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in the tributary area which is exported or sold for export; and

(3) Maintain records of all such transactions involving unprocessed timber and to make such records available for inspection and verification by the Forest Service for up to three (3) years after the sale is terminated.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*).

(c) The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0021.

[56 FR 65842, Dec. 19, 1991]

§ 223.49 Downpayment.

(a) For the purposes of this section, the terms listed in this paragraph shall have the following meaning:

(1) *Total bid value* is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume listed in the contract.

(2) *Ineffective purchaser credit* is that portion of the credit earned, pursuant to a specific Forest Service timber sale contract for construction of specified roads, or for other purposes in such contract, that exceeds the current contract value, minus base rate value as defined in that contract and, thus, is an amount that cannot be applied toward stumpage charges.

(3) *Bid premium* is the amount in excess of the advertised value that a purchaser bids for timber offered.

(4) *Lump sum timber sales* are premeasured sales where the entire value of the sale is paid in one payment at time of release for cutting.

(5) *Affiliate*. Concerns or individuals are affiliates if directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall

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consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(b) Timber sale contracts shall include provisions that require purchasers to make a downpayment in cash or by application of earned effective purchaser credit at the time a timber sale contract is executed.

(c) The minimum downpayment shall be equivalent to 10 percent of the total advertised value of each sale, plus 20 percent of the bid premium, except in those geographic areas where the Chief of the Forest Service determines that it is necessary to increase the amount of the downpayment in order to deter speculation. To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustment.

(d) On scaled sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the total bid value of the sale has been charged and paid for. On tree measurement sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the total bid value of the sale is shown on the timber sale statement of account to have been cut, removed, and paid for. For lump sum sales, the downpayment amount may be applied to payment for release of the single payment unit.

(e) A purchaser or any affiliate of that purchaser, awarded a Forest Service timber sale contract must meet the additional downpayment requirements of paragraph (g) of this section under the following circumstances:

(1) The purchaser or its affiliate after September 29, 1988 has failed to perform in accordance with the terms of a Forest Service or Bureau of Land Management timber sale contract which results in notification by a Contracting Officer that a contract has expired uncompleted or is terminated for cause; and

(2) The estimated value of the unscaled timber on scaled sales, or the estimated value of the timber outstanding on tree measurement sales, included in those terminated or expired contracts exceeds \$100,000, and

(3) Unpaid damages claimed by the Government remain outstanding prior to award of the new sale at issue and corrective action has not been taken to avoid future deficient performance.

(f) A subsequent final determination by the Contracting Officer or by a court of competent jurisdiction that a contract was improperly classified under the criteria in paragraph (e) of this section will result in the refund or credit of any unobligated portion of the amount of downpayment exceeding that required by paragraphs (c) and (d) and the limitations of paragraph (h) on application of downpayment shall no longer apply.

(g) Notwithstanding the provisions of paragraphs (c) and (d) of this section, a purchaser meeting the criteria of paragraph (e) of this section must make a minimum downpayment equal to 20 percent of the total advertised value of that sale, plus 40 percent of the total bid premium. This higher downpayment requirement applies throughout the National Forest System, except in those areas where the Chief of the Forest Service determines, before advertisement of the sale, that another downpayment rate is necessary to achieve the management objectives of the National Forest System.

(1) In calculating bid premiums for the downpayment requirement, the Forest Service shall not include the portion of the bid premium that offsets ineffective purchaser credit.

(2) To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustments.

(h) A purchaser subject to the additional downpayment requirements of paragraph (g) of this section cannot apply the amount deposited as a downpayment to other uses until:

(1) *On scaled sales*, the estimated value of the unscaled timber is equal to

or less than the amount of the downpayment; or

(2) *On tree measurement sales*, the estimated value remaining to be cut and removed as shown on the timber sale statement of account is equal to or less than the amount of the downpayment.

(i) For the purpose of releasing funds deposited as downpayment by a purchaser subject to paragraph (f) of this section, the Forest Service shall compute the estimated value of timber as follows:

(1) *On scaled sales*, the estimated value of the unscaled timber is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been scaled of that species.

(2) *On tree measurement sales*, the estimated value of the timber outstanding (that not shown on the timber sale statement of account as cut and removed) is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been shown on the timber sale statement to have been cut and removed of the species. The current contract rate for each species is that specified in each Forest Service timber sale contract.

(j) In order to deter speculation, the Chief of the Forest Service may increase the period for retention of the downpayment for future contracts subject to such criteria as the Chief may adopt after giving the public notice and opportunity to comment.

[50 FR 41500, Oct. 11, 1985, as amended at 53 FR 33131, Aug. 30, 1988; 56 FR 36103, July 31, 1991]

§ 223.50 Periodic payments.

(a) For the purposes of this section, the following terms have the meaning given:

(1) *Total contract value* is the product of the estimated volume of the sale multiplied by the rates bid by the purchaser. Total contract value excludes required deposits and is determined at bid date.

(2) *Current contract value* is the sum of the products of the current contract rates and, in a scaled sale, estimated remaining unscaled volume or, in a