

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. Sec. 499; 49 C.F.R. 1.46; 33 C.F.R. 1.05-(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Effective 12:01 a.m. on December 31, 1998, through 12:01 a.m. on March 1, 1999, Section 117.5-T-08-079 is added to read as follows:

### § 117.5-T-08-079 Upper Mississippi River.

Burlington Railroad Drawbridge, Mile 403.1, Upper Mississippi River. From 12:01 a.m. on December 31, 1998 through 12:01 a.m. on March 1, 1999, the drawspan shall open on signal if at least six (6) hours advance notification is given. Advance notice may be given by calling (309) 345-6103 during work hours and (309) 752-5244 after hours.

Dated: December 22, 1998.

**Paul J. Pluta,**

Rear Admiral, U.S. Coast Guard Commander,  
Eighth Coast Guard District.

[FR Doc. 99-57 Filed 1-4-99; 8:45 am]

BILLING CODE 4910-15-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD08-98-064]

RIN 2115-AE47

#### Drawbridge Operating Regulation; Lafourche Bayou, LA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is finalizing the interim regulations regarding the modifications to the operating regulations for the SR1 vertical lift bridge (Galliano-Tarpon bridge), mile 30.6, and the SR1 pontoon bridge (Cote Blanche bridge), mile 33.9, near Cutoff, Lafourche Parish, Louisiana.

**DATES:** This final rule becomes effective on January 5, 1999.

**ADDRESSES:** Documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130-3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. Commander

(ob) maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Frank, Bridge Administration Branch, telephone number 504-589-2965.

**SUPPLEMENTARY INFORMATION:** On October 14, 1998, the Coast Guard published interim regulations (63 FR 55030) to modify the drawbridge operation regulations for the SR1 vertical lift bridge (Galliano-Tarpon bridge), mile 30.6, and the SR1 pontoon bridge (Cote Blanche bridge), mile 33.9, near Cutoff, Lafourche Parish, Louisiana.

The modification to the regulation facilitates the movement of the school bus traffic while still providing for the reasonable needs of navigation. The interim rule requires the draws of the SR1 bridge, mile 30.6, and the SR1 bridge, mile 33.9, both near Cutoff, shall open on signal except that, from 2:30 p.m. to 3:30 p.m., and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draws need not open for the passage of vessels.

The 60-day comment period expired on December 14, 1998. The Coast Guard did not receive any comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

#### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

The amended regulation adjusts the hours that the bridges need not open for

the passage of vessels by 30 minutes. Any impact the adjustment may have on small entities is not substantial. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2-1, CE # 32(e) of the NEPA Implementing Procedures, COMDINST M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

Accordingly, the interim rule amending 33 CFR part 117 which was published at 63 FR 55030 on October 14, 1998, is adopted as a final rule without change.

Dated: December 22, 1998.

**Paul J. Pluta,**

Rear Admiral, U.S. Coast Guard Commander,  
Eighth Coast Guard District.

[FR Doc. 99-55 Filed 1-4-99; 8:45 am]

BILLING CODE 4910-15-M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 223

RIN 0596-AB62

#### Small Business Timber Sale Set-Aside Program; Appeal Procedures on Recomputation of Shares

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

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**SUMMARY:** This final rule establishes procedures by which timber purchasers may comment on an appeal the recomputation of shares and related decisions made under the Small Business Timber Sale Set-aside Program. This rule clarifies the kinds of decisions that are subject to appeal, who may appeal decisions, the procedures for appealing decisions, the timelines for appeal, and the contents of the notice of appeal. The intended effect is to provide an opportunity for timber sale purchasers to appeal small business shares as called for in the conference report accompanying the Fiscal Year 1997 Omnibus Appropriations Act. This final rule supersedes the interim rule published March 24, 1997.

**DATES:** This final rule is effective January 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rod Sallee, Forest Management Staff, (202) 205-1766.

**SUPPLEMENTARY INFORMATION:**

**Background**

Developed in cooperation with the Small Business Administration, the Forest Service Small Business Timber Sale Set-aside Program is designed to ensure that qualifying small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale. The current set-aside program was adopted July 26, 1990 (55 FR 30485).

Under the program, the Forest Service must recompute the shares of timber sales to be set aside for qualifying small businesses every 5 years on the actual volume of sawtimber that has been purchased and/or harvested by small business. Also, shares must be recomputed if there is a change in manufacturing capability, if the purchaser size class changes, or if certain purchasers discontinue operations. Direction to guide employees in administering the Small Business Timber Sale Set-aside Program is issued in the Forest Service Manual, Chapter 2430, and Chapter 90 of the Forest Service Timber Sale Preparation Handbook (FSH 2409.18).

In 1992, the agency adopted new administrative appeal procedures at 36 CFR part 215 in response to new statutory direction. These rules apply to certain National Forest System project-level decisions for which an environmental assessment (EA) or impact statement (EIS) has been prepared. Because the recomputation of shares under the Small Business Timber Sale Set-aside Program is not subject to documentation in an EA or EIS, the decisions on the 1996-2000 Forest

Service recomputation of small business shares were not subject to the new appeal procedures. However, since the agency had accepted appeals of recomputation decisions under 36 CFR part 217 prior to adoption of part 215, the agency decided to establish procedures for providing notice to affected purchasers with opportunity to comment on the recomputation of shares. Notice of these procedures was published in the **Federal Register** on February 28, 1996 (61 FR 7468).

The Conference Report accompanying the 1997 Omnibus Appropriation Act (Pub. L. 104-208) found the Forest Service decision to eliminate an administrative appeals opportunity for the Small Business Timber Sale Set-Aside Program "unacceptable" and directed the Forest Service to reinstate an appeals process before December 31, 1996. The Conference Report required that the agency establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-Aside (SBA) shares, structural recomputations of SBA shares, or changes in policies impacting the Small Business Timber Sale Set-Aside Program. It also provided that, as in the past, decisions related to the designation of the sales to be set aside are not subject to appeal. An interim rule published March 24, 1997 (62 FR 13826), went into effect immediately to comply with the Conference Report accompanying the FY 1997 Omnibus Appropriations Act. However, the agency also requested comment on the interim rule.

**Response to Comments Received**

Fifteen responses were received on the interim rule. Comments were received from 13 purchasers, one timber industry representative reflecting the joint views of four industry associations, and the Small Business Administration. A summary of the comments and the Department's response follows:

**General Comments**

*Comment:* Fairness and balance of the rule. One timber industry reviewer remarked that the rules were not fair or balanced and should be rejected.

*Response:* This respondent did not specify what is unfair or unbalanced in the interim rule and did not provide suggestions for modifying or improving the regulations. Therefore, the Department is unable to address the respondent's concerns directly. Nevertheless, the Department believes the final rule is fair and balanced with regard to both the decisions that can be appealed and who may participate in appeals.

*Comment:* Large purchasers influence. One respondent stated that the interim rule gives "undue influence to non-small business timber purchasers" and, as a result, limits the small business community's opportunity to purchase a fair proportion of National Forest System timber offered for sale.

*Response:* It appears that this respondent does not understand that the interim rule applies both to small and large businesses. The interim rule limits neither party's opportunity to purchase National Forest System timber and gives all purchasers within the area, regardless of size, equal opportunity to comment on and appeal the market share computations. Because the respondent was not specific about how the rule gives "undue influence to non-small business timber purchasers," the Department is unable to address this comment in more depth.

*Comment:* Include appeals under 36 CFR part 251, subpart C. Several respondents suggested placing the Small Business Timber Sale Set-Aside Program appeal rule under 36 CFR part 251, subpart C, Appeal of Decisions Relating to Occupancy and Use of National Forest Systems Lands. In particular, an organization representing timber purchasers asserted that the Forest Service had never explained why timber purchasers are not afforded the same appeal procedures as other National Forest System commercial users, such as holders of grazing, mining, and special use permits.

*Response:* Regulations at 36 CFR part 251, subpart C, set our procedures for appealing decisions related to occupancy and use of National Forest System lands through the issuance of written authorizations. By contrast, timber sales are governed by contracts, and contracts disputes are governed by the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) settled by the Agriculture Board of Contract Appeals under 7 CFR part 24. Moreover, the nature of the timber sale set-aside decisions which are subject to appeal under 36 CFR 223.118 are more limited than those decision appealable under 36 CFR part 251, subpart C, and the set-aside decisions precede the request for bids and award of contracts, a prerequisite for appeal under 36 CFR part 251. The Small Business Timber Sale Set-Aside Appeal process gives purchasers the opportunity to appeal discrepancies in data related to the share of timber to be made available for bidding by large and small businesses, as well as other decisions about the recomputation process. The Department believes trying to intermingle the set-aside sale decisions and appeal

procedures in part 251, subpart C, would unnecessarily complicate the appeal process and prove burdensome to the appellant and the agency. However to the extent possible, the Department has made the Small Business Timber Sale Set-Aside Appeal regulations consistent with the procedural rules governing the appeal of other Forest Service decisions under 36 CFR parts 215 and 217 in the belief that providing similar appeal procedures for recomputation of shares and related decisions at 36 CFR part 223 should facilitate appellant understanding and use.

#### Comments on Specific Provisions of the Interim Rule

Section 223.118(a) Decisions subject to appeal. Paragraph (a) of § 223.118 specifies that only those decisions leading to recomputation of shares in the Small Business Timber Sale Set-Aside Program are subject to appeal. Decisions leading to the recomputation of shares include structural change, special change, and market change decisions as well as the scheduled 5-year recomputations of the small business share of timber sales.

*Comment.* Five respondents suggested that the range of decisions subject to appeal should be expanded to include other critical decisions, such as changes in delineation of market areas and decisions to initiate a Small Business Timber Sale Set-Aside Program within the market area (trigger decisions). By contrast, the Small Business Administration (SBA) indicated that they would like to make certain that the types of decisions subject to appeal in paragraph (a) of the interim rule remain restricted to those listed in the interim rule as structural, special, market change, or the scheduled 5-year recomputation of the small business share of timber sales. The SBA specifically disagreed with suggestions by some small purchasers that decisions selecting the sales to be designated as timber set-aside sales should also be appealable.

*Response.* Because the SBA has the key responsibility for administering the overall Small Business programs, the Department concurs with SBA's recommendation not to expand the appeal categories.

However, having considered industry comments, the Department believes some clarification of the intended range and type of decisions that are subject to appeal would be helpful. Some changes in the Small Business Timber Sale Set-Aside Program require decisions to be made at two different times; for example, structural changes have two

decision points—the first is the decision that a structural change is needed. This is followed by a later decision that recomputes and establishes a new small business share recomputation. Other unique situations, such as carryover volume, may require two decisions, first, determining the next recomputation period and, secondly, recomputing the shares. In both cases, decisions made at the earlier stage as well as the later stage are appealable. Paragraph (a) of the final rule has been revised to clarify which decisions are appealable.

The second sentence is paragraph 228.118(a) of the interim rule described who may appeal recomputation related decisions. Since the substance of this provision is already set out in paragraph (c), Who may appeal or file written comments as an interested party, this sentence is redundant and has been removed from paragraph (a) in the final rule.

Section 223.118(b)(1) Predecisional notice and comment. No comment was received on this regulatory provision; therefore, no substantive changes have been made to the text in the final rule.

Section 223.118(b)(2) Notice of decision. Paragraph (b)(2) requires the Responsible Official, upon close of the 30-day predecisional review period, to consider any comments received, make a decision on the small business shares or related matters, and give prompt notice to all parties on the bidders' list for the bid area.

*Comment.* The Small Business Administration suggested that the Forest Service and the Small Business Administration make a joint decision on the small business shares, requiring the signature of officials from both agencies on the Notice of Decision.

*Response.* Agency officials "cooperate fully with Small Business Administration representatives in meeting the spirit and objectives of the small business timber sale set-aside programs" (FSM 2436.03). Nevertheless, it would be unwieldy and time-consuming to require approval of both agencies each time a decision on a Small Business Timber Sale Set-Aside matter is made. Moreover, the administration of the timber sale set-aside program, including decisions on recomputation of shares, is ultimately the responsibility of the Forest Service. For these reasons, the Department has not adopted this recommendation.

Section 223.118(c) Who may appeal or file written comments. This provision of the interim rule provides that only timber sale purchasers who are affected by the recomputations of the small business share of the timber sale

program, or their representatives, and who have submitted predecisional comment may appeal recomputation decisions.

*Comment.* Several respondents agreed with the interim rule requirement limiting appeal to timber sale purchasers who are on the bidders' list for the affected area and who have submitted predecisional comments. However, one respondent suggested that both small and large businesses be given the opportunity to provide comment as an interested party to any appeal submitted and several recommended allowing interveners.

*Response.* While the intent of the interim rule was to give both small and large business the opportunity to participate as appellants in the appeal process, the interim rule did not provide for interested parties to participate. In light of the comment on this provision, the Department has reconsidered and consequently has revised the final rule at § 223.118(c)(1) through (c)(3) to allow timber sale purchasers who are affected by recomputation decisions and who submitted predecisional comment to submit written comment as an interested party to the Appeal Deciding Officer within 15 days after the close of the appeal filing period for any filed appeal.

*Comment.* One respondent remarked that a timber purchasing firm with legitimate interest in being an appellant might not have filed earlier comments in the firm's name, because the comments were filed in the name of an association to which the firm belongs. In this case, if the association does not wish to pursue an appeal, but one of its members firms wants to appeal, the respondent felt that the member firm should not be barred from filing an appeal based on the fact that it was not an entity that had commented earlier.

*Response.* The Department disagrees that the member firm should have the right to appeal without having commented as an individual timber sale purchaser on the predecisional notice. However, the agency has reconsidered who may be considered interested parties to an appeal and, subsequently, has amended the language in the final rule to allow member firms to file comments on an appeal as an interested party. Paragraph (c)(2) of § 223.118 clarifies that a timber sale purchaser is considered an interested party, even if an association of which they are a member files comments but decides not to appeal. The rule makes clear that if an association appeals but the individual timber sale purchaser did not file an individual predecisional

comment, then the purchaser is not eligible to file a separate appeal.

*Comment.* One respondent suggested that affected purchasers be defined as small business companies employing less than five hundred employees.

*Response.* The Department disagrees that affected purchasers should be limited to small businesses and that only small businesses should be able to appeal small business share decisions. The small business set-aside program is designed to allocate shares among small and large businesses and, therefore, large and small businesses are equally eligible to appeal recomputation decisions or file written comments as interested parties.

Section 223.118(d) Level of appeal. This provision of the interim rule provides for one level of appeal and notes that the Appeal Deciding Officer is normally the Regional Forester.

*Comment.* One respondent suggested that appeals under this rule be decided by the highest official in the Forest Service.

*Response.* The Department disagrees with this suggestion. Share decisions are located decisions affecting a defined market area. The land management official who oversees timber sales for the area is best prepared to make such a decision. Issues can best be understood and addressed through local dialogue. Also, this provision is consistent with the general appeal process at 36 CFR part 215, which provides only one level of appeal.

Section 223.118(e) through (h)(2). No comments were received on paragraphs § 223.118(e) through (h)(2) of the interim rule; therefore, these paragraphs are retained as they appeared in the interim rule, except for minor editorial changes.

Section 223.118(h) Dismissal without decision. The agency determined that further clarification was needed to specify what information is required in order to review an appeal and to clarify that an appeal will be dismissed without decision unless that information is provided. Therefore, a new paragraph (h)(3) is added to this section which states that the Appeal Deciding Officer must dismiss an appeal if the appellant's notice of appeal does not contain the information required by paragraph (f) of this section. Paragraph (h)(3) of the interim rule is retained but is redesignated paragraph (h)(4) in the final rule.

Section 223.118(i) Appeal record. No comments were received on this provision and, subsequently, no substantive changes are made to this paragraph in the final rule.

Section 223.118(j) Appeal decision. This provision of the interim rule states that the Appeal Deciding Officer shall review the decision and appeal record and issue a written appeal decision to the parties within 30 days of the close of the appeal period. The Appeal Deciding Officer may affirm or reverse the Responsible Official's decision, in whole or in part. The time period for issuing the appeal decision may not be extended. Additional provisions of this paragraph of the interim rule state that if a decision is not rendered within the required 30 days, the existing decision is automatically affirmed. The Appeal Deciding Officer's decision or the failure of the Appeal Deciding Officer to decide within the required 30 days would constitute a final administrative decision of the Department of Agriculture.

*Comment.* Ten respondents suggested requiring a formal response to an appeal rather than allowing automatic affirmation of the existing decision if no formal response was made within 30 days.

*Response.* Upon reconsideration, the Department agrees with this suggestion. Accordingly, the final rule at § 223.118(j) is revised to require the Appeal Deciding Officer to issue a written appeal decision to the parties within 30 days of the close of the appeal period. The provision in the interim rule at § 223.118(j), which affirmed the decision under appeal if no formal response is made within 30 days, is not retained in the final rule.

*Comment.* Several respondents suggested allowing oral presentation during the appeal process. In addition, one respondent remarked that § 215.16 of this chapter of the Code of Federal Regulations allows parties to request a meeting for informal discussions.

*Response.* The provisions at part 215 of this chapter provide an informal process for resolving issues concerning National Forest System projects and activities. The Small Business Timber Sale Set-aside Appeal process is designed, however, to address discrepancies in data used to make the recomputation of shares. Because of the factual basis of the information provided for recomputation appeals, an oral presentation would not likely be the best medium for presenting data in an appeal of this type. Furthermore, there is ample opportunity for informal discussion with the responsible official prior to the decision. Paragraph (b)(1) of § 223.118 allows 30 days for predecisional review and comment. However, in response to this comment and to provide additional opportunity to discuss and clarify factual material, a

new paragraph (j)(2) has been added to permit Appeal Deciding Officers, at their discretion, to invite an appellant to discuss data relevant to the appeal.

*Comment.* Several respondents recommended that responsive statements be a requirement of the appeals process.

*Response.* If the Responsible Official and the Appeal Deciding Officer agree that the information in the appeal records clearly demonstrates the basis for the decision, then a responsive statement addressing the points of the appeal is not necessary. If the records do not adequately demonstrate the basis for the decision, then the Responsible Official may voluntarily prepare or the Appeal Deciding Officer may direct that the Responsible Official prepare a responsive statement. Also, the Appeal Deciding Officer may request additional information from either the Responsible Official or the appellant for clarification of appeal issues. The clarifying information must be based upon information previously documented in the files or in the appeal. A voluntarily prepared responsive statement or any information provided as a result of the Appeal Deciding Officer's request for more information must be made available to both parties. Either party will have 5 days after the Appeal Deciding Officer receives the additional information to review and comment on the information, and the appeal decision period will be extended 5 additional days to accommodate this review period.

The Appeal Deciding Officer must review the decision and appeal record and issue a written appeal decision to the parties within 30 days of the close of the appeal period, except, as previously noted, that period will be extended to 35 days to allow 5 days review by parties when additional information is requested by the Appeal Deciding Officer.

Paragraph 223.118(j) of this section has been revised to incorporate these procedures and timeframes.

*Comment.* The Small Business Administration suggested that the regulations include a provision requiring the Appeal Deciding Officer to consult with the Small Business Administration on appeals of recomputations.

*Response.* Forest Service Manual direction already requires employees to cooperate fully with the Small Business Administration (FSM 2436.03). In addition, a Forest Service Responsible Official is required to consult the Small Business Administration when issuing an initial decision that is subject to appeal (FSH 2409.18, 91).

Administration of the agency's Small Business Administration Program, including decisions on recomputation of shares, is the responsibility of the Forest Service; therefore, the Department has not adopted this recommendation. However, in recognition of the potential value of the Small Business Administration's participation in the appeals process, the Department has revised paragraph (c)(2) to include the Small Business Administration as an interested party to an appeal under this section.

Section 223.118(k) Implementation of decisions during pendency of appeal. No comments were received on this provision of the interim rule; therefore, the paragraph is retained without change in the final rule.

Section 223.118(l) Timber sale set-aside policy changes. The agency received no comment on paragraph § 223.118(l) of the interim rule; therefore, this paragraph is retained without change in the final rule. As stated in the preamble of the interim rule, timber purchasers are given an opportunity to review and comment on significant changes in the Small Business Timber Sale Set-aside program or policy prior to adoption and implementation. This opportunity is given through **Federal Register** notice and is consistent with the agency's treatment of all other major policy decisions.

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

In the interim rule, the agency requested comment on the information collection requirement for the Small Business Timber Sale Set-aside Program, Office of Management and Budget number 0596-0141. The information required by paragraph (f) of the interim rule must be provided by purchasers who object to the decision recomputing timber sales to be set aside for small timber purchasers and who wish to file an appeal.

*Comment.* One respondent commented that the estimates of the time required to prepare appeals of Small Business Timber Sale Set-aside decisions were too low. This respondent assumed that an appellant would have to develop an individual database, and, under this assumption, the reviewer stated that it would take 4-hours per market area per 6-month period to collect the Small Business Set-aside decision appeal information into a database. This respondent suggested that the burden be increased to 8 hours per market area to analyze any proposed change and 2 hours to write the comments. Another respondent

indicated that the agency's estimate of the burden of the proposed collection is "way low." This respondent also said that managing the information collection electronically would reduce the burden of collection.

*Response.* The requirements in § 223.118 (f) set out the information that must be provided in a notice of appeal of recomputations of Small Business Set-aside Timber Sale shares or related decisions. The agency does not expect that appellants would need to establish an individual database in order to collect this information, since commercial databases are already available which provide easy, fast access to recomputation-related information.

Furthermore, the agency recognizes that the time to prepare a collection would vary depending on the appeal issue. The estimate of the burden of the proposed collection is intended to be an average of the time that might be required to file an appeal under these regulations. Therefore, the Department does not agree that an adjustment to the number of hours is needed.

*Comment.* One respondent thought that the proposed collection of information appears reasonable except for the requirements of paragraph (f)(2)(vi) of the rule, which requires the appellant to list specific references to any law, regulation, or policy that the appellant believes to have been violated and the basis for such an allegation, and paragraph (f)(2)(vii), which requires a statement as to whether and how the appellant has tried to resolve with the Responsible Official the issue(s) being appealed, including evidence of submission of written comments at the predecisional stage. The respondent indicated that listing legal references does not add meaningful information and remarked that the burden of documenting how issues have been resolved should be shared between the appellant and the Responsible Official.

*Response.* The Department agrees that in some circumstances the requirements of paragraph (f)(2)(vi) may not apply to the decision being appealed and, accordingly, has edited the provision to indicate that this information is needed only if the appellant believes a law, regulation, or order is being violated. Paragraph (f)(2)(vii) is intended to encourage resolution of the issues in the spirit of an informal administrative process and, thus, avoid entering into a formal appeal process. Documenting whether and how such issue resolution occurred is not intended to be burdensome, but the information is necessary to provide evidence that the party did submit predecisional

comments and, therefore, is eligible to appeal. Accordingly, the Department does not agree that a change in paragraph (f)(2)(vii) is necessary.

This information collection has been reviewed by the Office of Management and Budget according to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. The Office of Management and Budget has approved information requirements and assigned control number 0596-0141, which expires May 31, 2000.

The preamble to the interim rule stated that when the information collection was approved by the Office of Management and Budget, a separate notice would be published in the **Federal Register** announcing the effective date of the information requirements. Although the agency received this approval, due to an oversight, the agency did not publish notice of that approval prior to publication of this final rule. The final rule contains a new paragraph (m) which sets forth the information collection control number.

#### **Other Comments**

Several respondents commented on other aspects of the timber sale set-aside program. Two respondents said the small business appeal process was not needed. One reviewer commented on the difficulty that small companies have bidding against large companies. These comments are beyond the scope of this rulemaking, and, therefore, not addressed as part of this final rule.

#### **Conclusion**

Based on the comments received, the interim rule has been revised to clarify decisions subject to appeal, to allow interested party participation, to modify information requirements in an appeal, to allow the Appeal Deciding Officer to request additional information from the appellant or a responsive statement from the Responsible Official, to remove automatic affirmation of the existing decision, and to clarify the filing procedure, when appeals may be dismissed without decision, and the appeal decision process. The final rule offers affected timber purchasers of any size the opportunity to appeal decisions related to the recomputation of share calculations for the Timber Sale Set-aside Program.

#### **Environmental Impact**

This final rule would establish uniform procedures for providing qualifying timber purchasers the opportunity to review, comment on, and

appeal decisions on recomputed shares of the Timber Sale Set-aside Program. 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 final rule falls within this category of actions and has no direct or indirect environmental impact, and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. No comments were received to the contrary.

#### 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 governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been 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 final 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to Office of Management and Budget review under Executive Order 12866.

Pursuant to 5 U.S.C. 605(b), it is hereby certified that this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*) and that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. The final rule imposes no additional requirements on small business timber sale purchasers or other small entities. It merely implements legislative intent to provide

small purchasers an administrative appeal opportunity. To facilitate the preparation and process of timber sale set-aside appeals, the agency has kept the appeal procedures as streamlined and as simple as possible.

#### No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. This final rule provides qualifying timber sales purchasers the opportunity to comment on and appeal the procedures for purchasing a fair proportion of the National Forest System timber offered for sale and neither abrogates or expands any rights related to such sales.

#### Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform, therefore: (1) all state and local laws and regulations that are in conflict with this final rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this final rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

#### List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, and Reporting and recordkeeping requirements.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 223 of Title 36 of the Code of Federal Regulations is hereby 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. 620–620h, unless otherwise noted.

#### Subpart B—Timber Sale Contracts—[Amended]

2. Revise § 223.118 to subpart B to read as follows:

#### § 223.118 Appeal process for small business timber sale set-aside program share recomputation decisions.

(a) *Decisions subject to appeal.* The rules of this section govern appeal of recomputation decisions related to

structural, special, or market changes or the scheduled 5-year recomputations of the small business share of National Forest System timber sales. Certain decisions related to recomputation of shares, such as structural change and carryover volume, may require two decisions, one to determine that a recomputation is needed and the other to recompute the shares. Decisions made both at the earlier stage as well as the later stage are appealable.

(b) *Manner of giving notice.* (1) *Predecisional notice and comment.* The Responsible Official shall provide qualifying timber sale purchasers, as defined in paragraph (c)(1) of this section, 30 days for predecisional review and comment on any draft decision to reallocate shares, including the data used in making the proposed recomputation decision.

(2) *Notice of decision.* Upon close of the 30-day predecisional review period, the Responsible Official shall consider any comments received. Within 15 days of the end of the comment period, the Responsible Official shall make a decision on the small business shares and shall give prompt written notice to all parties on the national forest timber sale bidders list for the affected area. The notice of decision must identify the name of the Appeal Deciding Officer, the address, the date by which an appeal must be filed, and a source for obtaining the appeal procedures information.

(c) *Who may appeal or file written comments as an interested party.* (1) Only timber sale purchasers, or their representatives, who are affected by recomputations of the small business share of timber sales as described in paragraph (a) of this section and who have submitted predecisional comments pursuant to paragraph (b)(1) of this section, may appeal recomputation decisions under this section or may file written comments as an interested party.

(2) Interested parties are defined as the Small Business Administration and those timber sale purchasers, or their representatives, who are affected by recomputations of the small business share of timber sales as described in paragraph (a) of this section and who have individually, or through an association to which they belong, submitted predecisional comments pursuant to paragraph (b)(1) of this section.

(i) A timber sale purchaser may submit comments on an appeal as an interested party if an association to which the purchaser belongs filed predecisional comment but later decides

not to appeal or not to file comments as an interested party.

(ii) A timber sale purchaser, who is a member of an association that appeals a decision, may not file a separate appeal unless that purchaser filed separate predecisional comment under paragraph (b)(1).

(3) Interested parties who submit written comments on an appeal filed by another party may not continue an appeal if the appellant withdraws the appeal.

(d) *Level of appeal.* Only one level of review is available for appeal of decisions pertaining to recomputations under the Small Business Timber Sale Set-aside Program. The Appeal Deciding Officer is the official one level above the level of the Responsible Official who made the recomputation of shares decision. The Responsible Official is normally the Forest Supervisor; thus, the Appeal Deciding Officer is normally the Regional Forester. However, when the Regional Forester makes recomputation decisions, the Appeal Deciding Officer is the Chief or such officer at the National headquarters level as the Chief may designate.

(e) *Filing procedures.* In order to file an appeal under this section, an appellant must file a notice of appeal, as specified in the notice of decision, with the Appeal Deciding Officer within 20 days of the date on the notice of the decision. This date must be specified in the notice of decision given pursuant to paragraph (b)(2) of this section. Written comments filed by an interested party in response to an appeal must be filed within 15 days after the close of the appeal filing period.

(f) *Content of notice of appeal.* (1) It is the responsibility of the appellant to provide sufficient narrative evidence and argument to show why a recomputation decision by the Responsible Official should be reversed or changed.

(2) An appellant must include the following information in a notice of appeal:

(i) The appellant's name, mailing address, and daytime telephone number;

(ii) The title or type of recomputation decision involved, the date of the decision, and the name of the Responsible Official;

(iii) A brief description and date of the decision being appealed;

(iv) A statement of how the appellant is adversely affected by the decision being appealed;

(v) A statement of the facts in dispute regarding the issue(s) raised by the appeal;

(vi) If relevant, any specific references to any law, regulation, or policy that the appellant believes to have been violated and the basis for such an allegation;

(vii) A statement as to whether and how the appellant has tried to resolve with the Responsible Official the issue(s) being appealed, including evidence of submission of written comments at the predecisional stage as provided by paragraph (a) of this section, the date of any discussion, and the outcome of that meeting or contact; and

(viii) A statement of the relief the appellant seeks.

(g) *Time periods and timeliness.* (1) All time periods applicable to this section will begin on the first day following a decision or action related to the appeal.

(2) Time periods applicable to this section are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is automatically extended to the end of the next Federal working day.

(3) It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of questions, legible postmarks on a mailed appeal or the time and date imprint on a facsimile appeal will be considered evidence of timely filing. Where postmarks or facsimile imprints are illegible, the Appeal Deciding Officer shall rule on the timeliness of the notice of appeal.

(4) The time period for filing a notice of appeal is not extendable.

(h) *Dismissal without decision.* The Appeal Deciding Officer shall dismiss an appeal and close the record without a decision in any of the following circumstances:

(1) The appellant is not on the timber sale bidders list for the area affected by the recomputation decision;

(2) The appellant's notice of appeal is not filed within the required time period;

(3) The appellant's notice of appeal does not contain responses required by paragraphs (f)(2)(i) through (f)(2)(viii) of this section; or

(4) The appellant did not submit written comments on the proposed decision of the new recomputed shares as described in paragraph (c) of this section.

(i) *Appeal record.* The appeal record consists of the written decision being appealed, any predecisional comments received, any written comments submitted by interested parties, any

other supporting data used to make the decision, the notice of appeal, and, if prepared, a responsive statement by the Responsible Official which addresses the issues raised in the notice of appeal. The Responsible Official must forward the record to the Appeal Deciding Officer within 7 days of the date the notice of appeal is received. A copy of the appeal record must be sent to the appellant at the same time.

(j) *Appeal decision.* (1) *Responsive statement for appeal decision.* The Appeal Deciding Officer may request the Responsible Official to prepare a responsive statement. However, if the information in the files clearly demonstrates the rationale for the Responsible Official's decision, then a responsive statement addressing the points of the appeal is not necessary.

(2) *Appeal issue clarification.* For clarification of issues raised in the appeal, the Appeal Deciding Officer may request additional information from either the Responsible Official, the appellant, or an interested party who has submitted comments on the appeal. At the discretion of the Appeal Deciding Officer, an appellant or interested party may be invited to discuss data relevant to the appeal. Information provided to clarify issues or facts in the appeal must be based upon information previously documented in the file or appeal. Any information provided as a result of the Appeal Deciding Officer's request for more information must be made available to all parties, that is, to the Responsible Official, the appellant, and interested parties who have submitted comments on the appeal. All parties will have 5 days after the Appeal Deciding Officer receives the additional information to review and comment on the information, and the appeal decision period will be extended 5 additional days.

(3) *Issuance of final decision.* The Appeal Deciding Officer shall review the decision and appeal record and issue a written appeal decision to the parties within 30 days of the close of the appeal period except that this period must be extended to 35 days when additional information is requested by the Appeal Deciding Officer. The Appeal Officer may affirm or reverse the Responsible Official's decision, in whole or in part. There is no extension of the time period for rendering an appeal decision.

(k) *Implementation of decisions during pendency of appeal.*

Recomputation of shares arising from a scheduled 5-year recomputation are effective on April 1 following the end of the 5-year period being considered. If an appeal that may affect the shares for the



next 5-year period is not resolved by the April 1 date, the share decision announced by the Responsible Official must be implemented. If an appeal decision results in a change in the shares, the revised total share of the Small Business Timber Sale Set-aside Program must be accomplished during the remaining portion of the 5-year period.

(l) *Timber sale set-aside policy changes.* Timber purchasers shall receive an opportunity, in accordance with all applicable laws and regulations, to review and comment on significant changes in the Small Business Timber Sale Set-aside Program or policy prior to adoption and implementation.

(m) *Information collection requirements.* The provisions of paragraph (f) of this section specify the information that appellants must provide when appealing decisions pertaining to recomputation of shares. As such, these rules contain information requirements as defined in 5 CFR Part 1320. These information requirements have been approved by the Office of Management and Budget and assigned control number 0596-0141.

Dated: December 29, 1998.

**Anne Kennedy,**

*Deputy Under Secretary, Natural Resources and Environment.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[LA40-1-7338a; FRL-6207-8]

#### Approval and Promulgation of Implementation Plan Louisiana; Nonattainment Major Stationary Source Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This action approves a revision to the Louisiana State Implementation Plan (SIP), Title 33 of the Louisiana Administrative Code Chapter 5 Section 504, "Nonattainment New Source Review Procedures." This revision was submitted on May 9, 1997, by the Governor of Louisiana to EPA for approval.

This revision allows major stationary sources emitting or having the potential to emit at least 100 tons per year of volatile organic compounds (VOC) to offset emissions within the source by an internal offset ratio of at least 1.3 to 1.

If the internal offset condition is met, then the requirement to apply the Lowest Achievable Emission Rate (LAER) shall be lifted. This rule making action is being taken under sections 110, 301, and part D of the 1990 Clean Air Act (Act).

**DATES:** This action is effective on March 8, 1999, unless adverse or critical comments are received by February 4, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** (FR) informing the public that this rule will not take effect.

**ADDRESSES:** Comments may be mailed to Ms. Jole Luehrs, Chief, Air Permits Section, Mailcode 6PD-R, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above location or at the:

Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

**FOR FURTHER INFORMATION CONTACT:** Tommy S. Stogner of the EPA Region 6 Air Permits Section at (214) 665-8510.

#### SUPPLEMENTARY INFORMATION:

##### I. Background of Section 504

This regulation is a revision to Section 504 previously approved on October 10, 1997, by EPA (62 FR 52948). The Governor of Louisiana submitted a revision of Louisiana Administrative Code (LAC) 33:III.504 (Section 504) on May 9, 1997, for EPA approval. This revision was submitted to incorporate provisions to implement Section 182(c)(8) of the Act.

##### II. Section 504: Incorporation of the Provision of Section 182(c)(8) of the Act

The State of Louisiana adopted this revision to incorporate provisions to implement section 182(c)(8) of the Act which provides a special rule for modifications of sources emitting 100 tons or more of VOCs per year. Affected sources are any major stationary source of VOCs located in an ozone nonattainment area classified as serious, and which emits, or has the potential to emit, 100 tons or more of VOCs per year. Whenever there is any change in emissions of VOCs from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 172(c)(5) and section 173(a). This Rule allows the owner or operator of the source to offset the increase by a greater

reduction in emissions of VOCs from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, in lieu of the requirements of section 173(a)(2) concerning the LAER.

##### III. Requirements of Section 182(f) of the Act

Section 182(f) sets forth the presumption that Nitrogen Oxides (NO<sub>x</sub>) are an ozone precursor unless the Administrator makes a finding of nonapplicability or grants a waiver pursuant to criteria contained in that subsection. Specifically, section 182(f) provides that requirements applicable for major stationary sources of VOC shall apply to major stationary sources of NO<sub>x</sub>, unless otherwise determined by the Administrator, based upon certain determinations related to the benefits or contribution of NO<sub>x</sub> control to air quality, ozone attainment, or ozone air quality. In the revised rule, NO<sub>x</sub> has been removed based on a demonstration that additional NO<sub>x</sub> reductions would not contribute to attainment of the National Ambient Air Quality Standard for ozone in the nonattainment area.<sup>1</sup>

##### IV. EPA Analysis

This regulation meets all requirements for major source modifications exempting sources complying with section 182(c)(8) of the Act from the requirements of section 173(a)(2) concerning LAER and is being approved by EPA. For further details regarding this rule, EPA has prepared a Technical Support Document for EPA actions on LAC 33:III.504 for this notice.

##### V. Final Action

The EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this FR publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 8, 1999, without further notice unless the Agency receives relevant adverse comments by February 4, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and

<sup>1</sup> The EPA previously approved the exemption (under section 182(f) of the Act) of NO<sub>x</sub> requirements for the serious ozone nonattainment area of Baton Rouge on January 18, 1996 (see 61 FR 2438) and approved the exemption of nitrogen oxide requirements for the marginal ozone nonattainment area of Lake Charles (Calcasieu Parish) on May 27, 1997 (See 62 FR 29072).