble, the Department is issuing an interim final rule to extend the date by which land and resource management plan amendments or revisions must comply with the November 2000 planning rule. In § 219.35(b), the date is extended from May 9, 2001, to May 9, 2002. In addition to this extension, this interim final rule would include at § 219.35(b) the interpretation of the term ''initiated'' as published in an interpretive rule on January 10, 2001 (66 FR 1864) to clarify this term as it applies to amendments or revisions initiated prior to May 9, 2002. The changes to § 219.35(b) are also fully consistent with the other provisions of the interpretive rule.

This interim final rule is necessary to grant relief to the approximately 20 units that have begun plan revisions under the 1982 regulations but could not meet the May 9, 2001, deadline. The interim final rule is also needed to facilitate timely implementation of site-specific projects that support the National Fire Plan. Nevertheless, the Department believes the public should have an opportunity to comment on the modification of § 219.35(b) which extends the period of use of the 1982 planning rule. Thus, the Department is simultaneously publishing this extension as a proposed rule with request for public comment in this same part of today's **Federal Register**.

Regulatory Certifications

Regulatory Impact

This is not a significant rule. This interim final rule will not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This interim final rule will not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, this interim final rule will not alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interim final rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866. Moreover, this interim final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This interim final rule will not have a significant economic impact on a substantial number of small entities as defined by the Act. This interim final rule will not impose recordkeeping requirements; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market.

Environmental Impact

This interim final rule has no direct or indirect effect on the environment, but merely extends the date by which amendments and revisions of land and resource management plans may be continued under the 1982 planning rule, as well as the date by which plans must conform to the November 2000 rule. The planning regulation itself deals with the development and adoption of Forest Service land and resource management plan decisions as well as procedures for developing site-specific decisions that may include decisions regarding the occupancy and use of National Forest System land. An environmental assessment was completed on the November 2000 planning rule, with a finding that the rule would have no significant impact on the environment. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules,

regulations or policies to establish Service-wide administrative procedures, program processes, or instructions. Based on the nature and scope of this rulemaking and the procedural nature of 36 CFR part 219, the agency has determined that this interim final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the interim final rule will not pose the risk of a taking of private property, as the interim final rule is limited to adjustment of the compliance date in the new planning rule.

Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule (1) does not preempt State and local laws and regulations that conflict with or impede its full implementation; (2) has no retroactive effect; and (3) will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this interim final rule on State, local and tribal governments and the private sector. This interim final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Federalism and Consultation and Coordination With Tribal Governments

The Department has considered this interim final rule under the requirements of Executive Orders 12612 and 13132 and concluded that the rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

This interim final rule does not have tribal implications as defined in Executive Order 13175 and, therefore, advance consultation with tribes is not required.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, part 219 of title 36 of the Code of Federal Regulations is amended as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

1. The authority citation for subpart A continues to read as follows:

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

2. Revise paragraph (b) of § 219.35 to read as follows:

§ 219.35 Transition.

(a) * * *

(b) Until May 9, 2002, a responsible official may elect to continue or to initiate new plan amendments or revisions under the 1982 planning regulations in effect prior to November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), or the responsible official may conduct the amendment or revision process in conformance with the provisions of this subpart. For the purposes of this paragraph, the reference to a plan amendment or revision initiated before May 9, 2002, means that the agency has issued a Notice of Intent or other public notification announcing the commencement of a plan amendment or revision as provided for in the Council on Environmental Quality regulations at 40 CFR 1501.7 or in Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, section 11.

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Dated: May 10, 2001.

Ann M. Veneman,

Secretary.

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