

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; correcting amendment.

SUMMARY: This rule corrects the direct final rule published on January 4, 2006. This final rule amends the current regulation in order to make it consistent with section 329 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 ("Act") and section 105 of the Tongass Timber Reform Act ("TTRA"). Section 329 of the Act placed certain restrictions and requirements upon the Secretary of Agriculture ("Secretary") pertaining to the construction of roads for the sale of National Forest timber and other forest products. As of the effective date of the section, April 1, 1999, the Forest Service implemented necessary changes to the timber sale program and revised the Forest Service Manual and Handbook. However, revisions to relevant sections of the Code of Federal Regulations were not made. This final rule makes technical amendments to the subpart to make it consistent with section 329. Additionally, this final rule revises Subpart B to make it consistent with section 105 of the TTRA, which eliminated a restriction applicable to timber sales on National Forest lands in the State of Alaska.

DATES: This final rule is effective March 8, 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: On January 4, 2006, the Forest Service published a direct final rule making minor, technical changes to 36 CFR part 223, subpart B (71 FR 522). This publication corrects that rule by republishing it with the following necessary modifications on page 523, in the second column: In § 223.41, the word "will" is replaced by "shall." In § 223.82, the phrase "a total estimated value" is changed to "total estimated construction costs." In § 223.83, enumerated paragraph (a)(16) is revised by removing the phrase "for each sale

described in § 223.82(b)" and the previous inclusion of (a)(17)(ii) is removed because there is no change to the prior rule. The preamble and the regulatory certifications are also revised as appropriate. Additionally, this publication contains a Good Cause Statement, which explains the Forest Service's decision to publish this direct final rule without notice and comment.

Background

The sale of National Forest timber or other forest products often involves the construction of roads necessary to access the land covered by the sale. If a particular sale requires road construction, then the Forest Service specifies this component in the notice of sale and offers further information to potential bidders in the prospectus. Road construction costs can be significant, especially for smaller timber purchasers. Under section 14(i) of the National Forest Management Act of 1976 (Pub. L. 94-588), a purchaser that qualified as a "small business concern" under the Small Business Act (15 U.S.C. 631, *et seq.*) had the right to elect to have the Forest Service build the roads specified in the notice of sale, if the estimated cost of such roads exceeded \$20,000. Section 329(c) of the Act (16 U.S.C. 535a(c)) essentially re-enacted existing law, but raised the monetary threshold to \$50,000 or more. Because 36 CFR part 223, subpart B reflects the previous monetary threshold of \$20,000, revisions are necessary to make the regulation consistent with the higher threshold contained in the Act. Accordingly, this final rule revises 36 CFR 223.41 and 36 CFR 223.82 to reflect construction costs of \$50,000 or more.

Under prior law, the foregoing right to elect road construction by the Forest Service was inapplicable to timber sales on National Forest lands in the State of Alaska. However, section 105 of the TTRA eliminated this restriction. Because the existing regulation contains the obsolete restriction, revision is necessary. This final rule deletes the restriction from 36 CFR 223.82.

This final rule also revises certain sections of 36 CFR part 223, subpart B that refer or relate to purchaser credit. Section 329(a) of the Act (16 U.S.C. 535a(a)) eliminated purchaser credit, prospectively, by prohibiting the Secretary from providing effective credit for road construction to any purchaser as of April 1, 1999 (the effective date of the section). Accordingly, as of April 1, 1999, the Forest Service discontinued the use of purchaser credit for appraised value determinations and in timber sale contracts. This was accomplished by making changes in Forest Service

Manual and Handbook procedures and by eliminating timber sale contract references on all sales after that date. However, corresponding revisions to 36 CFR part 223, subpart B were not made. Accordingly, this final rule eliminates references to purchaser credit contained in 36 CFR 223.82(b) and 36 CFR 223.83(a) and in the heading of 36 CFR 223.84. Additionally, this final rule revises 36 CFR 223.63 to reflect the Forest Service's method of determining the appraised value for a sale in light of the elimination of purchaser credit. (Estimated road construction costs are factored into the appraised value for the sale.)

It is important to note that this final rule intentionally does not revise, or eliminate all sections of Subpart B that refer or relate to purchaser credit. Because of a savings provision contained at section 329(g)(2) of the Act (16 U.S.C. 535a(g)(2)), the prohibition of purchaser road credit did not eliminate effective credit earned under a contract resulting from a sale noticed before the section's effective date, or credit otherwise earned before such date. Accordingly, the regulation retains references that may be useful for administering purchaser credit that exists by virtue of the savings provision.

Good Cause Statement

The Administrative Procedure Act ("APA") exempts certain rulemakings from its public notice and comment requirements. For example, the APA allows agencies to promulgate rules without public notice and comment when an agency, for good cause, finds that notice and public comment are "impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(3)(B)).

The Department finds that good cause exists to exempt this rulemaking from public notice and comment pursuant to 5 U.S.C. 553(b)(3)(B). First, this action makes only minor and purely technical changes to existing regulations. Second, the modifications made in this final rule are mandated by enactment of section 329 of the Act and section 105 of the TTRA and the Department has no discretion in implementing them. This final rule merely updates 36 CFR part 223, subpart B to comply with the terms of law and removes certain obsolete references to purchaser credit. Accordingly, the Department finds that good cause exists and that public notice and comment are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B).

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this rule is not a significant regulatory action and is not subject to Office of Management and Budget ("OMB") review. The technical revisions of 36 CFR part 223, subpart B accomplished through this rule will not have an annual effect of \$100 million or more on the economy. This rule will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. This rule will not interfere with an action taken or planned by another agency, but could 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 sale harvests to State and local governments will not change. 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. As noted above, this rule makes only minor, technical changes to achieve consistency with section 329 of the Act, section 105 of the TTRA, and current Forest Service Handbook and Manual procedures that were implemented as of April 1, 1999 and that did not, at that time, require OMB review. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Regulatory Flexibility Act

This final 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. Under Forest Service Manual and Handbook procedures implemented in response to section 329 of the Act, timber purchasers finance permanent road construction prior to the harvest (except in the case where a qualified small business concern elects Forest Service construction). Because road construction costs are factored into the appraised value for the sale, purchasers recover their road construction expenditures as they pay for harvested timber. This rule makes only technical changes to achieve consistency with section 329 of the Act, section 105 of the

TTRA, and current Forest Service procedures.

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 final 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 government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

This final rule accomplishes minor, technical changes to 36 CFR part 223, subpart B to make the regulation consistent with section 329 of the Act, section 105 of the TTRA, and current Forest Service procedures. Thus, it has no direct effect on the amount, manner, or location 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 final 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 Constitutionally-protected private property. There are no Constitutionally-protected private property rights to be affected because this rule will not alter or affect existing timber sale contracts. Any new contract provisions would be used only prospectively in new contracts.

Civil Justice Reform

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

The minor, technical revision accomplished through this final rule does not contain or establish any record keeping 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 the implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The Agency has considered this final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Agency has made a preliminary assessment that the rule conforms with the federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this rule, the Agency will consider if any additional consultations will be needed with the State and local governments.

Energy Effects

This final rule has been reviewed under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." It has been determined that this rule does not constitute a significant energy action as defined in the Executive Order.

Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, Highways and roads, National forests, Public lands, Reporting and record keeping, and Transportation.

■ 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

Subpart B—Timber Sale Contracts

■ 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.

■ 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 shall 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. Revise § 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 total estimated construction costs of \$50,000 or more, the advertisement shall also include:

* * * * *

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

§ 223.83 Contents of prospectus.

(a) * * *

(16) The estimated road construction cost 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.

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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: March 2, 2006.

Dale N. Bosworth,

Chief.

[FR Doc. 06–2161 Filed 3–7–06; 8:45 am]

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DEPARTMENT OF COMMERCE

37 CFR Part 404

[Docket No. 040305084–5095–02]

RIN 0692–AA19

Assistant Secretary for Technology Policy; Licensing of Government Owned Inventions

AGENCY: Assistant Secretary for Technology Policy, Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The Assistant Secretary for Technology Policy, DOC issues this final rule with respect to the granting of licenses by Federal agencies on Federally owned inventions. This rule is intended to incorporate changes made by the Technology Transfer Commercialization Act of 2000 and streamlines the licensing procedures to focus primarily on statutory requirements. This final rule responds to comments received in response to a proposed rule published on January 7, 2005 (70 FR 1403).

DATES: This rule is effective on April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. John Raubitschek, Patent Counsel, at telephone: (202) 482–8010 and e-mail: JRaubits@doc.gov.

SUPPLEMENTARY INFORMATION: Under the authority of 35 U.S.C. 208 and the delegation by the Secretary of Commerce in section 3(d)(3) of DOO 10–18, the Assistant Secretary of Commerce for Technology Policy may issue revisions to 37 CFR part 401.

Background

The Technology Transfer Commercialization Act of 2000 (TTCA) made several changes to the law for licensing Government-owned inventions in 35 U.S.C. 207 and 209,

which are implemented in this rule. This rule also streamlines the licensing procedures to focus primarily on statutory requirements. DOC published a proposed rule in the **Federal Register** on January 7, 2005 (70 FR 1403) seeking public comment on changes to §§ 404.1, 404.3, 404.4, 404.5, 404.6, 404.7, 404.9, 404.10, 404.11, 404.12 and 404.14. The comment period closed on February 7, 2005. The basis for this rulemaking was described in the preamble to the proposed rule and is not repeated here.

Summary of Public Comments Received by DOC in Response to the January 7, 2005 Proposed Rule and DOC's Response to Those Comments

DOC received seven responses to the request for comments. Four responses were from Federal government agencies. One was from a not-for-profit institution and two were from private individuals. Several responses made more than one comment. An analysis of the comments follows.

Comment: One comment suggested adding “formal” before “patent disputes” in § 404.1(c) to narrow the exemption from the licensing requirements in Part 404.

Response: DOC doubts that an agency will use this exemption to resolve a trivial or contrived dispute. Further, the addition of the word “formal” may not avoid this problem.

Comment: One comment suggested adding “,for example” after “protectable” in § 404.3(a).

Response: This definition is taken from 35 U.S.C. 201(d) and should remain as written for the sake of consistency.

Comment: Two comments noted a typographical error in § 404.5(a)(2) that “license” should be “licensee.”

Response: DOC agrees with the comments and has made the suggested change.

Comment: One comment suggested replacing “However” in 404.5(a)(2) with “For example.”

Response: No change has been made in response to this comment. The stated bases for waiving the domestic manufacturing requirement are not merely examples but the only reasons for the agency making the waiver.

Comment: One comment was concerned that § 404.5(a)(2) required an agency to find one or more companies which would refuse a license with the domestic manufacturing requirement in order to grant a waiver of such a requirement. The comment suggested adding “or no such candidates are known.”

Response: The waiver language was taken from 35 U.S.C. 204, which has