

Hendry, G. A. F. and J. D. Houghton, Blackie Academic & Professional, New York, 1996.

2. European Parliament and Council Directive 94/36/EC of June 30, 1994, on colours for use in foodstuffs, *Official Journal of the European Communities*, L 237:17-18, 1994.

3. Harrison, J. W. E., S. E. Levin, and B. Trabin, "The Safety and Fate of Potassium Sodium Copper Chlorophyllin and Other Copper Compounds," *Journal of the American Pharmaceutical Association*, 43:722-737, 1954.

4. "Toxicological Evaluation of Some Food Colours, Enzymes, Flavour Enhancers, Thickening Agents, and Certain Other Food Additives," Joint FAO/WHO Expert Committee on Food Additives, WHO Food Additives Series, No. 6, pp. 74-77, Geneva, 1975.

5. Ikeda, G. J., Memorandum entitled "Addendum to Toxicology Review Memorandum of June 14, 2000" from the Division of Food Contact Substance Notification Review (HFS-225) to the Division of Petition Control (HFS-215), Center for Food Safety and Applied Nutrition, FDA, November 21, 2001.

6. Ikeda, G. J., Memorandum entitled "Toxicology Review: Use of Sodium Copper Chlorophyllin as a Colorant for Citrus-based Dry Beverage Mix" from the Division of Health Effects Evaluation (HFS-225) to the Division of Petition Control (HFS-215), Center for Food Safety and Applied Nutrition, FDA, June 14, 2000.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 73.125 is added to subpart A to read as follows:

§ 73.125 Sodium copper chlorophyllin.

(a) *Identity.* (1) The color additive sodium copper chlorophyllin is a green to black powder prepared from chlorophyll by saponification and replacement of magnesium by copper. Chlorophyll is extracted from alfalfa (*Medicago sativa*) using any one or a combination of the solvents acetone, ethanol, and hexane.

(2) Color additive mixtures made with sodium copper chlorophyllin may contain only those diluents that are suitable and are listed in this subpart as

safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Sodium copper chlorophyllin shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

- (1) Moisture, not more than 5.0 percent.
- (2) Solvent residues (acetone, ethanol, and hexane), not more than 50 parts per million, singly or, in combination.
- (3) Total copper, not less than 4 percent and not more than 6 percent.
- (4) Free copper, not more than 200 parts per million.
- (5) Lead (as Pb), not more than 10 parts per million.
- (6) Arsenic (as As), not more than 3 parts per million.
- (7) Mercury (as Hg), not more than 0.5 part per million.
- (8) Ratio of absorbance at 405 nanometers (nm) to absorbance at 630 nm, not less than 3.4 and not more than 3.9.
- (9) Total copper chlorophyllins, not less than 95 percent of the sample dried at 100 °C for 1 hour.

(c) *Uses and restrictions.* Sodium copper chlorophyllin may be safely used to color citrus-based dry beverage mixes in an amount not exceeding 0.2 percent in the dry mix.

(d) *Labeling requirements.* The label of the color additive and any mixtures prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: April 25, 2002.

L. Robert Lake,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02-12544 Filed 5-17-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596-AB87

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 the date by which all land and resource management plan amendments and revisions would otherwise be subject to the planning regulations adopted November 9, 2000. An extension of the compliance date will allow the agency to propose and adopt adjustments to the 2000 planning rule that may be necessary. On May 17, 2001 (66 FR 27555), the public was given an opportunity to comment on the advisability and effects of extending the compliance date. At that time, the Forest Service noted that the Department had instructed the agency to propose changes to the November 2000 rule to improve its implementability. The deadline for complying with the November 2000 rule was May 9, 2002, and the proposed changes to the 2000 rule are not yet published. Therefore, the Department is issuing this interim final rule to delay mandatory compliance with the 2000 rule until a new final planning rule is adopted.

EFFECTIVE DATE: This interim final rule is effective May 20, 2002.

ADDRESSES: Written inquiries about or comments on this rule may be sent to the Director, Ecosystem Management Coordination Staff, Forest Service, USDA, Mail Stop 1104, 1400 Independence Ave., SW, Washington, DC 20250-1104 or by facsimile to (202) 205-1012.

FOR FURTHER INFORMATION CONTACT: Dave Barone, Planning Specialist, Forest Service, (202) 205-1019.

SUPPLEMENTARY INFORMATION: On November 9, 2000, the Secretary of Agriculture adopted a final rule substantially revising the National Forest System land and resource management planning regulation at 36 CFR part 219 (65 FR 67514). Section 219.35 of that rule provided for the transition from the 1982 planning rule to the 2000 rule. Under the requirements of § 219.35 as adopted, all amendments and revisions to land and resource management plans must be prepared pursuant to the November 2000 planning rule, unless the amendment or revision was initiated before November 9, 2000, and a notice of availability of the required environmental disclosure document was published before May 9, 2001. However, the Department subsequently determined that the Forest Service was not sufficiently prepared to implement the November 2000 planning rule. Therefore, on May 17, 2001, the Department issued an interim final rule immediately extending the compliance date of May 9, 2001, until May 9, 2002,

in anticipation that a revised planning rule would be final by that date (66 FR 27552). However, completion of the revised planning rule by May 9, 2002, has proven to be unrealistic; thus, the Department is extending the compliance deadline until the adoption of a new final planning rule.

The Need For Immediate Action

This interim rulemaking action is needed immediately. The May 9, 2002, compliance deadline is imminent, and it is necessary to grant relief to the units of the National Forest System that may initiate plan revisions and amendments after this date but before a new planning regulation is finalized. There are currently 33 forest plans being revised using the 1982 planning rule. An additional 19 plan revisions will be initiated in the next 18 months. The 2000 planning rule requires substantially different analyses to be completed prior to initiating revisions and engaging the public in the revision process. The November 2000 rule also requires different procedures for collaborating with the public to identify issues to be considered in the revision process. Even though units have had the option of using the November 2000 planning rule for plan revisions and amendments, to date no unit is utilizing it. As with the interim final rule adopted May 17, 2001, this new interim final rule allows forests the option of proceeding under the 1982 rule or under the November 2000 rule.

Another immediate concern is that many forests need to amend their land and resource management plans to implement site-specific projects that support the objectives of the interagency National Fire Plan, which was developed in response to the catastrophic wildfires of the 2000 fire season. These projects include activities to reduce high-hazard fuels near urban and suburban areas and to restore and rehabilitate burned areas. Because the November 2000 rule is less well understood, and, in some respects, more complicated than the 1982 regulations, it will be difficult for forests to fully comply with it and complete the necessary amendments to implement those projects.

Agency Proposal To Improve November 2000 Rule

After adoption of the November 2000 planning rule, the Secretary received a number of comments from individuals, groups, and organizations expressing concerns regarding its implementation. In addition, lawsuits challenging the promulgation of the 2000 rule have been filed. As a result, the Department and

the agency initiated two reviews of the 2000 rule focusing on its "implementability". The reviews concluded that many of the concerns regarding implementability of the rule were serious. The principal concerns identified were lack of clarity, budgetary and staffing impacts associated with sustainability, species viability requirements, use of science and scientists, monitoring, and the length of the transition requirements of the 2000 rule. Having considered the conclusions of the reviews of the 2000 rule, the Department directed the agency to develop a proposed rule to revise the 2000 rule. Notice of this proposed rulemaking was given in the Semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions on December 3, 2001 (66 FR 61400). That proposed rule is currently undergoing review within the Administration and is expected to be published soon. However, the Department does not expect to have a final rule in place before October 1, 2002.

On May 17, 2001, the Department issued an interim final rule and simultaneously issued a proposed rule extending the compliance date of May 9, 2001, until May 9, 2002. The agency received 84 responses to the request for comments. Categories of respondents included the wood products, mining, and agricultural industries; recreation, preservation, and conservation organizations; and unaffiliated individuals. About half of the respondents did not believe that the agency should extend the compliance deadline. They feel that the November 2000 rule should be implemented as is. In contrast, the balance of the respondents agreed with the need to extend the compliance date and felt that it was reasonable to allow the agency time to make adjustments to the 2000 rule. Among those who felt that the extension was appropriate, many encouraged the agency to take whatever time necessary to carefully consider the needed adjustments to the November 2000 rule. Some suggested the agency consider an extension beyond May 9, 2002. This interim final rule extending the date in § 219.35(b) will provide the agency and the Department the time needed to continue the current rulemaking effort to propose and adopt improvements and adjustments to the November 2000 rule that may be needed.

Effects of the Interim Final Rule

In light of the responses the agency received on the May 17, 2001, proposed rule, and the subsequent delay in publishing a proposed rule to revise the

November 2000 planning rule, the Department is now extending the compliance date established in 36 CFR 219.35(b) until such time as a new final planning rule is adopted.

The interim final rule will not alter the timber suitability provision in 36 CFR 219.35(c). If a suitability analysis must be prepared before a new planning rule is adopted, the Responsible Official will continue to have the option of conducting the suitability review pursuant to either the 1982 rule or § 219.35(c) of the 2000 rule. While most units are not prepared to implement 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. Rather, this interim final rule will maintain the status quo while the agency proposes and adopts changes to the November 2000 rule to improve its implementability.

The interim final rule also will not alter the transition language in 36 CFR 219.35(d) that directs site-specific decisions to conform to the provisions of the planning regulations after November 9, 2003. However, concerns have been raised by field personnel that the reasons necessitating an extended transition to the November 2000 rule for forest plan amendments or revisions may apply equally, if not more, to the November 9, 2003, deadline for preparing site-specific decisions under part 219. To address these concerns, the Forest Service expects to issue a proposed rule later this year and seek public comment on whether the November 9, 2003, date in 36 CFR 219.35(d), which would require that site-specific decisions conform to the 2000 rule, should be extended or whether the provision should be removed.

Exemption From 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 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 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)). 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. Earlier in 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 interagency National Fire Plan as directed by Congress. Given the agency's inability to complete all the actions necessary to meet the May 9, 2002, deadline, it is impracticable to provide for prior public comment on this extension. The agency's announced intention to revise the November 2000 planning rule, as well as previous public comment opportunities on adjusting the transitional language, are also important considerations in adopting this interim final rule.

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.

Other Changes

In addition to the 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. This language was also included in the May 17, 2001, interim rule. The changes to § 219.35(b) are also fully consistent with the other provisions of the interpretive rule.

Conclusion

For the reasons identified in this preamble, the Department finds good cause to adopt without prior notice and comment this interim final rule that amends § 219.35(b). This rule extends the date by which land and resource management plan amendments or revisions must comply with the November 2000 planning rule from May 9, 2002, until the Department promulgates a revised final planning rule.

This interim final rule is necessary to grant relief to the units of the National Forest System that may initiate plan revisions and amendments after May 9, 2002, but before a new planning rule is finalized. The interim final rule is also needed to facilitate timely implementation of site-specific projects that support the interagency National Fire Plan.

Regulatory Certifications

Regulatory Impact

This is not a significant rule as defined in Executive Order (E.O.) 12866. 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 E.O. 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 the competitive position of small businesses 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. 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. Moreover, section 31.1b of Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook (57 FR 43180; September 18, 1992), excludes from documentation in an environmental assessment or impact statement any rule, regulation, or policy 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 Department 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 November 2000 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 Department 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 (1) the States, (2) on the relationship between the national government and the States, or (3) on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary at this time.

Additionally, this interim final rule does not have tribal implications as defined in Executive Order 13175 and, therefore, advance consultation with tribes was 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.

Energy Effects

This interim final rule has been reviewed under Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." It has been determined that this rule does not constitute a significant energy action as defined in the Executive Order. This interim final rule merely extends a compliance date and allows the option of using the 1982 or the 2000 planning regulations to guide the amendment or revision of National Forest System land and resource management plans.

List of Subjects in 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.

* * * * *

(b) Until the Department promulgates the revised final planning regulations announced in the December 3, 2001, Semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions, 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, 2001), 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 initiation of a plan amendment or revision 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.

* * * * *

Dated: May 10, 2002.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 02-12508 Filed 5-17-02; 8:45 am]

BILLING CODE 3410-11-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 245-0311a; FRL-7202-1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Bay Area Air Quality Management District

(BAAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of nitrogen oxides (NO_x) and carbon monoxide (CO) from electric power generating steam boilers. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 19, 2002, without further notice, unless EPA receives adverse comments by June 19, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).