

§ 223.116

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§ 223.116 Cancellation.

(a) Timber sale contracts and permits may be canceled:

(1) For serious or continued violation of their terms.

(2) Upon application, or with the consent of the purchaser, when such action is of advantage to the United States or not prejudicial to its interests.

(3) Upon application of the purchaser if the value of the timber remaining to be cut is diminished materially because of catastrophic damage caused by forces beyond the control of the purchaser resulting in (i) physical change in the sale area or access to it, or (ii) damage to timber remaining to be cut.

(4) For conviction of violation of criminal statutes or, following final agency or judicial determination, of violation of civil standards, orders, permits, or others regulations for the protection of environmental quality issued by a Federal agency, State agency, or political subdivision thereof, in the conduct of operations thereunder, on National Forest System land, unless compliance with such laws or regulations would preclude performance of other contractual requirements.

(5) Upon determination by the Chief, Forest Service, that operations thereunder would result in serious environmental degradation or resource damage and with reasonable compensation to the purchaser for unrecovered costs incurred under the contract and the difference between the current contract value and the average value of comparable National Forest timber sold during the preceding 6-month period.

(b) Cancellation will be by the Chief, Forest Service. Authority to cancel contracts under paragraph (a)(1) through (4) of this section may be delegated to Regional Foresters for sales within their authorization. All contract cancellations under paragraph (a)(5) of this section shall be by the Chief, Forest Service, whose decision shall be the final agency decision.

[42 FR 28252, June 2, 1977, as amended at 48 FR 23819, May 27, 1983. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.117 Administration of cooperative or Federal sustained yield units.

With respect to sustained yield units established pursuant to the provisions of the Act of March 29, 1944 (58 Stat. 132; 16 U.S.C. 583-5831), the Chief, Forest Service, with authority to delegate to other officers and employees of the Forest Service:

(a) Shall provide that National Forest timber in any sustained yield unit shall be available in sufficient amounts to meet the needs of bona fide farmers, settlers, miners, residents and prospectors for minerals for personal and domestic use as provided by law and by regulation.

(b) May offer for sale to cooperators, without competition but at not less than appraised value, timber on National Forest lands within an approved cooperative sustained yield unit; or, if the approved sustained yield unit consists entirely of federally owned or administered forest land and if necessary for the maintenance of a stable community or communities, may offer National Forest timber for sale to responsible operators within such community or communities, at not less than appraised value but without competition or with competition restricted to responsible operators who will manufacture the timber to at least a stated degree within the community or communities to be maintained. Each such sale which involves more than \$500 in stumpage value may be made only after notice has been given in advance by such means as may be deemed effective in informing the public of the proposed action, including in any event, publication, once weekly for four consecutive weeks and with additional insertions if needed, in one or more newspapers of general circulation in the vicinity of the place where the timber is located, of a notice of the proposed sale stating at least:

(1) The location, estimated quantity and appraised value of the timber to be cut;

(2) The name and address of the proposed purchaser or those of the operators among whom bidding is to be restricted;

(3) The time and place of a public advisory hearing on the proposed sale, to

be held not earlier than 30 days after the first publication of said notice, if requested by the State or county where the timber is located or by any other person deemed to have a reasonable interest in the proposed sale or in its terms; and

(4) The title and address of the officer of the Forest Service to whom any request for such hearing should be made. Such requests need be considered only if received at the place designated in the notice not later than 15 days after the first publication of such notice. If a public advisory hearing is to be held, notice of it shall be published in the same newspaper or newspapers as the original notice, stating the place where it will be held and the time, which shall not be earlier than 10 days after the first publication of the said notice of hearing, and shall appear once each week, but not for more than four successive weeks in any event, until the date set for the hearing. Any such hearing shall be conducted by the Chief or by any officer designated by him as his representative, except that if the amount of the proposed sale is not in excess of that which the Regional Forester has been authorized to sell without prior approval of the Chief the hearing may be held by the Regional Forester concerned or by his representative and decision may be by the Regional Forester. At any such hearing, opportunity shall be given to those having a reasonable interest to make oral statements or to file written statements discussing the advantages and disadvantages of the proposed sale; and the officer holding the hearing may, in his discretion, permit the filing of such statements within a reasonable period after the close of the hearing to become part of the record for consideration before a decision is made.

(c) Shall keep available for public inspection,

(1) During the life of any sustained yield unit, the minutes or other record of the hearing held on the establishment thereof, and the determination of action taken following the hearing including any modification of the proposals as submitted at the hearing; and

(2) During the life of any cooperative agreement for coordinated manage-

ment the similar record of the hearings and actions determined upon; and

(3) During the life of any sustained yield unit the similar record of any public hearing which may be held on a sale made without competition or with restricted competition and the action determined upon. Such records of any case may be kept in any office of the Forest Service designated by the Chief as being suitable and convenient of access for probably interested persons.

(d) Shall make provision, in any contract for the purchase of timber without competition or with restricted competition, if that contract is of more than 7 years' duration and in his discretion in any case of shorter duration, for the redetermination of rates for stumpage and for required deposits to be paid by the purchasers, such redetermination to be effective at intervals or dates stated in the contract; but the sum of such redetermined rates for stumpage and sale area betterment shall not be less than the base rates in the published notice of the proposed sale.

(e) May modify and revise existing cooperative agreements entered into under said act after taking appropriate action.

§ 223.118 Appeal process for small business timber sale set-aside program share recomputation decisions.

(a) *Decisions subject to appeal.* The rules of this section govern appeal of recomputation decisions related to structural, special, or market changes or the scheduled 5-year recomputations of the small business share of National Forest System timber sales. Certain decisions related to recomputation of shares, such as structural change and carryover volume, may require two decisions, one to determine that a recomputation is needed and the other to recompute the shares. Decisions made both at the earlier stage as well as the later stage are appealable.

(b) *Manner of giving notice—(1) Predecisional notice and comment.* The Responsible Official shall provide qualifying timber sale purchasers, as defined in paragraph (c)(1) of this section, 30 days for predecisional review and comment on any draft decision to