

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.<sup>16</sup>

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.*

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**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 practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Doug

<sup>16</sup> At this time, the softwood lumber is expected to recover sufficiently by December 31, 2013.

MacCleery, USDA Forest Service (FM), 201 14th St. SW., Mailstop: 1103, Washington, DC 20024. Comments may also be sent via e-mail to [dmaccleery@fs.fed.us](mailto:dmaccleery@fs.fed.us), or via facsimile to (202) 205-1045.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the above address. Visitors are encouraged to call ahead to (202) 205-1745 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:**

Doug MacCleery, Forest Management, (202) 205-1745, [dmaccleery@fs.fed.us](mailto:dmaccleery@fs.fed.us). Additional information concerning Forest Service certification may be obtained on the Internet at <http://www.fs.fed.us/projects/forestcertification/index.shtml>.

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:**

Independent, third-party certification is one of the most significant developments in the field of forest management in the last two decades. Its use has expanded dramatically as the public and consumers have increased their interest in practical ways to ensure that good management practices are being applied to forests both domestically and around the world. Certified area has expanded to an estimated 7% of forests globally. In the U.S., the area of forests certified by the Sustainable Forestry Initiative (SFI) and the Forest Stewardship Council (FSC) has increased from virtually none in 1998 to over 60 million acres today. About 14 million acres of state-owned lands have been certified, in most cases to both FSC and SFI standards.

In the United States, certification was first applied to private lands. Due to the perceived benefits of the process, public lands are now becoming involved as well. Eight state forest systems in the U.S. are now certified. Some State forestry officials believe that certification has served to improve the quality of forestry management and to affirm their commitment to accepted standards of good forest management. Many believe that the certification process has been more about public accountability than providing certified wood to the marketplace.

Certifying National Forest System lands has been debated for several years. It is a sensitive and complex issue, perhaps more so for the NFS than any

other type of ownership in the U.S. National Forest System planning is exceedingly complex and management practices and objectives are closely scrutinized by both the public and U.S. Courts. The Forest Service is currently assessing the value and implications of certification for the NFS.

**National Forest Certification Study**

In 2005, in order to evaluate the implications of national forest certification, the U.S. Forest Service initiated a formal study of the issue. Independent third-party certification indicates certification to standards derived by a group external to the organization being audited. Under this study, independent 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). FSC certification standards and related information can be viewed at: <http://www.fscus.org>. The SFI Web site is at: <http://www.sfi-program.org>.

On October 22, 2007, "National Forest Certification Study: An Evaluation of the Application of Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI) Standards on Five National Forests" was released. This report, produced by the Pinchot Institute for Conservation (PIC), summarizes and discusses the five third-party evaluations and captures lessons learned through a review of participant experiences.

The study was designed to:

1. Evaluate the potential implications of third-party certification of national forests and grasslands,
2. Provide a better understanding of how national forest management practices align with FSC and SFI standards, and
3. Study the lessons learned as a basis for determining what policy and management direction may be needed in the event forest certification were pursued in the future.

Actual certification by FSC or SFI was outside the scope of these evaluations and was not a possible outcome on any of the study units. Nor did the FSC or SFI participate directly in the study. However, this study provided the Forest Service with a valuable opportunity to examine the consistency of current national forest resource management activities with the requirements of the two major forest certification programs now operating in the U.S. This was the first time national forest management had been evaluated with reference to the

standards of such certification programs.

**Participating Units**

The National Forest System (NFS) management units evaluated were the:

- Allegheny National Forest (ANF) in Pennsylvania.
- Lakeview Federal Stewardship Unit (LFSU) on the Fremont-Winema National Forest in Oregon.
- Chequamegon-Nicolet National Forest (CNNF) in Wisconsin.
- Mt. Hood National Forest (MHNF) in Oregon.
- National Forests in Florida (NFF).

**Role of the Pinchot Institute for Conservation**

The Pinchot Institute for Conservation (PIC), which carried out this study, is an independent nonprofit research and education organization dedicated to investigating new approaches to forest conservation and has carried out certification tests in a variety of settings. The Institute investigated the implications of certification on state-owned, private, tribal, and university forest lands. For this project the Institute:

- Worked to secure funding for the certification evaluations.
- Contracted with accredited, third-party auditors.
- Provided coordination between the Forest Service and auditors.
- Reviewed and evaluated the auditors' reports.
- Interviewed those involved in the certification evaluations to assess their views as to potential benefits and detriments/costs of the process.
- Prepared the study findings, results, and a lessons learned report.

**Study Scope and Conduct**

The national forest certification evaluations were designed to closely approximate the process that a national forest would undergo were it actually seeking certification. The audit firms were required to be fully accredited to carry out FSC and SFI certification audits and to use the same approach they would for an actual certification assessment. The study unit national forests addressed FSC and SFI requirements as set forth in standards applicable to private, State-owned and Department of Defense and Department of Energy (DOD-DOE) lands in the U.S.

All certification evaluations were the functional equivalents of major, broad-based management reviews of all aspects of national forest management. The FSC and SFI evaluation reports of the five national forests read like other certification assessment reports. They

include a summary of the management setting, stakeholder feedback, findings of performance gaps or non-conformances (major and minor), and issuance of Corrective Action Requests.

#### **Performance Against FSC and SFI Standards Used in the Study**

Auditors found many situations where practices on the units evaluated demonstrated good overall conformance with most of the FSC and SFI standards currently being applied to private and State-owned and DOD-DOE lands in the U.S.

Examples included:

- Forest planning and operations.
- Impact assessments.
- Stakeholder consultation.
- Coordination with First Nations.
- Extent of reserves.
- Protection of threatened and endangered species.
- Control of invasives and exotics.

The auditors did cite a number of areas where the Forest Service is not meeting the FSC or SFI certification standards used in the study.

Performance gaps on one or more study units included:

- Forest health issues arising from the backlog of management activities.
- A backlog of road maintenance and decommissioning.
- Inadequate monitoring of non-timber forest products.
- Issues with old-growth protection and management on two study national forests.
- Inadequate attention to logger safety.
- Operation under outdated management plans.
- Inadequate attention to off highway management issues and their environmental effects.
- Difficulty in dealing with oil and gas leases not controlled by the Federal Government on one study unit (split estate).

Some performance gaps are minor and do not preclude certification if they can be remedied within a given time period after a certificate is issued. Other gaps are major and would preclude FSC or SFI certification until mechanisms are put into place to address them. Auditors also issue observations or note opportunities for improvement that suggest things that may improve compliance with standards.

#### **Feedback From Forest Service Staff Involved in the Study**

The geographic representation of the study on unit national forests provided an opportunity to test certification in different NFS settings. Each participating forest faces similar

agencywide challenges (limited resources and overextended staff, appeals and litigation) and yet is faced with its own ecological and socioeconomic issues.

Most of the NFS study coordinators (the Forest Service point person for the study on each forest) felt that the certification programs impose requirements that are relevant to determining whether a forest is meeting its management objectives and improving their management practices over time. Forest staff indicated that certification can be a valuable tool if carried out in an effective manner that does not impose an additional, unsupported burden on staff and resources.

Staff found the evaluations to be a broad-based and comprehensive review—often more so than the Forest Service's own targeted, internal audits, of the many integrated management activities occurring on the forest. To this end, they were impressed with the wide range of issues addressed by the evaluations.

Coordinators also reported that the FSC and SFI evaluations provided positive, independent reinforcement of their management activities while identifying those areas where improvements are needed. In many cases, these identified improvements were not unfamiliar to forest staff but would not be addressed unless additional funding and/or staff resources were available. Participating staff also recognized the value of third parties communicating publicly on the successes and difficulties of national forest management, especially difficulties arising from factors they feel are "beyond their control." In this context, NFS study coordinators identified Corrective Action Requests that they felt would be difficult or impossible to fix, and would likely need to be addressed by the Forest Service Washington Office.

#### **Some Lessons Learned in the Study**

The following is a summary of some of the lessons learned in the study.

##### *Lessons Pertinent to Individual National Forests*

- Management issues, challenges, and certification assessment results will vary from unit to unit.
- The certification assessments were useful feedback mechanisms for national forest personnel regarding their management of the forest, and by providing a more comprehensive and integrative review than normal internal audits, they complemented existing management systems. Normally, a

certification assessment would also help determine whether a forest management unit is meeting its own management objectives, and would emphasize improving management practices over time.

- The assessments provided opportunities beyond existing legal and administrative requirements for interest groups and stakeholders to provide input regarding national forest management.

- Outdated land and resource management plans may prevent some forests from meeting the requirements set forth in certification standards, which emphasizes a potentially broader need for updating national forest management systems.

- The lack in some cases of integrated landscape planning involving adjacent lands and landowners raised the issue of the unique role of national forests within the broader landscape, as well as nationwide, and how certification would take account of this role.

##### *Lessons Pertinent to the National Forest System*

- Backlogs in road maintenance, delays in silvicultural treatments, and other problems in the implementation of approved forest plans were often cited as indicators of larger budgeting and staffing issues outside the control of individual national forests (in the hands of Congress or the Administration).

- National forest staff time required to participate in certification assessment and reporting procedures varied considerably from unit to unit but raised issues of 'unsupported' budgetary demands (not specifically covered by existing funding levels).

- The fact that ownership and control of sub-surface mineral rights may lie in the hands of external parties raised broader questions about how the Forest Service would deal with such issues if they impact forest management and the ability of a forest unit to meet certification standards.

- Inconsistencies between certification standards and existing National Forest System management, planning and policy commitments (Northwest Forest Plan, the definition of Native American organizations as sovereign entities, chemical use), raise broader questions about the relationship between private certification organizations and federal land management systems.

- Requirements in the SFI and FSC standards that the Forest Service make formal 'commitments' to the certification programs raise questions about how the agency could do this organizationally and legally.

## Next Steps

Recognizing that the Forest Service has not decided whether it will seek certification, the following are relevant considerations:

The FSC Federal Lands Policy establishes three criteria to be met before any new Federal land system such as the NFS could seek certification. In summary, the criteria are a *willing landowner* (the Forest Service), a determination that *public consensus* exists regarding management of the NFS, and the development of a *set of standards* specific to each category of Federal forestland (Forest Service, Bureau of Land Management, etc.). Because the Forest Service has not determined whether it will seek certification, FSC has not yet determined whether, how or when they will address these criteria for the Forest Service.

SFI has indicated that it would welcome NFS participation in SFI certification. A landowner seeking SFI certification must formally commit to reporting and management measures specific to the SFI Program. How and whether the Forest Service could make these commitments would also need to be determined.

A public outreach effort is now underway to obtain public and stakeholder views on the outcomes of the National Forest Certification Study and the potential implications of NFS certification in general. Once this effort is completed, the Forest Service will evaluate its options and determine how to proceed.

Dated: September 10, 2008.

**Charles L. Myers,**

*Associate Deputy Chief, NFS.*

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## DEPARTMENT OF AGRICULTURE

### Forest Service

RIN 0596-AC50

### Final Directives for Forest Service Outfitting and Guiding Special Use Permits and Insurance Requirements for Forest Service Special Use Permits

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of final directives; response to public comment.

**SUMMARY:** The Forest Service is revising directives governing special use permits for outfitting and guiding conducted on National Forest System lands by simplifying the application and administrative process; establishing a

flat land use fee for temporary use permits; developing a process for allocation of use on a first-come, first-served or lottery basis for temporary use permits to facilitate greater participation in outfitting and guiding by youth, educational, and religious groups; offering the same terms and conditions to educational and institutional permit holders as offered to other types of permit holders when they operate as a business; and clarifying policy for priority use permits governing performance, inspections, and allocation of use. In addition, the Forest Service is revising the directives governing insurance requirements for Forest Service special use permits. Public comment was considered in the development of the final directives, and a response to comments is included in this notice.

**DATES:** Effective Date: These directives are effective October 17, 2008.

**ADDRESSES:** The record for these final directives is available for inspection at the office of the Director, Recreation, Heritage, and Volunteer Resources Staff, USDA, Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except holidays. Those wishing to inspect these documents are encouraged to call ahead at (202) 205-1426 to facilitate access to the building. Copies of documents in the record may be requested under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Holbrook, (202) 205-1426, Recreation, Heritage, and Volunteer Resources Staff.

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### 1. Background and Need for the Final Directives

Outfitting and guiding conducted on National Forest System lands have become one of the chief means for the recreating public to experience the outdoors. The Forest Service administers approximately 5,000 outfitting and guiding permits, authorizing activities ranging from guided hunting and fishing trips to jeep tours and outdoor leadership programs. The agency anticipates that outfitting and guiding will increase in importance as the public's desire for use of Federal lands increases and as the agency encourages use by increasingly diverse and urban populations, many of whom may lack the equipment and skills necessary in the outdoors. Therefore, agency policy needs to reflect the public's demand for services while incorporating standard business practices and sustaining the natural environment in which these activities occur.

Except for the revision to term length for priority use permits (April 14, 2005, 70 FR 19727), outfitting and guiding directives have remained relatively unchanged since they were finalized in 1995. Since that time, proposed legislation and field implementation of current policy have shown the need for updating the directives. The changes adopted will be incorporated as appropriate in the standard special use permit for outfitting and guiding, form FS-2700-4i, and other applicable forms.

In addition, the Forest Service is updating direction on the minimum amount of insurance coverage required for special use permits generally, including outfitting and guiding permits.

### 2. Public Comments on the Proposed Directives and Agency Responses

#### Overview of Comments

The proposed directives were published in the **Federal Register** for public notice and comment on October 19, 2007 (72 FR 59246). The Forest Service received several requests for extension of the comment period and published two notices, each of which extended the comment period (72 FR 71113; December 14, 2007, and 73 FR 8264; February 13, 2008). The comment period closed on March 20, 2008.

The Forest Service received approximately 480 comments on the proposed directives. Respondents fell