

§ 223.51

36 CFR Ch. II (7-1-08 Edition)

tree measurement sale, the estimated remaining quantities by species of included timber meeting utilization standards.

(3) *Normal operating season* is the period so specified in a timber sale contract.

(4) *Periodic payment(s)* is/are amount(s) specified in a timber sale contract that a purchaser must pay by the periodic payment determination date(s) unless reduced by amounts paid as stumpage for volume removed.

(5) *A periodic payment determination date* is a date specified in a timber sale contract upon which the Forest Service will compare the payments made by the timber sale purchaser for timber charges (stumpage), exclusive of required deposits, with the periodic payment amount required as of that date in the contract.

(b) Except for lump sum sales, each timber sale contract of more than one full normal operating season shall provide for periodic payments. The number of periodic payments required will be dependent upon the number of normal operating seasons within the contract, but shall not exceed two such payments during the course of the contract. Periodic payments must be made by the periodic payment determination date, except that the amount of the periodic payment shall be reduced to the extent that timber has been removed and paid for by the periodic payment determination date. Should the payment fall due on a date other than normal billing dates, the contract shall provide that the payment date will be extended to coincide with the next timber sale statement of account billing date.

(1) At a minimum, each such contract shall require an initial periodic payment at the midpoint between the specified road completion date and the termination date. If there is no road construction requirement, payment shall be due at the midpoint between award date and the termination date.

(2) Contracts exceeding 2 full operating seasons shall require an additional periodic payment to be due no later than the midpoint of the last normal operating season or 12 months from the initial periodic payment whichever date is first.

(c) Each timber sale contract shall require the initial periodic payment to equal 35 percent of the total contract value or 50 percent of the bid premium, whichever is greater. The amount of this periodic payment will be reduced if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value.

(d) Where an additional periodic payment is required by the timber sale contract, this payment will equal 75 percent of the total contract value. The amount of this periodic payment will be reduced if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value.

(e) Dates for determining future periodic payments shall be adjusted as follows:

(1) When contract term adjustments are granted under § 223.46,

(2) When market-related contract term additions are granted under § 223.52,

(3) When urgent removal extensions are granted under § 223.53, or

(4) When extensions in the substantial overriding public interest are granted under § 223.115(b). Periodic payment determination dates shall not be adjusted when a contract term extension is granted under the general authority of § 223.115(a).

(f) In accordance with 36 CFR 223.52(a), no contract executed before July 31, 1991, shall be modified to allow for market-related contract term additions unless the purchaser makes a written request to the Contracting Officer by December 1, 1991, for a simultaneous modification implementing the periodic payment requirements of this section. The midpoint payment clause in contracts executed before July 31, 1991, is not the "periodic payment requirement" mandated by 36 CFR 223.52(a).

[56 FR 36104, July 31, 1991, as amended at 56 FR 55822, Oct. 30, 1991; 67 FR 70169, Nov. 21, 2002]

§ 223.51 Bid monitoring.

Each Regional Forester shall monitor bidding patterns on timber sales to determine if speculative bidding is occurring or if Purchasers are bidding in

Forest Service, USDA

§ 223.52

such a way that they would be unable to perform their obligations under the timber sale contract. A Regional Forester shall propose to the Chief changes in service wide timber sale procedures, as they appear necessary, to discourage speculative bidding.

[50 FR 41500, Oct. 11, 1985]

§ 223.52 Market-related contract term additions.

(a) *Contract provision.* (1) Except as provided in paragraph (a)(3) of this section, each timber sale contract exceeding 1 year in length shall contain a provision for the addition of time to the contract term, under the following conditions:

(i) The Chief of the Forest Service has determined that adverse wood products market conditions have resulted in a drastic reduction in wood product prices applicable to the sale; and

(ii) The purchaser makes a written request for additional time to perform the contract.

(2) The contract term addition provision of the contract must specify the index to be applied to each sale. The Forest Supervisor shall determine, and select from paragraph (b) of this section, the index to be used for each sale based on the species and product characteristics, by volume, being harvested on the sale. The index specified shall represent more than one-half of the advertised volume.

(3) A market-related contract term addition provision shall not be included in contracts where the sale has a primary objective of harvesting timber subject to rapid deterioration.

(b) *Determination of drastic wood product price reductions.* (1) The Forest Service shall monitor and use Producer Price Indices, as prepared by the Department of Labor, Bureau of Labor Statistics (BLS), adjusted to a constant dollar base, to determine if market-related contract term additions are warranted.

(i) The Forest Service shall monitor and use only the following indices:

BLS producer price index	Index series	Index code
Hardwood Lumber	Commodity	0812
Softwood Lumber	Commodity	0811

BLS producer price index	Index series	Index code
Wood Chips	Industry	3211135

(ii) Preliminary index values will be revised when final index values become available, however, determination of a qualifying quarter will not be revised when final index values become available.

(2) For PPI index codes 0811 and 0812, the Chief of the Forest Service shall determine that a drastic reduction in wood prices has occurred when, for any 2 or more consecutive qualifying quarters, the applicable adjusted price index is less than 88.5 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter, following the contract award date, where the applicable adjusted index is more than 11.5 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. For PPI index code 3211135, the Chief of the Forest Service shall determine that a drastic reduction in wood prices has occurred when, for any 2 or more consecutive qualifying quarters, the adjusted price index is less than 85 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter, following the contract award date, where the adjusted index is more than 15 percent below the average of such index for the 4 highest of the previous eight calendar quarters. Qualifying quarter determinations will be made using the Producer Price Indices for the months of March, June, September, and December.

(3) A determination, made pursuant to paragraph (b)(2) of this section, that a drastic reduction in wood product prices has occurred, shall constitute a finding that the substantial overriding public interest justifies the contract term addition.

(c) *Granting market-related contract term additions.* When the Chief of the Forest Service determines, pursuant to this section, that a drastic reduction in wood product prices has occurred, the Forest Service is to notify affected