

§ 163.12

growth and harvest at the earliest practical time.

§ 163.12 Harvesting restrictions.

(a) Harvesting timber on commercial forest land will not be permitted unless provisions for natural and/or artificial reforestation of acceptable tree species is included in harvest plans.

(b) Clearing of large contiguous areas will be permitted only on land that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally appropriate, based on ecological principles, to harvest a particular stand of timber by such method and it otherwise conforms with objectives in § 163.3 of this part.

§ 163.13 Indian tribal forest enterprise operations.

Indian tribal forest enterprises may be initiated and organized with consent of the authorized tribal representatives. Such enterprises may contract for the purchase of non-Indian owned forest products. Subject to approval by the Secretary the following actions may be taken:

(a) Authorized tribal enterprises may enter into formal agreements with tribal representatives for the use of tribal forest products, and with individual beneficial Indian owners for their forest products;

(b) Authorized officials of tribal enterprises, operating under approved agreements for the use of Indian-owned forest products pursuant to this section, may sell the forest products produced according to generally accepted trade practices;

(c) With the consent of the beneficial Indian owners, such enterprises may, without advertisement, contract for the purchase of forest products on Indian land at stumpage rates authorized by the Secretary;

(d) Determination of and payment for stumpage and/or products utilized by such enterprises will be authorized in accordance with § 163.22. However, the Secretary may issue special instructions for payment by methods other than those in § 163.22 of this part; and

(e) Performance bonds may or may not be required in connection with op-

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erations on Indian land by such enterprises as determined by the Secretary.

§ 163.14 Sale of forest products.

(a) Consistent with the economic objectives of the tribe and with the consent of the Secretary and authorized by tribal resolution or resolution of recognized tribal government, open market sales of Indian forest products may be authorized. Such sales require consent of the authorized representatives of the tribe for the sale of tribal forest products, and the owners of a majority Indian interest on individually owned lands. Open market sales of forest products from Indian land located off reservations will be permitted with the consent of the Secretary and majority Indian interest of the beneficial Indian owner(s).

(b) On individually owned Indian forest land not formally designated for retention in its natural state, the Secretary may, after consultation, sell the forest products without the consent of the owner(s) when in his or her judgment such action is necessary to prevent loss of value resulting from fire, insects, diseases, windthrow or other catastrophes.

(c) Unless otherwise authorized by the Secretary, each sale of forest products having an estimated stumpage value exceeding \$15,000 will not be approved until:

(1) An examination of the forest products to be sold has been made by a forest officer; and

(2) A report setting forth all pertinent information has been submitted to the approving officer as provided in § 163.20 of this part.

(d) With the approval of the Secretary, authorized beneficial Indian owners who have been duly appraised as to the value of the forest products to be sold, may sell or transfer forest products for less than the appraised value.

(e) Except as provided in § 163.14(d) of this part, in all such sales, the forest products shall be appraised and sold at stumpage rates not less than those established by the Secretary.

§ 163.15 Advertisement of sales.

Except as provided in §§ 163.13, 163.14, 163.16, and 163.26 of this part, sales of

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forest products shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the instrument of sale. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a non-member. If the estimated stumpage value of the forest products offered does not exceed \$15,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds \$15,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the forest products are situated. If the estimated stumpage value does not exceed \$50,000, the advertisement shall be made for not less than 15 days; if the estimated stumpage value exceeds \$50,000 but not \$250,000, for not less than 30 days; and if the estimated stumpage value exceeds \$250,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed period.

(c) If no instrument of sale is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such forest products. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

§ 163.16 Forest product sales without advertisement.

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually

owned Indian land, and the approval of the Secretary when:

(1) Forest products are to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) Tribal forest products are to be purchased by an Indian tribal forest enterprise;

(4) It is impractical to secure competition by formal advertising procedures;

(5) It must be cut to protect the forest from injury; or

(6) Otherwise specifically authorized by law.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is a type allowing use of negotiation procedures;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

§ 163.17 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of Indian forest products. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than \$100,000 and in any event not less than \$1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is \$100,000 to \$250,000 but in any event not less than \$10,000; and

(3) Three (3) percent if the appraised stumpage value exceeds \$250,000 but in any event not less than \$12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable as specified in the advertisement, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained