

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations that were published in the **Federal Register** on Wednesday, March 23, 2005, (70 FR 14561). The regulations related to cooperating agencies and cooperating agency status.

**DATES:** Effective on April 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Robert Winthrop at (202) 452-6597 or Mark Lambert at (202) 452-7763.

**SUPPLEMENTARY INFORMATION:**

### Background

#### *Need for Correction*

As published, the final regulations contain errors which may prove to be misleading and need to be clarified. The final regulations stated the corrections in singular form when some of the actual regulation text was in plural form. We need to make these corrections so that all of the necessary changes appear in the Code of Federal Regulations.

### List of Subjects in 43 CFR Part 1600

Administrative practice and procedures, Environmental Impact Statements, Indians, Intergovernmental relations, Public lands.

■ Accordingly, 43 CFR part 1600 is corrected by making the following correcting amendments:

### PART 1600—PLANNING, PROGRAMMING, BUDGETING

■ 1. The authority citation for part 1600 continues to read as follows:

**Authority:** 43 U.S.C. 1711–1712.

#### § 1610.1 [Corrected]

■ 2. Section 1610.1(a)(1) is amended by removing the misspelled word “suct” and add in its place the word “such.”

#### § 1610.1 Resource management planning guidance [Amended]

■ 3. Amend § 1610.1(a)(1) and (b) by revising the phrases “resource area” and “resource areas” to read “resource or field office area” and “resource or field office areas”, respectively.

#### § 1610.2 [Amended]

■ 4. Amend § 1610.2(j) by removing the phrase “District or Area Manager” and adding the phrase “Field Manager” and removing the phrase “Area or Field Manager” and adding the phrase “Field Manager.”

#### § 1610.3–1 [Amended]

■ 5. Amend § 1610.3–1 by removing the phrase “District Managers” from

paragraph (d) introductory text and adding in its place the phrase “Field Manager.”

Dated: May 11, 2005.

**Ian Senio,**

*Acting Group Manager, Regulatory Affairs.*

[FR Doc. 05–10015 Filed 5–19–05; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 48 CFR Parts 1437 and 1452

**RIN 1084–AA00**

#### Woody Biomass Utilization

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule converts an interim final rule to a final rule, with minor adjustments in response to public comment. In addition, the numbering scheme was revised to conform to the existing regulatory structure. As a result of this rulemaking, Department of the Interior will allow service contractors to remove woody biomass generated as a result of land management service contracts whenever ecologically appropriate and in accordance with applicable law.

**DATES:** *Effective Date:* May 20, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Delia Emmerich, Office of Acquisition and Property Management, Department of the Interior at (202) 208–3348, or e-mail at [Delia\\_Emmerich@os.doi.gov](mailto:Delia_Emmerich@os.doi.gov). Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:** On August 27, 2004, the Department published an interim final rule with request for comments at 69 FR 52607; the interim rule established procedures to allow service contractors to remove woody biomass generated as a result of land management service contracts whenever ecologically appropriate and in accordance with applicable law. This publication revises that rule in response to public comments. This rule establishes consistent and efficient procedures to allow contractors the option to remove woody biomass by-products from Department of the Interior land management activities. This option, where ecologically appropriate, will provide economic and social benefits by creating jobs and conserving natural resources. Removal or use of woody biomass will reduce

smoke and emissions from prescribed and natural fires; preserve landfill capacities, reduce the threat of catastrophic wildfires to communities and public/private utilities; improve watershed and wildlife habitat protection; and improve forest, woodland, and rangeland health.

This final rule, while substantially the same as the interim final rule published on August 27, 2004, contains minor changes to respond to comments and to improve clarity. It is also reformatted to move the required contract clause to Part 1452 of 48 CFR.

### I. Response to Public Comments

We received several comments from two sources. Our response to each comment follows, in order by section. The discussion of the comments shows the former section title and number, followed by the revised section number and (if different) title.

#### *Section 1437.100 General (New § 1437.7200)*

*Comment:* The woody biomass should stay where it is.

*Response:* The fundamental method of addressing forest health and hazardous fuel reduction strategies under the National Fire Plan and Healthy Forests Initiative is to remove small diameter trees. Contractors are cutting the trees to meet resource objectives. The removal is incidental to the project. The projects would occur whether or not there was an option for removal. The Rule simply makes these materials available for removal by contractors, rather than disposal through burning or other on-site disposal methods.

*Comment:* I oppose allowing the contractors to damage and destroy this area for their own enrichment.

*Response:* Contractors have been secured to provide a service to the federal agency, which includes the cutting or destruction of vegetation to meet a prescribed management objective, such as thinning small trees to improve forest growth or clearing of roads and building sites. Projects under Rule are developed under the requirements of the National Environment Policy Act, which is designed to “prevent or eliminate damage to the environment \* \* \*” If damage beyond that anticipated in the NEPA analysis were to occur, by design this would be accidental. By the nature of these projects, the removal of the low-value biomass has very little if any commercial value. If the biomass had commercial value, the project would most likely be a timber/vegetative sales contract offering unrelated to the

procurement regulations covered under this Rule.

*Comment:* There does not need to be any immediate need to rush through this plundering. I think the rush is to try to make it escape from public view. The Administrative procedure act calls for public input. I ask for extension of the time for the public to comment instead for a 90-day period.

*Response:* Urgent and immediate actions are called for under the National Fire Plan Hazardous Fuel Reduction Program. Thousands of projects are taking place every year. This Rule will make the by-products from these treatments immediately available. Removal of the biomass, in most cases, is preferable to leaving the material in the woods. Removal will reduce the threat of escaped wildfires from burning the material, reduce air pollution, and stimulate jobs for the local economy. Only two comments were received during the public comment period, one of which was from a federal agency. The Rule does not appear to be controversial, complex, or require additional analysis such that a 90-day comment period is necessary. No additional comments were received after closure of the official public comment period.

*Comment:* There is no "threat".

*Response:* The **Federal Register** of August 17, 2001 (66 FR 43435) includes 11,376 communities within the vicinity of Federal lands that are at high risk to wildfire. This list was jointly developed by States, tribes, and Federal agencies. The 2004 wildfire season, as well as the 2000 and 2002 seasons, are well above the 10-year average for acres burned due to wildfires. The trend for larger, more damaging fires has been increasing, with little relief in sight. The Congress, the Administration, and the States have made a national and local priority of addressing wildfire threats.

*Comment:* This rule will have an effect of \$100 million and therefore has a significant economic effect.

*Response:* Optimistic projections of woody biomass removal under the National Fire Plan, the largest and most active vegetation management program in the Federal government, could include the removal of approximately 7 million green tons per year. At the minimum rate of \$0.10 per green ton, or even an optimistic \$0.25 to \$0.50 per green ton, this represents less than \$5 million.

*Comment:* NEPA plans must be prepared and the public must be allowed to comment.

*Response:* As specific in the Interim Rule, "Federal agencies should consider the environmental effects of woody

biomass utilization in each project where woody biomass utilization is appropriate and make a determination of significance for the project." This would include, where appropriate, a public comment solicitation and a public record of decision. It is not necessary, nor in the best interest of the public, to delay implementation in order to prepare an environmental impact statement.

#### *Section 1437.104 Definitions (New § 1437.7203)*

*Comment:* The definition of "ecologically appropriate" states, "where the Deciding Officer and/or Contracting Officer determines it is not necessary to retain specific woody material \* \* \*" Only the Deciding Officer (Field Manager or other responsible line officer) will make this decision.

*Response:* The Responsible Official for the NEPA document makes the decision to include or not include woody biomass removal. The procurement Contracting Officer decides whether to include the clause from § 1452.237-71 in the solicitation or service contract, presumably in consultation with the Responsible Official. The timber/vegetative sales contract, if required, may be executed by the timber/vegetative sales Contracting Officer with the delegated authority to dispose of forest products, per Bureau policies. Clarification has been included in the final rule.

## **II. Procedural Matters**

### *1. Regulatory Planning and Review (E.O. 12866)*

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal communities. The contractors and the general public are not required to perform services or process materials' woody products will be removed and compensated, if appropriate, at fair market value as agreed upon.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This policy only applies to Department of the Interior Bureaus; other agencies and governments could positively benefit from the development of small-wood markets and any tax or economic rewards.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The contractor will be provided a new option, if executed, which is exclusive of other rights and benefits.

(4) This rule does not raise novel legal or policy issues. This policy uses existing authorities within existing policies.

### *2. Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The scope of the action is minor (less than \$100 million in economic impact); the benefits of the rule are to the contractor and may be exercised at their discretion.

### *3. Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. The woody by-products have limited economic value (small diameter, low trees and woody material), are unused or underutilized in current market conditions, and/or are by nature, incidental by-products.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The quantities are small in size and amounts, are widely scattered across the nation, and are low-value products.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The policy would increase U.S.-based economic opportunities, employment, innovation, and conservation of energy and resources.

### *4. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### 5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No rights, property or compensation has been, or will be taken. A takings implication assessment is not required.

### 6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule grants optional rights and increased economic opportunities to individuals, States, local governments, and Tribes, in furtherance of section 2(h) of E.O. 13132. A federalism assessment is not required.

### 7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

### 8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, we have evaluated this rule and determined that it has no potential negative effects on federally recognized Indian tribes. We have fully considered tribal views in the final rule. We have consulted with the appropriate bureaus and offices of the Department about the potential effects of this rule on Indian tribes, including the Bureau of Indian Affairs.

### 9. Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

### 10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. Federal agencies should consider the environmental effects of woody biomass utilization in each project where woody biomass utilization is appropriate and make a determination of significance for that project.

#### List of Subjects

##### 48 CFR Part 1437

Government contracts, Forests and forest products, Wood, Fire prevention, Service contracting,

##### 48 CFR Part 1452

Government contracts, Forests and forest products, Wood, Fire prevention, Contract clause.

Dated: March 22, 2005.

**P. Lynn Scarlett,**

*Assistant Secretary—Policy, Management and Budget.*

■ For the reasons given in the preamble, the Department of the Interior hereby amends 48 CFR chapter 14 as set forth below.

#### PART 1437—[AMENDED]

■ 1. Part 1437 is revised to read as follows:

#### PART 1437—SERVICE CONTRACTING

##### Subpart 1437.72—Utilization of Woody Biomass

Sec.

1437.7200 General.

1437.7201 When can woody biomass be removed?

1437.7202 When is the biomass utilization clause required?

1437.7203 Definitions.

**Authority:** 30 U.S.C. 601–604, 611, as amended; 16 U.S.C. 668dd; 16 U.S.C. 1; 25 U.S.C. 3101 *et seq.*; 43 U.S.C. 1701 *et seq.*

##### Subpart 1437.72—Utilization of Woody Biomass

###### § 1437.7200 General.

This subpart establishes consistent and efficient procedures to allow contractors the option to remove woody biomass by-products from Department of the Interior land management activities where ecologically appropriate. If the woody biomass has fair market value and payment is required, or as required by regulation, Bureau policy or the Mineral Materials Disposal Act of 1947 (30 U.S.C. 601 *et seq.*) a separate timber/vegetative sales contract must be executed.

###### § 1437.7201 When can woody biomass be removed?

(a) The Department of the Interior allows and encourages contractors to remove and use woody biomass from project areas when:

(1) The biomass is generated during land management service contract activity; and

(2) Removal is ecologically appropriate.

(b) A contractor removing biomass under this part shall:

(1) Do so only within legal limits applicable to the contractor, including National Environmental Policy Act (NEPA) compliance; and

(2) If required, comply with the terms, conditions and special provisions of the

applicable timber/vegetative sales notice.

###### § 1437.7202 When is the biomass utilization clause required?

(a) The contracting officer must insert a clause reading substantially the same as § 1452.237–71 in each solicitation and contract that is expected to generate woody biomass that meets the criteria in § 1437.7201(a), unless biomass removal is required elsewhere in the contract.

(b) In addition, the contract will specify any limitations on types of woody biomass that may not be removed and any areas from which woody biomass must not be removed.

###### § 1437.7203 Definitions.

*Ecologically appropriate* means those situations where the Responsible Official determines it is not necessary to retain specific woody material or reserve specific areas from woody biomass removal to meet ecological objectives. For example, it may be necessary to retain snags or small woody debris to meet wildlife habitat objectives, or to create specific prescribed burning conditions to stimulate native plant development; therefore it would not be appropriate to allow removal of the specified woody biomass.

*Responsible Official* means the Secretary of the Interior or designee having the delegated authority to responsibility to:

(1) Oversee the planning process and make decisions to carry out a specific planning action;

(2) Render a National Environmental Policy Act decision; or

(3) Sign the authorizing environmental document.

*Timber/vegetative sales contract and/or notice* means the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other compensation for the payment, removal, and/or transportation of woody biomass material.

*Woody biomass* means the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.

*Woody biomass utilization or use* means the harvest, sale, offer, trade, and/or utilization of woody biomass to produce the full range of wood products, including timber, engineered lumber, paper and pulp, furniture and value-added commodities, and bio-energy and/or bio-based products such as plastics, ethanol and diesel.

**PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 2. The authority for part 1452 is revised to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 301; 30 U.S.C. 601–604, 611, as amended; 16 U.S.C. 668dd; 16 U.S.C. 1; 25 U.S.C. 3101, et seq.; 43 U.S.C. 1701, et seq.,

- 3. A New § 1437–237–71 is added to read as follows:

**§ 1452.237–71 Utilization of Woody Biomass.**

As prescribed in § 1437.7202, insert the following clause:

**Utilization of Woody Biomass**

1. The contractor may remove and utilize woody biomass, if:

(a) Project work is progressing as scheduled; and

(b) Removal is completed before contract expiration.

2. To execute this option, the contractor must submit a written request to the Government.

3. Following receipt of the written request, and if appropriate, the Government and the contractor will negotiate and execute a separate timber/vegetative sales contract. Payment under the timber/vegetative sales contract must be at a price equal to or greater than the appraised value of the woody biomass. The contractor must make any appropriate payment specified in the related timber/vegetative sales contract before removal may be authorized.

4. If required by law, regulation or Bureau policy, the Government will prepare a timber/vegetative sales notice and/or prospectus, including volume estimates, appraised value and any appropriate special provisions.

5. The contractor must treat any woody biomass not removed in accordance with the specifications in the service contract.

6. The sales contract and service contract are severable; default or termination under either contract does not remove the contractor from payment or performance obligations under the other contract.

**7. Definitions:**

*Timber/vegetative sales contract and/or notice* means the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other compensation for the payment, removal, and/or transportation of woody biomass material.

*Woody biomass* means the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.

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