

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 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 private property. There are no private property rights to be affected, because the contract provisions that implement this rule will be used only with contract modifications that are made at the request of the timber sale purchaser.

#### *Civil Justice Reform Act*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this final rule; and (3) this 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 practices and procedures, Exports, Government contracts, Forests and forest products, National forests, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, the interim rule published at 67 FR 70165, November 21, 2002, is adopted as final with the following changes:

#### **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.

#### **Subpart B—Timber Sale Contracts**

■ 2. In § 223.53, revise paragraphs (b) through (e) to read as follows:

#### **§ 223.53 Urgent removal contract extensions.**

\* \* \* \* \*

(b) *Regional Forester determination.* If the Regional Forester determines that adequate cause for urgent removal extensions exists, Contracting Officers may extend National Forest System timber sale contracts, up to a maximum of 1 year, for the estimated amount of time required to harvest and process the damaged timber on non-National Forest System lands. Contracting Officers may grant urgent removal extensions only when the Regional Forester verifies in writing that:

(1) A specific catastrophe occurred for which urgent removal extensions should be granted;

(2) The manufacturing facilities or logging equipment capacity available to purchasers are insufficient to provide for both the rapid harvest of damaged non-National Forest System timber in need of expeditious removal and the continued harvest of undamaged (green) timber under contract with the Forest Service; and

(3) Failure to harvest the damaged non-National Forest System timber promptly could result in the following:

- (i) Pose a threat to public safety,
- (ii) Create a threat of an insect or disease epidemic to National Forest System or other lands or resources, or
- (iii) Significant private or other public resource loss.

(c) *Purchaser request.* To obtain an urgent removal extension on a National Forest System timber sale contract, a purchaser must make a written request to the Contracting Officer, which includes the following:

(1) An explanation of why the harvest of undamaged (green) National Forest System timber within the term of the existing National Forest System contract(s) will prevent or otherwise impede the removal of damaged non-National Forest System timber in need of expeditious removal; and

(2) Documentation that the manufacturing facilities or logging equipment capacity available to a purchaser would be insufficient to provide for both the rapid salvage of damaged non-National Forest System timber in need of expeditious removal and continued harvest of undamaged (green) National Forest System timber under contract with the Forest Service.

(d) *Contracting Officer determination.* To grant an urgent removal extension, the timber sale Contracting Officer must verify the following:

(1) That it is likely that the undamaged (green) timber from National Forest System land would be delivered to the same manufacturing

facilities as are needed to process the damaged non-National Forest System timber or the National Forest System timber sale contract would require the use of the same logging equipment as is needed to remove the damaged non-National Forest System timber from the area affected by the catastrophe;

(2) That extension of the National Forest System contract will not be injurious to the United States and will protect, to the extent possible, the health of the National Forest System lands, including:

(i) That urgent removal extension does not adversely affect other resource management objectives to be implemented by the National Forest System timber sale being extended; and

(ii) That the National Forest System timber sale contract to be extended is not a sale containing damaged, dead, or dying timber subject to rapid deterioration.

(3) That the purchaser has not been granted a previous urgent removal extension on the same National Forest System timber sale contract based on the current catastrophic event. Subsequent urgent removal extensions may be granted if there are subsequent Regional Forester determinations on other catastrophic events.

(4) That the revised National Forest System timber sale contract term will not exceed 10 years from the date the National Forest System contract was awarded; and

(5) That the purchaser is not in breach of the National Forest System contract, and all work items, payments, and deposits are current.

(e) *Execution of contract extension.* An urgent removal extension of a National Forest System timber sale contract is executed through a mutual agreement contract modification pursuant to § 223.112, which must include specific contract provisions. An agreement to modify a contract must identify the specific provision(s) of the contract being modified and must include the requirement that purchasers make cash payment to cover the costs of remarking timber on the sale area or reestablishing cutting unit boundaries if the Contracting Officer determines such work is necessary.

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Dated: December 23, 2003.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

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