expenditures in adapting the core software program to the requirements of C, one of X's customers.

(ii) *Conclusion.* Because X's activities represent activities to adapt an existing software program to a particular customer's requirement or need, X's activities are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section.

*Example 4.* (i) *Facts.* The facts are the same as in *Example 3*, except that C pays X to adapt the core software program to C's requirements.

(ii) *Conclusion.* Because X's activities are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section, C's payments to X are not for qualified research and are not considered to be contract research expenses under section 41(b)(3)(A).

*Example 5.* (i) *Facts.* The facts are the same as in *Example 3*, except that C's own employees adapt the core software program to C's requirements.

(ii) *Conclusion.* Because C's employees' activities to adapt the core software program to C's requirements are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section, the wages C paid to its employees do not constitute in-house research expenses under section 41(b)(2)(A).

*Example 6.* (i) *Facts.* X manufacturers and sells rail cars. Because rail cars have numerous specifications related to performance, reliability and quality, rail car designs are subject to extensive, complex testing in the scientific or laboratory sense. B orders passenger rail cars from X. B's rail car requirements differ from those of X's other existing customers only in that B wants fewer seats in its passenger cars and a higher quality seating material and carpet that are commercially available. X manufactures rail cars meeting B's requirements.

(ii) *Conclusion.* X's activities to manufacture rail cars for B are excluded from the definition of qualified research. The rail car sold to B was not a new business component, but merely an adaptation of an existing business component that did not require a process of experimentation. Thus, X's activities to manufacture rail cars for B are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section because X's activities represent activities to adapt an existing business component to a particular customer's requirement or need.

*Example 7.* (i) *Facts.* X, a manufacturer, undertakes to create a manufacturing process for a new valve design. X determines that it requires a specialized type of robotic equipment to use in the manufacturing process for its new valves. Such robotic equipment is not commercially available, and X, therefore, purchases the existing robotic equipment for the purpose of modifying it to meet its needs. X's engineers identify uncertainty that is technological in nature concerning how to modify the existing robotic equipment to meet its needs. X's engineers develop several alternative designs, and conduct experiments using modeling and simulation in modifying the robotic equipment and conduct extensive scientific and laboratory testing of design alternatives. As a result of this process, X's engineers develop a design for the robotic equipment that meets X's needs. X constructs and installs the modified robotic equipment on its manufacturing process.

(ii) *Conclusion.* X's research activities to determine how to modify X's robotic equipment for its manufacturing process are not excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section, provided that X's research activities satisfy the requirements of section 41(d)(1).

*Example 8.* (i) *Facts.* An existing gasoline additive is manufactured by Y using three ingredients, A, B, and C. X seeks to develop and manufacture its own gasoline additive that appears and functions in a manner similar to Y's additive. To develop its own additive, X first inspects the composition of Y's additive, and uses knowledge gained from the inspection to reproduce A and B in the laboratory. Any differences between ingredients A and B that are used in Y's additive and those reproduced by X are insignificant and are not material to the viability, effectiveness, or cost of A and B. X desires to use with A and B an ingredient that has a materially lower cost than ingredient C. Accordingly, X engages in a process of experimentation to develop, analyze and test potential alternative formulations of the additive.

(ii) *Conclusion.* X's activities in analyzing and reproducing ingredients A and B involve duplication of existing business components and are excluded from the definition of qualified research under section 41(d)(4)(C) and paragraph (c)(4) of this section. X's experimentation activities to develop potential alternative formulations of the additive do not involve duplication of an existing business component and are not excluded from the definition of qualified research under section 41(d)(4)(C) and paragraph (c)(4) of this section.

*Example 9.* (i) *Facts.* X, a manufacturing corporation, undertakes to restructure its manufacturing organization. X organizes a team to design an organizational structure that will improve X's business operations. The team includes X's employees as well as outside management consultants. The team studies current operations, interviews X's employees, and studies the structure of other manufacturing facilities to determine appropriate modifications to X's current business operations. The team develops a recommendation of proposed modifications which it presents to X's management. X's management approves the team's recommendation and begins to implement the proposed modifications.

(ii) *Conclusion.* X's activities in developing and implementing the new management structure are excluded from the definition of qualified research under section 41(d)(4)(D) and paragraph (c)(5) of this section. Qualified research does not include activities relating to management functions or techniques including management organization plans and management-based changes in production processes.

*Example 10.* (i) *Facts.* X, an insurance company, develops a new life insurance product. In the course of developing the product, X engages in research with respect to the effect of pricing and tax consequences on demand for the product, the expected volatility of interest rates, and the expected mortality rates (based on published data and prior insurance claims).

(ii) *Conclusion.* X's activities related to the new product represent research in the social sciences (including economics and business management) and are thus excluded from the definition of qualified research under section 41(d)(4)(G) and paragraph (c)(8) of this section.

(d) *Recordkeeping for the research credit.* A taxpayer claiming a credit under section 41 must retain records in sufficiently usable form and detail to substantiate that the expenditures claimed are eligible for the credit. For the rules governing record retention, see § 1.6001–1. To facilitate compliance and administration, the IRS and taxpayers may agree to guidelines for the keeping of specific records for purposes of substantiating research credits.

(e) *Effective dates.* This section is applicable for taxable years ending on or after December 31, 2003.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by removing the entry from the table for § 1.41–4(d).

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

**Pamela Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03–31818 Filed 12–31–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 223

**RIN 0596–AB48**

## Sale and Disposal of National Forest System Timber; Extension of Timber Sale Contracts To Facilitate Urgent Timber Removal From Other Lands

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department is adopting regulations to provide authority for Regional Foresters to authorize Contracting Officers to extend the contract performance time on certain

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.

**FOR FURTHER INFORMATION CONTACT:** Rex Baumback, Forests and Rangelands Management Staff, (202) 205–0855.

**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

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

the purchaser for an urgent removal extension should be similar to the cost when a purchaser is granted a contract term adjustment to log NFS salvage timber sale contracts. Therefore, § 223.53(e)(1)–(3) of the interim rule setting out this requirement have been removed from the final rule.

**Finding of Substantial, Overriding Public Interest**

Having considered (1) the potential plight of private and other non-NFS landowners whose timber may be damaged by wildfire and other catastrophes in future years; (2) the Forest Service statutory and regulatory framework for adjusting contracts; (3) the need for purchasers to plan their operations and to enter into contracts for the timely removal of damaged timber; (4) the need to improve protection of NFS lands from loss due to fire and/or insect and disease outbreaks on nearby non-NFS lands; (5) the need to reduce the threat to public safety and to property from catastrophic events; (6) the direct and indirect economic benefits from utilization of the damaged timber in the form of revenues received and employment created; (7) the avoided costs of wildfire suppression, reforestation, and watershed restoration work; and (8) the promotion of wise use and conservation of the natural resources of the Nation by utilizing rather than wasting damaged timber; the Chief of the Forest Service finds there is substantial, overriding public interest in extending certain NFS timber sale contracts for the harvest of undamaged (green) timber not requiring expeditious removal, when such an extension will expedite the rapid harvest of damaged timber requiring expeditious removal from private or other non-NFS lands. Extensions of undamaged (green) NFS timber sale contracts will be approved only if the delay of harvesting will not cause resource damage, delay the completion of needed projects, delay the harvest of damaged NFS timber, or in any other manner adversely impact the management of NFS lands. Highest priority consideration will be given to requests for extensions that involve damaged non-NFS timber adjacent to NFS lands.

**Regulatory Certifications**

*Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. OMB has determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local Governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. 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. 601 *et seq.*), and it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The final rule imposes minimal additional requirements on all timber purchasers for the purpose of validating the need for such extensions and to determine whether or not to approve the requested extension. The information required is easily within the capability of small entities to produce. All businesses that desire an urgent removal extension must show that the extension is needed in order to harvest and salvage deteriorating non-NFS timber, while avoiding significant economic hardship or contract default on NFS timber.

*Environmental Impact*

This final rule establishes uniform criteria to be followed when the Forest Service extends an NFS timber sale contract to facilitate the expeditious removal of damaged timber on non-NFS lands. 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'' that do not significantly affect the quality of the human environment. The Department's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which requires preparation of an environmental assessment or environmental impact statement. The intent of this final rule is to provide authority to allow additional time for completion of NFS timber sale contracts in the event the Forest Service authorizes purchasers to prioritize the harvesting of damaged timber from private or other non-NFS lands, thus avoiding unnecessary waste of valuable non-NFS resources due to deterioration. No change in environmental consequences to NFS lands would occur from implementation of this rule, only a temporary delay in operations.

*Controlling Paperwork Burdens on the Public*

The information required of a purchaser to request an extension of an NFS timber sale contract to facilitate expeditious removal of timber from non-NFS lands constitutes an information collection requirement, as defined in 5 CFR part 1320, and has been assigned Office of Management and Budget control number 0596–0167. This collection requires a purchaser to provide information to establish that an extension of a NFS timber sale contract(s) is needed to allow the harvest of damaged timber, located on private or other public lands, in need of expeditious removal because of catastrophic events beyond the control of the landowner.

*Unfunded Mandates Reform*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal Governments and the private sector. This final 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.

*Energy Effects*

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, 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. Procedural in nature, this final rule would allow for the extension of contract performance time on certain NFS timber sale contracts to facilitate the harvest of damaged timber from private or other non-NFS, allowing the expeditious removal of timber from lands in other ownerships damaged by catastrophic events beyond the landowner's control.

*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 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.

* * * * *

Dated: December 23, 2003.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 03–32243 Filed 12–31–03; 8:45 am]

BILLING CODE 3410–11–P