

Item	Description of chargers	Rate (\$) Montreal to or from Lake Ontario (5 locks)	Rate (\$) Welland Canal— Lake Ontario to or from Lake Erie (8 locks)
	Column 1	Column 2	Column 3
5.	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes ¹ .	20.00	20.00.

¹ The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is \$20 U.S. or \$30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Issued at Washington, DC on April 6, 2004.
Saint Lawrence Seaway Development Corporation.

Albert S. Jacques,
Administrator.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596-AC16

Sale and Disposal of National Forest System Timber; Timber Sale Contracts, Modification of Contracts

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: The Forest Service is adopting an interim final rule at part 223, subpart B, of Title 36, Code of Federal Regulations, § 223.112. This interim final rule authorizes timber sale contracting officers to modify contracts to provide a redetermination of stumpage rates and deposits to reflect significant timber market declines. This rule applies to existing timber sale contracts awarded after October 1, 1995, that have been suspended for more than 90 days, during the normal operating season because of administrative appeals or litigation, through no fault of the timber purchaser. Comments received on this interim final rule will be considered in adoption of a final rule.

DATES: This interim final rule is effective April 9, 2004. Comments must be received in writing by June 8, 2004.

ADDRESSES: Send written comments to the Director of Forest and Rangeland Management, via the U.S. Postal Service to MAIL STOP 1105, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250-0003; via e-mail to *wo timber sale contract rate*

redetermination@fs.fed.us; or via facsimile to 202-205-1045. Comments also may be submitted via the World Wide Web/Internet Web site at: <http://www.regulations.gov>. 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 interim final rule in the office of the Director of Forest and Rangeland 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: Richard Fitzgerald, Forest and Rangeland Management, (202) 205-1753.

SUPPLEMENTARY INFORMATION:

Background

The suspension of a timber sale purchaser's operations because administrative appeals or litigation, through no fault of the timber purchaser often can result in economic hardship to the purchaser, if after a period of time, the timber market decreases substantially. Not only may the purchaser face economic loss, but the government can be faced with potential claims or additional litigation relating to the delays. When timber markets rise, during the suspension, this problem does not occur.

The regulations at 36 CFR part 223.33 currently provide for a stumpage rate redetermination on sales of 7 years duration on a predetermined schedule. These regulations also provide for stumpage rate redeterminations when a purchaser has diligently performed a contract and seeks an extension (36 CFR 223.115) if, at the time of the scheduled contract termination, at least 75 percent of the contract volume has been removed, and all specified road construction completed. However, the current regulations do not give authority to the contracting officer to provide for

a stumpage rate redetermination to reflect changed market conditions when, at no fault of the purchaser, an existing timber sale contract was suspended because of administrative appeals or litigation. A rate redetermination would provide relief for purchasers in this situation.

Before 1990, very few timber sales were suspended because of administrative appeals or litigation. Now, with much less timber volume under contract, purchasers have limited opportunities to adjust operations to other sales, and thus minimize the economic impact. More recently, the suspension of sales has led to increased contract claims and litigation for damages resulting from the delays caused by the suspension. In the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), Congress provided economic relief to certain timber contracts in Alaska that were sold after 1995, because of changed timber market conditions.

A notice with request for comment on proposed revisions to timber sale contract Forms FS-2400-6, for scaled sale procedures, and FS-2400-6T, for tree measurement sale procedures, was published in the **Federal Register** on December 19, 2003 (68 FR 70758). That notice included a proposed contract provision which would provide relief for future timber sale purchasers by allowing modification of stumpage rates in contracts suspended for more than 90 days, due to administrative appeals or environmental litigation. The Forest Service currently is considering comments received from the public and anticipates issuing the final revised contracts in the near future.

Good Cause Statement

This interim final rule amends the current regulation at 36 CFR 223.112 to authorize redetermination of existing contract stumpage rates to provide economic relief to timber sale purchasers for remaining unharvested volume in timber sales awarded after October 1, 1995. This rule will authorize

redetermination of stumpage rates to reflect significant declines in timber market conditions during the suspension of timber sales for more than 90 days because of administrative appeals or litigation, through no fault of the timber purchaser.

This rule may enable purchasers obtaining stumpage rate redeterminations to continue existing contracts after the suspension has been lifted. If purchasers continue to lose money on sales, many purchasers may go out of business. In the past, timber sale contracts have not provided for a stumpage rate redetermination to reflect the economic impact on the purchaser because of contract suspensions. Authorizing rate redeterminations in limited circumstances results in claims and damages that could exceed the cost of providing this relief. There are a significant number of timber sale purchasers whose contracts have been suspended for more than 90 days due to no fault of their own, because of litigation or administrative appeals. These purchasers will have the ability to immediately request rate redetermination to insure the economic viability of the sale.

Conclusion

By adoption of this interim final rule, the Chief authorizes contracting officers to modify timber sale contracts, at the timber sale purchaser's request, to include a rate redetermination when an existing timber sale has been suspended for more than 90 days, due to administrative appeals or litigation, through no fault of the timber purchaser, to reflect significant timber market declines.

Regulatory Certifications

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. OMB has determined that this is not a significant rule. 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. 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 interim final rule is not subject to OMB review under Executive Order 12866.

Moreover, this interim final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The interim final rule imposes no additional requirements on timber purchasers for the purpose of contract modifications.

Environmental Impact

This interim final rule establishes the opportunity to provide relief from adverse economic impacts that occur at no fault of a timber sale purchaser. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement * * * rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions” * * * 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 interim final rule is to authorize stumpage rate redeterminations for existing sales suspended, at no fault of the purchaser, more than 90 days, during the normal operating season, as a result of administrative appeals or litigation, through no fault of the timber purchaser to reflect significant timber market declines. No change in resources on National Forest System (NFS) land would occur from implementation of this rule except to defer operations on an NFS timber sale. A final determination will be made upon adoption of a final rule.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or information requirement, as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501, *et seq.*), the Forest Service has not requested emergency approval from the Office of Management and Budget for this interim final rule.

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 interim 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.

List of Subjects in 36 CFR Part 223

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

■ Therefore, for the reasons set forth in the preamble, Title 36 of the Code of Federal Regulations, part 223, subpart B, 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. In § 223.112, designate the first paragraph as (a) and add paragraph (b) as follows:

§ 223.112 Modification of Contracts.

(a) * * *

(b) Timber sale contracts awarded after October 1, 1995, that have been suspended for more than 90 days, during the normal operating season, at no fault of the purchaser, because of administrative appeals or litigation, that did not include contract provisions for rate redeterminations may be modified at the request of the timber sale purchaser to include a rate redetermination for the remaining unharvested volume to reflect significant decreases in market value during the period of delay. Rates in effect at the time of the suspension will be redetermined in accordance with the standard Forest Service methods in effect 45 days prior to the rate redetermination.

Dated: April 2, 2004.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

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