



April 15, 2020

Glenn Casamassa, Regional Forester
U.S. Forest Service, Region 6
1220 SW 3rd Ave
Portland, OR 97204

Dear Regional Forester Casamassa,

We were pleased to see USDA determine that, in light of the ongoing Covid-19 pandemic, it is in the substantial overriding public interest (SOPI) to extend certain timber sale and stewardship contracts by two years. The Notice, published on April 14th, states: “Impending contract termination dates on existing Forest Service timber sales can limit purchasers’ options in these turbulent and uncertain times;” and: “This adversely affects stability in rural communities and future management of National Forests, as important opportunities for accomplishing forest management objectives are lost.” The stability of rural communities and future management of National Forests is dependent on a healthy forest products industry and are pleased the Forest Service understands this dynamic.

However, the viability of many of our members – and Forest Service customers – and the stability of the rural communities they help support were not addressed through this SOPI as Integrated Resource Service Contracts (IRSC) were excluded from its language. As you are aware, a significant component of the timber volume sold in this Region is accomplished through IRSCs. Although IRSCs differ in many ways from timber sale (2400-6) and Integrated Resource Timber contracts, they are similar in that they all involve the procurement of timber products. Forest products companies and the rural communities where they operate are both equally vulnerable to the “turbulent and uncertain times” referenced in the SOPI notice.

Additionally, as you are also aware, the use of IRSCs is most prevalent in eastern Washington and eastern Oregon. Not only are these areas of the Region identified as having the highest need for forest management to accomplish hazardous fuels reduction, but they also have relatively few forest products companies at all stages of the value chain, from logging, hauling, and processing into products or biomass energy. The repercussions to purchasers, operators, and the rural communities outlined in the SOPI notice will likely be exaggerated in the areas of the Region where IRSCs are prevalent. Like purchasers of timber sale contracts, IRSC contractors need predictability to effectively execute these contracts.

To address this pressing issue, we respectfully but urgently request that you take action to extend the intent and substance of the SOPI to IRSCs, that include the provision of timber products. There are existing contract mechanisms in service contracts that would accomplish this, as indicated by IRSC templates.

- For Construction IRSCs, the template contract incorporates FAR 52.249-8, the standard “default” clause. According to the Government Contract Guidebook, under this clause, **“An extension of time—but not a price increase—will generally be granted if a contractor's performance is delayed by one of these occurrences.”** The clause also indicates that “the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor.” One of the listed causes is **“epidemics”** and another is **“quarantine restrictions.”**
- Additionally, we are aware of some active Construction IRSCs that incorporate FAR 52.249-10. This clause provides that in the event of a delay, the contractor’s right to proceed “shall not be terminated” if the delay “arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor.” Again, this clause lists both **“epidemics”** and **“quarantine restrictions.”**
- For Commercial Services IRSCs, the template contract incorporates FAR 52.212-4, which includes an “excusable delay” clause stating that a contractor is not liable for nonperformance if caused “caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence,” again including epidemics and, quarantine restrictions.

In a similar situation, forty years minus one month ago, an Act of God occurred with the eruption of Mt. St. Helens forever changing the face of Region 6. A tree-planting contractor, Nogler Tree Farm, asked for but was denied an extension; the Agriculture Board of Contract Appeals later determined he had been “entitled to a time extension as a result of an act of God.” The volcanic eruption was “a singular, unexpected and irregular visitation of a force of nature,” not unlike the present circumstances.

Additional contract time will be critical for holders of IRSC contracts. We request your assistance to quickly provide appropriate and necessary contract relief to holders of IRSCs in these uncertain times in order to prevent unnecessary loss of infrastructure in some of the most vulnerable rural areas, and loss or disruption of restoration work on some of the most at-risk forests in the Region.

Sincerely,

Andy Geissler
Federal Timber Program Director
American Forest Resource Council