

## SUBCHAPTER E—FOREST MANAGEMENT (5000)

### Group 5000—Forest Management General

### PART 5000—ADMINISTRATION OF FOREST MANAGEMENT DECISIONS

#### Subpart 5003—Administrative Remedies

Sec.

5003.1 Effect of decisions; general.

5003.2 Notice of forest management decisions.

5003.3 Protests.

SOURCE: 49 FR 28561, July 13, 1984, unless otherwise noted.

#### Subpart 5003—Administrative Remedies

##### § 5003.1 Effect of decisions; general.

(a) Filing a notice of appeal under part 4 of this title does not automatically suspend the effect of a decision governing or relating to forest management as described under sections 5003.2 and 5003.3.

(b) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a wildfire management decision made under this part and parts 5400 through 5510 of this chapter effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(c) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (b) of this section within the time limits prescribed in 43 CFR 4.416.

[68 FR 33804, June 5, 2003]

##### § 5003.2 Notice of forest management decisions.

(a) The authorized officer shall, when the public interest requires, specify when a decision governing or relating to forest management shall be implemented through the publication of a notice of decision in a newspaper of general circulation in the area where the lands affected by the decision are located, establishing the effective date of the decision. The notice in the newspaper shall reference 43 CFR subpart 5003—Administrative remedies.

(b) When a decision is made to conduct an advertised timber sale, the notice of such sale shall constitute the decision document.

(c) For all decisions relating to forest management except advertised timber sales, the notice and decision document shall contain a concise statement of the circumstances requiring the action.

(43 U.S.C. 1181(a); 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1701)

[49 FR 28561, July 13, 1984]

##### § 5003.3 Protests.

(a) Protests of a forest management decision, including advertised timber sales, may be made within 15 days of the publication of a notice of decision or notice of sale in a newspaper of general circulation.

(b) Protests shall be filed with the authorized officer and shall contain a written statement of reasons for protesting the decision.

(c) Protests received more than 15 days after the publication of the notice of decision or the notice of sale are not timely filed and shall not be considered.

(d) Upon timely filing of a protest, the authorized officer shall reconsider the decision to be implemented in light of the statement of reasons for the protest and other pertinent information available to him/her.

(e) The authorized officer shall, at the conclusion of his/her review, serve his/her decision in writing on the protesting party.

(f) Upon denial of a protest filed under paragraph (a) of this section the

authorized officer may proceed with implementation of the decision.

(43 U.S.C. 1181(a); 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1701)

[49 FR 28561, July 13, 1984]

### PART 5040—SUSTAINED-YIELD FOREST UNITS

Sec.

5040.1 Under what authority does BLM establish sustained-yield forest units?

5040.2 What will BLM do before it establishes sustained-yield forest units?

5040.3 How does BLM establish sustained-yield forest units?

5040.4 What is the effect of designating sustained-yield forest units?

5040.5 How does BLM determine and declare the annual productive capacity?

AUTHORITY: 43 U.S.C. 1181e; 43 U.S.C. 1740.

SOURCE: 63 FR 13132, Mar. 18, 1998, unless otherwise noted.

#### § 5040.1 Under what authority does BLM establish sustained-yield forest units?

BLM is authorized, under the O. and C. Lands Act (43 U.S.C. 1181a *et seq.*) and the Federal Land Policy and Management Act, to divide the lands it manages in western Oregon into sustained-yield forest units. These lands are hereafter referred to as “the O. and C. lands.” BLM establishes units that contain enough forest land to provide, insofar as practicable, a permanent source of raw materials to support local communities and industries, giving due consideration to established forest products operations.

#### § 5040.2 What will BLM do before it establishes sustained-yield forest units?

Before BLM designates sustained-yield forest units, it will:

(a) Hold a public hearing in the area where it proposes to designate the units. BLM will provide notice, approved by the BLM Director, to the public of any hearing concerning sustained-yield forest units. This notice must be published once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the forest units are situated. BLM may also publish the notice in a trade publication; and

(b) Forward the minutes or meeting records to the BLM Director, along with an appropriate recommendation concerning the establishment of the units.

#### § 5040.3 How does BLM establish sustained-yield forest units?

After a public hearing, BLM will publish a notice in a newspaper of general circulation in the county or counties affected by the proposed units, stating whether or not the BLM Director has decided to establish the units. If the BLM Director determines that the units should be established, BLM will include in its notice information on the geographical description of the sustained-yield forest units, how the public may review the BLM document that will establish the units, and the date the units will become effective. BLM will publish the notice before the units are established.

#### § 5040.4 What is the effect of designating sustained-yield units?

Designating new sustained-yield forest units abolishes previous O. and C. master unit or sustained-yield forest unit designations. Until new sustained-yield forest units are designated for the first time in accordance with 43 CFR part 5040, the current master unit designations will continue to be in effect.

#### § 5040.5 How does BLM determine and declare the annual productive capacity?

(a) If BLM has not established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to the O. and C. lands, treating them as a single unit.

(b) If BLM has established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to each separate forest unit.

(c) If it occurs that BLM has established sustained-yield forest units for less than all of the O. and C. lands, then BLM will determine and declare the annual productive capacity as follows:

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(1) BLM will treat sustained-yield forest units as in paragraph (b) of this section; and

(2) BLM will treat any O. and C. lands not located within sustained-yield forest units as a single unit.

### Group 5400—Sales of Forest Products

#### PART 5400—SALES OF FOREST PRODUCTS; GENERAL

##### Subpart 5400—Sales of Forest Products; General

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##### Subpart 5401—Advertised Sales; General

5401.0-6 Policy.

##### Subpart 5402—Other Than Advertised Sales; General

5402.0-6 Policy.

AUTHORITY: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 1181a, 16 U.S.C. 607a, and 43 U.S.C. 1701 *et seq.*

### Subpart 5400—Sales of Forest Products; General

#### § 5400.0-3 Authority.

(a) The Act of August 28, 1937 (43 U.S.C. 1181a) authorizes the sale of timber from the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and directs that such lands shall be managed for permanent forest production and the timber thereon sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating streamflow and contributing to the economic stability of local communities and industries, and providing recreational facilities.

(b) The Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*) authorizes the disposal of timber and other vegetative resources on public lands of the United

States including lands embraced within an unpatented mining claim located after July 23, 1955, if the disposal of such resources is not otherwise expressly authorized by law including, but not limited to, the Act of June 28, 1934, as amended (43 U.S.C. 315 through 315o-1) and the U.S. mining laws; is not expressly prohibited by laws of the United States; and would not be detrimental to the public interest.

(1) The Act also authorizes the United States, its permittees, and licensees to use so much of the surface of any unpatented mining claim located under the mining law of the United States after July 23, 1955, as may be necessary for access to adjacent land for the purposes of such permittees or licensees. Any authorized use of the surface of any such mining claim shall be such as not to endanger or materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto.

(2) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this subpart only with the consent of such other Federal department or agency or of such State, or local governmental unit. The Act provides, however, that the Secretary of Agriculture shall dispose of materials if such materials are on lands administered by the Secretary of Agriculture for national forest purposes or for purposes of title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture.

(3) The provisions of the Act in disposal of vegetative or mineral materials do not apply to lands in any national park, or national monument or to any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

(c) The Department of the Interior and Related Agencies Appropriation Act, 1976 (Pub. L. 94-165) prohibits the

use of funds appropriated thereunder for sale of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser. The law also provides that the export restriction shall not apply to specific quantities of grades and species of timber which the Secretary of the Interior determines to be surplus to domestic lumber and plywood manufacturing needs.

(d) Authority for small sales of timber for use in Alaska is contained in the Act of May 14, 1898, as amended (16 U.S.C. 615a).

(e) Authority to enforce the provisions of this title is contained in the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

[37 FR 22797, Oct. 25, 1972, as amended at 41 FR 12659, Mar. 26, 1976; 56 FR 10174, Mar. 11, 1991]

#### § 5400.0-5 Definitions.

Except as the context may otherwise indicate, as the terms are used in parts 5400-5490 of this chapter and in contracts issued thereunder:

*Affiliate* means a business entity including but not limited to an individual, partnership, corporation, or association, which controls or is controlled by a purchaser, or, along with a purchaser, is controlled by a third business entity.

*Authorized Officer* means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

*Bureau* means the Bureau of Land Management, Department of the Interior.

*Commercial use* means use intended for resale, barter, or trade, or for profit.

*Director* means the Director of the Bureau of Land Management.

*Fair Market value* means the price forest products will return when offered for competitive sale on the open market. Determination of fair market value will be made in accordance with procedures in BLM Manual 9354.

*Federal lands* means all lands administered by the Department of the Interior west of the 100th meridian in the contiguous 48 States with the exception of tribal and trust allotted lands managed by the Bureau of Indian Affairs on behalf of the Indians.

*Federal timber* means timber sold by the Bureau of Land Management as used under these regulations.

*Incidental use* means personal use of other vegetative resources on the site where they are obtained, or, if they are transported to a secondary location, personal use of the resources within a reasonable period of time by the person obtaining them.

*Loading point* means any landing or other area in which logs are capable of being loaded for transportation out of the contract area: *Provided, however,* That right-of-way timber which has been cut shall not be considered to be at a loading point until such time as logs from any source are actually transported over that portion of the right-of-way.

*Nonwillful* means an action which is inadvertent, mitigated in character by the belief that the conduct is reasonable or legal.

*O. and C. Lands* means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the Act of August 28, 1937 (50 Stat. 874).

*Operating season* means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

*Operating time* means a period of time during the operating season.

*Other vegetative resources* means all vegetative material that is not normally measured in board feet, but can be sold or removed from public lands by means of the issuance of a contract or permit.

*Permit* means authorization in writing by the authorized officer or other person authorized by the United States Government, and is a contract between the permittee and the United States.

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*Personal use* means use other than for sale, barter, trade, or obtaining a profit.

*Product value* means the stumpage value of timber or the fair market value of other vegetative resources.

*Public lands* means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership.

*Purchaser* means a business entity including, but not limited to, an individual, partnership, corporation, or association that buys Federal timber or other vegetative resources.

*Sale value* means the contract value of the stumpage sold under the contract.

*Set-aside* means a designation of timber for sale which is limited to bidding by small business concerns as defined by the Small Business Administration in its regulations (13 CFR part 121) under the authority of section 15 of the Small Business Act of July 18, 1958 (72 Stat. 384).

*Substitution* means:

(1) The purchase of a greater volume of Federal timber by an individual purchaser than has been his historic pattern within twelve (12) months of the sale of export by the same purchaser of a greater volume of his private timber than has been his historic pattern during the preceding twelve (12) months, exclusive of Federal timber purchased by negotiated sale for right-of-way purposes, and

(2) The increase of both the purchase of Federal timber and export of timber from private lands tributary to the plant for which Bureau of Land Management timber covered by a specific contract is delivered or expected to be delivered.

*Third party scaling* means the measurement of logs by a scaling organization, other than a Government agency, approved by the Bureau.

*Timber* means standing trees, downed trees or logs which are capable of being measured in board feet.

*Trespass* means the severance, removal, or unlawful use of timber or other vegetative resources without the consent (authorization) of the Federal

Government, or failure to comply with contract or permit requirements that causes direct injury or damage to timber or other vegetative resources, or undue environmental degradation.

*Trespasser* means any person, partnership, association, or corporation responsible for committing a trespass.

*Unprocessed timber* means:

(1) Any logs except those of utility grade or below, such as sawlogs, peeler logs, and pulp logs;

(2) Cants or squares to be subsequently remanufactured exceeding eight and three-quarters ( $8\frac{3}{4}$ ) inches in thickness;

(3) Split or round bolts, or other roundwood not processed to standards and specifications suitable for end product use.

*Willful* means a knowing act or omission that constitutes the voluntary or conscious performance of a prohibited act or indifference to or reckless disregard for the law.

[35 FR 9783, June 13, 1970, as amended at 38 FR 6280, Mar. 8, 1973; 41 FR 12659, Mar. 26, 1976; 41 FR 31381, July 28, 1976; 56 FR 10175, Mar. 11, 1991; 57 FR 62235, Dec. 30, 1992]

### **§ 5400.0-7 Public hearings to determine surplus quantities and species of unprocessed timber.**

(a) Public hearings will be held when authorized by the Director to seek advice and counsel as to the specific quantities of grades and species of unprocessed timber surplus to the needs of domestic users and processors. Such species and quantities thereby determined to be surplus by the Secretary, may be designated as available for export by the Secretary.

(b) Such hearings will be coordinated with the Department of Agriculture and held at convenient, centralized locations within the range of the species under consideration.

(c) Before any hearing is held in this regard, a notice will be published in a newspaper of general circulation within the range of the species under consideration at least 15 days prior to the hearing. In addition, known parties or groups with special interest in the species concerned should be notified directly. The record of the hearing shall be kept open for at least 5 consecutive calendar days from the date of the

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hearing for receipt of additional statements.

(d) The hearing will be conducted by a representative or representatives of the Department of the Interior and the Department of Agriculture, respectively. At the conclusion of the hearing, the record thereof together with appropriate recommendations shall be forwarded to the Director for further action deemed appropriate. The Director shall give the public due notice as to the quantities and species of unprocessed timber determined to be surplus to the needs of domestic users and processors.

[35 FR 9783, June 13, 1970, as amended at 41 FR 12659, Mar. 26, 1976]

### **Subpart 5401—Advertised Sales; General**

#### **§ 5401.0-6 Policy.**

(a) All sales other than those specified in § 5402.0-6 shall be made only after inviting competitive bids through publication and posting. Sales shall not be held sooner than one week after the last advertisement. Competitive sales shall be offered by the authorized officer when access to the sale area is available to anyone who is qualified to bid. Further, timber or other vegetative resources that would normally be sold by negotiated sale because of lack of legal access may be sold competitively without access if the authorized officer determines that there is competitive interest in such a sale.

(b) All competitive sales shall be subject to the restrictions relating to the export and substitution from the United States of unprocessed timber.

(Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*)

[35 FR 9783, June 13, 1970, as amended at 41 FR 12659, Mar. 26, 1976; 49 FR 23839, June 8, 1984; 56 FR 10175, Mar. 11, 1991]

### **Subpart 5402—Other Than Advertised Sales; General**

#### **§ 5402.0-6 Policy.**

(a) When it is determined by the authorized officer to be in the public interest, he may sell at not less than the appraised value, without advertising or

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calling for bids, timber where the contract is for the sale of less than 250 M board feet.

(b) Timber on the right-of-way of a logging road and danger trees adjacent to the right-of-way on O. and C. lands may be sold at not less than the appraised value without advertising or calling for bids to (1) permittee who constructs a road pursuant to a permit issued under Subpart 2800 of this chapter, or (2) a contractor who is constructing a road with Government funds.

(c) In addition to paragraph (b) of this section, negotiated sales with no limitations as to volume may be made if:

(1) The contract is for the disposal of materials to be used in connection with a public works improvement program on behalf of a Federal, State or local government agency and the public exigency will not permit the delay incident to advertising; or if

(2) The contract is for the disposal of timber or other vegetative resources, for which it is impracticable to obtain competition.

(d) All negotiated sales shall be subject to the restrictions relating to the export and substitution from the United States of unprocessed timber. Timber purchased for right-of-way purposes will not be subject to substitution restrictions.

(Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*)

[35 FR 9784, June 13, 1970, as amended at 41 FR 12660, Mar. 26, 1976; 56 FR 10175, Mar. 11, 1991]

### **PART 5410—ANNUAL TIMBER SALE PLAN**

#### **Subpart 5410—Annual Timber Sale Plan; General**

#### **§ 5410.0-6 Policy.**

Plans for the sale of timber from the O. and C. and public lands will be developed annually. Suggestions from prospective purchasers of such timber may be received to assist in the development of a sound annual timber sale plan. Such plan may be advertised in a newspaper of general circulation in the

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area in which the timber is located. Such advertisement shall indicate generally the probable time when the various tracts of timber included in the plan will be offered for sale, set-asides if any, and the probable location and anticipated volumes of such tracts. The authorized officer may subsequently change, alter or amend the annual timber sale plan.

[35 FR 9785, June 13, 1970]

**PART 5420—PREPARATION FOR SALE**

**Subpart 5420—Preparation for Sale; General**

Sec.  
5420.0-6 Policy.

**Subpart 5422—Volume Measurements**

5422.1 Cruise sales.  
5422.2 Scale sales.

**Subpart 5424—Preparation of Contract**

5424.0-6 Policy.  
5424.1 Reporting provisions for substitution determination.

AUTHORITY: 61 Stat. 681, as amended, 69 Stat. 367; Sec. 5, 50 Stat. 875; 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

SOURCE: 35 FR 9785, June 13, 1970, unless otherwise noted.

**Subpart 5420—Preparation for Sale; General**

**§ 5420.0-6 Policy.**

All timber or other vegetative resources to be sold shall be appraised and in no case shall be sold at less than the appraised value. Measurement shall be by tree cruise, log scale, weight, or such other form of measurement as may be determined to be in the public interest.

**Subpart 5422—Volume Measurements**

**§ 5422.1 Cruise sales.**

As the general practice, the Bureau will sell timber on a tree cruise basis.

**§ 5422.2 Scale sales.**

(a) Scaling by the Bureau will be used from time to time for administrative reasons. Such reasons would include but not be limited to the following: To improve cruising standards; check accuracy of cruising practices; for volumetric analysis; and for highly defective timber where it is impossible to determine the tree cruise volume within a reasonable degree of accuracy.

(b) Third party scaling may be ordered by the Bureau after a determination that all of the following factors exist: (1) A timber disaster has occurred; (2) a critical resource loss is imminent; (3) measurement practices listed in § 5422.1 and paragraph (a) of this section are inadequate to permit orderly disposal of the damaged timber. Third party scaling volumes must be capable of being equated to Bureau standards in use for timber depletion computations, to insure conformance with sustained yield principles.

**Subpart 5424—Preparation of Contract**

**§ 5424.0-6 Policy.**

(a) All timber sales shall be made on contract or permit forms approved by the Director, BLM.

(b) Other than for incidental use, the severance and/or removal of any vegetative resource for personal or commercial use requires a written contract or permit issued by the authorized officer or other person authorized by the United States. All contracts or permits shall contain the following:

- (1) The name of the purchaser or his/her authorized representative with complete mailing address.
- (2) The specific vegetative resources authorized for removal and their respective quantities and values.
- (3) The specific location from which the vegetative resources are to be removed.
- (4) The term for which the contract or permit is valid.
- (5) Contract or permit conditions and stipulations.
- (6) Signature of purchaser or authorized representative.

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(c) The authorized officer may include additional provisions in the contract or permit to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and the protection of improvements, watersheds, recreational values, and the prevention of pollution or other environmental degradation.

(d) The contract or permit from and any additional provisions shall be made available for inspection by prospective bidders during the advertising period. When sales are negotiated, all additional provisions shall be made part of the contract or permit.

(e) Except for such specific quantities of grades and species of unprocessed timber determined to be surplus to domestic lumber and plywood manufacturing needs, each timber sale contract shall include provisions that prohibit:

(1) The export of any unprocessed timber harvested from the area under contract; and

(2) The use of any timber of sawing or peeler grades, sold pursuant to the contract, as a substitute for timber from private lands which is exported or sold for export by the purchaser, an affiliate of the purchaser, or any other parties.

[56 FR 10175, Mar. 11, 1991]

### § 5424.1 Reporting provisions for substitution determination.

(a) To determine whether substitution has occurred, the authorized officer may require that information identified in the contract be reported by:

(1) A purchaser who has exported private timber within one year preceding the purchase date of Federal timber, and/or

(2) An affiliate of a timber purchaser who exported private timber within one year before the acquisition of Federal timber from the purchaser.

(b) Purchasers or affiliates of purchasers shall retain a record of Federal timber acquisitions and private timber

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exports for three years from the date the activity occurred.

(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1004-0058)

[46 FR 29263, June 1, 1981]

## PART 5430—ADVERTISEMENT

### Subpart 5430—Advertisement; General

Sec.  
5430.0-6 Policy.  
5430.1 Requirements.

SOURCE: 35 FR 9785, June 13, 1970, unless otherwise noted.

### Subpart 5430—Advertisement; General

AUTHORITY: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

#### § 5430.0-6 Policy.

Competitive timber sales shall be advertised in a newspaper of general circulation in the area in which the timber or other vegetative resources are located and a notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks, except that sales amounting to less than 500 M board feet, need be published once only. When in the discretion of the authorized officer longer advertising periods are desired, such longer periods are permitted.

[35 FR 9785, June 13, 1970]

#### § 5430.1 Requirements.

The advertisement of sale shall state the location by county, section, township, range, meridian, of the tract or tracts on which timber or other vegetative resources are being offered, the estimated total quantity, the unit of measure, the total appraised value, the minimum deposit, time and place for receiving bids, the office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

[35 FR 14135, Sept. 5, 1970]



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**PART 5440—CONDUCT OF SALES**

**Subpart 5441—Advertised Sales**

Sec.

5441.1 Qualification of bidders.

5441.1-1 Bid deposits.

5441.1-2 Special considerations.

5441.1-3 SBA set-aside sales.

**Subpart 5442—Bidding Procedure**

5442.1 Bidding.

5442.2 Resale of timber from uncompleted contract.

5442.3 Rejection of bids; waiver of minor deficiencies.

**Subpart 5443—90-Day Sales**

5443.1 General.

AUTHORITY: Sec. 5, 50 Stat. 875, 61 Stat. 631, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

**Subpart 5441—Advertised Sales**

**§ 5441.1 Qualification of bidders.**

(a) A bidder or purchaser for the sale of timber must be (1) an individual who is a citizen of the United States, (2) a partnership composed wholly of such citizens, (3) an unincorporated association composed wholly of such citizens, or (4) a corporation authorized to transact business in the States in which the timber is located. A bidder must also have submitted a deposit in advance, as required by § 5441.1-1. To qualify for bidding to purchase set-aside timber, the bidder must not have been determined by the Small Business Administration to be ineligible for preferential award of set-aside sales and must accompany his deposit with a self-certification statement that he is qualified as a small business concern as defined by the Small Business Administration (13 CFR part 121).

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification in conformance with paragraphs (a) and (c) of this section or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c)(1) A purchaser who is under review for debarment may continue to bid on timber purchase contracts until a final debarment determination has

been made by the debarring official. However, contracts will not be awarded during the review period.

(2) Debarred purchasers are prohibited from bidding on timber purchase contracts.

[35 FR 9785, June 13, 1970, as amended at 47 FR 38696, Sept. 2, 1982; 52 FR 26983, July 17, 1987]

**§ 5441.1-1 Bid deposits.**

Sealed bids shall be accompanied by a deposit of not less than 10 percent of the appraised value of the timber or other vegetative resources. For offerings at oral auction, bidders shall make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers or certified checks made payable to the Bureau of Land Management, bid bonds of a corporate surety shown on the approved list of the United States Treasury Department or any guaranteed remittance approved by the authorized officer. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidder, will be returned. The deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer unless the deposit is a corporate surety bid bond, in which case the surety bond will be returned to the purchaser.

[55 FR 22917, June 5, 1990]

**§ 5441.1-2 Special considerations.**

Where a timber sale notice provides that the successful bidder may use a Small Business Administration road construction loan, and the bidder has reason to believe that he qualifies for such road construction loan under SBA regulations (13 CFR part 121), the bidder shall submit to the authorized officer a statement of his intention to file with SBA for such SBA road construction loan. The purpose of the filing is to facilitate action by the authorized officer and the Small Business Administration on the loan application.

[35 FR 9785, June 13, 1970]

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#### § 5441.1-3 SBA set-aside sales.

Only bids of small business concerns which have filed a self-certification statement as required by § 5441.1 may be considered for sales subject to set-asides. When no such bids are received, the timber may be sold under § 5443.1 in the same manner as timber not previously made subject to a set-aside. When timber subject to a set-aside is not sold for any other reason, the sale may be rescheduled for a set-aside sale.

[35 FR 9785, June 13, 1970]

### Subpart 5442—Bidding Procedure

#### § 5442.1 Bidding.

(a) Bidding at competitive sales shall be conducted by the submission of sealed bids, written bids, oral bids, or a combination of bidding methods as directed by the authorized officer.

(b) In sealed bid sales, the bidder submitting the highest sealed bid shall be declared the high bidder. In the event of a tie in high sealed bids, the high bidder shall be determined by lot from among those who submitted the tie bids.

(c) In oral auction sales, submission of the required minimum bid deposit and a written bid at not less than the advertised appraised price shall be required to participate in oral bidding. The officer conducting the sale shall declare a specific period, prior to oral bidding on each tract, during which bid deposits and written bids may be submitted. Bid deposits and written bids also may be submitted any time prior to the specific period declared by the officer conducting the sale. Oral bidding to determine the high bidder shall begin from the highest written bid after closure of the submittal period. In the event there is a tie in high written bids, and no oral bidding occurs, the bidder who was the first to submit his bid deposit and written bid shall be declared the high bidder. If the officer conducting the sale cannot determine who made the first submission of high tie written bids, the high bidder shall be determined by lot. The declared high bidder must confirm his oral bid in writing immediately after the sale,

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but failure to do so shall not relieve him of his purchase obligation.

[38 FR 6280, Mar. 8, 1973]

#### § 5442.2 Resale of timber from uncompleted contract.

(a) This section applies to the sale of timber only when 50 percent or more of the timber included in the sale is timber remaining from an uncompleted contract. A bid from a purchaser who held the uncompleted contract, or an affiliate of such purchaser, will be considered only if:

(1) The contract was not canceled because of breach by the purchaser, and

(2) The purchaser has made full payment of the total purchase price and any related charges by the expiration date.

(b) The purchaser who held the uncompleted contract, or affiliate of such purchaser, shall, upon execution of the resale contract, agree that the Bureau of Land Management shall retain the original payment for timber not removed under the uncompleted contract, less the cost of resale, as a credit toward the purchase price of the resale contract.

[55 FR 17755, Apr. 27, 1990]

#### § 5442.3 Rejection of bids; waiver of minor deficiencies.

When the authorized officer determines it to be in the interest of the Government to do so, he may reject any or all bids and may waive minor deficiencies in the bids or the timber sale advertisement.

[38 FR 6280, Mar. 8, 1973]

### Subpart 5443—90-Day Sales

#### § 5443.1 General.

If no bid is received within the time specified in the advertisement of sale, and if the authorized officer determines that there has been no significant rise in the market value, he may in his discretion, keep the sale open for not to exceed 90 days by posting notice thereof in a conspicuous place in the office where bids are to be submitted. If during such period a written bid is submitted, together with the required deposit, for not less than the advertised appraised value, a notice of such bid

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shall be posted immediately after receipt of such bid for seven successive days in the same office and in the same manner. If no other written bid is received during the seven day posting period, the sole bidder shall be deemed the high bidder. If, however, during such seven day posting period other written bids are received, an oral auction shall be conducted in the usual manner for those who have submitted written bids. The authorized officer shall notify those who have submitted written bids of the time and place of the oral auction. The written bids shall be considered the initial bids in such oral auction. If there is a tie in the high written bids that are submitted during the seven day posting period and if no higher bid is offered during the oral auction, the party who first submitted the high bid shall be deemed the high bidder.

[35 FR 9786, June 13, 1970]

**PART 5450—AWARD OF CONTRACT**

**Subpart 5450—Award of Contract; General**

Sec.  
5450.1 Pre-award qualifications of high bidder.

**Subpart 5451—Bonds**

5451.1 Minimum performance bond requirements; types.  
5451.2 Performance bonds in excess of minimum.  
5451.3 Performance bond reduction.  
5451.4 Payment bond.

**Subpart 5452—Method of Payment**

5452.1 Cash sales.  
5452.2 Installment payments.

AUTHORITY: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*

**Subpart 5450—Award of Contract; General**

**§ 5450.1 Pre-award qualifications of high bidder.**

(a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to perform the obligations of the contract.

The contract shall be awarded to the high bidder, unless he is not qualified or responsible, or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond and any required payment; the contract may be offered and awarded for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) A purchaser who has defaulted on a timber sale contract under this title by failing to complete payment of its total purchase price by the expiration date of the contract is considered a risk for purposes of being awarded future timber sale contracts. If a purchaser deemed a risk is the high bidder on a new timber sale, the authorized officer shall send a notice by registered mail requiring such purchaser to establish bidder responsibility by paying or bonding, or a combination of payment and bonding, for any one of the following: The total unpaid balance of the purchase price of all defaulted sales, the unsettled damages on all defaults, or 50 percent of the purchase price of contracts bid after the most recent default. Any payment applied toward 50 percent of a contract's bid price after the default(s) will be held as final payment for timber cut and/or removed under terms of the contracts. Acceptable bonding options are listed at §5451.1 of this title. Payment and bonding are due within time limits stated in §5450.1(c). Should the purchaser fail to demonstrate responsibility within 30 days of receipt of the notice, the authorized officer shall offer the contract for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract. Failure to demonstrate responsibility within 30 days of receipt of the notice indicates that the purchaser is not responsible, and debarment proceedings shall be considered under §5441.1 of this title.

(c) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond and any required payment: *Provided*, That the authorized officer may, in his

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discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period. If the successful bidder fails to comply within the stipulated time, his bid deposit shall be retained as liquidated damages.

(d) Award of contracts or permits on negotiated sales occurs upon the execution of the contract or permit. Terms and conditions shall reflect the contractor's ability to perform, and shall require prevention or mitigation of environmental degradation associated with the removal of the timber or other vegetative resource.

[35 FR 9786, June 13, 1970, as amended at 55 FR 3955, Feb. 6, 1990; 56 FR 10175, Mar. 11, 1991; 56 FR 47916, Sept. 23, 1991]

### Subpart 5451—Bonds

#### § 5451.1 Minimum performance bond requirements; types.

(a) A minimum performance bond of not less than 20 percent of the total contract price shall be required for all contracts of \$2,500 or more, but the amount of the bond shall not be in excess of \$500,000, except when the purchaser opts to increase the minimum bond as provided in § 5451.2 of this title. A minimum performance bond of not less than \$500 will be required for all installment contracts less than \$2,500. For cash sales less than \$2,500, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the United States Treasury Department and executed on an approved standard form; or

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States.

(5) Any guaranteed remittance approved by the authorized officer.

[35 FR 9786, June 13, 1970, as amended at 38 FR 6281, Mar. 8, 1973; 46 FR 42673, Aug. 24, 1981; 47 FR 38696, Sept. 2, 1982]

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#### § 5451.2 Performance bonds in excess of minimum.

(a) The purchaser may cut timber before payment of the second or subsequent installments required by § 5461.2(a) of this part by increasing the minimum bond required by § 5451.1(a) of this part by an amount equal to one or more installment payments; *Provided, however,* That the authorized officer may grant permission to cut timber only when the value of the timber to be cut does not exceed the amount by which the minimum bond has been increased. The purchaser shall secure approval in writing of the adjusted bond by the authorized officer prior to cutting any timber under the adjusted bond.

(b) If payment and bonding for 50 percent of the purchase price of a contract is provided in accordance with § 5450.1(b) of this title, the amount of performance bond in excess of the minimum performance bond required by § 5451.1(a) of this title may be used as an increased performance bond as specified in § 5451.2(a) of this title.

[47 FR 38697, Sept. 2, 1982; 47 FR 51868, Nov. 18, 1982, as amended by 55 FR 3955, Feb. 6, 1990; 55 FR 19886, May 14, 1990]

#### § 5451.3 Performance bond reduction.

(a) As contract provisions are satisfactorily completed, the authorized officer may, in his discretion, reduce the amount of the required performance bond: *Provided, however,* That the amount of the performance bond shall not be reduced below the minimum required by § 5451.1 until

(1) Payment of no less than 60 percent of the total purchase price has been made, or

(2) Road construction required under the contract has been completed, the value of which when combined with contract payments is equal to no less than 60 percent of the total purchase price.

(b) At the request of the purchaser, when the requirements set forth in the proviso to paragraph (a) of this section have been met, the amount of the performance bond may be reduced to 10 percent of the total purchase price or the entire cost of the uncompleted post-harvest contract requirements, whichever is greater. The amount of

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the performance bond shall not be reduced below 10 percent of the total purchase price until payment for all the timber sold under the terms of the contract is complete.

(c) For the purpose of this section, the value of completed road construction shall be based on the Bureau's appraisal allowance.

Satisfactory completion of portions of the required road construction, to reasonable points that can be easily identified in the road construction appraisal, shall be considered as completed road construction for the purpose of this section.

[55 FR 19886, May 14, 1990]

### § 5451.4 Payment bond.

To obtain permission to (a) cut and remove timber, or (b) remove timber already cut, which has been secured by an increased performance bond as provided for in § 5451.2, before payment of the first or subsequent installments, the purchaser must obtain a payment bond in an amount equal to one or more installment payments as determined by the authorized officer. The payment bond may be a bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department and executed on an approved form or negotiable securities of the United States. The payment bond may be a bond of a corporate surety shown on the approved list issued by the United States Treasury Department and executed on an approved form, negotiable securities of the United States, or any guaranteed remittance approved by the authorized officer. If a bond of a corporate surety is used, the payment bond shall provide that if the purchaser fails to make payment as required by § 5461.2(c) of this chapter, the surety will make such payment including any required interest to the Bureau within 60 days after demand therefor by the Bureau. With the written approval of the authorized officer a single blanket payment bond may be allocated to two or more contracts with the same purchaser in the same Bureau of Land Management administrative district. When operations cease for 60 days or more, the amount of a payment bond may be adjusted downward to an amount equal to the value of the tim-

ber cut. Before operations resume, a reduced bond shall be increased to the amount of a full installment.

[38 FR 6281, Mar. 8, 1973, as amended at 46 FR 42674, Aug. 24, 1981; 47 FR 38697, Sept. 2, 1982]

## Subpart 5452—Method of Payment

### § 5452.1 Cash sales.

For sales under \$500 the full amount shall be paid prior to or at the time the authorized officer signs the contract.

[35 FR 9787, June 13, 1970]

### § 5452.2 Installment payments.

For sales of \$500 or more the authorized officer may allow payment by installments as provided by § 5461.2 of this chapter.

[35 FR 9787, June 13, 1970]

## PART 5460—SALES ADMINISTRATION

### Subpart 5461—Contract Payments

Sec.

5461.1 Payment in advance of cutting or removal.

5461.2 Required payment schedule.

5461.3 Total payment.

### Subpart 5462—Contract and Permit Requirements

5462.1 Contract and permit compliance.

5462.2 Prohibited acts.

5462.3 Penalties.

### Subpart 5463—Expiration of Time for Cutting and Removal

5463.1 Time for cutting and removal.

AUTHORITY: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

### Subpart 5461—Contract Payments

#### § 5461.1 Payment in advance of cutting or removal.

Except as provided in §§ 5451.2 and 5451.4 no part of any timber or other vegetative resources sold may be cut or removed unless advance payment has been made as provided in the contract.

[35 FR 9787, June 13, 1970, as amended at 38 FR 6281, Mar. 8, 1973]

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### § 5461.2 Required payment schedule.

(a)(1) For sales of less than \$500,000, installment payments shall not be less than 10 percent of the total purchase price. For sales of \$500,000 or more, installment payments shall be \$50,000.

(2) The first installment shall be paid prior to or at the time the authorized officer signs the contract. A purchaser cannot apply any portion of the first installment to cover other payments due on the contract until either 60 percent of the total purchase price has been paid or road construction required by the contract, the value of which when combined with contract payments is equal to 60 percent of the total purchase price, has been completed. When either of these 60-percent levels has been reached, one-half of the first installment may be applied to other payments due on the contract.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section, when the contracting officer suspends or requests the purchaser to interrupt or delay operations during the operating season for a reason beyond the control of the purchaser, the contracting officer may reduce the amount of the first installment to 5 percent of the installment amount listed in the timber sale contract. Reductions may be made when the suspension, interruption, or delay can reasonably be expected to last longer than 30 days or has been in effect for more than 30 days for existing contracts. The purchaser shall request such reduction in writing from the contracting officer. The contracting officer will answer such requests within 15 days. The funds released may be refunded or credited to other contracts. When the contracting officer notifies the purchaser that operations may proceed, the purchaser shall have 15 days after such notification to return the first installment to the full amount specified in the timber sale contract. Failure to pay the full first installment amount within the specified time will be considered a material breach of contract, and the contracting officer may cancel the contract. No timber may be cut or removed from the contract area until the first installment is restored to the full amount required by the contract.

(4) The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of material cut or removed equals the sum of all payments made up to that point, not including the first installment, or one-half of the first installment after the other one-half of the first installment has been released as provided in paragraph (a)(2) of this section.

(5) Timber sale contracts shall contain provisions requiring periodic payments for all sales with a contract term of 19 months or longer. For sales with a contract term of 19-26 months, one periodic payment of 20 percent of the total purchase price will be required. For all sales with a contract term of 27 months or longer, two periodic payments will be required. The first payment shall be 20 percent of the total purchase price and the second payment shall be 40 percent of the total purchase price. The value of satisfactorily completed road construction required by the contract and all completed contract payments may be used as a credit against the amount due for periodic payments. The due dates for the periodic payments will be specified in the timber sale contract. Adjustment of the periodic payment dates in the contract may be made when the contracting officer suspends, interrupts, or delays operations during the operating season prior to the due date for a periodic payment for a reason beyond the control of the purchaser. The adjustment may be made when the suspension, interruption, or delay can reasonably be expected to last longer than 30 days or has been in effect for more than 30 days for existing contracts. The purchaser shall request such adjustment in writing from the contracting officer. The contracting officer will answer such requests within 15 days.

(6) For the purpose of this section, the value of satisfactorily completed road construction shall be based on the Bureau of Land Management's appraisal allowance. Satisfactory completion of portions of the required road construction, to reasonable points that can be easily identified in the road construction appraisal, shall be considered

as completed road construction for purposes of this section.

(b) Delayed payment of installments shall be allowed if the purchaser furnishes a bond as provided in § 5451.2 of this title. A deposit shall be paid in the same manner as prescribed in paragraph (a) of this section. If cutting is permitted before payment, as prescribed in § 5451.2 of this title, payment by installment shall be made before any timber may be skidded or yarded to a loading point or removed from the contract area. Each subsequent installment shall be due and payable without notice when the sale value of the timber skidded or yarded to a loading point or removed equals the sum of all payments not including the deposit. The unenhanced value of timber allowed to be cut in advance of payment shall be limited to the amount of the increase over and above the required performance bond. Upon payment, the amount of the bond may be applied to other timber sold under the contract to permit its cutting in advance of payment.

(c) Where cutting or removal is permitted under payment bond under § 5451.4 of this title, a deposit shall be paid as provided in paragraph (a) of this section. If cutting and/or removal is permitted before payment, as provided in § 5451.4 of this title, the purchaser shall be billed monthly for timber skidded or yarded to a loading point or removed from the contract area and for any related road maintenance fees unless a lesser period is agreed to by the authorized officer and the purchaser. Payment shall be made within 15 days of the billing date shown on the billing form. The unenhanced value of timber allowed to be cut and/or removed in advance of payment is limited to the amount of the payment bond. Upon payment, the amount of the bond may be applied to other timber.

[47 FR 38697, Sept. 2, 1982; 47 FR 51868, Nov. 18, 1982, as amended at 55 FR 19886, May 14, 1990; 57 FR 62235, Dec. 30, 1992]

#### § 5461.3 Total payment.

The total amount of the contract purchase price must be paid prior to expiration of the time for cutting and removal under the contract. For a

cruise sale the purchaser shall not be entitled to a refund even though the amount of timber cut, removed, or designated for cutting may be less than the estimated total volume shown in the contract. For a scale sale, if it is determined after all designated timber has been cut and measured that the total payments made under the contract exceed the total sale value of the timber measured, such excess shall be refunded to the purchaser within 60 days after such determination is made.

[35 FR 9787, June 13, 1970]

### Subpart 5462—Contract and Permit Requirements

#### § 5462.1 Contract and permit compliance.

(a) The following minimum requirements shall be met in order to assure contract or permit compliance:

(1) Contracts or permits shall be executed by authorized purchasers or their formally designated representatives.

(2) For other than lump sum sales, only the specific timber or other vegetative resource designated for removal, in their respective quantities, shall be removed.

(3) Timber or other vegetative resources shall be removed only from designated locations or areas.

(4) Transportation of timber or other vegetative resources shall be in accordance with contract or permit requirements and shall include appropriate load or product tagging if required.

(5) Contract or permit stipulations and specification shall be adhered to.

(6) Payments shall be made in accordance with subpart 5461 of this title.

(b) All contract and permit provisions and special provisions shall be adhered to unless the contract is modified in accordance with part 5470 of this title.

(c)(1) The authorized officer may cancel a contract or permit upon determining that the holder has failed to comply with a law or regulation pertinent to the contract or permit. The authorized officer may also cancel a contract or permit upon determining that the holder has failed to comply with a stipulation or requirement contained

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in the contract or permit and the non-compliance is detrimental to the public interest. Individual contracts or permits may contain specific language defining the remedies or penalties associated with noncompliance.

(2) Cancellation shall be mandatory in cases of intentional falsification of information used to obtain the permit or contract.

[56 FR 10176, Mar. 11, 1991, as amended at 60 FR 50450, Sept. 29, 1995]

### § 5462.2 Prohibited acts.

(a) The acts or omissions listed in paragraph (b) of this section apply only to BLM-administered lands and will render the person(s) responsible liable to the United States in a civil action for trespass, and such person(s) may be prosecuted criminally. If the authorized officer determines such acts or omissions to be detrimental to the public interest, the timber sale contract or permit held by the purchaser responsible for such acts or omissions may be canceled.

(b) The following activities are prohibited:

(1) Cutting, removing, or otherwise damaging any timber, tree, or other vegetative resource, except as authorized by a forest product sale contract, permit, or Federal law or regulation.

(2) Cutting any standing tree, under a permit or timber sale contract, before a BLM employee has marked it or has otherwise designated it for cutting.

(3) Removing any timber or other vegetative resource cut under a permit or timber sale contract, except to a place designated for scaling or measurement, or removing it from that place before it is scaled, measured, counted, or otherwise accounted for by a BLM employee.

(4) Stamping, marking with paint, tagging, or otherwise identifying any tree or other vegetative resources on BLM-administered lands in a manner similar to that employed by BLM employees to mark or designate a tree or other vegetative resources for cutting, removal, or transportation.

(5) Transporting timber or other vegetative resources without a valid haul ticket that pertains to the material in question, except as authorized by Federal law or regulation.

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(6) Except as authorized by Federal law or regulation, purchasers or their designated representatives, while engaging in any activity connected with the harvest or removal of forest products, failing to have in their possession and/or failing to produce any required permit or forest product sale contract for inspection upon demand by a BLM employee or any official of a cooperating law enforcement agency acting within his or her designated authority as a sale inspector, administrator, contracting officer, or law enforcement officer.

(7) Violating any State or local laws and ordinances relating to local permits, tagging, and transportation of timber, trees, or other vegetative resources.

(8) Violating any of the provisions regulating export and substitution contained in subparts 5400, 5403, and 5420 of this title.

(9) Obtaining any forest product sale contract or permit or taking any timber, trees, or other vegetative resources through falsifying, concealing, or covering up by any trick, scheme, or device a material fact, or making any false, fictitious, or fraudulent statement or representation, or making or using a false, fictitious, or fraudulent statement or entry, including altering any forest product sales contract or permit or using an unauthorized reproduction of any official load tag.

(10) Negligent or intentional destruction of or injury to any timber or other vegetative resource during operations under a forest product sale contract or permit.

[60 FR 50450, Sept. 29, 1995]

### § 5462.3 Penalties.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any individual who knowingly and willfully commits the prohibited acts under § 5462.2(b) is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than \$100,000 in accordance with the applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C.



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3551 *et seq.*), or imprisonment not to exceed 12 months, or both, for each offense, and any organization that commits these prohibited acts is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than \$200,000.

[60 FR 50450, Sept. 29, 1995]

### Subpart 5463—Expiration of Time for Cutting and Removal

#### § 5463.1 Time for cutting and removal.

Time for cutting and removal of timber or other vegetative resources sold shall not exceed a period of thirty-six months except that such time for cutting and removal may be extended as provided in subpart 5473.

[35 FR 9787, June 13, 1970, as amended at 56 FR 33832, July 23, 1991]

## PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

### Subpart 5473—Extension of Time for Cutting and Removal

Sec.

5473.1 Application.  
5473.4 Approval of request.  
5473.4-1 Reappraisal.

#### Subpart 5474—Contract Assignment

5474.1 Conditions; general.

AUTHORITY: 30 U.S.C. 601; 43 U.S.C. 1181e and 1740.

SOURCE: 35 FR 9787, June 13, 1970, unless otherwise noted.

### Subpart 5473—Extension of Time for Cutting and Removal

#### § 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

[57 FR 37477, Aug. 19, 1992]

#### § 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without

his fault or negligence, the contracting officer may grant an extension of time, upon written request by the purchaser. Such extension will not exceed one year, and will require an appraisal, if the delay was not imposed by the United States or any State government agency as provided by paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request by the purchaser.

(b) Notwithstanding the provisions of paragraph (a) of this section requiring reappraisal if the delay was not imposed by the United States or any State government under paragraph (c) of this section, the contracting officer may grant an extension of time, without reappraisal, not to exceed enough time to provide 30 days of operating time, if the delay was due to causes beyond the purchaser's control and without his fault or negligence. No additional extensions may be granted without reappraisal under the provisions of this paragraph.

(c) On a showing that the purchaser performed as the average prudent operator would be expected to perform in a like time period prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

(3) Reviews for cultural resource values;

(4) Court injunctions obtained by parties outside the contract; or

(5) Closure of operations by State fire protection agencies due to fire danger.

(d) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal lands timber that

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has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objectives. The State Director may also waive reappraisal for such extension.

[57 FR 37477, Aug. 19, 1992, as amended at 57 FR 62235, Dec. 30, 1992]

### § 5473.4-1 Reappraisal.

(a) If an extension is granted under § 5473.4(a), reappraisal by the contracting officer of the material sold will be in accordance with this section.

(b) For a cruise sale the timber remaining on the contract area shall be reappraised for the purpose of computing the reappraised total purchase price. The reappraised total purchase price shall not be less than the total purchase price established by the contract or last extension. The authorized officer may require that the reappraised total purchase price shall be paid in advance as a condition of granting an extension.

(c) For a scale sale each species of timber remaining on the contract area shall be reappraised. The reappraised unit price for each species shall be effective for the remaining life of the contract: *Provided, however*, The reappraised unit price for each species shall not be less than the unit price established by the contract or previous extension.

[52 FR 42587, Nov. 5, 1987 and 53 FR 31002, Aug. 17, 1988, as amended at 56 FR 33833, July 23, 1991; 57 FR 37477, Aug. 19, 1992]

## Subpart 5474—Contract Assignment

### § 5474.1 Conditions; general.

(a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State in which the timber or other vegetative resource is located; (2) submits such information as

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is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by subpart 5451 of this chapter or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

## Group 5500—Nonsale Disposals

### PART 5500—NONSALE DISPOSALS; GENERAL

#### Subpart 5500—Nonsale Disposals; General

Sec.

5500.0-3 Authority.

5500.0-5 Definitions.

SOURCE: 35 FR 9789, June 13, 1970, unless otherwise noted.

#### Subpart 5500—Nonsale Disposals; General

AUTHORITY: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 423.

#### § 5500.0-3 Authority.

(a) The Act of July 31, 1947 (61 Stat. 681), as amended by the Acts of July 23, 1955 (69 Stat. 367, 30 U.S.C. 601 *et seq.*) and the Act of September 25, 1962 (76 Stat. 587) authorizes the disposal of timber and other vegetative resources on public lands of the United States including lands embraced within an unpatented mining claim located after July 23, 1955, if the disposal of such resources is not otherwise expressly authorized by law including, but not limited to, the Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315 through 315o-1), as amended, and the United States mining laws; is not expressly prohibited by laws of the United States; and would not be detrimental to the public interest.

(1) The Act also authorizes the United States, its permittees, and licensees to use so much of the surface of any unpatented mining claim located

under the mining law of the United States after July 23, 1955, as may be necessary for access to adjacent land for the purposes of such permittees or licensees. Any authorized use of the surface of any such mining claim shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.

(2) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this subpart only with the consent of such other Federal department or agency or of such State, or local governmental unit. The Act of July 23, 1955, supra, provides, however, that the Secretary of Agriculture shall dispose of materials under the Act of July 31, 1947, as amended, supra, if such materials are on lands administered by the Secretary of Agriculture for national forest purposes or for purposes of Title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture.

(3) The provisions of the Act of July 23, 1955, supra, in disposal of vegetative or mineral materials do not apply to lands in any national park, or national monument or to any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

#### § 5500.0-5 Definitions.

Except as the context may otherwise indicate, as the terms are used in parts 5500 through 5520 of this chapter and in contracts issued thereunder:

(a) *Bureau* means the Bureau of Land Management, Department of the Interior.

(b) *Director* means the Director of the Bureau of Land Management.

(c) *Authorized Officer* means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

(d) *O. and C. Lands* means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the Act of August 28, 1937 (50 Stat. 874).

(e) *Public Lands* means the public domain and its surface resources under the jurisdiction of the Bureau of Land Management.

(f) *Timber* means standing trees, downed trees or logs which are capable of being measured in board feet.

(g) *Other vegetative resources* means all vegetative material which cannot be measured in units of board feet of timber.

## PART 5510—FREE USE OF TIMBER

### Subpart 5510—Free Use of Timber; General

Sec.

5510.0-3 Authority.

### Subpart 5511—Free Use Regulations

5511.1 Act of 1878.

5511.1-1 Free use of timber on mineral and nonmineral public lands.

5511.1-2 [Reserved]

5511.1-3 Use of timber on lands covered by grazing leases, by lessees, and others.

5511.2 Act of 1898 (Alaska).

5511.2-1 Free use privilege; cutting by agent.

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5511.2-3 Permits.

5511.2-4 Timber on withdrawn lands.

5511.3 Act of 1947.

5511.3-1 Free use of timber under other statutes.

5511.3-2 Permits.

5511.3-3 Conservation practices.

5511.3-4 Removal by agent.

5511.3-5 Removal of improvements.

5511.3-6 Permits to governmental units.

5511.3-7 Permits to non-profit organizations.

5511.3-8 Permits to mining claimants.

5511.4 Prohibited acts.

5511.5 Penalties.

AUTHORITY: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, R.S. 2478, sec. 32, 41 Stat. 450; 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 48 U.S.C. 423, 43 U.S.C. 1201, 30 U.S.C. 189.

SOURCE: 35 FR 9790, June 13, 1970, unless otherwise noted.

### Subpart 5510—Free Use of Timber; General

#### § 5510.0-3 Authority.

(a) *Nonsale disposals Act of June 3, 1878.* (1) Authority for free use of timber on mineral and nonmineral public lands. Section 5511 is issued under authority of the Act of June 3, 1878 (20 Stat. 88; 16 U.S.C. 604 through 606) and March 3, 1891 (26 Stat. 1093; 16 U.S.C. 607), as supplemented by the Act of January 11, 1921 (41 Stat. 1088; 16 U.S.C. 604, 612), settlers upon public lands, citizens and *bona fide* residents of the State, and corporations doing business in the State may obtain free use permit for timber.

(2) Authority for the issuance of regulations governing the free use of timber for fuel in drilling operations by oil and gas lessees is contained in section 32 of the Act of February 25, 1920 (41 Stat. 405; 30 U.S.C. 189).

CROSS REFERENCE: For additional free use privileges, see § 5511.3.

(b) *Nonsale disposals Act of July 23, 1955.* The Act of July 23, 1955, *supra*, authorizes the Secretary of the Interior in his discretion to permit free use of timber or other vegetative resources or mineral materials by any Federal or State governmental agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit for use other than for commercial or industrial purposes or resale. The Act of July 23, 1955, *supra*, also provides in part, under certain circumstances, for a mining claimant to obtain free-use of timber from other Bureau administered land in lieu of timber disposed of by the Bureau from lands covered by his mining locations. See § 5511.3-8.

(c) *Nonsale disposals Act of May 14, 1898.* Section 5511.2 is issued under the authority of section 11, 30 Stat. 414, as amended; 48 U.S.C. 423. Section 5511.2 appears at 19 FR 8880, Dec. 23, 1954. (1) Section 11 of the Act of May 14, 1898 (30 Stat. 414; 48 U.S.C. 423), empowers the Secretary of the Interior to permit the use of timber found upon the public lands in Alaska by actual settlers residents, individual miners, and prospectors for minerals for firewood, fencing, buildings, mining, prospecting, and

for domestic purposes as may actually be needed by such persons for such purposes. This section was amended by the Act of June 15, 1938 (52 Stat. 699), so as to permit the use of such timber by churches, hospitals, and charitable institutions for firewood, fencing, buildings, and for other domestic purposes.

### Subpart 5511—Free Use Regulations

#### § 5511.1 Act of 1878.

##### § 5511.1-1 Free use of timber on mineral and nonmineral public lands.

(a) *Lands on which timber may be cut.* Free-use permits to cut timber may be issued covering public lands as follows:

(1) Mineral lands, unoccupied and unreserved and not subject to entry under existing laws of the United States, except for mineral entry, in the States of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. (Act of June 3, 1878, 20 Stat. 88; 16 U.S.C. 604 through 606);

(2) Nonmineral, unoccupied, and unreserved public lands in the States mentioned and also in the States of California, Oregon, and Washington.

(b) *Kind of timber which may be cut.* The proper protection of the timber and undergrowth necessarily varies with the nature of the topography, soil, and forest. No timber not matured may be cut, and each tree taken must be utilized for some beneficial domestic purpose. Persons taking timber for specific purposes will be required to take only such matured trees as will work up to such purpose without unreasonable waste. Stumps will be cut so as to cause the least possible waste and all trees will be utilized to as low a diameter in the tops as possible. All brush, tops, logs, and other forest debris made in felling and removing timber under this section shall be disposed of as best adapted to the protection of the remaining growth and in such manner as shall be prescribed by the authorized officer, and failure on the part of the applicant, or an agent cutting for an

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applicant, to comply with this requirement will render him liable for all expenses incurred by the authorized officer in putting this regulation into effect.

(c) *Area of land to be cut over.* The permits shall limit the area of cutting to embrace only so much land as is necessary to produce the quantity of timber applied for.

(d) *Use which may be made of timber.* Timber may be cut under approved permit when actually needed for firewood, fencing, building, or other agricultural, mining, manufacturing, and domestic purposes.

(e) *Exportation of timber.* Timber may not be exported from the State in which it is cut except:

(1) Timber from a specified area in Wyoming may be exported into Idaho (Act of July 1, 1898, 30 Stat. 618; 16 U.S.C. 607, 611);

(2) Timber from a specified area in Montana may be exported into Wyoming (Act of March 3, 1901, 31 Stat. 1439; 16 U.S.C. 607, 613);

(3) Under the Act of March 3, 1919 (40 Stat. 1321; 16 U.S.C. 608), citizens of Malheur County, Oregon, may cut timber in Idaho and remove such timber to Malheur County, Oregon;

(4) Under the Act of March 3, 1919 (40 Stat. 1322; 16 U.S.C. 609), citizens of Modoc County, California, may cut timber in Nevada and remove such timber to Modoc County, California;

(5) Timber from a specified area in Arizona may be exported into Utah (Act of February 27, 1922, 42 Stat. 398; 16 U.S.C. 610);

(6) Citizens of Bear Lake County, Idaho, may cut timber from public lands in Lincoln County, Wyoming, and remove such timber to Bear Lake County, Idaho, but no live standing timber may be taken without compensation (Act of August 21, 1935, 49 Stat. 665; 16 U.S.C. 611a).

(f) *Application and permit—(1) Information to be furnished by applicant.* (i) Applications should be filed in duplicate and should set forth the names and post-office addresses of the applicants, and any agent or agents who may be employed to procure the timber. Where a corporation is the applicant, the State in which it was incorporated should also be shown.

(ii) Blank forms for making application may be procured from the State Director for the State in which the timber to be removed is located.

(iii) Applications should show the amount of timber required by each applicant; the use to be made thereof; a description of the land from which the timber is to be cut, by subdivision, section, township, and range, if surveyed, or by natural objects sufficient to identify the same if unsurveyed; and the date it is desired to begin cutting.

(2) *Duration of permit.* All rights and privileges under a permit shall terminate at the expiration of the period of 1 year from the date of approval of the permit.

(g) *Agents—(1) Cutting of timber by agents.* Where one or more persons desire timber, and are not in a position to procure the same for themselves, an agent or agents may be appointed for that purpose. Such agent shall not be paid more than a fair recompense for the time, labor, and money expended in procuring the timber and manufacturing the same into lumber, and no charge shall be made for the timber itself. The said compensation must be set forth in a written contract to be entered into by the parties, and a copy thereof must be filed with the application.

(2) *Cutting of timber by agent who is a sawmill operator.* If the amount of timber applied for exceeds \$50 in stumpage value, for any continuous period of 12 months, and the timber is to be procured by an agent who is a sawmill operator, a bond equal to three times the amount of the stumpage value of the timber applied for will be required, conditioned upon the faithful performance of the requirements.

[35 FR 9790, June 13, 1970, as amended at 60 FR 50450, Sept. 29, 1995]

### § 5511.1-2 [Reserved]

### § 5511.1-3 Use of timber on lands covered by grazing leases, by lessees, and others.

(a) Before taking timber under a lease issued under section 15 of the Taylor Grazing Act, as amended by the Act of June 26, 1936 (49 Stat. 1978; 43 U.S.C. 315m), the lessee should file application for and procure a permit in

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accordance with the regulations issued under the Acts of June 3, 1878 (20 Stat. 88; 16 U.S.C. 604 through 606), and March 3, 1891 (26 Stat. 1093; 16 U.S.C. 607), §§ 5510.0-3(a) and 5511.1-1(a) to 5511.1-1(g).

(b) Where application is made by a person other than the lessee to take timber from lands embraced in a grazing lease issued under section 15 of the said Act, investigation should be made to ascertain the facts in the case and whether or not the cutting of the timber applied for would adversely affect the lands for grazing purposes. If no objection appears, the permit may issue but should contain a provision that the timber cutting thereunder must be done in such manner as will not interfere with the rights of the lessee.

(c) All applications for timber should be filed with the State Director for the State in which the timber to be cut is located and should comply with the regulations contained in § 5511.1-1.

(Sec. 1, 20 Stat. 88, as amended, 26 Stat. 1003, as amended; 16 U.S.C. 604, 607)

### § 5511.2 Act of 1898 (Alaska).

#### § 5511.2-1 Free use privilege; cutting by agent.

Free use permits will not be issued where the applicant owns or controls lands having an adequate supply of timber to meet his needs.

[35 FR 9790, June 13, 1970, as amended at 60 FR 50451, Sept. 29, 1995; 62 FR 51377, Oct. 1, 1997]

#### § 5511.2-2 Free use of timber for Government purposes.

Persons contracting with Government officials to furnish firewood or timber for United States Army posts or for other authorized Government purposes may procure it from the vacant and unreserved public lands in Alaska free of charge, provided the contracts do not include any charge for the value of the firewood or timber. Where it is desired to procure timber for such use, an application for permit in duplicate on a form approved by the Director must be filed, as in other cases, and a copy of the contract must be attached to the application.

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### § 5511.2-3 Permits.

(a) *Application for permit.* Before timber is cut for free use, an application for permit in duplicate on a form approved by the Director must be filed in an office or with an employee of the Bureau of Land Management in Alaska.

(b) *Issuance and cancellation of permit; removal of timber; bond.* (1) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of the official form shall be returned to the applicant showing the approval or rejection of such application.

(2) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or the regulations in §§ 5511.2-1 to 5511.2-6, or if the permit has been issued erroneously.

(3) No timber shall be removed until the permit is issued. If deemed necessary by the signing officer, a bond, satisfactory to him, may be required as a guarantee of faithful performance of the provisions of the permit and the regulations in §§ 5511.2-1 to 5511.2-6.

(c) *Cutting rules and restrictions.* All free-use timber shall be cut and removed in accordance with approved forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources. In the free-use disposal of timber, the cutting and removal shall be accomplished in such manner as to leave the stand in condition for continuous production. Moreover, no green timber shall be cut within 300 feet of either side of the center line of a highway or public road, or bordering streams or the shores of lakes designated for recreational use unless specifically authorized by the authorized officer, to prevent or control fungus infection or insect attacks, or for other reasons found sufficient to justify such cutting.

(d) *Amount of timber which may be cut.* During each calendar year each applicant entitled to the benefits of section 11 of the Act of May 14, 1898, may take a total of 100,000 feet board measure or 200 cords in saw logs, piling, cordwood, or other timber. This amount may be

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taken in whole in any one of such classes of timber or in part of one kind and in part of another kind or other kinds. Where a cord is the unit of measure, it shall be estimated in relation with saw timber in the ratio of 500 feet board measure to the cord. Permits to take timber in excess of the amount stated may be granted to churches, hospitals, and charitable institutions upon a showing of special necessity therefor, and with the approval of the authorized officer.

(e) *Notice of completion of timber cutting operations.* Upon completion of the cutting and the removal of the timber, the permittee must notify the State Director, or other forest officer, stating when the work was completed, the land from which the timber was taken, the amount and kind of timber which was cut and removed, and the use to which the timber was put.

(f) *Termination of permit; extensions.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the signing officer.

### § 5511.2-4 Timber on withdrawn lands.

Sections 5511.2-1 to 5511.2-5 are inapplicable to timber on withdrawn areas unless the order of withdrawal so permits.

[35 FR 9790, June 13, 1970, as amended at 60 FR 50451, Sept. 29, 1995]

### § 5511.3 Act of 1947.

#### § 5511.3-1 Free use of timber under other statutes.

Free use will be allowed under the following circumstances:

(a) In certain States by settlers on public lands, citizens and *bona fide* residents of the State, and corporations doing business in the State (§5511.1), and

(b) In Alaska by actual settlers, residents, individual miners, prospectors for minerals, churches, hospitals and charitable institutions (§5511.2).

(c) Free-use of timber by Governmental units, nonprofit organizations, and certain mining claimants may be authorized under the act and these regulations only when such applicants

cannot qualify under the provisions of §§ 5511.1 to 5511.1-4 and § 5511.2.

#### § 5511.3-2 Permits.

(a) *Application for permit.* An application for permit in duplicate, must be made on a form approved by the Director and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit. A free-use permit may be applied for without formal application for the removal of not more than three Christmas trees upon oral or written request.

(b) *Issuance and cancellation of free-use permits; bond.* (1) A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of timber. Free-use permits shall not be issued when the applicant owns or controls an adequate supply of the material to meet his needs. Timber applied for must be for the applicant's own use and may not be bartered or sold. No timber may be cut or removed until the permit is issued.

(2) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions or the regulations, or if the permit has been issued erroneously.

(3) A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

(4) A free-use permit issued under this part may not be assigned.

(c) *Duration, extension, and termination of permit.* (1) Permits shall be granted for periods not to exceed 6 months and shall terminate on the expiration dates shown therein unless extended by the authorized officer. An extension not to exceed 3 months may be granted by the authorized officer. The permittee must notify the officer-in-charge upon the completion of removal.

(2) Permits issued for the benefit of a mining claimant under authority of the act shall terminate upon transfer of the ownership of the claim by any means. Reapplication must be made by the new claimants.

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#### § 5511.3-3 Conservation practices.

All free-use timber disposed of under the act shall be severed, or removed in accordance with sound forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed and other values of the land and resources. In the free-use disposal of timber, cutting and removal shall be accomplished in such a manner as to leave the stand in condition for continuous production.

#### § 5511.3-4 Removal by agent.

A free-use permittee may procure the timber by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor and money expended in procuring timber and processing it, and no charge shall be made by such agent for the timber itself. No part of the timber may be used in payment for services in obtaining it or processing it.

#### § 5511.3-5 Removal of improvements.

Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property and any improvements he has placed on the land, except roads, culverts and bridges are to be left in place, in good condition and will become the property of the United States upon expiration of the 90-day removal period.

#### § 5511.3-6 Permits to governmental units.

A free-use permit may be issued to a Federal or State agency, unit, or subdivision, including a municipality, only if the applicant makes a satisfactory showing to the authorized officer that such timber will be used for a public project. The right to remove timber under the permit is not revoked or terminated by (a) any subsequent claim or entry of the lands, (b) by any mining claim located prior to the issuance of the permit if such location was subsequent to July 23, 1955, nor (c) by any other mining claim as to which the Government's right to manage the surface resources has been established in accordance with Group 3800 of this chapter, or other proceedings.

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#### § 5511.3-7 Permits to nonprofit organizations.

A free-use permit issued to a nonprofit association or corporation may not provide for the disposition of more than \$100 worth of timber to the permittee during any one calendar year. Such permittee is granted a right to remove timber as against a subsequent applicant who may wish to obtain the same timber by purchase. The timber may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, or similar rights obtained under the public land laws.

#### § 5511.3-8 Permits to mining claimants.

(a) Free-use timber shall be granted under § 5510.0-3(b) to the record owner of a valid mining claim if such claim was located subsequent to July 23, 1955, or if the Government's right to manage the surface resources has been established in accordance with Group 3400 of this chapter, and he requires more timber than is available to him for prospecting, mining, or processing operations on his claim or claims after disposition of timber from his claim by the United States. The claimant shall be entitled to the free use of timber for such requirements from the nearest timber administered by the Bureau which is substantially equal in kind and quantity to the timber estimated by the authorized officer at the time of application to have been disposed of by the Bureau from the claim. Upon issuance of a patent to the mining claims, the free-use privilege will automatically terminate.

(b) The application required to be filed for free-use timber under this section must contain a statement that the timber applied for will be used for *bona fide* prospecting, mining, or prospecting operations on the claim or group of claims designated in the application. The applicant must also include a statement that he is the record owner of a valid mining claim or claims from which the timber was originally removed by the Government.

#### § 5511.4 Prohibited acts.

(a) In addition to the prohibited acts listed in § 5462.2, the acts or omissions



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listed in paragraph (b) will render the person(s) responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally.

(b) The following acts are prohibited:

(1) Obtaining any free use permit or taking any timber, trees, or other vegetative resources through falsifying, concealing, or covering up by any trick, scheme, or device a material fact, or making any false, fictitious, or fraudulent statements or representations, or making or using any false, fictitious or fraudulent statement or entry, including altering of any free use permit or using a reproduction of any official load tags.

(2) [Reserved]

(3) Violating any of the terms and conditions of a free use permit.

(4) Exporting timber cut under a free use permit from the State in which it was cut, except as provided in § 5511.1-1(e).

(5) The cutting of timber under a free use permit for sale, barter, speculation, or use by others than the permittee.

[60 FR 50451, Sept. 29, 1995, as amended at 62 FR 51377, Oct. 1, 1997]

**§ 5511.5 Penalties.**

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any individual who knowingly and willfully commits the prohibited acts under § 5511.4(b) is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than \$100,000, or not more than \$250,000 if commission of the prohibited acts results in death, in accordance with the applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 *et. seq.*), or imprisonment not to exceed 12 months, or both, for each offense, and any organization that commits these prohibited acts is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than \$200,000, or not more than \$500,000 if commission of the prohibited acts results in death.

[60 FR 50451, Sept. 29, 1995]