

### Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: November 13, 2007.

**Tom Quinn,**

*Forest Supervisor.*

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**BILLING CODE 3410-11-P**

### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of contract extensions.

**SUMMARY:** On November 2, 2007, the Chief of the Forest Service determined there is Substantial Overriding Public Interest in extending certain National Forest System timber sale contracts for up to one year, subject to a maximum total contract length of 10 years. Pursuant to the November 2, 2007, finding, timber sale contracts awarded prior to January 1, 2007, are eligible for extension and deferral of periodic payment due dates for up to one year. This finding does not apply to (1) contracts that have been or are currently eligible to be extended under market related contract term addition (MRCTA) contract provisions, except sales using the Hardwood Lumber index that were awarded after December 31, 2005, (2) salvage sale contracts that were sold with the objective of harvesting deteriorating timber, (3) contracts the Forest Service determines are in urgent need of harvesting due to deteriorating timber conditions that have developed following award of the contract, or (4) contracts that are in breach. To receive an extension, purchasers must make a written request to the appropriate Contracting Officer. Purchasers also must agree to release the Forest Service from all claims and liability if a contract extended pursuant to the November 2, 2007, finding is suspended, modified, or terminated in the future.

The intended effect of the Substantial Overriding Public Interest finding and contract extensions is to minimize contract defaults, mill closures, and company bankruptcies. The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with Forest Service authorizing legislation. See Act of June 4, 1897 (Ch. 2, 30 Stat. 11 as amended, 16 U.S.C. 475) (Organic Administration Act). In addition, by extending contracts and avoiding defaults, closures, and bankruptcies, the Government avoids the difficult,

lengthy, expensive, and sometimes impossible process of collecting default damages.

**DATES:** The determination was made on November 2, 2007, by the Chief of the Forest Service.

**FOR FURTHER INFORMATION CONTACT:** Lathrop Smith, Forest Management Staff, (202) 205-0858 or Richard Fitzgerald, Forest Management Staff (202) 205-1753; 1400 Independence Ave., SW., Mailstop 1103, Washington, DC 20250-1103.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. **SUPPLEMENTARY INFORMATION:** The Forest Service sells timber and forest products from National Forest System lands to individuals or companies pursuant to the National Forest Management Act of 1976, 16 U.S.C. 472a (NFMA). Each sale is formalized by execution of a contract between the purchaser and the Forest Service. The contract sets forth the explicit terms and provisions of the sale including such matters as the estimated volume of timber to be removed, the period for removal, price to be paid to the Government, road construction and logging requirements, and environmental protection measures to be taken. The average contract period is approximately two to three years, although a few contracts have terms of five or more years.

Rules in 36 CFR 223.52 (Market Related Contract Term Additions) permit contract extensions when the Chief of the Forest Service determines that adverse wood product market conditions have resulted in a drastic decline in wood product prices. Under market-related contract addition procedures, the Forest Service refers to the following three producer price indices maintained by the Bureau of Labor Statistics: Softwood Lumber #0811 and Hardwood Lumber #0812 in the Commodity Series, and Wood Chips #PCU32113321135 in the Industry Series.

The Softwood and Hardwood Lumber indices indicate a major downturn in those markets began following a peak in September 2004 and was still on a downward trend as of September 2007, with the relative Softwood Lumber index decreasing by about 36 percent and the Hardwood Lumber index decreasing by about 19 percent, during this time. While most purchasers holding contracts with those indices have received or are eligible to receive MRCTA, an anomaly in the wood

products markets and indices used in contracts in the Lake States area and some other parts of the country has left many purchasers without this remedy.

Section 472a(c) of NFMA provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of two years or more, unless the purchaser has diligently performed in accordance with an approved plan of operations or the "Substantial Overriding Public Interest" justifies the extension. The authority to make this determination has been delegated to the Deputy Under Secretary of Agriculture for Natural Resources and Environment in 7 CFR 2.59.

Accordingly, based on current data, the Chief has made a finding that there is a Substantial Overriding Public Interest in extending certain sales for up to one year. This finding does not apply to (1) contracts that have been or are currently eligible to be extended under MRCTA contract provisions, except sales using the Hardwood Lumber index that were awarded after December 31, 2005, (2) salvage sale contracts that were sold with the objective of harvesting deteriorating timber, (3) contracts the Forest Service determines are in urgent need of harvesting due to deteriorating timber conditions that have developed following award of the contract, or (4) contracts that are in breach. In addition to extending contracts pursuant to the Chief's finding, periodic payments will be deferred for up to one year on the extended sales. To receive an extension and periodic payment deferral, purchasers must make a written request to the appropriate Contracting Officer. Purchasers must also agree to release the Forest Service from all claims and liability if a contract is suspended, modified, or terminated, after the contract is extended pursuant to the Chief's November 2, 2007 finding. The text of the finding, as signed by the Chief of the Forest Service is set out at the end of this notice.

Dated: November 2, 2007.

**Joel D. Holtrop,**

*Deputy Chief for National Forest System.*

**Determination of Substantial Overriding Public Interest for Extending Certain Timber Sale Contracts**

The National Forest Management Act of 1976 (16 U.S.C. 472a(c)) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of two years or more unless he finds that the purchaser has diligently performed in accordance with an approved plan of operations or

that the "Substantial Overriding Public Interest" justifies the extension.

As a result of continued drastic reductions in forest product prices, there is a Substantial Overriding Public Interest in extending certain timber sale contracts.

**Background**

On December 7, 1990, the Forest Service published a final rule (55 FR 50643) establishing procedures in 36 CFR 223.52 for extending contract termination dates in response to adverse conditions in the timber markets. These procedures, known as Market Related Contract Term Additions (MRCTA), authorize extensions of timber sale contracts up to one additional year when qualifying market conditions are met. When the MRCTA procedures were established, experience indicated that the type and magnitude of lumber market declines that would trigger MRCTA generally coincide with low numbers of housing starts and are usually indicative of substantial economic dislocation in the wood products industry. Such economic distress broadly affects community stability, the ability of industry to supply construction lumber and other products for public use, and threatens maintaining plant capacity necessary to meet future demands for wood products from domestic sources. The Department has determined that a drastic reduction in wood product prices can result in a Substantial Overriding Public Interest sufficient to justify a contract term extension for existing contracts, as authorized by the National Forest Management Act of 1976 (16 U.S.C. 472a(c)) and existing regulations at 36 CFR 223.115(b).

Following promulgation of the rule in 1990, the Forest Service began tracking four producer price indices provided by the Bureau of Labor Statistics as indicators of a drastic reduction in wood product prices. Those indices were the Southern Pine Dressed, Douglas-fir Dressed, Other Species Dressed, and Hardwood Lumber. Beginning in the first quarter of 1994 through the first quarter of 1996, government indices indicated a major downturn in the lumber markets throughout the country was occurring, but only the Douglas-fir Dressed Lumber index used in contracts in Washington and Oregon dropped sufficiently to trigger MRCTA. Meanwhile, purchasers in other parts of the country were facing defaults, mill closures, and bankruptcies but were not eligible for MRCTA. To avert these problems, the Chief of the Forest Service determined that it was in the Substantial Overriding Public

Interest to extend for a period of up to one year certain contracts that had not received any MRTCA. The Forest Service also initiated a study of the MRTCA procedures and indices to determine why they did not appear to perform as expected. Findings in that study led the Forest Service to adopt four different producer price indices from the Bureau of Labor Statistics in May 1998; (1) Hardwood Lumber (SIC 24211), (2) Eastern Softwood Lumber (SIC 24213), (3) Western Softwood Lumber (SIC 24214), and (4) Wood Chips (SIC 24215). However, after December 2003, the Bureau of Labor Statistics discontinued publishing the Western Softwood Lumber index (SIC 24214), Eastern Softwood Lumber index (SIC 24213), and Hardwood Lumber index (SIC 24211). At the same time the Wood Chips index (SIC 24215) was renumbered as PCU32113321135. In January 2006, the Forest Service published a notice in the **Federal Register** (71 FR 3409) adopting the Softwood Lumber index 0811 and the Hardwood Lumber index 0812 to replace the three indices that were no longer supported by the Bureau of Labor Statistics. The Forest Service continued to rely upon the Wood Chips index, now numbered PCU32113321135, to gauge certain market conditions. The three indices the Forest Service adopted to gauge most market conditions, however, are not able to address market conditions for all forest products, e.g. biomass. Additionally, because the indices are national in scope, they may fail to address drastic declines in local markets.

**Market Conditions Leading to the November 2006, Determination of Substantial Overriding Public Interest To Extend Certain Sales**

The Softwood Lumber index #0811 began declining, after peaking in September 2004, and with adjustments for inflation the relative index had declined 47.9 points or 31 percent by September 2006. Between the third quarter 2005 and the third quarter 2006, there were five consecutive calendar quarters where the declines were large enough to trigger MRCTA. This was a substantially larger drop than the one in the period between 1994–1996, when the index declined about 38 points or 21 percent. The period from 1994–1996 was also the last time there were five consecutive qualifying quarters for MRCTA.

The Hardwood Lumber index #0812 also began declining, after peaking in September 2004, and with adjustments for inflation declined 18.6 points or 14 percent as of September 2006. There

were three consecutive quarters beginning with the third quarter of 2005 through the first quarter of 2006, where the quarterly declines were large enough to trigger MRCTA equal to one calendar year plus one normal operating season. The Hardwood Lumber index continued to decline in the second and third quarters of 2006, but the decline was not sufficient to trigger MRCTA. Consequently, some hardwood purchasers were expected to begin facing additional hardships as the MRCTA time they previously obtained expired.

Between September 2004 and January 2006, the Wood Chips index remained fairly static but was on a steady rise since then. The last time the Wood Chips index had a qualifying quarter was the third quarter of 1997.

As of November 2006, the MRCTA procedures on softwood lumber and hardwood lumber sales were generally functioning as expected. Additional contract time was being offered for qualifying sale, which assisted purchasers by allowing more time to wait for markets to recover or to spread out harvesting of high priced sales. But, as was the case in 1996, there were exceptions.

For example, in the Lake States area, a combination of factors contributed to a more drastic decline in forest product prices than was occurring in other parts of the country and/or the producer price indices were not triggering MRCTA. The predominant forest products produced in that area are wood chips used in pulping for paper and oriented strand board (OSB). Both the pulp and OSB sales used the Wood Chips index which had not had a qualifying quarter for MRCTA since 1997. National Forest System timber sales in the Lake States area often contain a diverse mix of forest products, which attracted strong competition leading to relatively high bid rates. Problems began in 2005, when prices for both pulp and OSB chips started declining sharply.

OSB is a building product with prices that tend to follow lumber market prices. Because lumber market prices were declining significantly across most of the country, contracts tied to the Softwood Lumber index were eligible to receive MRCTA. But in places, such as much of the Lake States region, many purchasers marketing OSB material were not getting this relief because most of their contracts were tied to the wood chips index which had not declined and was not triggering market related contract term additions. Concurrently, while lake states area pulp prices were declining national wood chip prices were stable or increasing, so purchasers

marketing pulp material were not eligible for market related contract term additions. The principal cause of this anomaly was due to the location along the great lakes and Canadian border, where competition from cheaper imported wood chips was driving prices down. As a result of these factors, purchasers in the Lake States area were faced with high bid prices on their existing contracts, low product prices, and no MRCTA to provide additional time for markets to recover or to mix the higher priced timber with lower priced timber for other sources. The MRCTA procedures were not functioning as expected here.

In another example, the sale of biomass material has been increasing in recent years with most of that material utilized for generating electricity in co-generation facilities. A reliable index for tracking this new product has not been found, so most sales of biomass material also use the Wood Chips index. Energy prices can differ substantially in different parts of the country and don't necessarily follow the Wood Chips index. Consequently, in areas where energy prices have drastically declined and purchasers are holding high price timber sale contracts, they are not currently eligible to receive a MRCTA because the Wood Chips index has not triggered.

The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with the Organic Administration Act. In addition, by extending contracts and avoiding defaults, closures and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible, process of collecting default damages.

Therefore, on November 2, 2006, the Deputy Under Secretary of Agriculture for Natural Resources and Environment determined there was a Substantial Overriding Public Interest in extending certain National Forest System timber sale contracts for up to one year, subject to a maximum total contract length of 10 years. Pursuant to the November 2, 2006, finding, timber sale contracts awarded prior to January 1, 2006, were eligible for extension and deferral of periodic payment due dates for up to one year. Contracts that were in breach, have been or were currently eligible to be extended under MRCTA contract

provisions, or salvage sale contracts that were sold with the objective of harvesting deteriorating timber were not eligible for extension pursuant to the November 2, 2006, finding. To receive an extension, purchasers were required to make a written request to the appropriate Contracting Officer. Purchasers were also required to agree to release the Forest Service from all claims and liability if a contract extended pursuant to the November 2, 2006, finding was suspended, modified, or terminated in the future.

#### **2007 Market Conditions**

Market conditions leading to the November 2, 2006, determination of Substantial Overriding Public Interest have continued to decline. Between September 2006, and September 2007, the relative Softwood Lumber index dropped an additional 9.4 points bringing the total decline since September 2004 to 57 points or 36.4 percent. Including the third quarter of calendar year 2007, the Softwood Lumber index has triggered for MRCTA, an unprecedented nine consecutive calendar quarters, which is the longest sustained decline since the Forest Service established the MRCTA procedures in December 1990. Between September 2006 and September 2007, the relative Hardwood Lumber index dropped an additional 7.5 points, bringing the total decline since September 2004 to 26.1 points or 19.1 percent. But, although the Hardwood Lumber index has steadily declined, the rate of decline has not been sufficient to trigger MRCTA for sales awarded since January 1, 2006. Between September 2006 and September 2007, the Wood Chips index continued an upward trend. In recognition of the seriousness of the market problems, the State of Minnesota and some counties within Minnesota have provided price relief to purchasers of their sales. The U.S. Forest Service has no statutory authority at this time to provide price relief but can offer additional contract time based on a determination of Substantial Overriding Public Interest.

#### **Determination of Substantial Overriding Public Interest**

The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided over large geographic areas by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in

accordance with the Organic Administration Act. In addition, by extending contracts and avoiding defaults, closures and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible, process of collecting default damages.

Therefore, pursuant to 16 U.S.C. 472a, and the authority delegated to me at 7 CFR 2.60, I have determined that it is in the Substantial Overriding Public Interest to extend for up to one year certain National Forest System timber sales that were awarded prior to January 1, 2007. This finding does not apply to (1) contracts that have been or are currently eligible to be extended under MRCTA contract provisions, except sales using the Hardwood Lumber index that were awarded after December 31, 2005, (2) salvage sale contracts that were sold with the objective of harvesting deteriorating timber, (3) contracts the Forest Service determines are in urgent need of harvesting due to deteriorating timber conditions that have developed following award of the contract, or (4) contracts that are in breach. Total contract length shall not exceed 10 years as a result of this extension. For those contracts extended pursuant to this finding, periodic payments due after the date of this determination will also be deferred for up to one year. To receive the extension and periodic payment deferral, purchasers must make written request and agree to release the Forest Service from all claims and liability if a contract extended pursuant to this finding is suspended, modified, or terminated in the future.

Dated: November 2, 2007.

**Abigail R. Kimbell,**  
Chief.

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Notice of Intent To Request Comments on a Currently Approved Information Collection.

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice announces the intention of the Natural Resources Conservation Service (NRCS) to request

comments on a currently approved information collection for which approval will expire, 0578-0030, Emergency Watershed Protection Program.

**Public Participation:** The NRCS invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Emergency Watershed Protection (EWP) Program are urged to provide comments.

**Scoping Process:** Public participation is requested throughout the scoping process. The NRCS is soliciting comment the public indicating what issues and impacts the public believes should be encompassed within the scope of the EWP Program. Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (b) The accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used, (c) Ways to enhance the quality, utility, and clarity of the information to be collected, and (d) Ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology.

**Date Scoping Comments Are Due:** Comments on this notice must be received by January 18, 2008 to ensure consideration. Comments may be sent to Phyllis I. Watkins, Agency OMB Clearance Officer, U.S. Department of Agriculture, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, MD 20705-5000; (301) 504-2170; [phyllis.i.watkins@wdc.usda.gov](mailto:phyllis.i.watkins@wdc.usda.gov).

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13), and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

#### Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require government agencies in general, and

NRCS in particular, to provide the option of submitting information or transacting business electronically to the maximum extent possible.

**FOR FURTHER INFORMATION CONTACT:** Questions and comments should be directed to Phyllis I. Watkins, Agency Office of Management and Budget Clearance Officer, USDA, Natural Resources Conservation Service, 5602 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705-5000; telephone: (301) 504-2170.

#### SUPPLEMENTARY INFORMATION:

**Title:** Emergency Watershed Protection Program.

**OMB Number:** 0578-0030.

**Expiration Date of Approval:** July 31, 2008.

**Type of Request:** To request comments on a currently approved collection for which approval will expire.

**Abstract:** The primary objective of the Natural Resources Conservation Service (NRCS) is to work in partnership with the American people and the farming and ranching community to conserve and sustain our natural resources. The purpose of Emergency Watershed Protection Program (EWP) information collection is to provide EWP assistance to sponsors to undertake emergency measures to retard runoff and prevent soil erosion to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural disaster is causing or has caused a sudden impairment of that watershed.

The sponsor's request is submitted formally as a letter (now the Appendix to the NRCS-PDM-20A) to the NRCS State Conservationist for consideration. The NRCS-PDM-20, Damage Survey Report (DSR), is the agency decision-making document that includes the economic, social, and environmental evaluation and the engineer's cost estimate.

This information collection allows the responsible Federal official to make EWP Program eligibility determinations and provide Federal cost-share contribution to complete the measures. This request is necessary to implement the EWP Program for which NRCS has statutory authority.

The table below lists the forms in this collection, the uses for each document, and the applicable programs. These forms constitute this information collection and reflect the documents used by EWP sponsors to request participation in the recovery program.