

## Background

On November 9, 2000, the Secretary of Agriculture adopted a final rule substantially revising the National Forest System land and resource management planning regulations at 36 CFR part 219 (65 FR 67514), which had been previously adopted in 1982 (47 FR 43026, September 30, 1982). These regulations, which implement the National Forest Management Act, apply to the development, revision, and amendment of land and resource management plans. The November 2000 planning rule also applies to site-specific project decisions. Section 219.35(d) of the 2000 planning rule requires all site-specific project decisions made by the responsible official as of November 9, 2003, to conform with the provisions of the 2000 planning rule at 36 CFR part 219.

Section 219.35 of the 2000 planning rule also provided for a transition from the 1982 planning rule to the 2000 planning rule.

Subsequent to the adoption of the 2000 planning rule, the Department determined in early 2001 that there were serious concerns regarding the agency's ability to implement the 2000 planning rule, such as the number of very detailed analytical requirements; the lack of clarity regarding many of the requirements; the lack of flexibility; and the lack of recognition of the limits of agency budgets and personnel. Therefore, on May 20, 2002, the Department issued an interim final rule at § 219.35(b) to delay mandatory compliance with the 2000 planning rule for land and resource management plan amendments and revisions until a new final planning rule is adopted (67 FR 35431); this delay would allow the agency time to propose and adopt revisions to the 2000 planning rule.

In the May 20, 2002, **Federal Register** notice, the Department also noted that concerns had been raised by field personnel that the reasons necessitating an extended transition to the November 2000 rule for forest plan amendments and revisions may apply equally, if not more, to the November 9, 2003, deadline for site-specific decisions to conform with part 219. At that time, the Department identified that it expected to address these concerns by removing the requirement or extending the original transition date for site-specific projects.

A proposed revision of the 2000 planning rule was published on December 6, 2002, (67 FR 72770). One change is that this rule, unlike the 2000 rule, would not apply to site-specific project decisions.

This interim final rule at § 219.35(d) provides the same extension of compliance deadline for site-specific projects as did the 2002 interim final rule at § 219.35(b) for plan amendments and revisions; until the Department promulgates the final planning regulations.

## Need for Immediate Action

The provisions of the 2000 planning rule are unclear regarding the relationship of site-specific project decisions to the development of landscape goals and information development requirements for addressing ecological, social, and economic sustainability. Reviews of the 2000 planning rule have pointed out the issues and problems related to mixing programmatic and project-level planning direction. There is a lack of clarity about how projects are to be compliant with the rule. This uncertainty and lack of clarity may pose an unreasonable analysis burden on field units when planning for site-specific project decisions.

The Department has proposed improvements and revisions to the 2000 planning rule that would remove the applicability of part 219 to site-specific project level decisions (67 FR 72770, December 6, 2002). Instead, the requirements of the 2002 proposed planning rule would apply at the programmatic level only to the development, amendment, and revision of land and resource management plans and (unlike the requirements of the 2000 planning rule) would not apply to site-specific projects. Under the 2002 proposed rule, a plan would guide site-specific project implementation and project decisions would be required to be consistent with the plan, but a plan would not determine the selection or implementation of site-specific actions.

Therefore, the Department has determined that it is necessary to extend the transition period at 36 CFR 219.35(d) by which the 2000 planning rule requires compliance for site-specific project decisions, currently set at November 9, 2003, until the promulgation of a final planning rule. While it has been anticipated that a final revised planning rule would be promulgated by the end of 2003, such a final rule may not be adopted by November 9, 2003.

Accordingly, extension of the transition period at 36 CFR 219.35(d) until a final planning rule is adopted is necessary for the following reasons: (1) To clarify planning requirements for site-specific project decisions; (2) to grant relief to the units of the National Forest System from a regulatory

provision of the 2000 planning rule soon to be made obsolete; and (3) in case the 2002 proposed planning rule is not finalized by November 9, 2003.

## Exemption From Advance Notice and Comment

The Administrative Procedure Act (APA) generally requires agencies to provide advance notice and an opportunity to comment on agency rulemakings. However, the APA also 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 exemption 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)). The Department has determined that delaying an extension of the compliance date in § 219.35(d) to obtain public comment is impracticable, unnecessary, and contrary to the public interest. Earlier in this preamble, the Department has made clear that an extension of the compliance date is necessary. Given the length of time (usually up to 6 months) it takes field units to plan for site-specific project decisions, it is impracticable to provide for prior public comment on this extension. The agency's publication of a proposed rule in 2002 to revise the November 2000 planning rule, and the fact that this