

### § 223.13

trees, or other forest products on National Forest System lands without advertisement when necessary for the occupancy of a right-of-way or other authorized use of National Forest System land. Payment for timber of merchantable size and quality will be required at its appraised value, but at not less than applicable minimum prices established by Regional Foresters, and payment will be required for young growth timber below merchantable size at its damage appraisal value. Payment will not be required:

(a) For timber necessarily killed or cut in connection with land uses which are of substantial benefit to the National Forests;

(b) For timber necessarily killed or cut and used by the permittee which would have been granted free under other applicable regulations; or

(c) For timber which will be cut by the permittee which the Forest Service retains for sale in log or other product form.

(Sec. 1, 30 Stat. 35, as amended, 16 U.S.C. 551)

### § 223.13 Compliance.

Forest officers authorizing free use shall ensure that such use is in compliance with applicable land management plans and is conducted in a manner which protects National Forest System resource values.

(92 Stat. 1301, Pub. L. 95-465)

### § 223.14 Where timber may be cut.

(a) The cutting of trees, portions of trees or other forest products may be authorized on any National Forest System lands, except for:

(1) Timber reserved by a grantor of land, during the life of such reservation.

(2) Timber reserved from cutting under other regulations.

(3) Timber on unpatented mining claims located prior to July 23, 1955, unless the claimant has executed a waiver pursuant to section 6 of the Act of July 23, 1955 (69 Stat. 367), or unless pursuant to a proceeding under Section 5 of that Act, the claimant has failed to file a verified statement or has failed to establish the validity and effectiveness of his asserted rights.

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(4) Timber on lands identified in land management plans as not suited for timber production, except that salvage sales or sales necessitated to protect other multiple-use values may be made.

(b) The cutting of timber on mining claims shall be conducted in such manner as not to endanger or materially interfere with prospecting, mining or processing operations.

(c) Timber on an unpatented claim to which the United States does not otherwise have disposal rights may be disposed of with the written consent of the claimant, or, in emergencies without the consent of the claimant.

(d) Timber on an unpatented claim may be cut by the claimant only for the actual development of the claim or for uses consistent with the purposes for which the claim was entered. Any severance or removal of timber, other than severance or removal to provide clearance, shall be in accordance with plan of operations required by Part 252 of this chapter, and with sound principles of forest management.

(e) With prior approval by the Regional Forester, timber on lands under option by the United States or on offered lands included in an approved land exchange agreement may be sold. Before the sale is made, a cooperative agreement must be made with the owner of the land authorizing the Forest Service to conduct the sale and providing for return of stumpage receipts to the owner if title to the land is not accepted by the United States.

(f) With prior approval by the Regional Forester, cutting of exchange timber described in § 223.4 may be authorized in advance of the acceptance of title to the non-Federal land offered in exchange.

## Subpart B—Timber Sale Contracts

### CONTRACT CONDITIONS AND PROVISIONS

### § 223.30 Consistency with plans, environmental standards, and other management requirements.

The approving officer will insure that each timber sale contract, permit or other authorized form of National Forest timber disposal is consistent with

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applicable land and resource management plans and environmental quality standards and includes, as appropriate, requirements for:

- (a) Fire protection and suppression;
- (b) Protection of residual timber;
- (c) Regeneration of timber as may be made necessary by harvesting operations;
- (d) Minimizing increases in soil erosion;
- (e) Providing favorable conditions of water flow and quality;
- (f) Utilization of the timber resource to provide for the optimum practical use of the wood material as may be obtained with available technology, considering opportunities to promote more efficient wood utilization, regional conditions and species characteristics;
- (g) Reduction of the likelihood of loss to destructive agencies; and
- (h) Minimizing adverse effects on, or providing protection for and enhancing other National Forest resources, uses and improvements.

### § 223.31 Duration of contracts.

Sale contracts shall not exceed 10 years in duration, unless there is a finding by the Chief, Forest Service, that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result.

### § 223.32 Timber sale operating plan.

Sale contracts with a term of 2 years or more shall provide for the filing of an operating plan as soon as practicable after execution of the contract, such plan shall be a part of the contract. The plan of operation shall be general in nature, outlining the expected timing and order of sale development, including such major operations as road construction, felling and removal of timber, distribution of timber, and contractual requirements for erosion prevention and slash disposal. The plan of operation and revisions thereto shall be subject to concurrence by the Forest Service.

### § 223.33 Redetermination of stumpage rates and deposits.

Sale contracts exceeding 7 years in duration, and those of shorter duration to the extent found desirable by the ap-

proving officer, will provide for the redetermination of rates for stumpage and for required deposits at intervals of not more than 5 years, exclusive of any period allowed for the construction of improvements.

### § 223.34 Advance payment.

Sale contracts shall provide that timber and forest products be paid for in advance of cutting, unless the contract authorizes the purchaser to furnish a payment guarantee satisfactory to the Forest Service. Advance payments found to be in excess of amounts due the United States shall be refunded to the current holder of the contract or to successors in interest. (90 Stat. 2959; 16 U.S.C. 472a.)

[43 FR 38008, Aug. 25, 1978. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.35 Performance bond.

Timber sale contracts may require the purchaser to furnish a performance bond for satisfactory compliance with its terms.

### § 223.36 Volume determination.

(a) Timber sale contracts may provide for volume determination by scaling, measuring, weighing, or counting the logs or other products, or by measuring the trees before cutting. If the contract or permit provides for the determination of volume by tree measurement and the timber has been paid for, the marking or otherwise designating of the tree authorizes cutting and removal. Otherwise no timber cut under any contract shall be removed from the place designated until it has been scaled, measured or counted as provided in the timber sale contract, unless such removal is specifically authorized in the contract.

(b) National Forest timber sold on board foot scale shall be scaled by the Scribner Decimal C Log Rule, or if the advertisement and contract or permit so state, by the International 1/4-inch log rule or by the International 1/4-inch Decimal log rule. National Forest timber may also be sold by the cubic volume rule or by cords, each as used by the Forest Service.