

construction. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

#### *No Takings Implications*

This 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 no changes in contract provisions are necessary to implement this rule and, in any case, new contract provisions would be used only prospectively in new contracts.

#### *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 its provisions.

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

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and 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, Public lands, Reporting and recordkeeping.

■ 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 § 223.41 to read as follows:

##### **§ 223.41 Payment when purchaser elects government road construction.**

Each contract having a provision for construction of specified roads with total estimated construction costs of \$50,000 or more will include a provision to ensure that if the purchaser elects Government road construction, the purchaser shall pay, in addition to the price paid for the timber or other forest products, an amount equal to the estimated cost of the roads.

■ 3. Amend § 223.63 to read as follows:

##### **§ 223.63 Advertised rates.**

Timber shall be advertised for sale at its appraised value. The road construction cost used to develop appraised value means the total estimated cost of constructing all permanent roads specified in the timber sale contract, estimated as if construction is to be accomplished by the timber purchaser. The advertised rates shall be not less than minimum stumpage rates, except that sales of insect-infested, diseased, dead, or distressed timber may be sold at less than minimum rates when harvest of such timber is necessary to protect or improve the forest or prevent waste of usable wood fiber.

■ 4. Revise § 223.82(b) introductory text to read as follows:

##### **§ 223.82 Contents of advertisement.**

\* \* \* \* \*

(b) For each timber sale which includes specified road construction with a total estimated value of \$50,000 or more, the advertisement shall also include:

\* \* \* \* \*

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

##### **§ 223.83 Contents of prospectus.**

(a) \* \* \*

(16) The estimated road construction cost for each sale described in § 223.82(b) and the estimated public works construction cost.

(17) For deficit sales:

(i) An estimate of the difference between fair market value and

advertised value, that is, the amount by which the advertised value exceeds the appraised value.

(ii) The amount of Forest Service funds or materials to be used to offset the deficit.

\* \* \* \* \*

■ 6. Amend § 223.84 by revising the section heading to read as follows:

##### **§ 223.84 Small business bid form provisions on sales with specified road construction.**

\* \* \* \* \*

Dated: December 28, 2005.

**Mark Rey,**

*Under Secretary, Natural Resources and Environment.*

[FR Doc. 06–35 Filed 1–3–06; 8:45 am]

**BILLING CODE 3410–11–P**

### **DEPARTMENT OF AGRICULTURE**

#### **Forest Service**

#### **36 CFR Part 223**

**RIN 0596–AC09**

#### **Sale and Disposal of National Forest System Timber; Free Use to Individuals; Delegation of Authority**

**AGENCY:** Forest Service, USDA.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule raises the value limit of timber that can be granted by line officers to individuals for use free of charge. Current regulations limit the value of free use timber that a designated forest officer can grant to an individual in a fiscal year to \$20. Forest Supervisors are limited to \$100 per year per individual and Regional Foresters are limited to \$5,000 per year per individual. Free use exceeding \$5,000 must be reviewed by the Chief of the Forest Service.

The ability of the Forest Service to respond to legitimate requests for free use have been restricted by these limits as timber values have increased over the years. The Forest Service is raising the limits to \$200 for forest officers, \$5,000 for Forest Supervisors, and \$10,000 for Regional Foresters. Any request for free use in excess of \$10,000 in value would still require review by the Chief of the Forest Service. No other changes to the regulations concerning free use of timber are being proposed.

**DATES:** This interim final rule is effective January 4, 2006. Comments must be received in writing on or before March 6, 2006.

**ADDRESSES:** Send written comments to USDA Forest Service, Director Forest

Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250-1103. Written comments also may be transmitted via the Internet to [freeuse@fed.fs.us](mailto:freeuse@fed.fs.us). Comments received on this interim final rule, including names and addresses where provided, are available for inspection in the office of the Director of Forest Management, Wing 3NW, Yates Building, 201 14th Street, SW., Washington, DC 20250, between the hours of 8 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202-205-0893) to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Rod Saltee, Forest Management Staff, at (202) 205-1766, or Richard Fitzgerald, Forest Management Staff, (202) 205-1753.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

A presidential proclamation in 1891 authorized the creation of the Forest Reserves in the United States. The Organic Act of 1897, as amended, authorizes the Secretary of Agriculture to permit under "regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located." The General Land Office administered these lands until 1905, when the forest reserves were transferred to the newly created Forest Service. In 1905, Gifford Pinchot, chief forester, released a handbook titled *The Use of the National Forest Reserves*. This was a revision of previous regulations and instructions used to manage the forest reserves. This handbook, which came to be known as the Use Book, contained regulations concerning free use of timber as authorized by the 1897 Act. In regulations number 5 and 6, Gifford Pinchot established a value for free use at \$20 in 1 year to a single applicant. This limit applied to "All supervisors, all forest rangers and deputy forest rangers, and such other forest officers as the supervisor may designate \* \* \*". Value limits set in 36 Code of Federal Regulations (CFR) 223.8—Delegation of authority to approve free use by individuals—still reflect this original free use limit. In the ensuing period of time, higher limits were established for Forest Supervisors, Regional Foresters and the Chief of the Forest Service, but

the limit for designated forest officers remained at \$20. These limits were appropriate at the time they were set. However, the value of all forest products has increased significantly since those limits were set. Although forest products authorized under the terms of a free use permit are granted without charge, the establishment of value limits is a part of the monitoring and administration of the free use program.

Higher value limits for free use timber will allow forest officers and Forest Supervisors more flexibility to handle legitimate free use requests. This is especially important when dealing with Native American traditional and treaty rights.

##### **Good Cause Statement**

The Forest Service is issuing this interim final rule to raise the value limits of free use timber granted by various Forest Service employees. Implementing these higher value limits allows Regional Foresters, Forest Supervisors, and District Rangers greater flexibility to handle legitimate free use requests in light of current market values for timber. By issuing this as an interim final rule, delegated employees can immediately begin operating under these new value limits. Public comments could result in a re-evaluation of one or more of these value limits.

This rulemaking merely updates regulations that comply with the terms of law and up-dates value limits that the Department considers obsolete. There is reason to believe that these changes are noncontroversial since it merely updates an existing regulation to reflect the current value of forest products.

##### **Regulatory Certifications**

###### *Regulatory Impact*

This 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 rule 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. Implementation of higher free use value limits will not affect the economy, a sector of the economy, productivity, competition, jobs, or State or local governments. This rule will not interfere with an action taken or planned by another agency, but may raise new legal or policy issues; however, these legal and policy issues are not likely to be significant. This action consists of technical, administrative changes to regulations affecting how individual

free use timber will be handled on National Forest System 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 rule is not subject to OMB review under Executive Order 12866.

###### *Regulatory Flexibility Act*

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. The rule makes only technical, administrative changes to existing regulations dealing with individual free use authorities. There is no business association in this regulation with either large or small business entities.

###### *Unfunded Mandates Reform*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

###### *Environmental Impact*

This rule raises the value limits of timber that can be granted by various Forest Service employees to individuals for use free of charge. Free use timber has been authorized by law since 1897. The value of free use timber does not directly infer how much timber is removed, location, or manner of removal. Those issues are still controlled by the local line officer. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

###### *No Takings Implications*

This 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 authorization for free use only applies to timber on National Forest System 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 its provisions.

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**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 A—General Provisions**

■ 2. Revise § 223.8(a) to read as follows:

##### **§ 223.8 Delegations of authority to approve free use by individuals.**

(a) Forest officers whom the supervisor may designate are authorized to grant free use of timber to individuals up to \$200 in value in any one fiscal year. Supervisors may grant permits for material not exceeding \$5,000 in value. Regional Foresters may approve permits for larger amounts, and in times of emergency may delegate authority to supervisors for not over \$10,000 in value. Prior review by the Chief of the Forest Service will be given if the amount involved exceeds \$10,000 in value.

\* \* \* \* \*

Dated: December 28, 2005.

**Mark Rey,**

*Under Secretary, Natural Resources and Environment.*

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