discretionary authority can be found at 36 CFR 1.5 (Closures and public use limits) and at 36 CFR 1.7(b) (Park compendium) to safely regulate access to the Caves.

On March 14, 1995, the NPS published the proposed regulation that would delete this special regulation (60 FR 13662). Public comment was invited. The comment period closed on May 15, 1995. No comments were received during the comment period.

Drafting Information

The primary authors of this final rule are Craig W. Ackerman, Area Manager of Oregon Caves National Monument and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance with Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this final rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants. Based upon this determination, this regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.49 [Removed]

2. Section 7.49 is removed.

Dated: March 14, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–7978 Filed 4–2–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB58

Disposal of National Forest System Timber; Modification of Timber Sale Contracts in Extraordinary Conditions

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for public comment.

SUMMARY: This interim rule revises the existing regulations regarding noncompetitive sale of timber based on the Secretary of Agriculture's determination that extraordinary conditions exist. The intended effect is to allow forest officers, without advertisement, to make modifications to timber sales awarded or released pursuant to section 2001(k) of the 1995 Rescissions Act, which result in the substitution of timber from outside the sale area specified in the contract for timber within the timber sale contract area. Good cause exists to adopt this interim final rule without prior notice and comment; however, public comment is invited and will be considered before adoption of a final rule.

DATES: This rule is effective April 3, 1996. Comments must be received by May 20, 1996.

ADDRESSES: Send written comments to: Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this rule in the Office of the Director, Timber Management Staff, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250. Parties wishing to view comments are requested to call ahead ((202) 205–0893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Bob Lynn, Timber Management Staff (202) 205–1787; Jay McWhirter, Natural Resources Division, Office of the General Counsel (202) 690–0329.

SUPPLEMENTARY INFORMATION:

Applicable Contract Law

The rules at 36 CFR Part 223 govern the sale of National Forest System timber. Sections 223.80 and 223.100 address the requirements for advertisement and for award of timber sale contracts respectively. Title 16 U.S.C. 472a(d) requires the Secretary of Agriculture to advertise all sales of forest products unless the value of the sale is less than $10,000, or the Secretary determines that extraordinary conditions exist, as defined by regulation. Current regulations at 36 CFR 223.80 require advertisement of a sale for 30 days when its value is greater than $10,000. The Secretary has not previously promulgated rules to implement section 472a(d)'s authority to dispose of timber without advertisement when extraordinary conditions exist.

The advertising requirement of 16 U.S.C. 472a(d) also limits modifications to contracts involving the addition or substitution of timber outside a contract's sale area. Since only the timber within the contract's sale area was subject to competitive bidding, any timber located outside the contract's sale area would theoretically be available for sale to other interested purchasers; thus the current rules do not permit contract modifications that add or substitute timber outside a contract's sale area for timber under contract within the sale area. Moreover, the General Accounting Office has held that substitution of timber outside a contract's sale area for timber within the contract area violated the agency's authority to sell timber. B–177602 (1973). The Agriculture Board of Contract Appeals has decided similarly in several cases. See *Appeal of Summit Contractors*, AGBCA No. 81–252–1, AGBCA No. 83–312–1 (Jan. 8, 1986), and *Appeal of Jay Rucker*, AGBCA No. 79–211A CDA (June 11, 1980). In addition, in a recent case involving the Bureau of Land Management, the Court of Federal Claims stated that modifications to existing timber sales must conform with agency status and regulations regarding disposal of timber. *Croman Corporation* v. *United States*, 31 Fed. Cl. 741, 746–47 (August 16, 1994).

The 1995 Rescissions Act

On July 27, 1995, President Clinton signed into law the 1995 Rescissions Act (Pub. L. 104–19, 109 Stat. 246). Section 2001(k) of the 1995 Rescissions Act directed the release of timber sales subject to section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act (Pub. L. 101–121, 103 Stat. 745). Section 318 has been the subject of extensive litigation, including a Supreme Court decision ultimately affirming the constitutionality of the law in *Robertson* v. *Seattle Audubon Society*, 503 U.S.C. 429 (1992). Some section 318 timber sales were affected by litigation over compliance with various terms of section 318, such as the requirement to minimize fragmentation of ecologically-significant old growth. See *Seattle Audubon Society* v. *Robertson*, Civ. No. 89–160 (W.D. Wash.).

Many section 318 sales did not go forward as a result of concerns about significant impacts to species listed under the Endangered Species Act (ESA). In June 1990, after enactment of section 318, the United States Fish and Wildlife Service (FWS) listed the northern spotted owl as a threatened species under the ESA (55 FR 26189; June 26, 1990). Because of the listing of the northern spotted owl as a threatened species, a number of Forest Service section 318 sales were ''modified, eliminated or held in abeyance.'' See *Gifford Pinchot Alliance* v. *Butruille*, 742 F. Supp. 1077, 1080.

On September 28, 1992, the FWS listed the marbled murrelet as a threatened species (57 FR 45328; Oct. 1, 1992). As a result of the listing, the Forest Service reinitiated consultation with the FWS under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), regarding the effects of murrelets of continuing to harvest section 318 sales that had already been awarded. In June 1995, the FWS concluded that further logging of a number of the Forest Service section 318 sales would likely jeopardize the continued existence of the marbled murrelet. As a result, these section 318 sales were suspended pending further field survey work.

Some section 318 sales were also affected when the National Marine Fisheries Service proposed listing several anadromous fish species in the region as threatened or endangered. These species include the Umpqua River cutthroat trout (59 FR 35089; July 8, 1994), and the coho salmon (60 FR 38011; July 25, 1995). As stated in these listings, the decline of these species is due in part to past timber harvest practices.

The 1995 Rescissions Act contained a provision directed at these section 318 sales that were still suspended. Section 2001(k) of the Act states:

> Notwithstanding any other provision of law, within 45 days after the date of the enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sale contracts offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318 of Public Law 101–121 (103 Stat. 745). The return of the bid bond of the higher bidder shall not alter the responsibility of the Secretary concerned to comply with this paragraph.

Currently the Department is in litigation involving the implementation of section 2001 of the 1995 Rescissions Act. On September 13, 1995, the district court in *NFRC* v. *Glickman* No. 95–6244–HO (D. Or.), held that section 2001(k) applies to timber sales previously offered or awarded in all national forests in Washington and Oregon and BLM districts in western Oregon up to July 27, 1995. On October 17, 1995, the district court entered an order which ''compelled and directed'' the Secretary of Agriculture and the Secretary of the Interior, ''to award, release and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sale contracts offered or awarded between October 1, 1990 and July 27, 1995, in any national forest in Oregon and Washington or BLM district in western Oregon, except for sale units in which a threatened or endangered bird species is known to be nesting.'' The government has appealed the district court's ruling (*NFRC* v. *Glickman*, 9th Cir. No. 95–36042), and is awaiting a decision.

After the district court's September 13, 1995, ruling, and its October 17, 1995, injunction, the Forest Service proceeded to release timber sales to previously identified high bidders. In one category of sales, however, the high bidders were either unwilling, unable, or unqualified to take advantage of the renewed offer of the timber sale. In another category of sales, courts had previously issued injunctions preventing the award of the sales, or the Forest Service had rejected bids, suspended, or terminated sales as a result of earlier litigation. For both categories, the Forest Service decided not to pursue the award or release of timber sales, and was challenged in district court in the *NFRC* v. *Glickman* case. In a decision dated January 10, 1996 (amended to address typographical errors on January 17, 1996), the district court enjoined the Secretary of Agriculture to award, release and permit to be completed immediately, all timber sales that were subject to section 2001(k). The January 10, 1996, injunction included sales where the Forest Service had rejected bids, suspended, or terminated sales as a result of earlier litigation, and those sales where the high bidders were unwilling, unable, or unqualified to be awarded sales.

In section 2001(k)(2) of the 1995 Rescissions Act, Congress created a limited exception from the general release requirements imposed by section 2001(k)(1). Under section 2001(k)(2), ''No sale unit shall be released or completed under this subsection if any threatened or endangered bird species is known to be nesting within the acreage that is the subject of the sale unit.'' Section 2001(k)(3) requires the Secretary of Agriculture and the Secretary of the Interior to provide an equal volume of alternative timber ''of like kind and value'' for timber sales withheld under 2001(k)(2)'s ''known to be nesting'' provision. On August 23, 1995, the Department of Agriculture and the Department of the Interior issued a joint letter of direction implementing section 2001(k)(2). The agencies concluded that, based on the scientific analysis used in a protocol developed by the Pacific Seabird Group, the protocol's criteria should be utilized in evaluating whether marbled murrelets are ''known to be nesting'' in timber sales that are subject to section 2001(k).

On September 1, 1995, a lawsuit was filed challenging the government's implementation of section 2001(k)(2). *Scott Timber Co.* v. *Glickman*, Civ. No. 95–6267–HO (D. Or.). The district court consolidated the Scott Timber case with *NFRC* v. *Glickman*, Civ. No. 95–6244–HO. On January 19, 1996, the district court issued a decision rejecting the government's interpretation of section 2001(k)(2) and use of the Pacific Seabird Group Protocol criteria to determine whether marbled murrelets are ''known to be nesting.'' The court stated:

> The language and legislative history of section 2001(k)(2) suggest that Congress intended to allow the agencies some leeway to determine what types of physical evidence observed within sale unit boundaries are sufficient to establish a ''known'' nesting site within the sale unit. Thus an agency may rely on the visual or auditory observation of a murrelet located sub-canopy within sale unit boundaries engaging in behavior that the

agency determines is sufficiently indicative of nesting to establish a ''known'' nesting site within that sale unit.

The District court then enjoined the Secretary of Agriculture to release sales that had previously been suspended if the sales did not satisfy the criteria set forth in the court's January 19, 1996, order. At a hearing held on January 25, 1996, the district court granted a 60-day stay of the injunction. The stay expires on March 25, 1996, and timber purchasers have opposed continuation of the stay order on the bases that they should be entitled to begin harvesting and any continuation may preclude them from completing timber sales due to the expiration of section 2001(k)(1) on September 30, 1996. The government has appealed both the January 10 and January 19, 1996, rulings of the district court; oral argument on the appeal is scheduled for the week of May 6, 1996.

Extraordinary Conditions

The Secretary of Agriculture is under October 17, 1995, January 10, 1996, and January 19, 1996, injunctions by the district court in *NFRC* v. *Glickman* to release sales that the Forest Service had previously suspended, withdrawn, or canceled. While the United States has taken appeals from the district court rulings underlying these injunctions, some sales have already been released, and others may be released in the future to comply with the district court injunctions.

Timber sales that have been released, or that may be released were planned and prepared under standards that pre-dated the Record of Decision for amendments to Forest Service and Bureau of Land Management planning documents within the range of the northern spotted owl, dated April 13, 1994 (hereinafter referred to as Northwest Forest Plan). The release and harvest of some of these sales may cause real harm to natural resources, including fish and wildlife resources. However, the opportunity exists to negotiate mutual modifications to these sales that will minimize environmental harm and bring them more in compliance with the Northwest Forest Plan's standards and guidelines. However, the mutual modifications likely to be needed for these sales would require the Forest Service to substitute timber from outside of the existing sale areas. Faced with these extraordinary conditions, unless the agency can immediately implement the authority provided in 16 U.S.C. 472a(d) to dispose of timber without advertisement, the opportunity to carry out section 2001(k) with a minimum of environmental harm through modifications to timber sale contracts will be lost.

Good Cause Exemption

Based on the foregoing extraordinary conditions, the Department finds that there exists good cause to promulgate this rule on an expedited basis. Because of district court injunctions in *NFRC* v. *Glickman* which require the Forest Service to take immediate action to award and release these timber sales, the Forest Service has a compelling need to make modifications to contracts which have been or will be awarded or released pursuant to section 2001(k) of the 1995 Rescissions Act. Without modification, sales will be awarded or released which contain provisions that pre-date the implementation of the timber sale standards and guidelines of the Northwest Forest Plan. Given the duty to comply with the district court's injunction, and the urgent need to modify timber sales to avoid environmental harm that would occur if these timber sales are completed without modification, the Department finds that notice and comment are impracticable prior to the issuance of this rule, and thus, that good cause exists to adopt this interim final rule.

Moreover, the Department finds that it would be contrary to the public interest, under these circumstances, to fail to act immediately to address the need for modification of these timber contracts. First, this rule will have a limited application. It will apply only to those sales that have been or will be released pursuant to section 2001(k) of the 1995 Rescissions Act. To date, the Forest Service has identified approximately 100 timber sales subject to section 2001(k). Second, without authority to make contract modifications that include timber outside the sale area, the Forest Service cannot provide a reasonable alternative to imminent harvest of environmentally harmful timber sales. It is the opinion of the Department, based on communications with timber contract holders, that failure to expeditiously provide alternatives to the timber sales released by section 2001(k) will lead to the immediate harvest of released sales. Such environmental harm, which may restrict options for future timber harvests, may occur within the time otherwise required for notice and public participation by E.O. 12866. Finally, section 2001(h) of the 1995 Rescissions Act does not require the Secretary of Agriculture to adhere to the requirements of 5 U.S.C. 553 in implementing the 1995 Rescissions Act. To the extent that this rule is in furtherance of the duties imposed by the Rescissions Act, normal rulemaking procedures would not apply.

Intended Effects

This interim final rule redesignates the existing text in 36 CFR 223.85 as paragraph (a) and adds a new paragraph (b) to define ''extraordinary conditions'' to allow forest officers, without advertisement, to make modifications to timber sales awarded or released pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246), which result in the substitution of timber from outside the sale area specified in the contract for timber within the sale area. It should be noted, however, that this rule change does not compel a timber purchaser to accept a timber sale modification offered under the interim final rule. The rule authorizes the Forest Service to propose modifications and to enter into discussions with purchasers on such modifications, but, as with all mutual transactions, purchasers are not obligated to accept any proposed modifications.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. While it has been determined that this is not an economically significant rule, this rule has been determined to be significant because this rule implements a statutory authority for noncompetitive modification of timber sale contracts. Heretofore, there have been no rules on this subject. Given the wide interest in the timber sales and the statutory direction that gives rise to the extraordinary conditions which are the subject of this rulemaking, this rule has been reviewed by the Office of Management and Budget prior to publication.

Moreover, this 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 action will not have a significant economic impact on a substantial number of small entities as defined by that act.

Environmental Impact

This rulemaking action falls within a category of actions excluded from documentation in an Environmental Impact Statement or an Environmental Assessment. 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 for this rule.

Controlling Paperwork Burdens on the Public

This rule does not require any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 not already approved for use and, therefore, imposes no additional 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 1320 do not apply.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forest, Reporting and recordkeeping requirements, Timber sales.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 223 of title 36 of the Code of Federal Regulations 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, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Section 223.85 is revised to read as follows:

§ 223.85 Noncompetitive sale of timber.

(a) Forest officers may sell, within their authorization, without further advertisement, at not less than appraised value, any timber previously advertised for competitive bids but not sold because of lack of bids and any timber on uncut areas included in a contract which has been terminated by abandonment, cancellation, contract period expiration, or otherwise if such timber would have been cut under the contract. This authority shall not be utilized if there is evidence of competitive interest in the product.

(b) Extraordinary conditions, as provided for in 16 U.S.C. 472(d), are defined to include the potential harm to natural resources, including fish and wildlife, and related circumstances arising as a result of the award or release of timber sale contracts pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246). Notwithstanding the provisions of paragraph (a) or any other regulation in this part, for timber sale contracts that have been or will be awarded or released pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246), the Secretary of Agriculture may allow forest officers to, without advertisement, modify those timber sale contracts by substituting timber from outside the sale area specified in the contract for timber within the timber sale contract area.

Dated: March 28, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–8095 Filed 4–2–96; 8:45 am]

BILLING CODE 3410–11–M

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36 CFR Part 292

RIN 0596–AB39

Smith River National Recreation Area

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements Section 8(d) of the Smith River National Recreation Area Act of 1990 and sets forth the procedures by which the Forest Service will regulate mineral operations on National Forest System lands within the Smith River National Recreation Area. This rule supplements existing Forest Service regulations and is intended to ensure that mineral operations are conducted in a manner consistent with the purposes for which the Smith River National Recreational Area was established.

EFFECTIVE DATE: This rule is effective April 3, 1996.

FOR FURTHER INFORMATION CONTACT: Sam Hotchkiss, Minerals and Geology Management Staff, (202) 205–1535.

SUPPLEMENTARY INFORMATION:

Background

The Smith River National Recreation Area (SRNRA) was established by the Smith River National Recreation Area Act of 1990 (the Act) (16 U.S.C. 460bbb *et seq.*). The purpose of the Act is to ensure, ''. . . the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources. . . .''

In order to meet the purposes of the Act, Congress directed the Secretary to manage the SRNRA to provide for a broad range of recreational uses and to improve fisheries and water quality. The Act prohibits mining, subject to valid existing rights and limits extraction of mineral materials to situations where the material extracted is used for construction and maintenance of roads and other facilities within the SRNRA and in certain areas specifically excluded from the SRNRA by the Act.

The SRNRA consists of approximately 300,000 acres of National Forest System lands in the Six Rivers National Forest in northern California. The Act divides the SRNRA into eight distinct management areas and specifies a management emphasis for each. One of these eight areas is the Siskiyou Wilderness, most of which was designated by Congress in 1984. The Gasquet-Orleans Corridor was added to the Siskiyou Wilderness by the Act in 1990. The Act specifies that the Siskiyou Wilderness is to continue to be managed pursuant to the provisions of the Wilderness Act.

The Act also designates the Smith River, the Middle Fork of the Smith River, the North Fork of the Smith River, the Siskiyou Fork of the Smith River, and the South Fork of the Smith River as components of the National Wild and Scenic Rivers System and stipulates that they be managed in accordance with the Act and the Wild and Scenic Rivers Act. In the event of a conflict between the provisions of these two statutes, the Act specifies that provisions of the most restrictive statute apply. Finally, the Act expressly excludes four areas that lie within the boundary of the SRNRA from compliance with provisions of the Act.

Mining and prospecting for minerals have been an important part of the history of the Smith River area since the 1850's. Historically, mining operations within the Smith River area have been small-scale placer gold exploration and recovery operations within the bed and banks of the Smith River and its main tributaries. Panning, sluicing, and dredging operations occur predominantly during the summer months. In recent years, large, low-grade, nickel-cobalt resources in the uplands of the Smith River watershed have attracted the attention of prospectors. In 1990, there were approximately 5,000 mining claims covering about 30,000 acres of National Forest System lands within the SRNRA. By 1995, however, there were only approximately 320 mining claims covering about 8,000 acres of National Forest System lands in the SRNRA that met current Bureau of Land Management filing requirements. In