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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: The Under Secretary for Natural Resources and Environment, Department of Agriculture has determined in accordance with paragraph 14(c) of the National Forest Management Act of 1976 (NFMA) and Forest Service regulations that it is in the substantial overriding public interest (SOPI) to extend certain National Forest System timber sales, sale of property stewardship contracts, and forest product permits. This finding applies to timber sale, sale of property stewardship contracts, and forest product permits that were awarded or issued, before April 1, 2020, and upon award to sales with a bid opening prior to April 1, 2020. Extensions will be granted upon written request of the contract or permit holder, unless the Contracting Officer determines the wood products are in urgent need of removal due to forest health conditions or to mitigate a significant wildfire threat to a community, municipal watershed or other critical public resource. The Under Secretary finds in accordance with Forest Service regulations that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained –Yield Act of 1960) will result by extending certain contracts and permits. Therefore, contract length may exceed 10 years as a result of this SOPI.

DATES: The SOPI determination was made on April 10, 2020, by the Under Secretary for Natural Resources and Environment, Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Carl Maass, Forest Management Staff, 970–295–5961 or John Gary Church, Forest Management Staff 202–205–1732; 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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Extension of certain contracts and permits is necessary due to a combination of factors impacting the national economy and the timber market. As one measure of the timber market, beginning in the 4th quarter of 2018 the Softwood Lumber Producer Price Indices (PPI) declined enough to qualify for some relief for timber purchasers under Market Related Contract Term Additions (MRCTA) provision of 36 CFR 223.52 (MRCTA). A similar downward trend occurred in the Hardwood Lumber PPI in the 2nd Quarter of 2018, but it did not qualify for MRCTA. Then, beginning in the 4th Quarter of 2019, trade disputes impacted the export of hardwood lumber to Pacific-rim nations. US hardwood lumber exports to China were valued in 2018 at approximately $2 billion prior to tariffs being imposed. In March of 2020 indications are that impacts from the general economic slowdown attributed to the novel coronavirus pandemic (COVID-19) are adding to these economic disruptions, affecting a wide range of the forest products industry, including direct effects on timber purchasers and contractors across the country. In addition, mill closures and curtailment of timber harvests under Forest Service contracts appear to be a reflection of market declines over the past 24 months.

Due to the complex factors involved, recovery is expected to be a protracted process. Looking at historically significant downturns in timber markets (early 1980's, early 1990's and late 2000's) recovery from the current market shocks is expected to be a prolonged process over two or more years. By way of illustration, recovery after the recession between 2005 and 2009 required substantial improvement in the domestic housing market before pre-recession production levels could be obtained. See, GTR NRS-P-105, USDA Forest Service Northern Research Station from 2012, for detailed information on how recovery proceeded after the economic downturn between 2005 and 2009. This SOPI will provide time needed for markets to stabilize and for purchasers, and contractors to resume operations currently disrupted by these unprecedented global conditions.

Pursuant to this SOPI, and except as discussed herein, most contracts may be extended for a maximum of two years, including MRCTA time that has previously been provided under 36 CFR 223.52. Based on past experience a two-year time period should allow time for substantial market adjustments and any broad scale market assessment the Forest Service may find necessary to make. Market conditions in Alaska are exceptionally disrupted, resulting from its dependence on log exports to international markets, so timber sale contracts and permits in Alaska may receive up to 3 years of additional time through a combination of MRCTA and this SOPI.

The intent of this SOPI is not to be duplicative of relief previously provided, or relief that may be available in the future, under contract provisions for MRCTA. In the event MRCTA triggers in the future, any MRCTA time added to contracts and permits, will be limited to the amount of time that exceeds additional time authorized under this SOPI. For example, sales that have previously received 1 year and 6 months of MRCTA shall only receive an additional 6 months of extension under this SOPI, for a total of 24 months of combined MRCTA and SOPI, except sales in Alaska will receive up to 3 years of additional time through a combination of MRCTA and this SOPI. Thus, sales in Alaska that have previously received 1 year and 6 months of MRCTA are eligible to receive up to an additional 18 months of extension under this SOPI for a combined total of 36 months. If MRCTA is triggered in the future, MRCTA time will be reduced by the amount time granted under this SOPI. The combination of additional time from previous MRCTA and this SOPI will be limited to a maximum of two years, except that timber sale contracts and permits in Alaska may receive up to 3 years of additional time through a combination of MRCTA and this SOPI. International markets for logs exported from Alaska are governed by market demand and foreign restrictions largely outside the control of US domestic policy. The additional year of extension may be required by Alaska producers to resolve international market disruptions without requiring additional relief measures.

Sales where the wood products are in urgent need of removal due to forest health conditions or to mitigate a significant wildfire threat to a community, municipal watershed, or other critical public resource that is determined to be in urgent need of harvest will not be extended. The Forest Service will continue to monitor market conditions to determine if and when additional time may be needed.

MRCTA procedures were adopted by the USDA Forest Service in the early 1990's to avert contract defaults, mill closures and associated impacts to dependent communities when there is a drastic decline in wood product prices (36 CFR 223.52). Most Forest Service timber sale contracts over 1-year in length include MRCTA procedures. Salvage sales and sales of products not covered in a Bureau of Labor Statistics (BLS) Producer Price Index (PPI) used to determine when MRCTA triggers are examples of contracts that do not include a MRCTA provision.

The effects of international trade disputes and the novel coronavirus 2019 (COVID-19) pandemic have not yet been fully accounted for in the way the Forest Service uses the PPIs to calculate when MRCTA is triggered. As a result, MRCTA is not providing timely or adequate relief for many producers that are experiencing the effects of tariffs imposed by other countries, particularly China, that affect United States exports and the effects of COVID-19 pandemic on domestic and global forest products markets. The effects include disruptions in international trade and interruptions in domestic production, distribution of forest products as well as demand for forest products as a result of national and local COVID-19 containment measures such as "stay-at-home" or "shelter-in-place" orders.

A unique combination of world market conditions, the COVID-19 pandemic and a massive bark beetle epidemic in central Europe has created an unprecedented worldwide instability in timber industries and associated markets. Data and available information indicate the volatility and speed of changes concurrent with the COVID-19 pandemic are introducing extreme uncertainty for timber purchasers and stewardship contractors regarding investment decisions about current and future operations. The number of people seeking unemployment benefits in March 2020 shot up to over 10 million in a few weeks, providing a great deal of uncertainty for housing starts and the mortgage industry. Sawmills in Oregon and elsewhere are curtailing operations, halting operations on National Forest timber sales as markets for the logs shut down. Impending contract termination dates on existing Forest Service timber sales can limit purchasers' options in these turbulent and uncertain times. When members of the timber industry must decide whether to harvest timber during severely depressed markets or risk defaulting contracts, such decisions can and previously have led to bankruptcies, loss of infrastructure and loss of jobs. This adversely affects stability in rural communities and future management of National Forests, as important opportunities for accomplishing forest management objectives are lost. Providing additional contract time during previous significant downturn market conditions has allowed timber purchasers additional flexibility to navigate the crisis and sustain long-term business viability, providing tools to support Forest Service land management goals and providing future employment opportunities.

The intended effects of this SOPI finding and contract extensions are, again, to allow timber purchasers, contractors, and permit holders time to navigate through the COVID-19 crisis and other market conditions, minimize contract defaults, mill closures, and bankruptcies, and sustain employment opportunities. The Government benefits if timber sale contract defaults, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous economically viable, timber purchasers and contractors 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 Act of June 4, 1897 (Ch. 2, 30 Stat. 11, as amended, and 16 U.S.C. 475) (Organic Administration Act). Having numerous economically viable timber purchasers is also essential as employment and the national economy recovers following the COVID-19 pandemic.

The Forest Service sells timber and forest products from National Forest System lands to individuals and companies pursuant to the National Forest Management Act of 1976, 16 U.S.C. 472a (NFMA); the Stewardship End Result Contracting Projects Act, 16 U.S.C. 6591c; and implementing regulations in 36 CFR part 223. Each sale is formalized by execution of a contract for the sale of property between the timber purchaser or Stewardship Contractor and the Forest Service. The contract sets forth the explicit terms 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. The average contract period is approximately 2 to 3 years, although some contracts may have terms up to 10 years. The contract term is established by the Forest

Service based on the estimated time an average prudent timber contractor would need to mobilize and complete the timber harvest under the conditions of the contract.

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 2 years or more 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 the extension.

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 timber markets. These procedures, known as Market Related Contract Term Additions (MRCTA), authorize extensions of timber sale contracts when qualifying market conditions are met. Subsequent amendments have provided that the total contract period may be extended up to 10 years as the result of MRCTA when specified criteria are met. When the MRCTA procedures were established, experience indicated that the type and magnitude of lumber market declines that would trigger market related contract term additions generally coincide with low numbers of housing starts and substantial economic dislocation in the wood products industry. Such economic distress broadly affects rural community stability, the short-term capacity of the domestic industrial supply chain, and threatens long-term industrial capacity needed to meet future Forest Service land management objectives and the demand for wood products from domestic sources.

When MRCTA was designed, the focus was on domestic disruptions in forest product markets and not the effects of world trade restrictions or a global pandemic. In promulgating the MRCTA rule the Department 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).

The three Bureau of Labor Statistics (BLS) Producer Price Indices (PPI) the Forest Service currently uses to gauge most market conditions include Hardwood Lumber 0812, Softwood Lumber 0811, and Chips (not field chips) PCU32113321135. However, these indices are not able to address all forest products and market conditions. For example, biomass material, which is a large component of many stewardship contracts, is not covered by these indices. Also, because the indices are national in scope, they may fail to address drastic declines in local markets or products and, more importantly at this time, markets affected by tariffs and the evolving COVID-19 pandemic. Furthermore, the indices as used in Forest Service contracts are not able to reflect rapidly declining market conditions since the formulas used to trigger MRCTA require measuring PPI decline over two consecutive calendar quarters. Current market conditions are very volatile and will not be reflected in the MRCTA formulas for several months.

The Bureau of Labor Statistics (https://www.bls.gov/ppi/home.htm) describes the effects of tariffs on the producer price index in March 2020, as follows:

24. “Does the PPI include tariffs in its estimates of price change?

The Producer Price Index (PPI) measures the average change in prices U.S. producers receive for the sale of their products. Since tariffs and taxes are not retained by producers as revenue, they are explicitly excluded from the PPI. However, pricing decisions producers make in reaction to tariffs are included in the PPI. For example, if a domestic producer is manufacturing a product that is subject to import competition and tariffs are placed on those imports, the domestic producer may increase its own prices in order to maximize revenue. In this case, the price increase for the domestic producer would be included in the PPI. Similarly, if a domestic producer exports products to a foreign country that placed tariffs on U.S. products and the domestic producer lowered its prices either to better compete in the export market or to sell domestically excess inventory that resulted from those tariffs, those price decreases would also be reflected in the PPI.”

The above description provides a general overview that tariffs are not captured in the PPI. Only the impact of tariffs on pricing decisions of individual firms are recognized through this method.

Hardwood Lumber Markets

Hardwood industry data suggests that U.S. prices are severely depressed by tariffs imposed by China on imports of hardwood lumber and logs from the United States. Although tariff relief on hardwoods is occurring, an oversupply of logs in China and the effects of containing COVID-19 by stopping manufacturing operations in China will delay the reopening of the Chinese export market. The Forest Service currently has 192 sales awarded that are tied to the Hardwood Lumber PPI, with 55 of those sales terminating in calendar year 2020, and an additional 51 sales terminating in 2021. It is estimated that as many as one third of these sales may be directly affected. The hardwood lumber market is complex with multiple interconnections and relies on demand for finished furniture, which ebbs and flows as US tariffs are applied to goods imported to the US, and Chinese tariffs applied to hardwood logs exported to China. These market disruptions can affect the entire market and would have some variable ripple effect on potentially all the active sales. Some specifics regarding the variable effects observed to date are described below.

Eastern Hardwood Lumber Markets

- Hardwood Review Weekly (http://www.hardwoodreview.com) indicates that export volume for all hardwood species is down by 39% compared to a year ago.
    - Hardwood total export value is down 42.2% compared to a year ago.
    - Product unit values are down by an average of - 5%, with variation by species from -2.8% Yellow Poplar to -12% for Cherry.
- About 1/3 of the active timber sales on the National Forests of North Carolina (NC), about 34,000 Hundred Cubic Feet (CCF), are in jeopardy of default due to poor market conditions. This represents about 76% of all timber sale contracts in

North Carolina with a combined value of nearly $1 million.

- A hardwood sawmill has already closed in Jackson County, NC, and there are reports that another one has curtailed production, idling around 70 workers.
- A finished furniture mill in Western North Carolina closed last fall.
- Local Forest Service officials report that mills are struggling in several other locations including Haywood and Graham Counties, NC.
- Sales in Tennessee are in danger of default due to:
    - restrictive delivery quotas;
    - restrictions on certain species of hardwood logs; and
    - newly imposed increases in minimum sawlog sizes are diverting some logs to lower quality, lower value products as a result of reduced demand.

During the period of September 2005 through December of 2008 the Hardwood Lumber PPI 0812 did not decline enough to authorize MRCTA, and, in the absence of triggering MRCTA, qualifying hardwood sales received additional time through a SOPI in 2007, the 2008 Farm Bill and a 2008 SOPI.

The hardwood lumber PPI 0812 began declining after May 2018, and with adjustments for inflation, has declined 15.2 points or 13% as of January 2020. But, similar to the situation during the period between September 2005 and December 2008, PPI 0812 declines for two consecutive quarters have not been sufficient to trigger MRCTA. Consequently if hardwood prices do not begin to recover soon, or if conditions for MRCTA do not trigger, some hardwood purchasers are expected to face severe hardships and potential defaults as contract termination dates approach.

China began eliminating tariffs on most North American hardwood lumber imports for one year beginning February 28, 2020. Despite the change in tariffs, reliable information from news reports and industry publications indicate that business disruptions related to efforts to contain COVID-19 are stalling shipments to China. The effects of the COVID-19 pandemic on other export markets is still unclear but has potential to become significant.

Softwood Lumber Markets

The softwood lumber PPI 0811 triggered MRCTA during four consecutive quarters including the 4th quarter 2018 through the 3rd quarter 2019. Contracts tied to the softwood lumber PPI sold prior to the 1st quarter 2019 have been eligible to receive MRCTA time. Sales tied to the softwood lumber index sold during the 2nd quarter 2019 and later have not been eligible for MRCTA time.

There is no indication that foreign tariffs on softwood logs and lumber exported from the United States will be lifted any time soon. Furthermore, China has been severely limiting or rejecting imports of softwood lumber and logs due to excess inventory at processing facilities. Even before the tariffs and the COVID-19 pandemic, the Chinese softwood lumber manufacturers were flooded with inexpensive spruce from a major spruce beetle epidemic in central Europe. The oversupply situation has been exacerbated by China's response to the COVID-19 situation, which led to a general stopping of manufacture and related decline in demand for a log supply and further restricted imports. This is having a significant impact on Alaska timber producers where market conditions are driven by log exports to China. While the effects of these conditions are partially mitigated by MRCTA, it is apparent that MRCTA alone will not provide adequate time for the Alaska export markets to recover before contracts there begin terminating.

Softwood log exports from Federal lands are limited to areas east of the 100th meridian (USFS Regions 8 and 9) and Alaska (USFS Region 10). Although sales subject to the Softwood Lumber PPI have received additional MRCTA time, sales in Alaska may require additional time due to the very limited markets available for economically viable softwood exports from Alaska.

Alaska Market

- Major exporters of softwood timber from Alaska have experienced a loss of about 50% of their Freight on Board (FOB) price to China in the last 18 months.
- Alaskan exporters are estimated to lose $250 per thousand board feet (MBF) on all of their National Forest Young Growth (YG) sales.
- With the current 20% tariff imposed by China on Alaska wood products, exporters stopped shipping to China in August of 2019.
- Large inventories of logs destined for export are awaiting resolution of tariffs and market limitations.

Market demand and tariff conditions are delaying the start of all operations in the estimated $100 million dollar forest product industry in Alaska (2015 data). As discussed above, purchasers of softwood sales throughout the rest of the country are coming under increasing pressure from market and manufacturing conditions affected by actions and responses to the COVID-19 pandemic and the general slowing of economic activity. This situation continues to be very volatile. Providing extra time to those sales will provide those purchasers with additional flexibility as they adjust to the changing market situation.

Biomass and Wood Chip Markets

Little information is currently available on the effects of the COVID-19 pandemic on biomass and wood chip markets, but as the general economy slows down, it is likely that those markets will also be affected. The forest products industry is interconnected among dimension lumber, pulp, chips and biomass. Each part of the industry supports other parts. For example, most biomass and chip sales include a component of sawtimber and some of the outputs from sawtimber support pulp, chips and biomass. Consequently, contracts where biomass or wood chips the primary timber product will also be eligible for an extension of up to 2 years under this SOPI determination.

Determination of Substantial Overriding Public Interest: The Government benefits if timber sale contract defaults, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous economically viable, timber 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. Timber sales play a major role in maintaining healthy forests and restoring watersheds that produce clean water and are resilent to insects and diseases. Maintaining a healthy forest products industry allows the Forest Service to continue this vital work while supporting hundreds of thousands of meaningful jobs throughout the country.

By preventing defaults, better utilization of various forest resources (consistent with the provisions of the Multiple-Use Sustained –Yield Act of 1960) will result if contracts are extended beyond 10 years as a result of this finding.

Therefore, pursuant to 16 U.S.C. 472a, I have determined that it is in the substantial overriding public interest to extend up to two years certain National Forest System timber sale contracts awarded and timber product permits issued before April 1, 2020, and sales with a bid opening date of prior to April 1, 2020 that have not yet been awarded, subject to the following conditions:

1. The combination of additional time from previous MRCTA and this SOPI will be limited to a maximum of two years. For example, sales that have previously received 1 year and 6 months of MRCTA shall only receive an additional 6 months of extension, for a total of 24 months under this SOPI, except market conditions in Alaska are such that sales in Alaska will receive up to 3 years of additional time through a combination of MRCTA and this SOPI . For example, sales in Alaska that have previously received 1 year and 6 months of MRCTA are eligible to receive up to an additional 18 months of extension under this SOPI for a combined

total of 36 months.

2. In the event MRCTA triggers in the future, additional time will be limited to that exceeding the amounts authorized under this SOPI.
3. Contracts shall not be extended under this SOPI when the Contracting Officer determines the wood products are in urgent need of removal due to forest health conditions or to mitigate a significant wildfire threat to a community, municipal watershed or other critical public resource.
4. Notwithstanding the preceding conditions, contracts or portions of contracts that are in breach are not eligible for extension under this SOPI determination until such breach is remedied.
5. This SOPI does not apply to stewardship contracts determined to be for the procurement of services under 36 CFR 223.300(b)(1) or (3)-Stewardship Agreements.
6. Forest Product Permits shall be extended for up to 2 years upon request when product removal limits shown on the permit have not been met.

Total contract length may exceed 10 years as a result of receiving a SOPI extension under this determination.

Any periodic payment due dates that have not been reached as of the date the Contracting Officer receives a request for a SOPI extension shall be adjusted one day for each additional day of contract time granted. Periodic Payments with determination dates from

March 1, 2020 to the date this SOPI is published shall be adjusted by adding one day for each additional day of contract time granted, when the request for SOPI extension is received within 30 days of publication of the SOPI.

To receive an extension and periodic payment deferral pursuant to this SOPI, 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.

The Forest Service shall continue to monitor market conditions to determine if additional relief measures may be needed in the future.

James E. Hubbard,
Under Secretary,
Natural Resources and Environment.

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