

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 337

RIN 3206-AK35

#### Examining System

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final regulation to designate two sections of the Alternative Ranking and Selection Procedures from the Chief Human Capital Officers Act of 2002 (Title XIII of the Homeland Security Act) as veterans' preference requirements for purposes of a prohibited personnel practice violation, thereby aligning these sections with other statutory provisions covering veterans' preference.

**DATES:** This rule is effective February 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Linda Watson by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at [linda.watson@opm.gov](mailto:linda.watson@opm.gov).

**SUPPLEMENTARY INFORMATION:** On April 7, 2005, OPM published a proposed rule at **Federal Register** 70 FR 17160 designating sections 3319(b) and (c)(2) of title 5, United States Code (U.S.C.) as veterans' preference requirements for purposes of 5 U.S.C. 2302(b)(11). OPM's authority to designate in regulation a provision of law as a "veterans' preference requirement" is prescribed in 5 U.S.C. 2302(e)(1)(G). The purpose of this designation is to align sections 3319(b) and (c)(2) with the other statutory provisions covering veterans' preference that are listed in section 2302(e)(1) as constituting veterans' preference requirements.

As background, this action completes the implementation of specific provisions of the Chief Human Capital Officers Act of 2002 (Act), Public Law 107-296. The Act provides Federal agencies with a number of human resources flexibilities to enhance their recruitment and hiring programs. These flexibilities include the alternative (category) rating and selection procedures which were codified in 5 U.S.C. 3319. This section provides agencies with the authority to develop a category-based rating method to assess and rate job applicants for positions filled through the competitive examining process.

Section 3319(b) protects the rights of preference eligibles by placing them ahead of non-preference eligibles within each category in lieu of adding veterans' preference points or applying the "rule of three."

Section 3319(c)(2) prohibits appointing officials from passing over a preference eligible in the same quality category from which a selection is made to select a non-preference eligible unless the requirements of section 3317(b) or 3318(b) are satisfied.

This rule designates sections 3319(b) and (c)(2) as veterans' preference requirements, for which, failure to comply constitutes a prohibited personnel practice. For additional background information, please refer to the proposed rule.

During the comment period, OPM received six comments to the proposed regulation. Two agencies submitted their comments supporting the proposed regulation and the remaining comments were outside the scope of this rule.

We are therefore issuing the final regulation with only stylistic changes.

#### E.O. 12866, Regulatory Review

This final rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would only apply to Federal agencies and employees.

#### List of Subjects in 5 CFR Part 337

Government employees.

**Linda M. Springer,**

*Director, U.S. Office of Personnel Management.*

■ Accordingly, OPM is amending 5 CFR part 337 as follows:

#### PART 337—EXAMINING SYSTEM

■ 1. Revise the authority citation for part 337 to read as follows:

**Authority:** 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; Sec. 1413, Pub. L. 108-136, 117 Stat. 1392, 1665; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980.

#### Subpart C—Alternative Rating and Selection Procedures

■ 2. Revise § 337.304 to read as follows:

##### § 337.304 Veterans' preference.

In this subpart:

(a) Veterans' preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(2);

(b) Veterans' preference points as prescribed in section 337.101 of this part are not applied in category rating; and

(c) Sections 3319(b) and 3319(c)(2) of title 5, U.S.C. constitute veterans' preference requirements for purposes of 5 U.S.C. 2302(b)(11)(A) and (B).

[FR Doc. 06-550 Filed 1-20-06; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 223

RIN 0596-AC29

#### Sale and Disposal of National Forest System Timber; Timber Sale Contracts; Indices To Determine Market-Related Contract Term Additions

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Forest Service is selecting Producer Price Indices (PPI) for use by the Chief of the Forest Service to determine whether there has been a drastic reduction in

wood prices warranting market-related contract term additions. The indices selected in this final rule replace certain PPI indices that were discontinued by the Bureau of Labor Statistics (BLS) after December 2003. An interim final rule and request for comments was published in the **Federal Register** on June 29, 2005 (70 FR 37266). In this final rule, the Forest Service makes appropriate changes, reflecting public comments and its own analysis of the replacement indices. A detailed summary of Forest Service responses to public comments is available for review as provided in the **ADDRESSES** section of this notice.

**DATES:** This final rule is effective January 23, 2006.

**ADDRESSES:** The Forest Service response to public comments is available for public review on the Forest Service World Wide Web/Internet site at <http://www.fs.fed.us/forestmanagement/infocenter/index.shtml>. Alternatively, these can be viewed in the office of the Director of Forest Management, Third Floor, Southwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205-1496 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lathrop Smith, Forest Management Staff, at (202) 205-0858, or Richard Fitzgerald, Forest Management Staff, at (202) 205-1753.

**SUPPLEMENTARY INFORMATION:**

**Background**

In order to protect timber purchasers and the public from severe downturns in the wood products industry, the Forest Service has granted market-related contract term additions for timber sale contracts when a drastic reduction in wood prices has occurred. Applying regulations promulgated under the Federal Timber Contract Payment Modification Act (16 U.S.C. 618), the Chief of the Forest Service has determined the existence of a drastic reduction in prices by using BLS PPI indices for certain wood products. However, as of December 2003, BLS discontinued three of the four PPI indices contained in the previous iteration of this regulation: Hardwood Lumber (SIC 24211), Eastern Softwood Lumber (SIC 24213), and Western Softwood Lumber (SIC 24214). BLS also re-designated Wood Chips (SIC 21215) as (NAICS 3211135). Accordingly, in the interim final rule and request for comments, the Forest Service selected two replacement indices—Softwood Lumber (0811) and Hardwood Lumber (0812)—and adopted the re-designation

of the Wood Chips index. The Forest Service made no other changes to 36 CFR 223.52.

Before selecting the foregoing replacement indices in the interim final rule, the Forest Service evaluated several possible replacements. For example, the Forest Service examined the Random Lengths indices and Western Wood Products Association indices. Additionally, the Forest Service examined certain regional indices. The Forest Service found that indices other than the replacement indices were inadequate for determining the existence of a drastic reduction in wood prices. For example, regional indices were unsuitable because of variance in their timing of publication, collection of information, and processing of data. Accordingly, the Forest Service selected the BLS Softwood Lumber (0811) and Hardwood Lumber (0812) indices because they represent the best-available replacement indices, which most closely replicate the historical results of the discontinued indices.

The three indices contained in this final rule are not seasonally adjusted. Each PPI is adjusted to a constant dollar base by dividing it by the PPI for All Commodities (00000000) to eliminate changes due to inflation and deflation.

As noted in the interim rule, the Forest Service adopted the replacement indices retroactively to January 2004. For purposes of this final rule, the indices shall have the same retroactive application.

The Forest Service received a total of twenty-six replies to the interim final rule. Nineteen were unresponsive because they did not address MRCTA procedures. Four were statements not requiring a response. Three were responsive to the interim rule and proposed changes. As noted in the Introduction, a detailed summary of Forest Service responses to public comments is available for review, as provided in the **ADDRESSES** section of this notice.

In response to the relevant comments, the Forest Service has made changes to the interim final rule, which are contained in this final rule. Based on public comments and its own analysis, the Forest Service changed the percentage decrease applied to the replacement indices, contained at 36 CFR 223.52(b)(ii)(2), from 15% to 11.5%. The percentage change in wood prices is used to balance the public interest in having a reasonable term on a timber sale contract and minimizing the risk of defaults on timber sale contracts. Setting the percent change in price too low could result in unnecessary contract term additions.

Setting the percent change in price to high could result in contract defaults. The 15% decrease in the discontinued indices provided this balance for the last two decades. The new replacement indices are broader than the discontinued indices and less sensitive to changes in market conditions. Internal agency analysis compared the replacement indices to the discontinued indices for the years 1981 through 2003. The replacement indices only triggered a qualifying quarter about one third as often as the discontinued indices when a 15% decrease in wood prices was used. Changing the decrease in wood prices to 11.5% better tracks the historical results generated under the discontinued indices for the purpose of determining qualifying quarters and maintaining the balance between extending the term of a timber sale contract and the number of defaults on timber sale contracts. Because the Wood Chips index was merely re-designated, the Forest Service has retained the 15% value applied to that index.

Additionally, in response to public comments, the Forest Service herein clarifies ambiguity as to the timing of qualifying quarters. A qualifying quarter must be a quarter that follows the date of the contract award. This change is consistent with language in timber sale contracts and with the Forest Service's previous application of this rule.

**Regulatory Certifications**

*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 rule is not a significant regulatory action and is not subject to Office of Management and Budget ("OMB") review. This rule will not have an annual effect of \$100 million or more on the economy and will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. In short, little or no effect on the national economy will result from this regulatory action, which consists of necessary, technical changes to the regulation governing market-related contract term additions. Using the replacement indices and the modified formula contained in this final rule, the Forest Service will be able to determine whether a drastic decline in wood products prices has occurred. Finally, this action will not alter the

budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. As revised in this rule, the formula better corresponds to the historical performance of the discontinued indices and allows the Forest Service to grant market-related contract term additions to small and large purchasers when market conditions warrant. Refining the formula for determining when a drastic reduction in wood product prices has occurred will have the intended effect of allowing purchasers additional time to complete contracts when severe adverse conditions have occurred in the wood products market.

#### *Unfunded Mandates Reform*

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

#### *Environmental Impact*

This final rule concerns the extension of timber sale contracts when warranted by a drastic reduction in wood product prices, and, as such, has no direct effect upon the amount, location, or manner of timber offered for purchase. 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 Forest Service’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.

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

This final rule does not contain any recordkeeping or reporting requirements

or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

#### *Energy Effects*

This final rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order.

#### *Federalism*

The agency has considered this final rule under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### *Consultation and Coordination With Indian Tribal Governments*

This final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

#### *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.

#### *Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. In any event, after adoption of this final rule: (1) All State and local laws or regulations that conflict with this rule or that would impede full implementation would be preempted; (2) no retroactive effect would be given to this final rule, except as described herein; and (3) the

final rule would not require the use of administrative proceedings before parties could 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, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, part 223 of Title 36 of the Code of Federal Regulations is amended as follows:

#### **PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER**

■ 1. The Authority citation for part 223 continues to read as follows:

**Authority:** 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213; 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

■ 2. Revise § 223.52 (b)(2) to read as follows:

#### **§ 223.52(b)(2) Market-related contract term additions.**

\* \* \* \* \*

(b) \* \* \*

(2) For PPI index codes 0811 and 0812, the Chief of the Forest Service shall determine that a drastic reduction in wood prices has occurred when, for any 2 or more consecutive qualifying quarters, the applicable adjusted price index is less than 88.5 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter, following the contract award date, where the applicable adjusted index is more than 11.5 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. For PPI index code 3211135, the Chief of the Forest Service shall determine that a drastic reduction in wood prices has occurred when, for any 2 or more consecutive qualifying quarters, the adjusted price index is less than 85 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter, following the contract award date, where the adjusted index is more than 15 percent below the average of such index for the 4 highest of the previous eight calendar quarters. Qualifying quarter determinations will be made using the Producer Price Indices for the months of March, June, September, and December.

\* \* \* \* \*

Dated: January 13, 2006.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 06-548 Filed 1-20-06; 8:45 am]

BILLING CODE 3410-11-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R04-OAR-2005-TN-0006-200519(c); FRL-8023-5]

#### Approval and Promulgation of Implementation Plans; Tennessee; Nashville Area Second 10-Year Maintenance Plan for the 1-Hour Ozone National Ambient Air Quality Standard; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** On November 1, 2005, at 70 FR 65838, EPA published a document concerning the Nashville, Tennessee area's second 10-year maintenance plan for the 1-hour ozone national ambient air quality standard. The new 2016 motor vehicle emissions budgets (MVEBs) were incorrectly stated in one location in the publication. This document corrects this incorrect reference.

**DATES:** *Effective Date:* This correction is effective January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Lynorae Benjamin of the Air Quality Modeling and Transportation Section or Sean Lakeman of the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Benjamin can be reached by phone at (404) 562-9040 or via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov). Mr. Lakeman can be reached by phone at (404) 562-9043 or via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is making a correction to the document published on November 1, 2005 (70 FR 65838), approving a revision to the second 10-year maintenance plan for the Nashville 1-Hour Ozone Maintenance Area. This action included approval of the new 2016 MVEBs (70 FR 65840), but subsequently reference them incorrectly in another portion of the document. Specifically, at 70 FR 65841, the new 2016 MVEBs were erroneously stated as the 2016 on-road emissions (*i.e.*, 19.18

tons per day (tpd) for volatile organic compounds (VOC) and 36.01 tpd for nitrogen oxides (NO<sub>x</sub>) for this area. On page 65841, under the heading "IV. What Is an Adequacy Determination and What Is EPA's Adequacy Determination for the Nashville Area's New MVEB for the Year 2016?," in the second column at the end of the last sentence, EPA is correcting the reference to the 2016 MVEBs to read as follows: "VOC of 21.93 tpd and for NO<sub>x</sub> 45.76 tpd for the Nashville area."

Dated: January 11, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 06-582 Filed 1-20-06; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 213 and 253

[DFARS Case 2003-D075]

#### Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Simplified Acquisition Procedures

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing the use of simplified acquisition procedures. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Effective January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D075.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures

that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Updates and consolidates text on the use of imprest funds and third-party drafts at DFARS 213.305;

- Deletes unnecessary cross-references at DFARS 213.7001 and 213.7003-2; and

- Deletes guidance on the use of unilateral contract modifications at DFARS 213.302-3, and deletes procedures for use of forms at DFARS 213.307, 253.213, and 253.213-70. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 19042 on April 12, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change. In addition, statutory references have been updated at DFARS 213.305-3(d)(iii)(A) and 213.306(a)(1)(B).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule updates and streamlines DFARS text, but makes no significant change to DoD contracting policy.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

##### List of Subjects in 48 CFR Parts 213 and 253

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 213 and 253 are amended as follows: