

**File Code:****Date:** January 14, 2019**Route To:****Subject:** Timber Operations and Grazing Permit Administration Supplemental Guidance during the Lapse in Appropriations**To:** Regional Foresters

Regional Foresters:

As we learn more with the continuation of the lapse in funding, I am updating direction to the Regions for operations during this period. This letter supersedes my December 27<sup>th</sup> letter and supersedes some elements of the USDA Forest Service Contingency Plan for Agency Close-Down Procedures from December 2018. This guidance clarifies Category II (Exempt) work, administration of existing timber harvest activities past 21 days, and grazing permit administration.

Three principles are reflected in this guidance:

1. Category I and III defines *Excepted* work and is subject to the shutdown guidance in the USDA Forest Service Contingency Plan for Agency Close-Down Procedures from December 2018.
2. Category II work (*Exempt* work), using prior year's funds, permanent allocations and trust funds, retained receipts, or other non-appropriated funds, is not subject to orderly shutdown procedures. Projects may occur on a case by case basis as determined by the appropriate line officer.
3. Line officers are *Excepted* and have the full authority to act in their normal capacity through the partial shutdown period including oversight of Exempt work.

**USDA Forest Service Contingency Plan for Agency Close-Down Procedures from December 2018**

The 2018 Agency Close-Down Procedures contained some inaccurate and conflicting information that is clarified in this letter. To remedy this, the following guidance from that plan is modified as follows:

*Page 9, paragraph 7 currently reads:*

All timber sale contracts, stewardship contracts (IRTC and IRSC), Stewardship Agreements, and service contracts that are directly connected to timber harvesting may continue. Employees working on this work would be considered *exempt*.



*This guidance is modified through this letter to read:*

All timber sale contracts, stewardship contracts (IRTC and IRSC), Stewardship Agreements, and service contracts that are directly connected to timber harvesting may continue. Employees working on this work would be considered *excepted*.

*Page 9, paragraph 8 currently reads:*

New timber sales would not be awarded and the associated bid opening processes prior to a contract award would not be authorized during the shutdown.

*This guidance is modified through this letter to read:*

New timber sales would not be awarded and the associated bid opening processes prior to a contract award would not be authorized during the shutdown *unless such work is carried out as a Category II (Exempt) project*.

### **Working Capital Fund Nursery System**

Staff of WCF Nursery System units are both *exempted* (because their funding is not appropriated from Congress) and *excepted* (Category III—protect life and property).

### **Reforestation Contracts**

For contracts that have already been let and work already been scheduled, Contracting Officer Representatives/inspectors would be classified *exempt* if using non-appropriated funds, and classified as *excepted* if this work is critical to complete in during the shutdown period and FY19 appropriated funds not already obligated are being used. Regional Foresters should work with their Contracting Officers to determine which contract administration personnel need to be *excepted* or *exempted* from furlough to administer these contracts.

### **Timber Harvesting**

#### **Category I and III Operations**

Timber harvesting projects, timber sale contracts, stewardship contracts [IRTC], and Good Neighbor Authority projects, may continue even past 21 days, as long as cash obligations and payment guarantees are in place. Financial systems, including FMMI are operational and will be monitored to ensure they continue to be operable. Specific instructions may be updated as conditions change.

Regional Foresters, working with their timber sale contracting specialists and Contracting Officers should determine the financial and operational status of all active contracts and assess the resources at risk if operations continue through the furlough period. Contract administration employees, including key Timber Sale Resource Accounting personnel, and other natural resource specialists who may be needed to provide advice in the administration of complex timber sale requirements should be made available to allow for the assessment of risk, and to provide for intermittent inspections of active contracts



Stewardship Agreements, service contracts, and Integrated Resource Service Contracts with obligated funds may continue if the contracting officer determines the contract is compliant with financial policy and the Anti-deficiency Act.

The focus should be on protecting property and natural resources. During the furlough period operations may continue as long as funds are available even past 21 days, once funds are no longer available an orderly shutdown process should begin. A full shutdown of harvesting operations may occur in the future as other connected and necessary systems to support active timber sales lose capability when funds are no longer available. Any ordered suspension of operations prior to a natural suspension due to lack of payment guarantee or other reasons will only be made on a case by case basis, based on financial, property and natural resources at risk. Contracting Officers shall consult with Regional Contract Specialists and WO-Forest Management prior to ordering a suspension of operations except where human life or irreparable resource damage is in jeopardy.

### ***Category II Operations***

All Category II (Exempt) work is discretionary and should be determined by appropriate funding and priorities as determined through a line officer.

For ongoing timber harvesting projects, timber sale contracts, stewardship contracts [IRTC], and Good Neighbor Authority projects being operated as Category I and III (Excepted) work that could transition to Category II (Exempt) work:

- Excepted work on open payment units should continue. New payment units and additional operations may be initiated if appropriate funds are available to administer the units as Category II work.
- New financial obligations and new contracts are allowed if they are based on prior year appropriations or non-appropriation funding sources.
- Only sales with sufficient payment guarantees should be allowed to open new payment units.

New timber sale contracts, stewardship contracts, and stewardship agreements may be advertised and awarded. In doing so, it is critical the forest products industry and all prospective bidders have been contacted and are aware the Agency is accepting bids, awarding contracts, or signing agreements and any specific procedures to follow during the shutdown process.

Awards for bid periods that closed before the lapse in funding and were not cancelled may proceed. Bid periods that closed during the shutdown period and were cancelled may be re-advertised with appropriate diligence.

Time periods for bids must be a minimum of 30 days unless a shorter time period is authorized by a Regional Forester pursuant to 36 CFR 223.81 (to avoid deterioration or to minimize the likelihood of the spread of insects) or 36 CFR 223.2 (disposal of timber for administrative use). Identified funding, as Category II (Exempt) work, must be sufficient to carry through the entire bid period for any new advertisement.



**Forest Products Permits**

The two most common forest products permits are for firewood and special forest products. Sale of these permits are suspended during furlough since our offices where the sales occur are closed. Permits already sold to the public will still be in effect. Third-party vendors may continue to sell permits under established agreements. Only essential (Law Enforcement) personnel will enforce permit terms, unless there are agreements with local law enforcement agencies.

**Grazing Administration**

Currently active grazing allotments can continue operating, allotment inspections can be completed when funding is restored.

Grazing permits may be administered as Category II (Exempt) work as funding allows. For grazing allotments that are initiating grazing, it is recommended to bring on the necessary staff to prepare, issue, and monitor the payment of the bill for the coming grazing season 30 days in advance of the start of grazing. The bills can be prepared with the knowledge at hand on the permitted numbers and normal season of use. If the partial shutdown prohibits the National Agriculture Statistic Service from providing the data to calculate 2019 grazing fees the bill should be calculated using the minimum fee of \$1.35. A second bill can be sent later if necessary, the logic being a second bill is easier to process then a refund. The normal pre-season meetings with permittees can occur once funding resumes, or be completed now based on the availability of non-appropriated funds to pay the needed range specialists.

**Points of Contact**

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