

## **GUIDANCE TO CONTRACTING OFFICERS FOR EXTENDING TIMBER SALE CONTRACTS UNDER 2020 FINDING OF SIGNIFICANT OVERRIDING PUBLIC INTEREST (SOPI)**

**SUMMARY:** The Under Secretary for Natural Resources and Environment, Department of Agriculture has determined there is a Substantial Overriding Public Interest (SOPI) in extending for two years certain National Forest System timber sale contracts and permits, except sales in Alaska will be eligible to receive up to 3 years, issued or awarded before April 1, 2020. The extension periods will be in combination with any time previously granted under Market Related Contract Term Addition (MRCTA). In accordance with Title 36 Code of Federal Regulations, section 223.31 contract length may exceed 10 years as a result of this SOPI.

A unique combination of tariffs, the novel-coronavirus (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 information available indicate the volatility and speed of changes attributed to COVID-19 is making it extremely difficult for timber sale purchasers and contractors to make informed decisions about current and future operations. Contract termination dates on Forest Service timber sales can limit purchasers' options in these turbulent and uncertain times and may result in purchasers and contractors making business decisions that may also impact the Forest Service. Providing additional contract time will allow timber sale purchasers greater flexibility as they navigate through this crisis and benefit the Forest Service's achievement of its land management goals.

### 1. WHAT IS BEING OFFERED?

**ANSWER:** Extension for all National Forest System timber sale contracts awarded and timber product permits issued before April 1, 2020, and sales with bid opening dates prior to April 1, 2020 upon award, for up to two years and contracts in Alaska up to three years. Extension time will include any time previously granted under MRCTA. Contract length may exceed 10 years as a result of this extension.

### 2. Which contracts and permits are included?

**ANSWER:** This includes:

- FS– 2400–6/6T and FS–2400–13/13T
- FS-2400-2, FS-2400-3, FS-2400-3P, FS-2400-3T, FS-2400-3S, and FS-2400-4 contracts
- FS-2400 -1 and FS-2400-8 permits

### 3. Which contracts are excluded?

**ANSWER:** All contracts would be eligible for extensions except:

- Those in breach until such breach is remedied.
- Contracts in which the CO 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.
- SOPI does not include stewardship agreements, IRSC contracts and Good Neighbor Agreements. AQM and Grants and Agreements may be providing additional time through Excusable Delay clause as applicable.

4. How do I determine if a contract is in urgent need of removal?

ANSWER: Contracting Officers are to consult with the responsible Line Officer before denying an extension under this SOPI. Local declarations of forest health or public safety hazard involving forest conditions related to the reasons described in the SOPI need to be fully documented if the decision is made to not grant an extension. The intent is to grant the SOPI extension unless there is a *current* urgent need for harvest without delay.

5. What do you mean by “A two year extension of any timber sale contract, or three years for contracts in Alaska, in combination with Market Related Contract Term Addition previously received”?

ANSWER: 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.

Eligible sales under the SOPI that have not received MRCTA shall be granted 2 years of time under the SOPI, 3 years in Alaska.

6. What do you mean by if MRCTA is triggered in the future, MRCTA time will be reduced by the amount of time granted under this SOPI?

ANSWER: 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. MRCTA triggers in the future for 1 year of additional time. The additional time is reduced by 6 month for a total additional time of 6 months. 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. MRCTA triggers in the future for 1 year of additional time. The additional time is reduced by 18 months. No additional time is granted.

7. Are periodic payments extended as they are for MRCTA under C(T)8.212?

ANSWER: Yes, with the additional instructions:

Any periodic payment (PP) 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 **as described in B/BT4.213.** **Periodic payment determination dates from March 1, 2020 to the date of this SOPI is published (expected to be April 15, 2020), shall be adjusted by adding one day for each additional day of contract time granted, if the request for extension is received by the Contracting Officer within 30 days of publication of this SOPI.**

Bills (or portions of bills) for Periodic Payments with determination dates in March 2020 through the SOPI publication date (expected to be April 15, 2020) should be cancelled or not sent if sales qualify and purchaser requests a SOPI extension within 30 days of publication. **CO's should directly contact Purchasers with bills due before the 30 days is up and immediately contact purchasers with periodic determination dates after SOPI publication, these requests for extension must be received before the periodic payment determination dates to be deferred.** We do not have a provision for refunds. Payments made for PP with determination dates in February are not affected.

8 How does a Purchaser or Contractor request a SOPI extension?

ANSWER: The WO will provide sample letters for each Contracting Officer to use to notify each Purchaser of the opportunity to request a SOPI extension. Requests from Purchasers and Contractors must be in writing but requests by email may be accepted but should be confirmed by telephone with the Purchaser's Representative. Request a follow-up letter if there is any doubt about the authenticity of the email.

Contracting Officers will date stamp each request upon receipt and confirm the dates for any upcoming Periodic Payments. Any bills for PP with determination dates in March 2020 through the SOPI publication date should be cancelled for qualifying sales as described in the answer to Question 5 above.

9. Each Purchaser or Contractor must release the Forest Service from all claims and liability if a contract is extended under this SOPI. How is that accomplished?

ANSWER: The WO will provide a liability release form to attach to their request for SOPI extension. This form must be completed and returned before the CO grants the SOPI extension.

10. How will contracts be extended under this SOPI?

ANSWER: Contracting officers should process extensions using form FS-2400-10 *Agreement to Extend and Modify Timber Sale Contract*. Contracting officers may grant conditional extensions as needed to provide purchasers/contractors 30 days to execute a SOPI extension. Please contact Carl Maass at 970-295-5961 or [carl.maass@usda.gov](mailto:carl.maass@usda.gov) if you have any questions about the SOPI finding or the extension procedures. Remember to include Modification of Termination Date and Periodic Payment Dates.

11. Can downpayment amounts be reduced under a SOPI?

ANSWER: Yes, in accordance with special provision C(T)4.212 Temporary Reduction of Downpayment, if the contract term is extended for 30 or more consecutive days under the SOPI or MRCTA. Purchaser must submit written request to the CO for temporary reduction of the downpayment. Purchaser shall not cut or remove timber on a contract where the downpayment has been temporarily reduced until the downpayment amount stated in the contract is fully restored.

12. How will permits be extended?

ANSWER: This is yet to be determined. A separate letter will be forthcoming with instructions for permit administrators.