

National Forest System (NFS) timber sale contracts to facilitate the harvest of damaged timber from private or other non-National Forest System (non-NFS) lands. These contract extensions will allow the expeditious removal of timber from lands in other ownerships damaged by catastrophic events beyond the landowner's control. Catastrophic events include, but are not limited to, severe wildfire, flood, insect and disease infestations, drought, and windthrow. This final rule also provides for adjustment of future periodic payment determination dates as an element of these contract extensions.

The intended effects of this final rule are to promote the wise use and conservation of the Nation's natural resources, to reduce the threat to public safety and property due to fire and hazardous dead trees, and to improve protection of NFS lands from fire and disease that could otherwise develop on the damaged lands. The Forest Service timber sale contract provides additional contract time on undamaged (green) NFS timber sales to permit the purchaser to harvest damaged timber outside the sale area on NFS lands. However, without adoption of the previously published interim rule and this final rule, the Forest Service would not have the regulatory authority to provide additional contract time on NFS timber sales to permit the purchaser to harvest damaged timber from private or other non-NFS lands. This provides purchasers of NFS timber sales, who do not have mills, loggers and mill owners the opportunity to delay harvest of green sales while logging damaged timber on other ownerships. An urgent removal extension will not be approved for any NFS timber sale contracts on lands that contain dead or dying timber subject to rapid deterioration; where delayed harvesting will cause resource damage; or where extensions would delay the completion of needed projects, or adversely impact the harvest of damaged NFS timber, or in any other manner adversely impact the management of NFS lands.

EFFECTIVE DATE: This final rule is effective February 2, 2004.

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SUPPLEMENTARY INFORMATION:

Background

In order to facilitate the expeditious removal of timber in other ownerships damaged by catastrophic events beyond the landowner's control, the Forest Service promulgated an interim rule at §§ 223.50 and 223.53 of Title 36 of the

Code of Federal Regulations and requested public comment on November 21, 2002 (67 FR 70165). The comment period ended January 21, 2003. The interim rule provided authority for Regional Foresters to authorize Contracting Officers to extend the contract performance time on certain National Forest System (NFS) timber sale contracts and to delay periodic payments on the extended contracts. This final rule incorporates revisions to § 223.53 in response to comments received on the interim rule. Section 223.50 of the interim rule is adopted in entirety in the final rule.

Periodically, catastrophic events such as severe drought conditions, insect and disease outbreaks, wildfires, floods, and windthrow occur on forested lands within, or near, NFS lands. As a result of such catastrophic events, substantial amounts of private and other public timber may be severely damaged. This damaged timber must be harvested within a relatively short time period to avoid substantial losses due to deterioration in both the quantity and quality of the timber. The critical time period for harvesting this damaged timber and avoiding substantial deterioration varies with the season of the year, the species of timber, the damaging agent, and the location of the damaged timber. In most cases, substantial deterioration can be avoided if the damaged timber is harvested within 1 year of the catastrophic event. The number of wildfires, and the extent of damage to public and private forested land experienced in the last few years, has resulted in renewed requests by forest products companies and forest industry associations for the Forest Service to adjust its contracting procedures to support expeditious removal of damaged timber on non-NFS lands.

Regulatory and Administrative Framework

The National Forest Management Act of 1976 (16 U.S.C. 472a(c)) provides that timber sale contracts with an original term of 2 years or more shall not be extended unless the Secretary finds that the purchaser has diligently performed in accordance with an approved plan of operations or that the substantial overriding public interest justifies an extension. These related requirements are set out at § 223.115.

The Forest Service timber sale contract provides additional contract time on undamaged (green) NFS timber sales to permit the purchaser to harvest damaged timber outside the sale area on NFS lands. However, without adoption of the previously published interim rule

(67 FR 70165) and this final rule, the Forest Service would not have the authority to provide additional contract time on NFS timber sales to permit the purchaser to harvest damaged timber from private or other non-NFS lands.

Impediments to Timely Harvest

When significant catastrophic events occur on non-NFS lands, timber sale purchasers often do not have the personnel, equipment, or mill capacity to take on new contracts because all of their resources are committed to NFS contracts. Thus, landowners who have suffered from catastrophic events may be unable to find available loggers, buyers, and mill capacity to remove damaged timber before it deteriorates.

Risks and Benefits Associated With Removal of Damaged Timber

Damaged timber can provide a source of highly flammable fuel for future wildfires, with inherent risks to public safety and property as well as to resource values of any nearby NFS lands. Damaged timber can also provide a habitat conducive to the development of insect infestations and subsequent diseases that could threaten nearby undamaged (green) timber stands on private, NFS, or other public land.

Summary of Public Comments

Comments were received on the interim rule from four timber sale purchasers, four timber industry associations, one association that represents State Foresters, and three State governments. All respondents strongly supported urgent removal extensions, and all but four recommended clarifications to improve the rule. A summary of the comments and the Department's response follows:

General comments. Two respondents suggested that guidance be provided in the rule, or in Forest Service Manual and Handbook direction, to assure that the Forest Service implements the rule as the Department intends. Specifically, the respondents were concerned that: (1) The rule was not specific enough for purchasers to determine with certainty, in advance of purchasing non-NFS timber sales, the likelihood of getting needed extensions of Forest Service timber sales; (2) the Forest Service may not approve urgent removal extensions in a timely manner, once salvage sales on non-NFS lands are purchased; and (3) the Forest Service may interpret the provisions of § 223.53(d)(1)–(4) of the interim rule so broadly that few sales will be eligible for an urgent removal extension.

Response. The Forest Service will address these issues in the Forest