

American business as a whole necessitates additional time for industry to focus on the complexities of the proposed rule. DISCUS further asserted that the regulations in question have a major impact on the requirements to operate distilled spirits plants and that the opportunity to streamline and modernize those regulations is of critical importance, particularly in light of today's economy.

In response to this latest request, TTB extends the comment period for Notice No. 83 for an additional 90 days, which together with the original 90-day comment period and the first 90-day extension of the comment period will leave Notice No. 83 open to public comment for 9 months. We believe this time period will allow industry members and the public to fully consider the proposals outlined in Notice No. 83. Therefore, comments on Notice No. 83 are now due on or before February 3, 2009.

*Drafting Information:* Gabriel J. Hiza of the Regulations and Rulings Division drafted this notice.

Signed: October 22, 2008.

**William H. Foster,**

*Assistant Administrator, Headquarters Operations.*

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**BILLING CODE 4810-31-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 223

**RIN 0596-AC80**

#### **Sale and Disposal of National Forest System Timber; Downpayment and Periodic Payments**

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Forest Service is proposing to amend the Downpayment rule and the Periodic payments rule to reflect changes in contracting procedures adopted in the April 2004 and June 2006 timber sale contracts. These changes reflect stewardship contracting authorities, and reflect changes in forest products markets since these rules were adopted in 1991. The proposed changes also would remove obsolete references and procedures; make downpayments and periodic payments optional for stewardship contracts; allow downpayment and periodic payment amounts to be recalculated when contracts receive a

rate redetermination; revise the procedure for releasing the downpayment; and would allow downpayments to be temporarily reduced when Forest Service authorizes certain additions of contract time.

The intended effect of this proposed rule is to protect the Government's financial security while providing financial relief to timber purchasers during periods when forest products prices drastically decline or purchasers receive additional contract time for periods when they are not expected to operate.

**DATES:** Comments must be received in writing by December 29, 2008.

**ADDRESSES:** Mail written comments to the Director of Forest Management, MAIL STOP 1105, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250-1105; via e-mail to [downpayment@fs.fed.us](mailto:downpayment@fs.fed.us); or via facsimile to (202) 205-1045. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this proposed rule in the office of the Director of Forest Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205-0893 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lathrop Smith, Forest Management, (202) 205-0858.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The current downpayment regulation (36 CFR 223.49) and periodic payments regulation (36 CFR 223.50) were adopted on July 31, 1991, (56 FR 36099) to protect the Government's financial interests, reduce speculative bidding, encourage purchasers to harvest timber in a timely manner and to comply with section 2d of the Federal Timber Contract Payment Modification Act (Pub. L. 98-478, 98 Stat 2213; 16 U.S.C. 618) (Buy-out Act).<sup>1</sup>

Under the current downpayment regulations, a purchaser must deposit cash in the timber sale account at the time of sale award equal to 10 percent of the total advertised value of the sale plus 20 percent of the bid premium. This cash is held by the Forest Service and cannot be used by the purchaser for

any other purpose until (1) on scaled sales stumpage representing 25 percent of the total bid value has been charged and paid for, or (2) on tree measurement sales until stumpage value representing 25 percent of the total bid value is shown on the timber sale statement of account to have been cut, removed, and paid for (36 CFR 223.49(d)).

Under the current periodic payments regulation, periodic payments are "amounts specified in the contract that a purchaser must pay by the periodic payment determination date(s) unless reduced by amounts paid as stumpage for volume removed." (36 CFR 223.50(a)(4)). The initial periodic payment is equal to 35 percent of the total contract value or 50 percent of the bid premium, whichever is greater. Where an additional periodic payment is required by the contract, the payment will equal 75 percent of the total contract value. The amount of the periodic payment(s) will be reduced if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value. (36 CFR 223.50(c)).

#### **Proposed Amendments to the Downpayment Requirements**

The following changes are proposed. Sections 223.49 and 223.50 will be reformatted accordingly.

1. In § 223.49(a)(2), the definition for *ineffective purchaser credit* would be removed. Section 329 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (as contained in section 101(e) of division A of Public Law 105-277; 16 U.S.C. 535a) directed, among other things, that the procedure known as "purchaser credit" be eliminated no later than April 1, 1999. The use of purchaser credit was discontinued in timber sales advertised after March 31, 1999 by making changes in timber sale contract provisions (File code 2450 letter to Regional Foresters dated February 19, 1999). As of March 30, 2008, only \$6,000 worth of ineffective purchaser credit was being used to cover downpayment requirements. Because no additional purchaser credit is being earned, references to ineffective purchaser credit in the downpayment regulation are obsolete and unnecessary.

2. In § 223.49(b), the option of using effective purchaser credit would be eliminated for the same reasons cited above, and to make downpayments for stewardship contracts optional. Section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (as contained in division F of Pub. L. 108-7; 16 U.S.C. 2104 Note) (Stewardship Contracting Act),

<sup>1</sup> Section 2(d) provides that "[e]ffective January 1, 1985, in any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash down-payment at the time the contract is executed and periodic payments to be made over the remaining period of the contract."

authorizes the Forest Service, until September 30, 2013, to enter into stewardship contracting projects for up to 10 years with private persons or public or private entities, by contract or by agreement, to perform services to achieve land management goals for the national forests or public lands that meet local and rural community needs. In addition to other items, the Stewardship Contracting Act authorizes the Forest Service to apply the value of timber or other forest products removed under a stewardship project as an offset against the cost of service work performed under the contract or agreement.

On October 5, 2004, the Forest Service implemented interim Integrated Resource Timber Contracts FS-2400-13 and FS-2400-13T for use in stewardship end result contracting. The Forest Service awards stewardship contracts on the basis of best value as described in the Federal Acquisition Regulations. (FSH 2409.19, chapter 60). Awarding stewardship contracts on a best value basis virtually eliminates the potential for speculative bidding because factors other than price are used to determine best value.

Further, offsetting the value of timber against the cost of service work within a stewardship contract accomplishes the dual functions of providing financial security to the Government and establishing incentive for the contractor to harvest timber and perform the service work in a timely manner. In addition, the government's financial security is safeguarded on most stewardship contracts without a downpayment. Specifically, the government's risk of financial loss is minimized if the contractor performs the service work before harvesting timber. Alternatively, the contractor must pay in advance for any timber cut prior to performing service work. For these reasons, the Forest Service has adopted the policy that most stewardship contracts do not need a downpayment.

However, there can be exceptions. For example, if the value of the timber greatly exceeded the costs of the services, a downpayment may be needed to encourage the contractor to harvest the timber in a timely manner. Forest Service Handbook (FSH) 2409.19, chapter 60, currently requires the contracting officer to determine what bonds will be required for individual stewardship contracts. That chapter will be amended to include determining whether a downpayment should be required on a stewardship contract.

3. In § 223.49(c) the obsolete references to converting units of

measure other than board feet to board feet would be deleted, and a requirement would be added to include recalculating the amount of the downpayment when stumpage rates are redetermined. The downpayment amount is calculated as a percentage of sale value without regard to unit of measure for the timber. Timber sale contracts contain procedures to redetermine stumpage rates for (1) Environmental modification, (2) catastrophic damage, (3) market change that occurs after Forest Service orders a suspension or delay, and (4) a market change emergency rate redetermination. None of these stumpage rate redetermination procedures includes a process for concurrently recalculating the amount of the downpayment or periodic payments. The amount of cash deemed necessary to protect the Government's financial security and encourage purchasers to harvest timber in a timely manner is based on a percentage the contract's value at time of award. Therefore, when the contract value changes substantially as a result of a stumpage rate redetermination, the downpayment and periodic payments should also be recalculated commensurate with the change in sale value. The Government's financial security is maintained because it retains the same percentage of total contract value before and after the rates are redetermined.

4. Section 223.49(d) would be amended to clarify when the downpayment can be released. In § 223.49(d), purchasers of scaled sales cannot apply the amount deposited as a downpayment to cover other obligations on the sale until 25 percent of the total bid value of the sale has been charged and paid for; on tree measurement sales, the purchaser cannot apply the downpayment to cover other obligations until stumpage value representing 25 percent of the total bid value of the sale shown on the timber sale statement of account to have been cut, removed and paid for. On sales subject to stumpage rate adjustment, prices can decline so much that the amount of the downpayment can exceed the value of timber remaining to be harvested without triggering the release of the downpayment. For example: Sale A contains 4000 ccf of timber advertised at \$50/ccf and bid up to \$70/ccf for a total sale bid value of \$280,000. Pursuant to § 223.49(c) the downpayment amount is \$36,000 and pursuant to § 223.49(d), \$70,000 of timber must be charged and paid for before the purchaser can apply the amount deposited as the downpayment to cover other obligations

on the sale. As a result of stumpage rate adjustments in a rapidly declining market current contract rates de-escalate to \$14/ccf for a total contract value of \$56,000. The purchaser harvests 2000 ccf at \$14/ccf and pays \$28,000. The Forest Service is still holding the \$36,000 downpayment even though it is greater than the \$28,000 remaining value of the sale.

The Forest Service never intended to hold a downpayment greater than the value of timber remaining to be harvested which is evidenced by the following: (1) § 223.49(d), which specifies that for lump sum sales the downpayment may be applied to payment for release of the single payment unit, and (2) § 223.49(h), which authorizes release of the downpayment for sales subject to the additional downpayment requirement in § 223.49(g) when the value of timber remaining to be harvested is equal to or less than the amount of the downpayment. The amendment to § 223.49(d) will allow a downpayment to be released when it equals or exceeds the value of timber remaining to be harvested. Section 223.49(d)(1) would be added to address the procedure on scaled sales and § 223.49(d)(2) would be added to address the procedure on tree measurement sales.

5. Amend § 223.49(g) to allow the downpayment amount on contracts subject to § 223.49(e)'s higher downpayment requirement to be recalculated when stumpage rates are redetermined for the same reasons cited in the description of changes for § 223.49(c).

6. Remove § 223.49(g)(1) to eliminate the obsolete reference to ineffective purchaser credit.

7. Remove § 223.49(g)(2) to eliminate obsolete references to converting units of measure other than board feet to board feet for the same reasons cited in the description of changes for § 223.49(a)(2).

8. Add § 223.49(k) to allow a temporary reduction of downpayments. Timber sales on contract forms dated April 2004 and later contain provisions for temporarily reducing the amount of the downpayment when Forest Service orders a delay or interruption of the contract for 30 days or more when the contract would be operating but for the order. That procedure went through a public review process in 2004 (69 FR 25367), and is included in the proposed § 223.49(k). This amendment proposes expanding that procedure to include when a purchaser's scheduled operations are delayed or interrupted for 30 consecutive days or more for any of the following reasons: (1) Forest Service

requests or orders purchaser to delay or interrupt operations for reasons other than breach; (2) a contract term addition pursuant to purchaser shifting operations to a sale designated by the Forest Service as in urgent need of harvesting; or (3) an extension of the contract term authorized upon a determination of substantial overriding public interest (SOPI), including a market-related contract term addition (MRCTA), or urgent removal contract term extension under 36 CFR 223.53. During the qualifying period of delay, interruption, or extension, the downpayment may be reduced to \$1000 or two (2) percent of the downpayment amount stated in the contract, whichever is greater. Upon purchaser's receipt of the bill for collection and written notice from the contracting officer that the basis for the delay or interruption no longer exists, the purchaser shall restore the downpayment to the full amount stated in the contract within 15 days after the date the bill for collection is issued. Purchaser shall not conduct operations until the downpayment amount stated in the contract is fully restored.

Under normal market conditions, purchasers have an incentive to harvest enough timber to release the downpayment; that is not always the case when forest products markets have drastically declined. Although the Forest Service does not require purchasers to operate sales receiving additional time pursuant to a SOPI, the current regulation requires purchasers to maintain their full downpayment during a SOPI extension. Requiring purchasers to maintain their full cash downpayment as an inducement to operate a sale receiving additional time pursuant to a SOPI, or because the Forest Service requested or authorized a purchaser to harvest other timber in more urgent need of harvesting is unnecessary. In addition, the Forest Service does not believe that the temporary downpayment reductions allowed by § 223.49(k) will impact the regulation's effectiveness in reducing speculative bidding.

Further, the Forest Service has determined that the benefits of temporarily reducing downpayments under § 223.49(k) outweigh the potential increased risks to the government's financial security. First, the Forest Service believes that temporarily reducing downpayments on sales that the Agency requested or ordered be interrupted or delayed minimizes the Agency's potential financial liability under the contract. Second, allowing purchasers to temporarily reduce downpayments when they shift their

operations to other timber designated as in urgent need of harvesting may result in purchasers buying urgent need timber that otherwise would not be sold. Finally, allowing purchasers to temporarily reduce downpayments on contracts extended by a SOPI determination may help purchasers and the Forest Service meet the challenges associated with drastic declines in forest products markets, which have become apparent during the current prolonged softwood and hardwood lumber market declines. Following is an example showing how both parties can benefit from a temporary reduction in downpayment on sales receiving a SOPI extension pursuant to the MRCTA regulation.

When a purchaser harvests a sale, the downpayment is released and the purchaser receives revenue from selling or processing the timber. The purchaser uses some of that cash to cover the bid guarantee and downpayment on a new sale that will be operated in the future. Presently that cash flow is interrupted when harvesting activities are put on hold because the sale is receiving MRCTA to allow time for market conditions to improve. The cash tied up covering the downpayment and lack of revenue being generated from the inactive sale dries up the cash needed to buy a new sale. This leads to the Government not receiving a bid on a new sale that is offered at prices reflecting the depressed market. The purchaser can't operate the high priced sale receiving MRCTA without suffering losses and can't afford to buy a new less expensive sale that could be operated. With its revenue stream broken, the purchaser starts laying off workers and has logging equipment repossessed as payments fall behind. By the time market conditions improve the purchaser has lost the ability to complete the sale that had received the MRCTA and defaults. Defaults are costly for the Government to process and often lead to loss of industry infrastructure needed to accomplish forest management objectives in a cost effective manner and industry infrastructure needed for dependent communities. The Government can apply the downpayment it is still holding towards default damages but the purchaser is now gone and not available to buy and harvest future sales. But the current depressed market conditions aren't affecting just one purchaser; they are affecting virtually all purchasers. While many purchasers will be able hold on until market conditions improve, many will not. As those numbers increase, there will be an

increase in the number of sales not receiving any bids. The costs of completing forest management work such as treating fuels in a Wildland Urban Interface area will increase if that work has to be performed with a service contract that generates no offsetting revenue to the Government. Temporarily reducing downpayments as proposed will help a purchaser's cash flow and potentially head off the drastic economic chain of events described above. This won't prevent all purchasers from failing or prevent all contracts from defaulting during drastic market declines. But, the amount of financial security the Government may forgo by temporarily reducing downpayments on contracts that ultimately default will be more than offset by the economic benefits derived from the increased number of contracts that don't default because of helping purchasers with their cash flow.

#### **Proposed Amendments to the Periodic Payment Requirements**

1. Section 223.50(b) would be amended to clarify that periodic payments are not required for stewardship contracts for the same reasons that downpayments are not required for stewardship contracts.

2. Section 223.50(f) would be amended to remove obsolete contract modification procedures and add procedures for recalculating the amount of the periodic payment(s) following a rate redetermination authorized under the contract. The obsolete procedures being removed required purchasers of pre-1991 contracts to make a written request by December 31, 1991, to receive market-related contract term additions. The addition of procedures for recalculating the amount of the periodic payment(s) following a rate redetermination are for the same reasons as cited for § 223.49(c) above.

#### **Conclusion**

The proposed rule will modify the downpayment regulation (36 CFR 223.49) and the periodic payments regulation (36 CFR 223.50) to provide financial relief to timber purchasers during times of significant market declines. The small amount of financial security the Government may forgo by temporarily reducing downpayments on contracts that ultimately default will be more than offset by the economic benefits derived from the increased number of contracts that don't default because of helping purchasers with their cash flow.

The proposed rule will add flexibility to the regulations on downpayment and periodic payments for stewardship sales

consistent with existing Forest Service policy. Finally, the proposed rule will eliminate out of date references to purchaser credit and to modifying contracts awarded prior to July 1, 1991.

### Regulatory Certifications

#### *Regulatory Impact*

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is not a significant regulatory action and is not subject to OMB review. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local Governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. This rule consists of technical administrative changes to regulations affecting the administration of commercial timber sales on National Forest lands. 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. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

#### *Regulatory Flexibility Act*

This proposed 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 rule will not have a significant economic impact on a substantial number of small entities. This rule makes only technical administrative changes to existing regulations affecting the administration of commercial timber sales on National Forest System land. The proposed rule imposes minimal additional requirements on all timber purchasers while providing economic relief from current market conditions. The information required is easily within the capability of small entities to produce.

#### *Unfunded Mandates Reform*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and Tribal Governments and the private sector. This proposed 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 proposed rule establishes uniform criteria to be followed when consideration is being given to temporarily reduce or change the downpayment requirements on a timber sale. Downpayments in timber sales have been required for many years and this requirement remains. Only the amount of downpayment is being revised and will be controlled at the local level by the Timber Sale Contracting Officer. Section 31.12 of Forest Service Handbook 1909.15 (February 15, 2007) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions" that do not significantly affect the quality of the human environment. The agency's preliminary 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. The intent of this proposed rule is to provide authority to allow for changes in the downpayment requirements while maintaining financial protection to the Government.

#### *No Takings Implications*

This 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 private property. There are no private property rights to be affected because the rule applies to commercial timber sale on National Forest lands.

#### *Civil Justice Reform Act*

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 it provisions.

#### *Controlling Paperwork Burdens on the Public*

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing

regulations at 5 CFR part 1320 do not apply.

### List of Subjects in 36 CFR Part 223

Administrative practice and procedures, Exports, Forests and forest products, Government contracts, National Forests, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Forest Service proposes to amend Part 223 of Title 36 of the Code of Federal Regulations as follows:

### PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

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.

#### Subpart B—[Amended]

2. Revise § 223.49 to read as follows:

#### § 223.49 Downpayments.

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

(3) *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.

(4) *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 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 at the time a timber sale contract is executed, except that a downpayment is not required for stewardship contracts unless the contracting officer determines that a downpayment is needed to ensure the Government's financial security.

(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. The amount of the downpayment shall be redetermined when contract rates for timber are redetermined under the terms of the contract for:

- (1) Environmental modification,
- (2) Catastrophic damage,
- (3) Market change, or
- (4) An emergency rate

redetermination.

For the purpose of recalculating the minimum downpayment, total advertised value shall be replaced with total redetermined value.

(d) A purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until:

(1) On scaled sales stumpage value representing 25 percent of the total bid value of the sale has been charged and paid for, or the estimated value of unscaled timber is equal to or less than the amount of the downpayment; or

(2) On tree measurement sales 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, or the estimated value of timber remaining to be cut, removed and paid for as shown on the timber sale statement of account is equal to or less than the amount of the downpayment, except that on 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) of this section and the limitations of paragraph (h) of this section 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. The amount of the downpayment shall be redetermined in accordance with this paragraph when contract rates for timber are redetermined under the terms of the contract for:

- (1) Environmental modification,
- (2) Catastrophic damage,
- (3) Market change, or
- (4) An emergency rate

redetermination.

For the purpose of redetermining the downpayment total advertised value shall be replaced with total redetermined value.

(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.

(k) The Forest Service may temporarily reduce the downpayment when a purchaser's scheduled operations are delayed, interrupted, or extended for 30 or more consecutive days for any of the following reasons:

(1) Forest Service requests or orders purchaser to delay or interrupt operations for reasons other than breach;

(2) A contract term addition pursuant to purchaser shifting operations to a sale designated by the Forest Service as in urgent need of harvesting; or

(3) An extension of the contract term authorized upon a determination of substantial overriding public interest, including a market-related contract term addition, or an urgent removal contract term extension under 36 CFR 223.53.

(l) During the qualifying period of delay, interruption, or extension that meets the conditions of paragraph (k) of this section, the Forest Service may reduce the downpayment to \$1000 or two (2) percent of the downpayment amount stated in the contract, whichever is greater. Upon purchaser's receipt of the bill for collection, and written notice from the contracting officer that the basis for the delay, interruption, or extension no longer exists, the purchaser must restore the downpayment to the full amount stated in the contract within 15 days after the date the bill for collection is issued. Purchaser shall not conduct operations until the downpayment amount stated in the contract is fully restored.

3. In § 223.50 revise paragraphs (b) introductory text and (f), and add a new paragraph (b)(3) to read as follows:

#### **§ 223.50 Periodic payments.**

\* \* \* \* \*

(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.

\* \* \* \* \*

(3) Notwithstanding paragraph (b) of this section, periodic payments are not required for stewardship contracts unless the contracting officer determines that periodic payments are needed to ensure the government's financial security.

\* \* \* \* \*

(f) The amount of any periodic payment(s) not yet reached shall be revised when rates are redetermined under the terms of the contract. The revised periodic payment amounts shall be based on a recalculated total contract value using the same procedures described in paragraphs (c) and (d) of this section. The recalculated total contract value is the current contract value following the rate redetermination plus:

(1) The total value of timber scaled prior to establishing redetermined rates in a scale sale, or

(2) The total value of timber shown on the timber sale statement of account as having been cut, removed and paid for in a tree measurement sale.

Dated: October 23, 2008.

**Abigail R. Kimball,**

*Chief, Forest Service.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2008-0198; FRL-8723-1]

### Approval and Promulgation of Air Quality Implementation Plans; Illinois

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a request submitted by the Illinois Environmental Protection Agency

(IEPA) on January 24, 2008, to revise the Illinois State Implementation Plan (SIP) for volatile organic compounds (VOC). The proposed approval revises the Illinois SIP by updating information regarding the packaging production facility of Cromwell-Phoenix, Incorporated, located in Alsip, Illinois. It acknowledges that the source has changed its name from Cromwell-Phoenix, Incorporated, to CP-D Acquisition Company, LLC, as a consequence of a change in ownership. The revision does not change any of the VOC control requirements and will not increase VOC emissions because no emission limits were increased.

**DATES:** Comments must be received on or before November 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2008-0198 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
- *Fax:* (312) 886-5824.
- *Mail:* John Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

#### FOR FURTHER INFORMATION CONTACT:

Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final

rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of the adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 16, 2008.

**Walter W. Kovalick, Jr.,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E8-25659 Filed 10-28-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0656; FRL-8735-5]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Movement of Richmond and Hampton Roads 8-Hour Ozone Areas From the Nonattainment Area List to the Maintenance Area List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of moving the Richmond and the Hampton Roads 8-Hour Ozone Nonattainment Areas from the nonattainment areas list to the maintenance areas list. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all