

Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 26, 2006.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: February 16, 2006.

**Michael O. Leavitt,**

*Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 5420

[WO–270–1820–00–24 1A]

RIN 1004–AD70

#### Preparation for Sale

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) amends its regulations on preparation for timber sales to allow third party scaling on density management sales with an upper limit on the quadratic mean diameter at breast height (DBH) of the trees to be harvested of 20 inches. Third party scaling will be limited to the situations described in the amended provision, that is, if a timber disaster has occurred and a critical resource loss is imminent, and tree cruising and BLM scaling are inadequate to permit orderly disposal of the damaged timber, or if BLM is carrying out density management timber sales subject to the size limits stated above. Thus, third party scaling will generally not be used for sales of higher-value and/or larger diameter timber. BLM is amending the regulations in order to improve the efficiency of density management timber sales where the timber to be harvested may be designated by prescription (a written prescription included in the timber sale contract). The regulations will no longer require that BLM perform all scaling except in the event that a timber disaster is threatening imminent critical resource loss and scaling by BLM would be inadequate to permit orderly disposal of the damaged timber. In the case of density management timber sales when the quadratic mean DBH of trees to be cut and removed is equal to or less than 20 inches, the regulations will only allow third party scaling by scalers or scaling bureaus under contract to BLM.

**DATES:** *Effective Date:* June 26, 2006.

**ADDRESSES:** Inquiries or suggestions should be sent to Director (270), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD70.

**FOR FURTHER INFORMATION CONTACT:** For technical questions about the rule, contact Lyndon Werner at (503) 808–6071 or Scott Lieurance at (202) 452–0316. For procedural questions about the rulemaking process, contact Ted Hudson at (202) 452–5042. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of Public Comments
- III. Procedural Matters

#### **I. Background**

BLM Districts have been testing different methods of selling timber, such as Designation-by-Prescription (DxP), attempting to gain efficiencies, especially with a program comprised of substantially more density management and small logs than was historically the case. This testing has revealed that the gain in efficiency by using such methods is lost due to the regulatory requirement that BLM personnel conduct all the scaling if a DxP sale is scale as opposed to lump sum. Otherwise, scale DxP sales can be more efficient in certain situations (small diameter density management).

43 CFR 5422.1 states: “[a]s the general practice, the Bureau will sell timber on a tree cruise basis,” which means lump-sum sales. Section 5422.2(a) states: “[s]caling by the Bureau will be used from time to time for administrative reasons.” Lump-sum sale is the default. There must be an interest-of-the-Government reason to conduct a scale sale.

43 CFR 5422.2(b) allows third party scaling when all of three conditions are met:

- (1) A timber disaster has occurred;
- (2) A critical resource loss is imminent; and
- (3) Lump-sum timber measurement practices are inadequate to permit orderly disposal of the damaged timber.

Regular commercial density management sales obviously do not meet these conditions. The definition of third party scaling found in 43 CFR 5400.0–5 is “the measurement of logs by a scaling organization, other than a Government agency, approved by the Bureau.” This includes the non-

governmental scaling bureaus that normally contract with purchasers to scale in mill yards. BLM does contract with these scaling bureaus to scale for administrative check scales.

Historically, BLM timber sales, particularly in western Oregon, were clearcuts of high-value large timber. Log accountability was the principal reason for the aforementioned regulations limiting scale sales and third party scaling. These provisions are intended to minimize the potential for log theft.

Today’s sale program, however, has a considerable component of density management sales in lower-value, smaller-log situations that meet one or more of the following objectives: Growth enhancement, habitat restoration, or fuels/fire hazard reduction. Density management sales are timber sales intended to accomplish these objectives by removing smaller trees and understory that may inhibit growth or forest health or contribute to fuel buildup. In addition, density management sales intended to enhance wildlife habitat may remove some dominant and co-dominant trees in the forest stand to enhance biological diversity. Smaller logs cannot be efficiently and effectively truck scaled. Scaling in the mill yards as trucks are unloaded is faster and more accurate.

#### **II. Discussion of Public Comments**

We published the proposed rule on November 17, 2005 (70 FR 69714). The comment period for the proposed rule closed on January 17, 2006. During the comment period, we received 4 public comments on the proposed rule.

One comment expressed general opposition to third party scaling, stating that it would be a way to let profiteers cheat U.S. citizens who own the public lands even more than they do now. The comment went on to criticize the Mining Law of 1872.

We have not changed the final rule in response to this comment. As we stated in the preamble to the proposed rule, third party scaling will provide flexibility in marketing and selling small diameter timber sales. This will be highly cost-effective for BLM and timber sale purchasers alike. The change to allow third party scaling of timber sales will lead to a dramatic efficiency improvement for the Bureau and timber sale purchasers when timber disasters threaten imminent resource loss. Ultimately, with third party scaling, BLM will receive higher timber payments for timber sold—as compared to the current regulation that precludes third party scaling. The current regulation is unnecessarily costly, inefficient, and affords no greater

government accountability as to timber or logs.

Three comments expressed general support for the proposed rule. One stated that the savings in risk assessment and man hours along with the efficiencies of operating a scaled sale, as opposed to a lump-sum sale, will be beneficial to both BLM and industry. Another stated that third party scaling will allow BLM managers use of both of the two commonly-accepted practices used by the forest products industry throughout the Northwestern United States. The comment went on to express agreement with the analysis of the effect of the rule stated in the preamble of the proposed rule.

One of these comments expressed general support for selling timber on a "recovery" basis (i.e., scale sales) as outlined in the proposed rule, so long as implementation is carried out without detriment to the purchaser. The comment stated, however, that the proposed rule did not provide sufficient assurance or explanation of this.

The comment addressed several specific concerns in this regard. The first related to the particular scaling rules used to measure the quantity of timber; the second related to accountability and security; the third related to log scaling site approval; and the fourth related to opportunities to sample scale. The comment recommended that Westside (long log) scaling rules, which it describes as the industry standard, be used. (These standards apply in western Oregon and Washington, and Alaska.)

BLM interprets this comment to apply only to the timber sale program in western Oregon. Nationally, BLM uses Scribner short log board foot rules in order to have a consistent measure across the Bureau. In Oregon and Washington, where approximately three-quarters of BLM timber volume is offered for sale, BLM follows the Northwest Log Rules handbook, and specifically the Scribner short log rule. Northwest Log Rules is an association of Federal agencies (BLM, Forest Service, and Bureau of Indian Affairs), the States of Oregon and Washington, and the local scaling bureaus (non-profit third party scaling organizations). The Northwest Log Rules handbook also includes the Westside long log scaling rules, the industry standard. These Northwest short and long log rules employ consistent log rules and are readily converted from one to the other. Industry expressed considerable consternation when BLM was using cubic foot rules for lump-sum and scale sales, but BLM ceased that policy and returned to board foot measure in 2004.

BLM believes that, with smaller diameter timber making up a substantial part of the total volume offered, a short log rule (as opposed to long log) more accurately predicts the actual board foot recovery from a given tree or log, since there is more volume not accounted for due to the greater amount of taper in a 32-foot log under long log rules as opposed to a 16-foot log under short log rules. Board feet measurement is made based on a cylinder whose diameter is measured at the narrow end of the log.

The comment's concerns about BLM's procedures for log accountability and security measures, and standards for log scaling site approval, are important issues for BLM as well when conducting scale timber sales. However, BLM believes these issues should be matters of policy and not codified in regulation. Policy changes in response to changing conditions can be made much more readily than changes in regulations. BLM is interested in industry's particular concerns, and in effectiveness and efficiency for both parties. However, we recommend that industry representatives raise their concerns at the semi-annual Federal Timber Purchaser Committee meetings held with BLM representatives in western Oregon. Accordingly, we have not incorporated scaling procedures and rules in the regulations on scale sales, and have not amended the proposed rule in response to the comment.

The final issue raised in the comment was the opportunity to sample scale. In Oregon and Washington, virtually all scale timber sales and administrative check scales have recently been and will likely continue to be sample scale measured. An administrative check scale occurs when the BLM, through third party scalers, scales a lump-sum timber sale to assess the actual volume removed as a quality control check on the original pre-sale estimate of timber volume. This scale volume does not affect the volume or value of the lump-sum timber sale contract. The uncommon exceptions, where 100 percent of the truck loads of logs are scaled, might be sales of less than 500,000 board feet and/or sales of large diameter and highly defective and/or otherwise variable timber. These kinds of sales may not all be sample scaled and will more likely be 100 percent scaled.

### III. Discussion of the Final Rule

The final rule adds one sentence to § 5422.2 on scale sales: "BLM may also order third party scaling, only by scalers or scaling bureaus under contract to BLM, for the scaling of density management timber sales when the

quadratic mean diameter of the trees to be cut and removed is equal to or less than 20 inches." (The quadratic mean diameter is a measure used by foresters as an index of the size of trees in a stand. According to the Dictionary of Forestry, the quadratic mean diameter is the diameter of the tree corresponding to the tree of mean basal area. Basal area is the cross-sectional area of a tree measured at breast height. The basal area of a tree with DBH equal to the quadratic mean diameter is equal to the mean basal area of the stand.) This will enable us to conduct density management sales while taking advantage of the improved economies that third party scaling may provide, such as by allowing scaling in the mill yards as trucks are unloaded, which is faster and more accurate.

For the sake of clarity, we also divide § 5422.2(b) into three paragraphs, the second of which comprises this new provision. Paragraph (b)(1) consists of the first sentence of existing paragraph (b), which covers the disaster situation in which third party scaling is allowed, and paragraph (b)(3) consists of the second sentence of existing paragraph (b), which requires that third party scaling must follow BLM standards in use for timber depletion computations, so that we can make sure that sales conform with sustained yield principles. Redesignated paragraph (b)(1) is also amended editorially to read in active voice. Neither paragraph (b)(1) nor (b)(3) contains substantive changes.

The final rule does not represent a major shift to scale sales for density management. Rather, it provides a multifaceted "tool kit" of sale method options allowing us to maintain as cost effective a program as possible. It is not in the best interest of the Government to scale all density management sales. In certain cases, the costs of administering a lump-sum sale are less than costs of conducting scaling, making the lump-sum sale the preferred in-the-interest-of-the-Government option.

### IV. Procedural Matters

#### *Executive Order 12866, Regulatory Planning and Review*

This final rule is not a significant regulatory action and is not subject to review by Office of Management and Budget under Executive Order 12866. The final rule will not have an effect of \$100 million or more on the economy. The average cost of contract scaling is approximately \$1.50 per thousand board feet. The approximate average annual number of sales contracts over the past several years that would have qualified for third party scaling under the final

rule has been ten sales. The new provision will enable BLM to prepare and administer certain contracts (that otherwise qualify to be sold as a scale sale) more efficiently, saving approximately \$90,000 per year. These savings are not directly passed onto purchasers. There may be a slight savings to a purchaser of a scale sale over a lump-sum sale due to their not having to conduct pre-sale measures of the sale volume to the same intensity.

For the same reasons, the final rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. The rule will impose no requirements on any governmental entities.

The final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The approach in the final rule is similar to that of the Forest Service in using third party scaling.

The final rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, having no effect on any of these matters; nor do they raise novel legal or policy issues.

#### *National Environmental Policy Act*

BLM has determined that this final rule authorizing certain timber cuts to be scaled by BLM-approved third parties is a regulation of an administrative and financial nature. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

#### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not

unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The final rule will likely provide additional business opportunities to scalers and scaling bureaus, which are mostly if not all small entities. The average cost of contract scaling is approximately \$1.50 per thousand board feet. The approximate average annual number of sales contracts over the past several years that would have qualified for third party scaling under the final rule has been ten sales. The new provision will enable BLM to prepare and administer certain contracts (that otherwise qualify to be sold as a scale sale) more efficiently, saving approximately \$90,000 per year. These savings are not directly passed onto the purchasers. There may be a slight savings to a purchaser of a scale sale over a lump-sum sale due to their not having to conduct pre-sale measures of the sale volume to the same intensity. Therefore, BLM has determined under the RFA that this final rule will not have a significant economic impact on a substantial number of small entities.

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

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). That is, it will not have an annual effect on the economy of \$100 million or more; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will 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. It merely allows BLM to contract out a management step in timber volume measurement for some types of timber sales to non-governmental entities that can operate more efficiently than the Bureau.

#### *Unfunded Mandates Reform Act*

The final rule does not impose an unfunded mandate on state, local, or Tribal governments or the private sector, in the aggregate, of \$100 million or more per year; nor will the final rule have a significant or unique effect on state, local, or Tribal governments. The rule imposes no requirements on any of these entities. We have already shown, in the previous paragraphs of this section of the preamble, that the change in this rule will not have effects approaching \$100 million per year on

the private sector. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

#### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The final rule is not a government action capable of interfering with constitutionally protected property rights. The rule allows BLM to contract out one step in the timber volume measurement process, and does not provide for the taking or reduction in value of, or any other effect on any private property. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

#### *Executive Order 13132, Federalism*

The final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. It does not apply to states or local governments or state or local governmental entities. Therefore, in accordance with Executive Order 13132, BLM has determined that this final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

#### *Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, we have determined that this final rule will not will burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have Tribal implications. There are no substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. There will be some small economic benefit to scalers and scaling bureaus, and therefore to any American Indians that may be employed by or otherwise financially connected to such entities. There are, however, no policy

implications that require consultation with Indian Tribes.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

In accordance with Executive Order 13211, BLM has determined that the final rule will not have substantial direct effects on the energy supply, distribution, or use, including a shortfall in supply or price increase. The rule does not relate to energy supply, distribution, or use in any respect.

*Executive Order 13352, Facilitation of Cooperative Conservation*

In accordance with Executive Order 13352, BLM has determined that this final rule is purely administrative and does not affect cooperative conservation. This final rule takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources because it does not interfere with such interests. The final rule solely affects a Federal responsibility not involving state or local participation, and has no impact on public health and safety.

*Paperwork Reduction Act*

This final rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

**Author**

The principal authors of this final rule are Scott Lieurance, Forester—Senior Specialist, Washington Office, and Lyndon Werner, Forester, Oregon State Office, assisted by Ted Hudson, Senior Regulatory Specialist, Washington Office, Bureau of Land Management.

**List of Subjects in 43 CFR Part 5420**

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

Dated: April 20, 2006.

**Johnnie Burton,**

*Acting Assistant Secretary of the Interior.*

■ Accordingly, for the reasons stated in the preamble and under the authorities stated below, BLM amends 43 CFR part 5420 as set forth below:

**PART 5420—PREPARATION FOR SALE**

■ 1. The authority citation for part 5420 continues to read as follows:

**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.

**Subpart 5422—Volume Measurements**

■ 2. Amend § 5422.2 by revising paragraph (b) to read as follows:

**§ 5422.2 Scale sales.**

\* \* \* \* \*

(b) (1) BLM may order third party scaling after determining that all of the following factors exist:

(i) A timber disaster has occurred;

(ii) A critical resource loss is imminent; and

(iii) Measurement practices listed in § 5422.1 and paragraph (a) of this section are inadequate to permit orderly disposal of the damaged timber.

(2) BLM may also order third party scaling, only by scalers or scaling bureaus under contract to BLM, for the scaling of density management timber sales when the quadratic mean diameter of the trees to be cut and removed is equal to or less than 20 inches.

(3) Third party scaling volumes must be capable of being equated to BLM standards in use for timber depletion computations, to insure conformance with sustained yield principles.

[FR Doc. E6–8109 Filed 5–25–06; 8:45 am]

**BILLING CODE 4310–84–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 62**

[FEMA–2005–0057]

**RIN 1660–AA41**

**National Flood Insurance Program (NFIP); Appeal of Decisions Relating to Flood Insurance Claims**

**AGENCY:** Federal Emergency Management Agency (FEMA), Department of Homeland Security.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule will amend the National Flood Insurance Program (NFIP) regulations to include an appeals process for NFIP policyholders as required by Congress in Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act (FIRA) of 2004.

**DATES:** *Effective:* This rule is effective June 26, 2006. *Comments:* Comments due on or before July 25, 2006.

**ADDRESSES:** You may submit comments, identified by Docket Number FEMA–

2005–0057, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: [FEMA-RULES@dhs.gov](mailto:FEMA-RULES@dhs.gov). Include Docket Number FEMA–2005–0057 in the subject line of the message.

Fax: 202–646–4536.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 406, 500 C Street, SW., Washington, DC 20472.

**Instructions:** All Submissions received must include the agency name and docket number (if available) for this interim final rule. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at FEMA, Office of General Counsel, 500 C Street, SW., Room 406, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:**

James Shortley, Director of Claims, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3418 (Phone), (202) 646–4327 (facsimile), or [James.Shortley@dhs.gov](mailto:James.Shortley@dhs.gov) (e-mail).

**SUPPLEMENTARY INFORMATION:**

**Public Participation**

Interested persons are invited to participate in this notice by submitting written data, views, or arguments on all aspects of the interim final rule. FEMA also invites comments that relate to the economic, environmental, or federalism affects that might result from this interim final rule. Comments that will provide the most assistance to FEMA in developing this interim final rule will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

**Background**

In the face of mounting flood losses and escalating costs of disaster relief to the taxpayers, the NFIP was established by Congress as part of the National