



File Code: 6300

Date: July 15, 2005

Route To:

Subject: Exigency Authority for Hurricane Disaster Recovery Efforts During 2005

To: Regional Foresters, Station Directors, Area Director, IITF Director

## **DETERMINATION AND FINDING**

### **EXIGENCY AUTHORITY UNDER FSH 6309.32, FSAR 4G13 SIMPLIFIED ACQUISITION PROCEDURES**

Procurement authorities are agency specific and agency procurement personnel are bound to follow these regulations. USDA Forest Service Acquisition Regulations (FSAR) Part 4G13 sets forth simplified acquisition procedures, which include the use of Government purchase cards, for the acquisition of goods and services. These requirements include limitations on the acquisition of restricted and/or distinctive items. Such items may only be acquired under special conditions and authorities.

The Federal Emergency Management Agency (FEMA) has requested additional resources and authorities for Hurricane Disaster Recovery. The Forest Service is tasked with providing resources to assist in the 2005 Hurricane Disaster Recovery efforts, including, but not limited to, Hurricane Denny, and has mobilized several Buying Teams and Miscellaneous Overhead. These resources support federal, state and local agencies in the recovery. The buying teams will procure supplies and services in support of the response effort.

In exigency situations such as these, immediate procurement of supplies and service is critical. It is essential that agency procurement personnel be given the tools to perform their duties and to respond to the emergency.

Some regulatory requirements can delay or prohibit the procurement of certain goods and services in emergencies. These regulations require that procurement personnel (including purchase cardholders) obtain the necessary approvals before acquiring property, information technology, and other goods and services. For example, FSAR 4G13.001-70 Distinctive and/or Restrictive Items, states that certain supplies and services identified as distinctive and/or restrictive items may be purchased only under special conditions and authorities. These items must be approved for purchase, depending on their classification, by either the Washington Office or by the Region or Station. Examples of restricted items that must be approved at the Washington Office level include, but are not limited to, the following: audiovisual equipment over \$3,000; information technology (computer hardware, software, maintenance and related services); motor vehicles; radios; GPS units and other electronic equipment; and telecommunication services. Examples of distinctive items that have special authorities include, but are not limited to, acquisition of car rental service; special clothing (including personal



protective equipment); medical care of employees engaged in hazardous work; gasoline, fuel oil, kerosene and other solvents; hazardous materials; radio parts and accessories; printing and copying services, and rental of equipment.

In addition, the purchase card regulations at FSAR Part 4G13 include prohibitions on splitting purchases in order to stay within the purchase card limit. While the prohibition against splitting purchases is not waived under this authority, it is important to clarify that this prohibition does not apply to the practice of establishing standing orders with one vendor that may be paid incrementally by more than one buying team member over the course of several days or weeks. Such purchases are legitimate methods to procure goods and services and are not prohibited by the regulations in FSAR 4G13.

In accordance with the Interagency Business Management Handbook, FSH 6309.32, Chapter 20, normal purchasing restrictions generally apply to emergency incident operations. However, special circumstances can occur that cause us to waive such restrictions to enable the agency to be responsive to the needs of the mission.

For the reasons stated herein, I hereby waive the application of the restrictions in FSAR 4G13, Exhibit 13-1 that require that procurement personnel seek special authority and approval to acquire restricted and/or distinctive items. This determination acts as approval of the purchase of these items due to all 2005 Hurricane Disaster Recovery efforts, with the following parameters:

Use of this authority carries a responsibility to engage in careful and prudent actions on the part of persons engaged in procurements to ensure that the restricted items procured are applicable to the support of declared disaster responses.

All other applicable procurement laws and regulations remain in effect.

Upon completion of this effort a report of actions taken under this authority shall be submitted to the Director, USDA Forest Service, Acquisition Management.

This authority is effective immediately and applies to all procurements made in the performance of official duties by USDA Forest Service procurement personnel (inclusive of all Forest Service members of Buying Teams) assigned to all 2005 Hurricane Disaster Recovery efforts.

/s/ RONALD E. HOOPER  
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Director, Acquisition Management

cc: Mary Morris, Mary A Szymoniak, Jan D McCluskey, pdl wo ops acm directors