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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Modification of Contracts To Prevent Environmental Damage or To Conform to Forest Plans

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment combines two similar rules to establish one streamlined regulation for modifying timber sale contracts. The need for this technical amendment became apparent when the agency reviewed its regulations as part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Naylor, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090-6090, (202) 205-0858.

SUPPLEMENTARY INFORMATION: Section 6 of the Forest and Rangeland Renewable Planning Act of 1974 (16 U.S.C. 1600 *et seq.*) directs that contracts, permits, and other instruments for use of National Forest System lands be consistent with land management plans. Part 223 of Title 36 of the Code of Federal Regulations implements this direction by providing for modification of timber sale contracts and permits in § 223.39, Revision of contract conditions, and § 223.113, Modification to prevent environmental damage or to conform to forest plans. However, these provisions are redundant; the content of § 223.39 is largely repeated in § 223.113. Therefore, in order to streamline the regulations and eliminate any confusion caused by redundancy, this technical amendment removes and reserves § 223.39 and

makes minor revisions to § 223.113 to clarify and simplify the rule.

Section 223.39 states that timber sale contracts, permits, or other instruments longer than 2 years in duration shall provide for revision of contract terms to make them consistent with guidelines and standards developed to implement section 6 of the Forest Rangeland and Renewable Resources Planning Act of 1974, as amended, and with land management plans developed or revised thereunder. This regulation also provides for a rate redetermination to compensate for any differences in value after the contract changes are made. The revised § 223.113, like the current § 223.113, includes the substance of § 223.39 but removes the qualification that the legal instruments must be longer than two years because the two year requirement is not in compliance with the National Forest Management Act of 1976 (NFMA), which amended the Forest and Rangeland Renewable Planning Act of 1974. NFMA states that contracts, permits, and other instruments must be consistent with land management plans, but the act does not exempt from compliance contracts and permits that are less than two years in duration.

The revised § 223.113 is substantively the same as the current § 223.113. The revised § 223.113 provides that contracts, permits, and other instruments may be modified to prevent environmental damage or to make them consistent with amendments or revisions of land management plans adopted subsequent to award or issuance of a timber sale contract, permit, or other such instrument. The reference to "permits and other instruments" is added in the revised § 223.113 in order to mirror the language of NFMA and to incorporate the language of § 223.39. Revised § 223.113, like the current § 223.113, also provides for compensation in the event of contract modification. The language relating to compensation, which can include a rate redetermination, is simplified in the amended rule by referring to timber sale contract provisions and § 223.60 of this subpart, the regulations for determining fair market value.

The revised regulation does not include the statement: "Modifications shall be subject to the purchaser's valid existing rights," which is in the current

§ 223.113. This language is superfluous and confusing because the contract already sets forth the parties' rights and, therefore, this statement does not clarify nor add to the parties' rights under the contract.

Compliance With Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(B) of the Administration Procedure Act, the Forest Service has determined that publication of this rule for notice and comment prior to adoption is unnecessary. The final rule makes minor technical changes to streamline and clarify rules at 36 CFR part 223 so that these regulations conform to the Forest and Rangeland Renewable Planning Act of 1974. This rulemaking does not make any significant substantive changes to the administration of timber sale contracts, permits, or other legal instruments when they need to be modified in order to prevent environmental damage or to comply with the Forest and Rangeland Renewable Planning Act of 1974.

Regulatory Impact

This technical rule has no substantive revisions and is not subject to review under USDA procedures or Executive Order 12866 on Regulatory Planning and Review. As a technical amendment, this final rule is exempt from further analysis under Executive Order 12630, Takings Implications; the Unfunded Mandate Reform Act of 1995; the Paperwork Reduction Act of 1995; and Executive Order 12778, Civil Justice Reform.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting requirements, Timber sales.

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

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation 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. 620-620h, unless otherwise noted.

§ 223.39 [Removed and Reserved]

2. Remove and reserve § 223.39

§ 223.113 [Revised]

3. Revise § 223.113 to read as follows:

§ 223.113 Modification of contracts to prevent environmental damage or to conform to forest plans.

Timber sale contract, permits, and other such instruments may be modified to prevent environmental damage or to make them consistent with amendments or revisions of land and resource management plans adopted subsequent to award or issuance of a timber sale contract, permit, or other such instrument. Compensation to the purchaser, if any, for modifications to a contract shall be made in accordance with provisions set forth in the timber sale contract. When determining compensation under a contract, timber payment rates shall be redetermined in accordance with appraisal methods in § 223.60 of this subpart.

Dated: November 13, 1996.

David G. Unger,
Associate Chief.

[FR Doc. 96-31232 Filed 12-6-96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 131**

[FRL-5659-9]

RIN 2040-AC78

Water Quality Standards for Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes water quality standards applicable to waters of the United States in the Commonwealth of Pennsylvania. EPA is promulgating this rule pursuant to Section 303(c)(4) of the Clean Water Act (CWA). This rule establishes an antidegradation policy for Pennsylvania, making available additional water quality protection than currently provided by the Commonwealth's antidegradation policy including the "Special Protection Waters Program," which EPA disapproved in part in 1994.

EFFECTIVE DATE: January 8, 1997.

ADDRESSES: This action's administrative record is available for review and copying at Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107. For access to the docket materials, call Denise Hakowski at 215-566-5726 for an appointment. A reasonable fee will be charged for copies.

FOR FURTHER INFORMATION CONTACT:

Evelyn S. MacKnight, Chief, PA/DE Branch, 3WP11, Office of Watersheds, Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA, telephone: 215-566-5717.

SUPPLEMENTARY INFORMATION:**A. Potentially Affected Entities**

This action will establish a Federal antidegradation policy applicable to waters of the United States in the Commonwealth of Pennsylvania. Entities potentially affected by this action are those dischargers (e.g., industries or municipalities) that may request authorization for a new or increased discharge of pollutants to waters of the United States in Pennsylvania. This list is not intended to be exhaustive, but rather a guide for readers regarding entities potentially affected by this action. Other types of entities not listed could also potentially be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

Under section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA), States are required to develop water quality standards for waters of the United States within the State. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c). States are required to submit the results of their triennial review of their water quality standards to EPA. EPA reviews the submittal and makes a determination whether to approve or disapprove any new or revised standards.

Minimum elements which must be included in each State's water quality standards regulations include: use designations for all waterbodies in the State, water quality criteria sufficient to protect those designated uses, and an antidegradation policy consistent with EPA's water quality standards regulations (40 CFR 131.6). States may also include in their standards policies generally affecting the standards' application and implementation (40 CFR 131.13). These policies are subject to EPA review and approval (40 CFR 131.6(f), 40 CFR 131.13).

This rule involves antidegradation. 40 CFR 131.12 requires States to adopt antidegradation policies that provide three levels of protection of water quality, and to identify implementation methods. Under 40 CFR 131.12(a)(1), referred to as Tier 1, existing instream

water uses and the level of water quality necessary to protect the existing uses are to be maintained and protected. Existing uses are those uses that existed on or since November 28, 1975. Tier 1 represents the "floor" of water quality protection afforded to all waters of the United States. Under 40 CFR 131.12(a)(2), referred to as Tier 2 or High Quality Waters, where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint sources.

Finally, under 40 CFR 131.12(a)(3), known as Tier 3 or Outstanding National Resource Waters (ONRWs), where a State determines that high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Section 303(c)(4) (33 U.S.C. 1313(c)(4)) of the CWA authorizes EPA to promulgate water quality standards for a State when EPA disapproves the State's new or revised water quality standards, or in any case where the Administrator determines that a new or revised water quality standard is needed in a State to meet the CWA's requirements.

In June 1994, EPA Region 3 disapproved portions of Pennsylvania's standards pursuant to Section 303(c) of the CWA and 40 CFR 131.21, including portions of the antidegradation policy, known in Pennsylvania as the Special Protection Waters Program, relating to protection of existing uses, criteria used to define High Quality Waters and protection afforded to Exceptional Value Waters as equivalent to ONRWs. For a detailed review of the correspondence and discussions between the Pennsylvania Department of Environmental Protection ("Pennsylvania" or "the Department") resulting from EPA's disapproval, see