

Bureau of Land Management, Interior

§ 5400.0-3

Group 5400—Sales of Forest Products

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

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AUTHORITY: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 2601, 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. 2601) 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(2) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State county, municipality, water district, or other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) Public Law 101-382 (104 Stat. 714) Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620) restrictions on exports of unprocessed timber originating from Federal lands.

(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).

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(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; 85 FR 82373, Dec. 18, 2020]

§ 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.

Export means the transporting or causing to be transported, either directly or through another party, unprocessed timber to a foreign country. Export occurs on the date that a person enters into an agreement to sell, trade, or otherwise convey such timber to a person for delivery to a foreign country. If the date in the preceding sentence cannot be established, export occurs when unprocessed timber is placed in an export facility for preparation, including but not limited to, sorting or bundling, and container loading, for shipment outside the United States, or when unprocessed timber is placed on board an oceangoing vessel, rail car, or other conveyance destined for a foreign country, port, or facility.

Fair Market value means the price for forest products will return when offered for competitive sale on the open market.

Federal lands means all lands administered by the Department of the Interior west of the 100th meridian in the

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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.

Lump-sum means a sale where the total quantity of forest product that is designated for removal is estimated and established prior to the sale.

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

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Government, and is a contract between the permittee and the United States.

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.

Scale sale means a sale where the total quantity of forest product that is designated for removal is determined after cutting, but before its conversion or end use.

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).

Sourcing area means a geographic area approved by the Secretary of the Interior where prohibitions for direct and indirect substitution shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States by a person who, in the previous 24 months, has not exported unprocessed timber originating from private lands within the sourcing area; and during the period in which such approval is in effect, does not export unprocessed timber originating from private lands within the sourcing area.

Substitution means:

(1) The purchase of a greater volume of Federal timber by an individual purchaser than has been his historic pattern within twenty-four (24) months of the sale of export by the same purchaser of a greater volume of his pri-

vate timber than has been his historic pattern during the preceding twenty-four (24) months; 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 or weight scale certified by a State, 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 (8³/₄) 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; 85 FR 82373, Dec. 18, 2020]

§ 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

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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 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

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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 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.

(e) Special forest products, including firewood, Christmas trees, boughs,

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greenery, mushrooms, and other similar vegetative resources, may be sold by permit, without appraisal, after payment to the Government of adequate compensation for the material and may include the expense of issuance of the permit.

[35 FR 9784, June 13, 1970, as amended at 41 FR 12660, Mar. 26, 1976; 56 FR 10175, Mar. 11, 1991; 85 FR 82373, Dec. 18, 2020]

PART 5410—ANNUAL TIMBER SALE PLAN

Subpart 5410—Annual Timber Sale Plan; General

Sec.
5410.0-6 Policy.

Subpart 5411 [Reserved]

AUTHORITY: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 2604.

SOURCE: 85 FR 82373, Dec. 18, 2020, unless otherwise noted.

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 (as defined in § 5400.0-5 of this chapter) 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 area in which the timber is located or an agency website. 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.

Subpart 5411 [Reserved]

PART 5420—PREPARATION FOR SALE

Subpart 5420—Preparation for Sale; General

Sec.
5420.0-6 Policy.

Subpart 5422—Volume Measurements

5422.1 Lump-sum sales.
5422.2 Scale sales.

Subpart 5424—Preparation of Contract

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

AUTHORITY: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 2604.

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, except materials that qualify under § 5402.0-6(e) of this chapter, will be appraised to estimate fair market 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.

[85 FR 82374, Dec. 18, 2020]

Subpart 5422—Volume Measurements

§ 5422.1 Lump-sum sales.

As the general practice, the Bureau of Land Management (BLM) will estimate volume for a lump-sum sale using a tree cruise basis.

[85 FR 82374, Dec. 18, 2020]

§ 5422.2 Scale sales.

(a) Scaling will be performed by the BLM or third-party scaling organization approved by the BLM or any operator of a State-certified weight scale.

(b) The BLM may also order third-party scaling for administrative reasons. Such reasons would include, but