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[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596-AD78

Purchaser Credit on Timber Sale Contracts

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture, Forest Service (Forest Service or Agency) is making purely technical, clarifying amendments to its existing regulations relating to timber purchaser credit in timber sale contracts on National Forest System lands. The authority to use purchaser credit ended in April 1999, and there are no timber contracts subject to this expired authority. This final rule removes sections regulating purchaser credit because these regulations are now obsolete. The removal is necessary to reflect the statutory repeal of purchaser credit authority after April 1, 1999, and the elimination of expired contractual provisions.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Kraig Kidwell, National Timber Contracts and Appraisals Group Lead, at kraig.kidwell@usda.gov or 541-961-2614. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service, then provide the phone number of the person named as point of contact for further information.

SUPPLEMENTARY INFORMATION: This final rule makes purely technical, clarifying revisions to the Agency's existing regulations at 36 CFR 223, sections 223.42, 223.43, 223.44, 223.45, 223.62, and 223.304 relating to timber purchaser credit in timber

sale contracts on National Forest System (NFS) lands, pursuant to the Omnibus Consolidated and Emergency Appropriations Act of 1999 (Public Law 105-277, div. A, § 101(e) [title III, § 329]; 16 U.S.C. § 535a). The regulations in sections 223.42, 223.43, 223.44, 223.45, and 223.62 promulgated rules for transferring credit, established the limit on transferred credit, established road construction credit, established protections for the Forest Service to carry out collections, and provided definitions. The regulation in section 223.304 made use of sections 223.42-.45 and 223.62 inapplicable to sale of property (stewardship timber sale) contracts. Upon reviewing these regulations, USDA has determined they are obsolete and should be removed or amended as applicable. The Omnibus Consolidated and Emergency Appropriations Act of 1999 prohibited the continued use of purchaser credit in new timber sale contracts after April 1, 1999. The Forest Service removed purchaser credit references from internal directives and on all timber sale contracts after that date, but some regulatory references to purchaser credit in 36 CFR 223 were maintained because purchaser credit authorized prior to April 1, 1999, on existing timber contracts remained valid. However, all timber contracts that were subject to this authority have long since expired.

Therefore, sections 223.42, 223.43, 223.44, 223.45, and 223.62 regulating purchaser credit in subpart B of Part 223 are now obsolete. The regulations will be removed and the sections will be reserved for future use. Section 223.304 of subpart I is being amended to delete references to the five obsolete sections of subpart B being removed. Section 223.304 also is being amended because it erroneously repeats a paragraph. Paragraphs (a)(3) through (a)(5), (a)(7), and (a)(9) of section 223.304 will be removed because they reference the obsolete sections; paragraph (a)(6) will be removed because it duplicates paragraph (a)(5). The remaining paragraphs in section 223.304(a) will be renumbered to maintain numerical order.

These technical, clarifying amendments do not formulate standards, criteria, or guidelines applicable to Forest Service programs and therefore do not require public notice and opportunity to comment under section 14(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1612(a)).

Regulatory Certifications

Regulatory Planning and Review

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this final rule is not significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Department has developed the final rule consistent with E.O. 13563.

Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), OIRA has designated this final rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The final rule will remove or amend sections that regulate purchaser credit because the use of purchaser credit is prohibited by law, making these regulations obsolete. Department regulations at 7 CFR 1b.4(c)(20) exclude from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions." The Department's assessment is that this final rule falls within this category

of actions and that no extraordinary circumstances exist that will require preparation of an environmental assessment or an environmental impact statement.

Regulatory Flexibility Act

The Department has considered this final rule under the Regulatory Flexibility Act (5 U.S.C. 602 *et. seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. This final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered this final rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that this final rule will not have federalism implications.

Consultation and Coordination with Indian Tribal Governments

E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian Tribes. The final rule will remove sections that regulate purchaser credit in timber sales because the use of purchaser credit is prohibited by law, making these regulations obsolete. The Department has reviewed this final rule in accordance with the requirements of E.O. 13175 and has determined that this final rule will not have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments is not required for this proposed rule.

Family Policymaking Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for a rule that may affect family well-being. The final rule will have no impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment for the final rule.

Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*. The Department has determined that the final rule will not pose the risk of a taking of private property.

Energy Effects

The Department has reviewed the final rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Department has determined that the final rule will not constitute a significant energy action as defined in E.O. 13211.

Civil Justice Reform

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform*. Upon publication of the final rule, (1) all State and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), the Department has assessed the effects of the final rule on State, local, and Tribal governments and the private sector. The final rule will not compel the expenditure of $100 million or more, adjusted annually for inflation, in any 1 year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required.

Paperwork Reduction Act

The final rule does not contain any recordkeeping or reporting requirements, or other information collection requirements as defined in 5 CFR part 1320, that are not already required by law or not already approved for use. 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 procedure, Exports, Forests and forest products, Government contracts, National forests, Reporting and recordkeeping requirements.

Therefore, for the reasons stated in the preamble, and under the authority of 16 U.S.C. 535a, the Department is amending 36 CFR part 223 as follows:

PART 223— SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223, applicable to all subparts, continues to read:

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, 25 U.S.C. 3055 and 3057, 113 Stat. 1501a, 16 U.S.C. 528 note; unless otherwise noted.

Subpart B—Timber Sale Contracts

§ 223.42 [Removed and Reserved]

2. Remove and reserve § 223.42.

§ 223.43 [Removed and Reserved]

3. Remove and reserve § 223.43.

§ 223.44 [Removed and Reserved]

4. Remove and reserve § 223.44.

§ 223.45 [Removed and Reserved]

4. Remove and reserve § 223.45.

§ 223.62 [Removed and Reserved]

4. Remove and reserve § 223.62.

5. Revise § 223.304(a) to read as follows:

Subpart I— Stewardship End Result Contracting Projects

§ 223.304 Sale of property contracts.

* * * * *

(a) Utilize the provisions of subparts A and B of this part, except that the following provisions will not be applicable:

(1) Section 223.4 Exchange of trees or portions of trees.

(2) Section 223.31 Duration of contracts.

(3) Section 223.49 Downpayments. Paragraph (d).

(4) Section 223.65 Appraisal of timber for land exchange; right-of-way, or other authorized use.

(5) Section 223.80 When advertisement is required.

(6) Section 223.82 Contents of advertisement.

(7) Section 223.83 Contents of prospectus.

(8) Section 223.84 Small business bid form provisions on sales with specified road construction.

(9) Section 223.88 Bidding methods.

(10) Section 223.100 Award to highest bidder.

(11) Section 223.102 Procedure when sale is not awarded to highest bidder.

(12) Section 223.103 Award of small business set-aside sales.

(13) Section 223.118 Appeal process for small business timber sale set-aside program share recomputation decisions.

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Michael K. Boren,
Under Secretary
Natural Resources and Environment.
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