

Service Handbook (FSH) 2409.15, Timber Sale Administration. The FSH direction will require the Regional Forester and the Contracting Officer to act promptly in response to urgent removal extension requests. The FSH direction will require that the Regional Forester evaluate the size and scope of an event and the impact on the loggers and mill capability to be able to log National Forest green sales without adversely impairing the harvesting of the damaged timber on private lands. Direction in FSH 2409.15 will also provide that purchasers who submit the required documentation may request a determination of whether their sales qualify for urgent removal extensions prior to purchasing non-NFS timber.

Even though a catastrophic event has occurred and the Regional Forester has authorized urgent removal extensions, § 223.53(d)(1) does not entitle a purchaser to an extension unless the harvest of the NFS timber within the contract term will impede the removal of damaged non-NFS timber. In response to respondent concerns regarding § 223.53(d)(2)–(4), the Chief has already made an overall determination at § 223.53(a) that it is in the substantial, overriding public interest to grant urgent removal extensions where a need exists.

*Comments on contract extension length.* Seven respondents suggested that limiting extensions to a maximum of 1 year and allowing only one urgent removal extension may not be sufficient due to unforeseen events, such as additional catastrophic damage, poor operating conditions, and appeals and protests.

*Response.* The Department agrees that subsequent catastrophic events may justify additional urgent removal extensions. Other events, such as interruptions of operations due to appeals and litigation, may justify additional contract time under existing authorities and contract provisions. The Department believes that it is clear in § 223.53(b) that the 1-year limitation applies only to the events that led to the Regional Forester's determination. Section 223.53(d)(3) of the rule has been modified to make it clear that additional urgent removal extensions may be granted if there are subsequent Regional Forester determinations related to other catastrophic events.

*Comments on required documentation.* Six respondents stated that the requirement for purchasers to document that manufacturing facilities or logging equipment capacity available to a purchaser are insufficient to provide for both the rapid salvage of damaged non-NFS timber and

continued harvest of undamaged (green) NFS timber under contract with the Forest Service (§ 223.53(c)(2)) is overly burdensome and redundant with the requirement for the Regional Forester to determine that there is an adequate cause for urgent removal extensions.

*Response.* The Department disagrees. The Regional Forester is required by § 223.53(b) to determine that a significant catastrophic event has occurred that may justify urgent removal extensions. Even though a catastrophic event has occurred and the Regional Forester has authorized urgent removal extensions, a purchaser is not entitled to an extension unless the harvest of the NFS timber within the contract term will impede the removal of damaged non-NFS timber. The Contracting Officer uses the purchaser's documentation to verify that a specific purchaser needs the urgent removal extension, based on the purchaser's particular operating requirements. The Department believes that the documentation required is within the purchaser's capacity to produce.

*Comments on Regional Forester determination.* One respondent was concerned that the requirement for a Regional Forester's determination may cause delays and other problems, if the catastrophic event and timber sale needing an extension are in different Regions. The respondents suggested that this authority should be delegated to Forest Supervisors.

*Response.* The authority to make determinations that adequate cause for urgent removal extensions exists is delegated to the Regional Forester to assure that there is consistency on a Regional basis. The FSH 2409.15 direction will require the Regional Forester to promptly document the need for urgent removal extensions after a significant catastrophic event. Contracting Officers will be directed to grant urgent removal extensions based on determinations made by any Regional Forester.

*Comments on notarized statement requirement.* Six respondents commented that the second part of the notarized statement in § 223.53(c)(3) of the interim rule forces purchasers to surrender contractual rights to compensation, if the contract is suspended or canceled. The respondents asserted that this is unjustified, adversarial, and punitive, and a serious disincentive to applying for urgent removal extensions. One additional respondent stated that, as a minimum, the statement should be clarified so that the limitation on damages applies only to the extension

period and not to other factors, which are not related to the extension.

*Response.* The Department believes that the Government's liability for damages to the purchaser is limited during the extended contract length granted by an urgent removal extension. The overriding public benefits derived from the improved protection of public lands and public safety outweighs any potential risk to the Government for granting urgent removal extensions. Therefore, § 223.53(c)(3) of the interim rule setting out the requirements for a notarized statement has been removed from the final rule.

*Comments on cash payment requirement.* Seven respondents stated that requiring a cash payment, under § 223.53(e)(1) of the interim rule, is punitive and a disincentive to requesting an urgent removal extension. The respondents stated that the Chief's finding of substantial, overriding public interest is sufficient contract consideration for granting the additional contract term. One additional respondent suggested the alternative of a flat fee to compensate the Government for the cost of processing the extension, thus, the purchaser's decision on whether to request an extension would not be based on the current value of funds rate.

*Response.* The Department agrees that the overriding public benefits and the direct and indirect economic benefits from utilization of the damaged timber in the form of revenues received and employment created, and the avoided costs of wildfire suppression, reforestation, and watershed restoration work compensates the Government for granting the additional contract term. Therefore, § 223.53(e)(1) of the interim rule setting out the requirement for a cash payment have been removed from the final rule.

*Comments on stumpage rate adjustment.* Five respondents stated that freezing the floor of the tentative rates on sales subject to stumpage rate adjustment, as provided in § 223.53(e)(1)–(3), is punitive and a disincentive to requesting an urgent removal extension and conflicts with the Chief's finding of substantial, overriding public interest. One additional respondent stated that freezing the floor of the tentative rates on sales subject to stumpage rate adjustment should only apply during the extension period.

*Response.* The Department agrees that limiting downward adjustments of tentative rates conflicts with the substantial, overriding public interest identified by the Chief for granting urgent removal extensions. The cost to