



Federal Register

**Wednesday,
January 4, 2006**

Part IV

Department of Agriculture

Forest Service

36 CFR Part 223

**Sale and Disposal of National Forest
System Timber; Timber Sale Contracts;
Purchaser Elects Government Road
Construction; Free Use to Individuals;
Delegation of Authority; Final Rule and
Interim Final Rule**

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 223**

RIN 0596-AC40

Sale and Disposal of National Forest System Timber; Timber Sale Contracts; Purchaser Elects Government Road Construction**AGENCY:** Forest Service, USDA.**ACTION:** Direct Final rule.

SUMMARY: This direct final rule raises the total specified road construction cost threshold for a small business concern road election from \$20,000 to \$50,000. Congress raised the limit to \$50,000 via the Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105-277; Sec. 329(c)). The Supplemental Appropriations Act also eliminated the restriction, which precluded small business concerns in the State of Alaska from exercising the road election option. The Forest Service implemented this change upon passage of the law, and corrected agency handbook direction, but the CFR references to these minimum values were not changed. This direct final rule corrects this policy oversight. Obsolete references to purchaser credit are also being eliminated.

DATES: This direct final rule is effective March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management Staff, at (202) 205-0858, or Richard Fitzgerald, Forest Management Staff, (202) 205-1753.

SUPPLEMENTARY INFORMATION:**Background**

One of the components a timber sale may include is the construction of new specified roads in order to access areas where timber will be removed. Road construction can be a significant cost to a small business timber purchaser. The National Forest Management Act of 1976 (Pub. L. 94-588) section 14(i) allowed small business concerns to elect to have the Forest Service construct specified roads for a timber sale. The agency promulgated regulations in 36 CFR part 223. 36 CFR 223.84 allows for small business concerns to elect to have the Forest Service contract for the construction of new specified roads. 36 CFR 223.41 requires that if a small business concern does elect to have the Forest Service contract for the road construction, the small business must reimburse the government for the estimated costs of construction through

higher stumpage payments. 36 CFR 223.82 requires that the Forest Service include notice of this option in the contents of advertisements and bid forms for timber sales. A small business concern can only elect to have the Forest Service build the roads if the specified road construction was valued at \$20,000 or more. 36 CFR 223.41 and 36 CFR 223.82 both included this \$20,000 value. On October 21, 1998, the Supplemental Appropriations Act for Fiscal year 1999 (Pub. L. 105-277) became law. Section 329(c) included an increase in the value of the specified road construction to \$50,000 or more before a small business concern could elect to have the Forest Service contract for construction of specified roads. It also eliminated an earlier restriction that precluded small business concerns in the State of Alaska from the specified road election. This final rule updates 36 CFR 223.41 and 36 CFR 223.82 to include the higher value established by Congress, and eliminates references to the State of Alaska and purchaser credit.

The Supplemental Appropriations Act for Fiscal year 1999 (Pub. L. 105-277) also directed the Forest Service to eliminate purchaser credit procedures by April 1, 1999. The use of purchaser credit for appraised value determination and the use of purchaser credit in timber sale contracts were discontinued as of April 1, 1999. This was accomplished by making changes in Forest Service manual and handbook procedures and eliminating purchaser credit references on all timber sale contracts after that date. Purchaser credit on sales existing at that time remained which means there are still active sales that have purchaser credit. References that are being eliminated do not affect those sales or the use of existing purchaser credit.

Regulatory Certifications*Regulatory Impact*

This rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this rule is not a significant regulatory action and is not subject to OMB review. This rule will not have an annual effect of \$100 million or more on the economy. Implementation of procedures to change how roads are constructed or financed was accomplished on April 1, 1999. Revision of the regulations to be consistent with this change will not affect the economy, a sector of the economy, productivity, competition, jobs, or State or local governments. This rule will not interfere with an action

taken or planned by another agency, but may raise new legal or policy issues; however, these legal and policy issues are not likely to be significant. Financial relationships between the Government and timber sale purchasers will not be changed by this rule and benefits from timber sales harvests to State and local governments will not change. Little or no effect on the national economy will result from this rule. This action consists of technical, administrative changes to regulations affecting how permanent timber sale roads are constructed and financed. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rule is not subject to OMB review under Executive Order 12866.

Regulatory Flexibility Act

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. Current procedures, implemented April 1, 1999, require that both small and large businesses finance permanent road construction prior to the harvest of timber. They recover these expenditures as the timber is harvested by paying less for the timber. The rule makes only technical changes to be consistent with the prohibitions in the act. To the extent that the rule imposes additional financial requirements on small entities, these requirements are minimal when compared to the total financing that is necessary to successfully complete a timber sale. The requirements are within the capability of nearly all small entities to meet.

Unfunded Mandates Reform

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 rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Environmental Impact

This rule deals with how timber sale contract roads are financed and, as such, has no direct effect on the amount, location, or manner of timber sale road

construction. 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." The agency's assessment is that this 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 rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the rule does not pose the risk of a taking of private property. There are no private property rights to be affected, because no changes in contract provisions are necessary to implement this rule and, in any case, new contract provisions would be used only prospectively in new contracts.

Civil Justice Reform Act

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule were adopted, (1) all State and local laws and regulations that are in conflict with this rule or which would impede its full implementation would be preempted; (2) no retroactive effect may be given to this rule; and (3) it does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. 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 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, Public lands, Reporting and recordkeeping.

■ For the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The Authority citation for Part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213; 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart B—Timber Sale Contracts

■ 2. Revise § 223.41 to read as follows:

§ 223.41 Payment when purchaser elects government road construction.

Each contract having a provision for construction of specified roads with total estimated construction costs of \$50,000 or more will include a provision to ensure that if the purchaser elects Government road construction, the purchaser shall pay, in addition to the price paid for the timber or other forest products, an amount equal to the estimated cost of the roads.

■ 3. Amend § 223.63 to read as follows:

§ 223.63 Advertised rates.

Timber shall be advertised for sale at its appraised value. The road construction cost used to develop appraised value means the total estimated cost of constructing all permanent roads specified in the timber sale contract, estimated as if construction is to be accomplished by the timber purchaser. The advertised rates shall be not less than minimum stumpage rates, except that sales of insect-infested, diseased, dead, or distressed timber may be sold at less than minimum rates when harvest of such timber is necessary to protect or improve the forest or prevent waste of usable wood fiber.

■ 4. Revise § 223.82(b) introductory text to read as follows:

§ 223.82 Contents of advertisement.

* * * * *

(b) For each timber sale which includes specified road construction with a total estimated value of \$50,000 or more, the advertisement shall also include:

* * * * *

■ 5. Amend § 223.83 by revising paragraphs (a)(16) and (a)(17) to read as follows:

§ 223.83 Contents of prospectus.

(a) * * *

(16) The estimated road construction cost for each sale described in § 223.82(b) and the estimated public works construction cost.

(17) For deficit sales:

(i) An estimate of the difference between fair market value and

advertised value, that is, the amount by which the advertised value exceeds the appraised value.

(ii) The amount of Forest Service funds or materials to be used to offset the deficit.

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■ 6. Amend § 223.84 by revising the section heading to read as follows:

§ 223.84 Small business bid form provisions on sales with specified road construction.

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Dated: December 28, 2005.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 06–35 Filed 1–3–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AC09

Sale and Disposal of National Forest System Timber; Free Use to Individuals; Delegation of Authority

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule raises the value limit of timber that can be granted by line officers to individuals for use free of charge. Current regulations limit the value of free use timber that a designated forest officer can grant to an individual in a fiscal year to \$20. Forest Supervisors are limited to \$100 per year per individual and Regional Foresters are limited to \$5,000 per year per individual. Free use exceeding \$5,000 must be reviewed by the Chief of the Forest Service.

The ability of the Forest Service to respond to legitimate requests for free use have been restricted by these limits as timber values have increased over the years. The Forest Service is raising the limits to \$200 for forest officers, \$5,000 for Forest Supervisors, and \$10,000 for Regional Foresters. Any request for free use in excess of \$10,000 in value would still require review by the Chief of the Forest Service. No other changes to the regulations concerning free use of timber are being proposed.

DATES: This interim final rule is effective January 4, 2006. Comments must be received in writing on or before March 6, 2006.

ADDRESSES: Send written comments to USDA Forest Service, Director Forest