Notices

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Abolish System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of abolishment of Department of Agriculture System of Records, USDA/FS–12 Incident Management and Prescribed Fire Qualification and Experience Records.

SUMMARY: The records formerly maintained in the Privacy Act System of Records, USDA/FS–12 Incident Management and Prescribed Fire Qualification and Experience Records are now maintained in another Privacy Act System of Records USDA/BLM–40 Incident Qualification and Certification System (IQCS). Therefore, this system is being abolished and removed from the inventory of USDA Systems of Records in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This notice is effective on September 17, 2008.

ADDRESSES: For additional information contact the Director of Fire and Aviation Management, Forest Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Mailstop 1107, Washington, DC 20250–1107.

FOR FURTHER INFORMATION CONTACT: Tom Harbour, Director of Fire and Aviation Management, Forest Service, U.S. Department of Agriculture, telephone: (202) 205–1483.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended, requires that each agency publish a notice of the existence and character of each new or altered ''system of records.'' 5 U.S.C. 552a(a)(5). This notice identifies a Forest Service System of Records that is no longer in use, USDA/FS–12 Incident Management and Prescribed Fire Qualification and Experience Records. The records which were formerly maintained in this system are now maintained in another Privacy Act System of Records, USDA/BLM–40 Incident and Certification System (IQCS); as published in the **Federal Register** on February 6, 2008. The System of Records, USDA/FS–12, Incident Management and Prescribed Fire Qualification and Experience Records is abolished as absolute and no longer used, and it is removed from the inventory of the USDA System of Records.

Dated: September 3, 2008.

Edward T. Schafer,

Secretary.

[FR Doc. E8–21726 Filed 9–16–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

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

AGENCY: Forest Service, USDA.

ACTION: Notice of Determination of Substantial Overriding Public Interest.

SUMMARY: Pursuant to section 472a(c) of the National Forest Management Act of 1976 (NFMA), and the authority delegated at 7 CFR 2.20, the Under Secretary of Agriculture for Natural Resources and Environment has determined that the substantial overriding public interest (SOPI) justifies the use of market-related contract term adjustments (MRCTA) to extend beyond 10 years, certain existing green timber sale contracts tied to Softwood Lumber index #0811 and Hardwood Lumber index #0812 that were awarded prior to January 1, 2007. This SOPI determination is based on the sustained drastic reduction in softwood lumber prices since 2004 and the more recent hardwood lumber decline.

DATES: The determination was made on September 10, 2008 by the Under Secretary of Agriculture for Natural Resources and Environment.

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.

Background

Section 472a(c) of NFMA provides, in part, as follows:

> Unless there is a finding by the Secretary of Agriculture that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use, Sustained-Yield Act of 1960) will result, sales contracts shall be for a period not to exceed 10 years: Provided, That such period may be adjusted at the discretion of the Secretary to provide additional time due to time delays caused by an act of an agent of the United States or by other circumstances beyond the control of the purchaser.[1]

Although the Forest Service generally does not allow the extension of timber sale contracts beyond 10 years, the Secretary of Agriculture may extend such contracts beyond 10 years if he determines doing so will result in the better utilization of the various forest resources. However, the Secretary ''shall not extend any contract period with an original term of 2 years or more unless he finds (A) that the purchaser has diligently performed in accordance with an approved plan of operation or (B) that the substantial overriding public interest justifies the extension.''[2]

The Under Secretary of Agriculture for Natural Resources and Environment has determined that a healthy timber industry infrastructure results in the better utilization of the various forest resources. The grant of additional MRCTA time to purchasers eligible for relief under this SOPI is intended to help maintain that infrastructure by preventing timber sale purchasers from defaulting on their contracts, closing their mills, and filing for bankruptcy protection. Having numerous economically viable timber sale purchasers is in the substantial overriding public interest for many reasons, including the following: (1) It allows the Forest Service to accomplish land management objectives in a cost-effective manner; (2) it increases competition for National Forest System timber sales and can result in higher prices paid for timber; (3) it helps

[1] 16 U.S.C. 472a(c).

[2] *Id.*

provide a continuous timber supply to the public in accordance with the Organic Administration Act; (4) it helps accomplish fuels reduction projects; and (5) it helps maintain the economic stability of communities dependent upon the timber industry.

MRCTA relief granted pursuant to this SOPI must be made in accordance with 36 CFR 223.52, subject to the following exceptions:

(a) Notwithstanding 36 CFR 223.52(c)(3), up to 4 years may be added to a contract's length by MRCTA;

(b) Notwithstanding 36 CFR 223.52(c)(4), the revised contract term may exceed 10 years; and

(c) No contract subject to this SOPI may have its termination date extended past December 31, 2013.

Periodic payments shall be adjusted pursuant to 36 CFR 223.52(d).

The following types of contracts are not eligible for relief under this SOPI: (1) Contracts the Forest Service determines are in urgent need of harvesting for reasons including, but not limited to, deteriorating timber conditions or public safety and (2) contracts that are in breach.

To determine when there is a drastic decline in lumber prices sufficient to trigger a market-related contract term addition, the Forest Service monitors two producer price indices maintained by the Bureau of Labor Statistics (BLS): #0811 Softwood Lumber and #0812 Hardwood Lumber. These indices are published monthly by the BLS, but the Forest Service only uses the indices from the last month of each calendar quarter (March, June, September, and December) to calculate when MRCTA triggers. Because the BLS indices are not adjusted for inflation, the Forest Service uses a relative index adjusted for inflation that allows comparisons to be made over time on a constant dollar basis. The relative index is calculated each quarter by dividing 100 by the BLS all commodities index for that month and multiplying the result times the monthly indices #0811 and #0812. All references to BLS indices #0811 and #0812 in this notice are to the Forest Service's relative index.

The current decline in the softwood lumber index is the worst on record going back to March 1949. After peaking in the third quarter 2004, softwood lumber index #0811 steadily declined so that by the end of the second quarter (June) 2008, it had decreased by 47 percent. Beginning with the third quarter of 2005 and continuing through the second quarter of 2008, there were 12 consecutive calendar quarters where the declines were large enough to trigger MRCTA. The only other comparable market decline took place during the early 1980's, but the current decline in the index value is worse as can be seen in the table below.[3]

SOFTWOOD LUMBER INDEX

Decline period[4]	Number of months	High index	Low index	Point drop	% Drop	Trigger quarters
9/78—9/82	48	155.8	99.8	56.0	35.9	[3] 12
9/04—6/08	45	156.5	83.8	72.7	46.4	12

After peaking in the second quarter 2003, the hardwood lumber index steadily declined through the second quarter 2008. During this 42-month period, the index dropped 46.3 percent and triggered MRCTA for three consecutive quarters (September 2005, December 2005 and March 2006), followed by seven quarters that did not trigger. The hardwood lumber index has triggered again in the first and second quarters of 2008. The table below compares the current decline to that in the early 1980s.

HARDWOOD LUMBER INDEX

Decline period[5]	Number of months	High index	Low index	Point drop	% drop	Trigger quarters
9/78–3/82	42	131.7	99.6	32.1	24.3	[3] 7
12/03–6/08	54	138.8	92.5	46.3	33.3	5

During the decline in the early 1980s, purchasers faced low demand, decreased product prices and severe competition from Canadian lumber, which resulted in many purchasers being unable to operate their timber sale contracts. As a result, a large number of purchasers were in danger of defaulting on their contracts and possibly being forced into bankruptcy. Such an outcome could have had a devastating effect on the economic health of the timber industry, as well as communities surrounding National Forests. Accordingly, in 1980, 1981, and 1982, the Forest Service determined that the substantial overriding public interest justified granting extensions to certain timber sale contracts.[6]

However, the adverse market conditions continued beyond 1982. In July 1983, the President authorized the Secretary of Agriculture, upon a finding of substantial overriding public interest, to grant additional extensions to certain timber sale contracts without interest for a maximum of 5 years beyond their present termination dates.[7] On August 18, 1983, the Chief of the Forest Service made such a finding, and the Forest Service published a notice of interim policy establishing the multi-sale extension program.[8] Under this program, total sale life could extend beyond 10 years.[9] The Forest Service published a final policy on December 7,

[3] The number of consecutive qualifying quarters if MRCTA had been in effect at that time.

[4] The decline period begins with the month the index peaked and ends respectively (1) when the 1980s index bottomed out and (2) June 2008, which is the last quarter with data available for the current decline.

[5] The decline period begins with the month the index peaked and ends respectively (1) when the 1980s index bottomed out and (2) June 2008, which is the last quarter with data available for the current decline.

[6] *See* Extension of Certain Timber Sale Contracts, 48 FR 38,862, 38,863 (Aug. 26, 1983) (describing the SOPI determinations made in the early 1980s).

[7] Extension of Certain Timber Sale Contracts, 48 FR 54,812 (Dec. 7, 1983).

[8] Extension of Certain Timber Sale Contracts, 48 FR 38,862 (Aug. 26, 1983).

[9] *Id.*

1983.[10] Current market conditions justify a similar use of discretion.

Substantial Overriding Public Interest Determination

The Under Secretary of Agriculture for Natural Resources and Environment has concluded that a viable timber industry infrastructure results in the better utilization of the various forest resources. Accordingly, the Under Secretary has determined that helping to maintain numerous economically viable timber sale purchasers is in the substantial overriding public interest.

The public benefits when defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting additional contract time to purchasers. For example, government resources that might otherwise be spent recovering losses can be focused elsewhere. Further, a large pool of timber sale purchasers allows the Forest Service to accomplish its land management objectives in a more cost-effective manner by increasing competition for National Forest System timber sales, which can result in higher contract prices. In addition, a large number of timber purchasers can provide a more continuous supply of timber to the public in accordance with the Organic Administration Act. The timber industry also helps to maintain the stability of dependent communities.

Further, the timber industry is a valuable partner in the fight against catastrophic fires, especially those in urban interface areas found throughout the western United States. In December 2003, President Bush signed the Healthy Forests Restoration Act (HFRA), which contains a variety of provisions that speed up hazardous-fuel reduction and forest-restoration projects on specific types of federal land at risk for wildland fires and/or insect and disease epidemics.[11] The Act also encourages biomass removal from public and private lands.[12] Byproducts removed during hazardous fuels reduction and landscape restoration activities are often utilized in certain forest products (e.g., timber, engineered lumber, paper, pulp and furniture) and bio-energy and bio-based products (e.g., plastics, ethanol, and diesel). The value of these products helps offset the Forest Service's hazardous fuels removal costs, making treatment of substantially more acreage possible.

Maintaining a viable industry infrastructure capable of processing material removed during HFRA projects is essential; it allows fuels reduction projects to be accomplished with timber sale contracts that return money to the Treasury. The loss of a viable industry in many parts of the country, including the Southwest and the Intermountain West, has limited the opportunities to harvest insect and fire damaged trees. Without a viable infrastructure, the Forest Service would have to pay a service contractor to perform the work. However, when trees are harvested for products, those products provide a valuable commodity to the American public and reduce the government's cost of removing or disposing material that might otherwise have to be burned, chipped, or masticated. In some market areas where little industry infrastructure remains, the loss of a single mill can significantly increase the government's costs of fuels reductions projects. Further, in many places, particularly in the western states, the industry infrastructure is already too small to respond to urgent needs; additional mill closures will aggravate this situation.

An example of the problems associated with limited industry resources is Colorado, where a mountain pine beetle epidemic is impacting over 1.5 million acres. Remaining industry in Colorado is too small to keep up with the urgent need to reduce the fire danger posed by this epidemic by harvesting dead and dying trees around communities and within municipal watersheds. In a June 4, 2008 letter to the Chief of the Forest Service, Colorado Senator Wayne Allard stated the following: ''Providing relief on the ten-year deadline for green sales has become a pivotal issue this year. Under existing policy, operators will be forced to log green sales that are reaching their termination dates, rather than treating much more urgent areas. More important, forcing them to do so during the worst market they have ever experienced could hasten the loss of our last remaining infrastructure—without which the Forest Service would be incapable of performing its mission.''

Considering the extraordinary market conditions currently facing the forest products industry, and recognizing the need to maintain a viable forest products industry, the Forest Service has implemented a variety of relief options over the past few years. For example, in 2006 and 2007, the Forest Service issued SOPI determinations intended to help timber purchasers cope with steadily declining timber markets.[13] However, the 2006 and 2007 SOPIs, like those issued from 1980–1982, did not provide adequate relief.

Accordingly, in May 2008, Congress passed section 8401 of the Food, Conservation, and Energy Act of 2008 (Farm Bill) to provide additional relief.[14] Then, as the result of an error in the Farm Bill that did not affect Section 8401, the May 2008 Farm Bill was repealed. However, on June 18, 2008, Congress reenacted the Farm Bill, which included an identical section 8401.[15] In part, section 8401 recognized that, due to the severity of the current market decline, many contracts had already received the maximum MRCTA time allowed under 36 CFR 223.52(c)(3): ''No more than twice the original contract length or 3 years, whichever is less, shall be added to a contract's term by market-related contract term addition.'' Therefore, Congress enacted section 8401(c), which provides as follows:

> (c) EXTENSION OF MARKET-RELATED CONTRACT TERM ADDITION TIME LIMIT FOR CERTAIN CONTRACTS.—Notwithstanding any other provision of law, upon the written request of a timber purchaser, the Secretary may, at the sole discretion of the Secretary, modify a timber sale contract (including a qualifying contract) awarded to the purchaser before January 1, 2007, to adjust the term of the contract in accordance with the market-related contract term addition provision in the contract and section 223.52 of title 36, Code of Federal Regulations, as in effect on the date of the modification, except that the Secretary may add no more than 4 years to the original contract length.

Section 8401(c) changed 36 CFR 223.52(c)(3) by giving the Secretary of Agriculture discretion to award certain contracts with up to four years of MRCTA to the original contract term. However, section 8401 did not change § 223.52(c)(4)'s requirement that total sale length not exceed 10 years.

Nationally, there are up to 46 contracts that are prevented from receiving the up to 4 years of MRCTA authorized by the Farm Bill because of the 10-year limit on total sale length. Nine of those contracts are scheduled to

[10] Extension of Certain Timber Sale Contracts, 48 FR 54,812 (Dec. 7, 1983). After the housing market decline of the 1980s, the Forest Service promulgated 36 CFR 223.52, which provides for market-related contract term additions in response to adverse timber market conditions. *See* Sale and Disposal of National Forest Timber; Market-related Contract Term Adjustments, 55 Fed. Reg. 50,643 (Dec. 7, 1990).

[11] 16 U.S.C. 6501 *et seq.*

[12] *See e.g.* 16 U.S.C. 6531.

[13] *See* Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest, 71 FR 66,160 (Nov. 13, 2006); Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest, 72 FR 64,991 (Nov. 19, 2007).

[14] Pub. L. No. 110–234, 122 Stat. 93 (May 22, 2008). Section 8401, depending on the circumstances, allows for the following types of contract modifications: (1) Rate redetermination; (2) contract cancellation; (3) index substitution; and (4) MRCTA extension.

[15] Pub. L. No. 110–246, 122 Stat. 1651 (June 18, 2008).

terminate before the end of 2008 and 18 have termination dates in 2009. Six of the 46 contracts have current termination dates of December 31, 2013 or later. Contracts with termination dates after December 31, 2013 are not eligible for relief under this SOPI.[16]

Therefore, up to 40 timber sales could benefit from using MRCTA to extend contract length beyond 10 years. While this number is not large, the Secretary of Agriculture agrees with Senator Allard's observation that forcing those sales to be operated in the current market situation could hasten the loss of infrastructure needed by the Forest Service to perform its mission. Extending these sales and other sales allows purchasers to delay harvest of green timber while harvesting damaged timber.

Purchasers of the 40 sales potentially eligible for relief under this SOPI face the same market conditions as purchasers eligible for the additional MRCTA time authorized by the Farm Bill. Further, some of these green timber sales have been delayed as a result of the Forest Service requesting that the purchasers harvest salvage timber instead. Without this SOPI, many of these purchasers may be forced to harvest sales that are uneconomical or may face default if their contracts can't be extended. An indication of the economic problems facing existing green sales is that over 360 applications have been made for a rate redetermination under the Farm Bill. These applications show how much the market has changed over the past few years and that without some economic or time-frame relief, older green timber sales can not be harvested economically.

The 2006 and 2007 SOPI determinations and section 8401 of the Farm Bill provided relief options for most National Forest System timber sale contracts suffering under the ongoing drastic decline in forest product markets. The principal exceptions are the contracts ineligible for additional MRCTA time because of the ten-year limit on total contract length.

Therefore, pursuant to 16 U.S.C. 472a(c) of NFMA, and the authority delegated to me at 7 CFR 2.20, I, Mark E. Rey, Under Secretary of Agriculture for Natural Resources and Environment, have determined that the substantial overriding public interest justifies the use of MRCTA to extend beyond 10 years certain existing green timber sale contracts awarded prior to January 1, 2007, that are tied to Softwood Lumber index #0811 and the Hardwood Lumber index #0812.

MRCTA relief granted pursuant to this SOPI must be made in accordance with 36 CFR 223.52, subject to the following exceptions:

(a) Notwithstanding 36 CFR 223.52(c)(3), up to 4 years may be added to a contract's length by market-related contract term addition;

(b) Notwithstanding 36 CFR 223.52(c)(4), the revised contract term may exceed 10 years; and

(c) No contract's termination date shall be set past December 31, 2013. Periodic payments shall be adjusted pursuant to 36 CFR 223.52(d).

The following types of contracts are not eligible for relief under this SOPI: (1) Contracts the Forest Service determines are in urgent need of harvest for reasons including, but not limited to, deteriorating timber conditions or public safety, and (2) contracts that are in breach.

To be considered for additional MRCTA time under this SOPI, eligible purchasers must make a written request to the Contracting Officer. The timber purchaser must also agree to release the United States from all liability resulting from (1) any relief provided by this SOPI, and (2) a decision by the Forest Service not to provide relief under this SOPI.

Dated: September 10, 2008.

Mark Rey,

Under Secretary, NRE.

[FR Doc. E8–21613 Filed 9–16–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Certification and Its Implications for America's National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: The USDA, Forest Service is seeking comments on forest certification and its implications for America's national forests. This **Federal Register** notice is to serve as a formal public solicitation of views on the question of National Forest System certification and its implications, if national forest lands were to become certified under one or both of the two major certification systems being used in the United States. The U.S. Forest Service, which manages 193 million acres, or approximately eight percent of the nation's land, believes that it is important to better understand the implications of third-party certification of National Forest System (NFS) lands and, in 2005, began exploring independent, third party certification as a potential option. To this end, the Forest Service initiated the National Forest Certification Study, which resulted in the report, ''National Forest Certification Study: An Evaluation of the Application of Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI) Standards on Five National Forests.'' This report documents the study in which third-party auditors evaluated current forest management practices on five national forest units using the existing certification standards of two certification programs, Sustainable Forestry Initiative (SFI) and Forest Stewardship Council (FSC).

Recognizing that the Forest Service has not decided whether it will seek certification, public outreach and discussion is requested to obtain public and stakeholder views on the National Forest Certification Study and its associated report, as well as the potential implications of NFS certification in general before determining how to proceed.

In addition to comments on the National Forest Certification Study, the Forest Service is particularly interested in public views on the following questions:

1. What are your general views on the implications of independent, third party certification of NFS lands?

2. Would certification improve the management of national forests?

3. Could certification make it more difficult to achieve national forest management goals?

4. What questions would certification be able to answer, and what needs would it be able to meet, on national forest lands?

5. Are there key questions or needs that certification would be unable or poorly suited to address?

6. Would independent, third party certification be an appropriate or effective tool, given the unique role of national forests? Or, because of that unique role, would certification be particularly inappropriate or ineffective?

Detailed information about the NFS Certification Study is available on the following Web site: *http://www.fs.fed.us/projects/forestcertification/index.shtml.*

DATES: Comments must be received, in writing, on or before November 17, 2008. Comments received after that date will be considered to the extent praticable.

ADDRESSES: Comments concerning this notice should be addressed to Doug

[16] At this time, the softwood lumber is expected to recover sufficiently by December 31, 2013.