

**§ 165.T13-092 Safety Zone; Hood Canal Cable Laying Operation, Hood Canal, WA**

(a) *Location.* The following area is a safety zones: (1) All waters of the Hood Canal, from surface to bottom, within a 100 yard radius around any construction barge participating in the Hood Canal Bridge Construction Project while the barge is in operation; and

(2) All waters of the Hood Canal, from surface to bottom, between any barge participating in the Hood Canal Bridge Construction Project and the Hood Canal Bridge itself.

(b) *Enforcement period.* This rule will be enforced from 6 a.m. on June 15, 2009, until 6 a.m. September 30, 2009, unless cancelled or ended sooner.

(c) *Regulations.*

(1) In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within this safety zone unless authorized by the Captain of the Port or her Designated Representative.

(2) "Designated Representative" means any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on her behalf.

(3) To request authorization to operate within the safety zone, contact the USCG Sector Seattle Joint Harbor Operations Center at 206-217-6001. Additional information regarding the construction work may be obtained from Kiewit-General Construction Company at 360-620-3423, or the on-scene official patrol, or M/V REDWOOD CITY on VHF-FM channel 13, 14, or 16.

Dated: June 14, 2009.

**S.E. Englebert,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

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**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:** Final rule.

**SUMMARY:** This final rule revises the Forest Service's downpayment and periodic payment regulations to reflect changes in contracting procedures and authorities since these regulations were

adopted in 1991. The changes 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 rate redeterminations; revise procedures for releasing downpayments; and allow downpayments to be temporarily reduced for certain delays, interruptions, or extensions. This final rule protects the Government's financial security, reduces speculative bidding, and encourages purchasers to harvest timber in a timely manner. In addition, the rule provides financial relief to timber purchasers when forest product prices drastically decline or purchasers receive additional contract time and are not expected to operate.

**DATES:** This final rule is effective September 14, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Lathrop Smith, Forest Management staff, at (202) 205-0858, or Richard Fitzgerald, Forest Management staff, at (202) 205-1753. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Background**

The 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 security, 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>

The downpayment regulation requires purchasers to make a cash deposit in the timber sale account at the time of sale award equal to 10 percent of the sale's total advertised value plus 20 percent of the bid premium. This cash is held by the Forest Service and cannot be used by the purchaser until (i) on scaled sales, stumpage representing 25 percent of the total bid value has been charged and paid for, or (ii) on tree measurement sales, stumpage 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).)

*This final rule revises 36 CFR 223.49 by:* (1) Removing obsolete definitions, references and procedures; (2) making downpayments optional for stewardship contracts; (3) adding procedures to recalculate downpayments when contracts receive rate redeterminations; (4) revising procedures for releasing downpayments; and (5) adding procedures to temporarily reduce downpayments when the Forest Service authorizes or orders certain contract delays, interruptions, or extensions.

Section 223.49(b) is revised to make downpayments optional for stewardship contracts. Stewardship contracts are awarded on a best value basis, which virtually eliminates the potential for speculative bidding because factors other than price determine best value. Further, section 323 of the Department of the Interior and Related Agencies Appropriations Act of 2003 (as contained in division F of Public Law 108-7; 16 U.S.C. 2104 Note) 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. Doing so provides financial security to the Government and incentivizes contractors to harvest timber and perform service work in a timely manner. Stewardship contracts require contractors to make cash deposits equal in value to timber they plan to cut before performing service work. To get these cash deposits back, contractors must perform the service work. Alternatively, if a contractor performs the service work first, the Government uses the value of timber the contractor harvests to offset the service work's cost. For these reasons, most stewardship contracts do not need a downpayment.

However, there can be exceptions. For example, if the value of the timber greatly exceeds the cost of services under a contract, a downpayment may be needed to provide financial security. Therefore, this final rule allows contracting officers to require downpayments on stewardship contracts when needed to ensure the Government's financial security.

This rule also revises § 223.49(c) to allow downpayments to be recalculated when contracts receive rate redeterminations. The initial downpayment amount deemed necessary to protect the Government's financial security and encourage purchasers to timely harvest timber in is based on a percentage of a contract's value at time of award. However, timber sale contracts contain procedures to redetermine stumpage rates for (1)

<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."

environmental modification; (2) catastrophic damage; (3) Forest Service ordered suspension or delay; and (4) emergency rate redeterminations. Redetermined rates can change a contract's total value. While many contracts already provide that required deposits can be redetermined when contract rates are redetermined, the practice has not been to adjust downpayments. This final rule clarifies that downpayments should be recalculated when rates are redetermined. Allowing downpayment redeterminations maintains the government's financial security because the same percentage of downpayment to total contract value deemed necessary under § 223.49 is retained under this final rule.

In addition, this rule revises § 223.49(d) to allow downpayments to be released when they equal or exceed the value of a sale's remaining timber. Section 223.49(d)(1) was added for scaled sales and § 223.49(d)(2) was added for tree measurement sales. This change was made to prevent situations where prices on sales subject to stumpage rate adjustments decline so much that the downpayment exceeds the value of remaining timber without triggering the downpayment's release. The Forest Service never intended to hold downpayments greater than the value of remaining timber.

Finally, this rule adds § 223.49(k), which allows downpayments to be temporarily reduced when the Forest Service authorizes or orders certain contract delays, interruptions, or extensions. The Forest Service has determined that it is not necessary to require full cash downpayments when the scenarios identified in § 223.49(k) occur.

Periodic payments are "amounts specified in a 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, 75 percent of the total contract value at time of award must be paid by the second periodic payment determination date. The periodic payment(s) amount is reduced when payment would result in the purchaser's credit balance for timber charges exceeding the current contract value (36 CFR 223.50(c)). Many purchasers never receive a periodic payment bill because their stumpage payments for volume removed stay ahead of periodic payment amounts. For

purchasers that are billed, or are about to be billed, the periodic payment is an economic incentive to resume or accelerate harvesting.

*This final rule revises 36 CFR 223.50 by:* (1) Amending paragraph (b) to clarify that periodic payments are not required for stewardship contracts and (2) amending paragraph (f) to add procedures to recalculate periodic payment(s) amounts after contractual rate redeterminations and to remove obsolete procedures. These changes were made for the same reasons as the corresponding changes made to section 223.49.

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

*Section 223.49 is amended as follows:*

In paragraph (a)(2), the definition of *ineffective purchaser credit* is removed and paragraphs (3)–(5) are renumbered (2)–(4). 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 "purchaser credit" procedure 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 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.

In paragraph (b), the option of using effective purchaser credit is eliminated for the same reasons cited above. A sentence has also been added making downpayments optional for stewardship contracts unless needed to ensure the Government's financial security.

In paragraph (c), obsolete references to converting units of measure other than board feet to board feet have been removed. The downpayment amount is calculated as a percentage of sale value without regard to unit of measure. Paragraph (c) is further amended to include procedures to recalculate downpayments when contract rates are redetermined.

Paragraph (d) is amended to allow downpayments to be released when the estimated value of remaining timber is less than the downpayment. Paragraph (d)(1) is added for scaled sales and paragraph (d)(2) is added for tree measurement sales.

Paragraph (g) is amended to allow contracts subject to paragraph (e)'s higher downpayment requirement to have their downpayments recalculated when stumpage rates are redetermined. This change was made for the same reasons as the changes to paragraph (c). In addition, paragraphs (g)(1) and (2) are removed to eliminate obsolete references to ineffective purchaser credit and converting units of measure other than board feet to board feet. The removal of those paragraphs was made for the same reasons as the deletions made in paragraph (a)(2).

Paragraph (j) is amended to specify that the Chief of the Forest Service may preclude temporary downpayment reductions under paragraph (k)(2) and (3) to deter speculation.

Paragraph (k) is added to allow temporary downpayment reductions when a contractor is not cutting or removing timber because its scheduled operations were delayed, interrupted, or extended for 30 consecutive days or more for any of the following reasons: (1) Forest Service requested or ordered delay or interruption of operations for reasons other than breach; (2) a contract term addition pursuant to contractor shifting operations to a sale designated by the Forest Service as in urgent need of harvesting; or (3) a contract term extension authorized upon a determination of substantial overriding public interest, including a market-related contract term addition, or urgent removal contract term extension under 36 CFR 223.53.

Paragraph (l) is added to allow downpayments to be reduced to the greater of \$1,000 or two percent of the amount stated in the contract during qualifying periods of delay, interruption, or extension under paragraph (k), unless the purchaser is cutting or removing timber. Purchasers cannot cut or remove a contract's timber until the downpayment stated in the contract is restored.

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

*Section 223.50 is amended as follows:*

Paragraph (b)(3) is added to clarify that not all stewardship contracts require periodic payments. Paragraph (f) is amended to remove obsolete contract modification procedures and add procedures to recalculate periodic payment(s) amounts following a contract rate redetermination authorized. The obsolete procedures being removed required pre-1991 contract purchasers to make a written request by 1991 to receive market-related contract term additions.

### Agency Response to Major Public Comments

On October 29, 2008, the Forest Service published a notice of proposed rule and request for comment on revisions to 36 CFR 223.49 and 223.50 in the **Federal Register** (73 FR 64288). During the comment period, which ended December 29, 2008, the Forest Service received 4 comments responsive to the rule's merits and 2 non-responsive comments. The four responsive comments were from the Federal Timber Purchasers Committee, Westek Forest, Ltd., New Hampshire Timber Owners Association, and the Wilderness Society. Following are the Forest Service's responses to those comments.

*Comment 1:* We believe the proposed changes to the downpayment regulation are well designed and will help timber purchasers with cash management in these difficult markets.

*Response 1:* This is a statement for which no response is necessary.

*Comment 2:* We urge you to act expeditiously to give timber purchasers as much relief as possible in order to keep them viable and preserve options for the management of the National Forests.

*Response 2:* This is a statement for which no response is necessary.

*Comment 3:* I agree with the proposed rule change. This change will give contractors better flexibility to complete stewardship contracts.

*Response 3:* This is a statement for which no response is necessary.

*Comment 4:* Nationwide, the forest products industry is undergoing extreme stress due to reduced demand for forest products, lower prices, and increased costs of production. It does the American people no good to force wood producers into bankruptcy or to deal with timber sale contracts that cannot be operated profitably under current market conditions. If these sale contracts are cancelled and the timber reoffered, it would not sell or would only bring greatly reduced prices. This process would be expensive and yield no positive results. We have reviewed the proposed rules and agree that they would have an overall positive effect on the Forest Service timber sale program and are in the best interest of the people of the United States.

*Response 4:* These are statements for which no response is necessary.

The remaining comments were from a single respondent prefaced by the statements that (1) significant information necessary to fully understand the proposed rule and prepare informed comments is missing

and (2) the **Federal Register** notice proposes significant changes in the amount and requirements for downpayments and periodic payments yet the basic facts and conditions that have caused the agency to pursue these rule changes are undisclosed. Unless otherwise noted, no changes were made in response to the following comments.

*Comment 5:* The Forest Service states a desire to lower the risk of timber contract default. This would not be proposed unless default was a significant problem. What is the rate and percentage of default in the last five or ten years and over the past 12 months? What is the projected rate of default based on current market conditions?

*Response 5:* The Forest Service does not track defaults so it can not calculate a percentage of defaults over a five or ten year period. Although snapshots of the timber sale accounting system can be taken to determine the number of contracts coded as defaulted on specific dates, the system can not tally the number of defaults over a period of time.

On March 31, 2009, the Forest Service had 1,972 open contracts on forms FS-2400-6 and FS-2400-6T. Twenty-three of those contracts or 1.2 percent were coded in the timber sale accounting system as defaulted. On March 31, 2008, there were 1,961 open contracts on those same forms; 24 or 1.2 percent were coded as defaulted. Sales on other contract forms were not included in these calculations because the Forest Service is not aware of any other types of open contracts subject to this final rule.

A projected default rate based on current market conditions would only be an unsubstantiated estimate subject to dispute. However, it is reasonable to predict that when purchasers are forced to cease operating due to adverse market conditions, uncompleted contracts are at an increased risk of default. An objective of the final rule is to lower default risk by adjusting downpayments to reflect drastic declines in contract values and temporarily reducing downpayments when appropriate. These changes are expected to help purchaser cash flow, which may help them continue operating and/or purchasing contracts.

*Comment 6:* The Forest Service recently described over 1,000 agency timber sales as eligible for market-related contract term additions (MRCTA). All would then be eligible for downpayment and periodic payment redeterminations.

*Response 6:* The MRCTA procedures do not include a mechanism for

redetermining contract rates. Therefore, a sale's eligibility for MRCTA does not mean it will receive a rate or periodic payment redetermination. On March 31, 2009, the Forest Service had approximately 615 sales eligible for downpayment and periodic payment redeterminations under this rule. Of those 615 sales, only 199 still had downpayments on deposit, for a total value of \$6.8 million. Without looking at the statement of account for each one of those contracts, it is not possible to assess each contract's periodic payment status.

*Comment 7:* How many sales would be eligible for redetermination under the three clauses (environmental modification, catastrophic damage and emergency rate determination)? What percentage of sales does this represent? How often do these cases occur?

*Response 7:* The commenter is asking the Forest Service to quantify where and when unpredictable events such as natural disasters may occur in the future. Any attempt to do so would be purely speculative. However, we do know that on March 31, 2009, there were 1,972 open sales and 615 or 31 percent were potentially eligible for emergency rate redeterminations. Of those 615 sales, only 199 still had downpayments on deposit in the amount of \$6.8 million.

*Comment 8:* The Forest Service retains authority to set larger downpayment amounts and proposes to limit redeterminations in geographic areas where speculation has or could occur. Where has the agency set larger downpayments in the past? How does the agency recognize when speculation is occurring?

*Response 8:* The Forest Service uses appraisal performance reports, Forest Service Manual (FSM) 2422, and Bid Monitoring Reports, FSM 2432.52, to identify speculative bidding. The agency has not increased downpayments pursuant to the authority in 36 CFR 223.49(c).

*Comment 9:* The agency states: "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." **Federal Register**, Volume 73, No. 210, page 64,290. Please provide a copy of the analysis that led to this determination.

*Response 9:* The Forest Service has closely monitored the drastic decline in forest product markets since late 2004. As the market decline deepened, reports in the national press, trade bulletins, (such as Random Lengths, TDC Stumpage Price Report, WWPA

Barometer and others), as well as discussions with individual purchasers and representatives from industry associations, provided information about falling prices and a growing number of mill closures. Despite the current decline's severity, the default rate on open sales has been less than 1.25 percent over the last two years. The Forest Service believes this relatively low default rate, in the face of extreme market turmoil, is the result of several successful proactive measures it has taken to avoid the widespread defaults seen in the 1980s. These measures include (1) market-related contract term additions; (2) additional contract time authorized under the November 2006, November 2007, and September 2008 findings of substantial overriding public interest; (3) emergency rate redeterminations; and (5) contract cancellations, rate redeterminations, and extensions authorized by the 2008 Farm Bill. Despite the apparent success of these measures, forest product markets have continued to worsen, leading the Forest Service to conclude that this rule is needed to further reduce the risk of defaults. After careful consideration, the Forest Service determined that the benefits of further reducing potential defaults and their associated costs outweigh any potential increased risks to the government's financial security created by this rule.

This determination was made based on extensive oral discussions among the Washington Office's Forest Management staff. The Forest Management staff considered the following factors: (a) Deteriorating market conditions; (b) procedures to temporarily reduce downpayments when the Forest Service orders a delay or interruption for environmental reasons are already part of all post-April 2004 contracts; (c) existing administrative authority to change the rule to achieve its intended effect; (d) concern that these changes are needed to prevent the loss of industry infrastructure; (e) concern that costs to the government of treating vegetation under service contracts exceeds the costs of doing so under timber sale contracts; (f) general knowledge that most defaults occur after the downpayment has been released; (g) general knowledge that cash flow is critical to sustained operations for timber purchasers, and tying up money in downpayments on sales the Forest Service is not expecting purchasers to operate until market conditions improve obligates cash that may be needed elsewhere; (h) general knowledge that purchasers' fixed costs, including payments on equipment, continue even

if a purchaser isn't operating; (i) industry requests; and (j) in the event a contract defaults while the downpayment has been temporarily reduced, the government can still apply the performance bond to damages.

Since the analysis of market conditions that led to the proposed rule, the Forest Service has learned that housing starts in April 2009 hit a record low down almost 80 percent from the peak in January 2006; greatly exceeding the 46 percent decline during the 1981 downturn and the 60 percent decline in the 1986–1991 period.<sup>2</sup> U.S. Census Bureau data shows privately-owned housing starts in April were at a seasonally adjusted annual rate of 458,000 which is 12.8 percent below the revised March estimate of 525,000 and is 54.2 percent below the revised April 2008 rate of 1,001,000.<sup>3</sup> Adding to this dismal picture, a Western Wood Products Association (WWPA) March 24, 2009, news release predicted that the poor economy and a weak housing market are expected to reduce demand for lumber in the U.S to the lowest level in modern history.<sup>4</sup> The article notes that since reaching an all-time high of 64.3 billion board feet in 2005, U.S. demand for lumber has dropped by more than 55 percent representing the steepest decline in the history of the industry. While home construction which accounts for about 45 percent of the lumber used each year is predicted to increase slightly in 2010 to a little over a half million, WWPA does not expect housing starts to exceed 1 million units until 2012.

Another measure of the drastic decline in lumber prices is the Bureau of Labor Statistics index for softwood lumber. The Forest Service monitors this index to determine when drastic declines in forest products prices sufficient to trigger granting Market-Related Contract Term Additions pursuant to 36 CFR 223.52 occur. The softwood lumber index began declining in the 3rd calendar quarter of 2004 and beginning with the 3rd quarter of 2005 began triggering Market-Related Contract Term Additions. Through the first quarter of calendar year 2009 the softwood index, after adjustments to a constant dollar basis, has lost about 49 percent of its value and has triggered

<sup>2</sup> USA Today, May 20, 2009, *Record-low housing starts in April cast pall over market*, by Julie Schmidt.

<sup>3</sup> NEW RESIDENTIAL CONSTRUCTION IN APRIL 2009, U.S. Census Bureau News, Joint Release, U.S. Department of Housing and Urban Development, May 19, 2009; <http://www.census.gov/const/newresconst>.

<sup>4</sup> Western Wood Products Association, news release, Robert Bernhardt, Jr. Information Services Director, March 24, 2009.

Market-Related Contract Term Additions an unprecedented 15 consecutive quarters. The previous greatest decline of the softwood lumber index was in the early 1980s when it lost about 36 percent of its value and would have triggered 12 consecutive quarters of Market-Related Contract Term Additions if the procedure had been in place at that time. The softwood lumber index hit its lowest point yet in March 2009, and showed a slight increase in April 2009, but it is too early to tell if the April increase marks the beginning of a recovery.

The data and predictions indicate that while the decline in demand for lumber may be at or near bottoming out, the recovery will be long and gradual. Meanwhile the agency has been routinely receiving reports of sawmills curtaining operations or permanently closing. The Forest Service accomplishes many of its vegetation management objectives through timber sale contracts, which enables the Forest Service to achieve its objectives while generating revenues. A large pool of timber sale purchasers allows the Forest Service to accomplish these objectives in a more cost-effective manner by increasing competition for National Forest System timber sales, which can result in higher contract prices. Absent a viable industry infrastructure capable of purchasing and processing Forest Service timber, the Forest Service would have to pay service contractors to perform certain vegetative management objectives currently achieved by selling timber. This would substantially reduce the Agency's ability to accomplish important management objectives such as reducing hazardous fuels in wildland urban interface areas where much of the work must be performed by mechanical means and can often be done with timber sales.

Temporarily reducing downpayments is unlikely to prevent or reduce defaults by itself. However, in conjunction with other relief measures, it is expected to provide short-term relief that will help reduce the number of defaults and loss of industry infrastructure that might occur in its absence. Specifically it will free up cash purchasers need for a variety of reasons including (1) harvesting sales that are operable in this economic climate, (2) storing increasing inventories of lumber until demand picks up, (3) making payments on equipment, and (4) maintaining bonds on existing sales.

On March 31, 2009, the Forest Service had 1,972 open contracts on forms FS–2400–6 and FS–2400–6T. Twenty-three of those contracts or 1.2 percent were coded in the timber sale accounting

system as defaulted. Only five of the default sales still had downpayments on deposit, which totaled \$101,300; less than 1 percent of the \$26.1 million total value of downpayments on deposit. One year earlier, on March 31, 2008, there were 1,961 open contracts of which 24 or 1.2 percent were coded as defaulted; 5 of the defaults still had downpayments on deposit in the amount of \$100,600.

Considering the above-referenced factors, the Forest Service determined that the benefits of temporarily reducing downpayments under 223.49(k) outweigh the potential increased risks to the government's financial security.

*Comment 10:* This and previous **Federal Register** notices on market-related contract term additions and substantial overriding public interest (SOPI) determinations describe the government's reasons for wanting to maintain numerous economically viable timber sale purchasers. These include having a pool of contractors in situations where the Forest Service determines that timber is in need of urgent removal. But the definition of "urgent removal" at 36 CFR 223.53 applies only to private and other non-National Forest System (NFS) lands. The context for the term here and in the market-related contract term addition/substantial overriding public interest (SOPI) **Federal Register** notices imply that the term refers to NFS lands. Please provide the regulatory cite that allows the Forest Service to shift contract operations to a NFS sale in urgent need of harvesting as described on page 64,290 of the **Federal Register** notice.

*Response 10:* The authority is in 36 CFR 223.112, Modification of contracts. Implementation procedures are documented in Forest Service Handbook 2409.18, section 55.21. In addition, please see the response to comment 11.

*Comment 11:* It is unclear how exactly the agency defines "urgent" projects in each context, the conditions under which it is applied or how the Forest Service maintains consistency in the application of this term throughout the national forest system (NFS). This lack of clarity would then affect who is potentially eligible for downpayment and periodic payment redeterminations. The term and its application here should be defined.

*Response 11:* The determination of whether timber in a specific sale or project is in urgent need of removal is a decision the Forest Service makes on a case-by-case basis after considering the relative conditions on the ground. Indicators of a sale in urgent need of

removal include, but are not limited to situations where:

1. Dead or dying timber is subject to rapid deterioration;

2. Failure to harvest the timber promptly could threaten public safety. For example, removing hazardous trees along public roads.

3. Failure to harvest the timber promptly could create an insect disease epidemic on National Forest system lands or other lands or resources.

The Forest Service is currently drafting an amendment to chapter 50 of the sale preparation handbook, FSH 2409.18, that will provide land managers with more specific guidance to determine when a sale contains timber in urgent need of removal.

*Comment 12:* The proposed rule language at 36 CFR 223.49(c)(4) and 223.49(g)(4) lists "an emergency rate redetermination" as a reason for contract downpayment redetermination. But we can find no definition of the term "emergency rate redetermination."

*Response 12:* Emergency rate redetermination is a procedure addressed in standard timber sale contract provisions (B/BT3.34) and standard integrated resource timber contract clauses (D/DT.3.4) for adjusting rates when the Bureau of Labor Statistics Producer Price Index stated in the contract declines by 25% or more after the contract award date.

*Comment 13:* If the Forest Service is referring to "urgent removal" (as defined at 36 CFR 223.53) in its use of the emergency rate redetermination clause, then it should clearly state so and disclose to the public that downpayment and periodic payment reductions would be granted to allow timber companies to pursue harvest on private and non-National Forest System (NFS) lands.

*Response 13:* Prior to authorizing urgent removal contract extensions pursuant to 36 CFR 223.53, a Regional Forester must make a determination that there is a substantial overriding public interest in extending National Forest System timber sale contracts for undamaged (green) timber not requiring expeditious removal in order to facilitate the rapid harvest of catastrophically damaged timber requiring expeditious removal on private and other non-National Forest System lands. Similarly Forest Service policy is to grant contract term adjustments on certain timber sale contracts for undamaged (green) timber not requiring expeditious removal in order to facilitate the rapid harvest of other National Forest System timber in urgent need of harvesting (FSH 2409.18, § 55.21).

Contract provision B/BT3.34 does not permit emergency rate redeterminations for contracts receiving contract term extensions pursuant to 36 CFR 223.53. The contract permits, however, emergency rate redeterminations to facilitate the rapid harvest of National Forest System timber and the urgent removal harvesting. This is done pursuant to provision B/BT8.21. However, the Forest Service may modify timber sale contracts in accordance with 36 CFR 223.112. In response to the severity of the current market conditions, and in the interest of preventing further erosion of the timber industry infrastructure, the Forest Service is currently modifying rates on contracts extended pursuant to 36 CFR 223.53 to allow emergency rate redetermination procedures when requested by purchasers. Contracting Officers should not modify contracts that are in breach and shall seek Washington Office advice prior to modifying contracts that are determined to be at high risk for default. For much the same reason this rule allows temporary reductions in downpayments when a timber purchaser receives additional time to harvest timber in urgent need of removal on non-NFS lands pursuant to 36 CFR 223.53.

This rule does not modify emergency rate redetermination procedures.

*Comment 14:* We believe the Forest Service should make concurrent changes in its National Environmental Policy Act (NEPA) procedures in order to reduce the need for downpayment and periodic payment redeterminations and ensure that important resource management goals are being met.

*Response 14:* Changes to NEPA procedures recommended by the commenter are not responsive to the merits of the rule.

*Comment 15:* Stating that the proposed rule only changes the amount of the downpayment is the wrong lens through which to view environmental impacts. While downpayments may have been required for many years, the proposed reductions to just 2% of the downpayment or \$1000.00 whichever is greater while still holding the contract is significant and unprecedented. This would expose the Federal government to significant financial risk. The agency states their belief that this will not result in an increase in speculative bidding and that the benefits will outweigh the potential increased risks to the government's financial security. No evidence for these assertions is presented.

*Response 15:* This comment pertains to the rule's procedures to temporarily reduce downpayments when contracts

are delayed, interrupted or extended for reasons listed in § 223.49(k). Contrary to the commenter's assertion that this is significant and unprecedented, timber sale contract forms FS-2400-6 and FS-2400-6T dated April 2004 and later already allow temporary downpayment reductions when the Forest Service orders certain delays or interruptions. This rule expands this existing process to include situations where the downpayment's economic inducement to operate is not warranted.

The agency believes these temporary reductions will not increase speculative bidding because nothing in the final rule removes the downpayment requirement at time of award. Once deposited, the downpayment can not be temporarily reduced unless one of the three conditions specified in the rule occurs. Therefore, speculative bidders must speculate that the market will rise above overbids and that at least one of the conditions allowing temporary downpayment reductions will occur. Even if that happened, the downpayment still has to be reestablished before the sale can be operated. Considering these safeguards, the Forest Service concluded the rule was unlikely to increase speculative bidding.

Nevertheless, the Forest Service will continue to monitor bidding patterns and the agency will deny temporary downpayment reductions where speculative bidding is occurring. In response to this comment, the final rule has been revised to clarify that requests for temporary downpayment reductions may be denied in market areas where the Chief determines speculative bidding is occurring.

*Comment 16:* For the reasons cited in our response, we believe the Forest Service has failed to follow proper procedures in proposing this rule without analysis under the National Environmental Policy Act (NEPA). We believe that changes in the Forest Service Handbook (FSH), Forest Service Manual (FSM) and agency NEPA analysis of economic effects as we detailed would fulfill agency requirements for this proposed rule under NEPA. We urge the agency to consider them in completing the required regulatory certification of environmental impact for the proposed rule.

*Response 16:* The changes in the FSH, FSM and agency NEPA analysis of economic effects provided by the commenter are not responsive to the merits of the rule. Furthermore, this final rule is categorically excluded under 36 CFR 220.6.

*Comment 17:* Because commercial sales are now most often regarded as a tool to meet management objectives and not the objective or purpose and need itself, the effect of possible contract extensions (and subsequent downpayment and periodic payment redeterminations) must be analyzed under NEPA in determining the ability of commercial sales (for each alternative that uses this tool) to meet the purpose and need. We do not think this would entail undue burden on the agency given current and suggested procedures.

*Response 17:* Please see the response to comment 16.

*Comment 18:* Commenter presented a series of comments questioning agency NEPA procedures for forest management projects and proposing changes to those procedures.

*Response 18:* These comments are beyond the final rule's scope and are nonresponsive to its merits.

*Comment 19:* National Forest System (NFS) lands supply a very small percentage of the U.S. timber supply (< 4% according to recent estimates). A seemingly small percentage of Forest Service timber sale contracts (eligible for downpayment and/or periodic payment redetermination) multiplied by a small percentage of the timber supply means a very small percentage of the U.S. timber supply would be affected by this proposed rule. As described above, the Forest Service should disclose the total number of timber sale contracts eligible for downpayment and periodic payment redeterminations in order to assess the full impact of the proposed rule and its financial (and other) effects. The notion that failure to enact this change will affect the U.S. timber industry is not credible—the amount or value of timber involved simply is not large enough to be important.

*Response 19:* On March 31, 2009, the Forest Service had 1,972 sales on contract forms FS-2400-6 and FS-2400-6T. The remaining value of those sales was \$249.1 million. Of those sales, 615 or 31 percent were potentially eligible for emergency rate redeterminations. Only 199 of those 615 still had downpayments on deposit, in the amount of \$6.8 million. Although the data base could not be queried to show how many sales eligible for emergency rate redeterminations are also eligible for periodic payment redeterminations, it would be less than 615.

The commenter is correct that the number of Forest Service contracts eligible for downpayment and periodic payment redeterminations is small and failure to enact the rule is unlikely to significantly affect the U.S. timber

industry. However, the rule's effect may be significant for individual purchasers on the brink of closure; with unemployment rates continuing to increase at alarming rates, preventing or reducing job losses is a national issue.

One respondent commenting on this rule wrote that the forest products industry sector of New Hampshire's economy is vibrant and is the third largest sector of manufacturing in the Granite State, employing over 9,500 people directly with an annual payroll over \$320 million. The respondent also stated that high quality timber from the White Mountain National Forest provides an important raw material source.

Further, a June 2008 report by the University of Minnesota-Deluth Labovitz School's Bureau of Business and Economic Research addressed the economic impact of declines in forestry-related industries in Minnesota, Wisconsin and Michigan. ([https://lsbe.d.umn.edu/departments/bber/bber\\_projects.php](https://lsbe.d.umn.edu/departments/bber/bber_projects.php)). The report documented that, in 2006, forestry related industries in the study area employed over 58,000 workers and estimated that for every worker laid off another 2.2 jobs were lost in the economy. The collapsing timber industry in this three State region provided the impetus in the 2008 Farm Bill, Section 8401 of the Food, Conservation, and Energy Act of 2008, Public Law 110-246, 122 Stat. 1651, granting additional contract time and price relief to qualifying contracts. While the National Forest System's contribution to the national timber supply may not be significant, it is an important component and in some areas it is the primary source.

*Comment 20:* The terms of the proposed rule would allow companies to bid on and hold National Forest System timber sales for future harvest while receiving most of their downpayment back for a number of loosely defined reasons.

*Response 20:* As noted previously, this final rule requires purchasers to make downpayments at time of award and only allows temporary reductions when the conditions specified in section 223.49(k) are met. Once those conditions cease to exist, purchasers must restore their downpayments.

*Comment 21:* The proposed rule change has been justified in part on the basis of community stability and economic health. This is dubious at best. It is questionable whether this rule will make a difference even in local or regional markets. It has been clear for years that supplying timber to local mills is an ineffective (at best) strategy

for supporting sustainable local economic development. (Rasker, R., Gorte, J. F., and Alkire, C. 1996. *Logging National Forests to Create Jobs: An Unworkable Covenant*, Washington, DC: The Wilderness Society.) The Forest Service should analyze the socio-economic costs associated with an historic emphasis on resource extraction, which has resulted in repetitious cycles of socio-economic distress for rural communities. The extractive industries, including the timber industry, represent an ever smaller portion of the total jobs and income in rural counties. The relative importance of these industries compared to expanding industries in the professional and service sectors and those which depend on non-labor income must be acknowledged.

*Response 21:* The Forest Service agrees that communities with a broad economic base tend to be more stable than those dependent on a single business. But a socio-economic analysis isn't needed to demonstrate that the loss of jobs has adverse economic effects, especially in small rural communities. With rising unemployment rates, any loss of jobs, regardless of business sector or community size, has a negative effect on communities where lost jobs are located. Arguing that the Forest Service program is insignificant when looking at the industry or the country as a whole and downplaying the importance of jobs in extractive industries ignores the significance of those jobs to affected individuals and communities. To the extent that this rule reduces defaults, it is also expected to help reduce job losses.

*Comment 22:* What is not fully discussed or disclosed is the extent of possible financial risk and exposure accruing to the Federal government, and to taxpayers, from these proposed changes, especially during extensive market downturn as is the case today.

*Response 22:* Any estimate or prediction of future defaults or specific damage amounts associated with them would be highly speculative and subject to challenge. The October 29, 2008, **Federal Register** notice (73 FR 64288) discussed the financial risks of the proposed changes in relative terms. In addition, data pulled from the timber sale accounting system on March 31, 2009, showed 1,972 open contracts, of which 23 were coded as defaulted. The defaulted contracts had a remaining value of \$18.3 million and performance bonds totaling about \$2.5 million. Only five of the defaults still had downpayments on deposit when they defaulted, in the amount of \$101,300. By comparison, on March 31, 2008,

there were 1,961 open contracts of which 24 or 1.2 percent were coded as defaulted. The 24 defaulted sales had performance bonds totaling about \$4.4 million; only 5 still had downpayments on deposit in the amount of \$100,600. Had this final rule been in effect when those contracts defaulted, the potential loss to the government of reduced downpayments could have equaled the reduced downpayment amounts. However, that estimate is a worst-case scenario based on the assumption that every defaulting contractor had (1) a temporarily reduced downpayment, (2) insufficient bonding to cover default damages, and (3) an inability to pay applicable damages, including those ordered by a Federal court. Such an outcome is unlikely.

Although the Government may potentially lose some financial security under this rule, the Forest Service believes this risk is outweighed by the benefits associated with averting potential defaults. Given the above data, the factors addressed in response 9, and default costs to the Forest Service, industry, and timber-dependent communities, the agency believes the potential risks associated with this rule are justified.

*Comment 23:* Citing the ability of potential contractors to bid on yet more Federal (and private) sales would only seem to increase Federal exposure to risk. Continued market downturn would result in continued downpayment and periodic payment redetermination. Examining the need for timber sales in the first place and other possible methods to accomplish the purpose and need for vegetation management projects would seem a more prudent and less fiscally risky approach.

*Response 23:* Contracting officers are required under 36 CFR 223.101 to make an affirmative determination of a purchaser's responsibility prior to awarding a contract. When conducting a responsibility determination, consideration is given to the purchaser's financial ability to complete the contract while taking into account all of the purchaser's commercial and governmental business commitments. This process limits the government's risk.

When proposing vegetation management projects, the Forest Service considers alternatives to timber sale contracts for accomplishing the necessary work, including stewardship contracts, procurement contracts, agreements, and using its own employees.

*Comment 24:* The commenter presented a series of comments pertaining to questions of the effect of

the proposed rule on other costs associated with timber harvest and suggested that there is research providing compelling evidence for maintaining lands in their protected state and/or for treating vegetation with methods other than timber sales.

*Response 24:* These comments are beyond the scope of this rule and were deemed nonresponsive to the rule's merits.

## Conclusion

This final rule revises the Forest Service's downpayment and periodic payment regulations to reflect changes in contracting procedures and authorities since these regulations were adopted in 1991. The rule will protect the Government's financial security, reduce speculative bidding, and encourage purchasers to harvest timber in a timely manner. In addition, the rule provides financial relief to timber purchasers when forest product prices drastically decline or purchasers receive additional contract time and are not expected to operate.

## Regulatory Certifications

### Regulatory Impact

This final 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 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 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 certain commercial timber sales on National Forest System land. The final 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 final 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*

The agency's preliminary assessment is that this rule falls within 36 CFR 220.6, which 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. This final rule establishes uniform criteria to temporarily reduce or change timber sale downpayments and periodic payments. This rule does not change the longstanding requirement that timber sale contracts include downpayments and periodic payments. Implementation of this rule will be controlled at the local level by the Timber Sale Contracting Officer. This final rule falls under 36 CFR 220.6(d)(2), which 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.

#### *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 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 final 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 would not require administrative proceedings before parties may file suit in court challenging its provisions.

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

This final rule does not contain any record-keeping 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, 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**

■ 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—Timber Sale Contracts**

■ 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 environmental modification; catastrophic damage; market change; or 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. 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 and is notified 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 environmental modification; catastrophic damage; market change; or 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 (i.e., 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 the 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 and/or preclude temporary reduction of the downpayment under paragraphs (k)(2) and (k)(3) of this section 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) When purchaser is not cutting or removing timber under contract during a qualifying period of delay, interruption, or extension listed in paragraph (k) of this section, the downpayment may be reduced to \$1000 or 2 percent of the downpayment amount stated in the contract, whichever is greater. The purchaser must restore the downpayment to the full amount stated in the contract within 15 days from receipt of the bill for

collection and written notice from the contracting officer that the basis for temporarily reducing the downpayment no longer exists. Purchaser shall not cut or remove timber on a contract where the downpayment has been temporarily reduced until the downpayment amount stated in the contract is fully restored.

■ 3. Amend § 223.50 by revising paragraphs (b) introductory text and (f) and adding 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 this paragraph (b), 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 contract. The revised periodic payment amounts shall be based on a recalculated total contract value using the same procedures described in (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 scaled sale; or

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

Dated: August 7, 2009.  
**Ann Bartuska,**  
*Acting Deputy Undersecretary, NRE.*  
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