



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5000, 5400, 5420, 5440, 5450, 5460, 5470, and 5500

[LLHQ200000 L63000000 PH0000 21X]

RIN 1004-AE61

Forest Management Decision Protest Process and Timber Sale Administration

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: Through this final rule, the Bureau of Land Management (BLM) is amending its regulations governing protests of forest management decisions and administration of the timber sale process. This final rule will streamline the process for active forest management by the BLM. The BLM has promulgated this final rule to address poorly defined, repetitive, and burdensome regulatory requirements. This final rule will improve the BLM's ability to conduct active forest management, while reducing burdens to the public and the administration of BLM-managed lands.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Information Collection Requirements: If you wish to comment on the information collection requirements in this final rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication in the Federal Register. Therefore, comments should be submitted to OMB by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Information Collection Requirements:* Written comments and recommendations for this information collection should be sent within 30 days of

publication of this document to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to Darrin King, Information Collection Clearance Officer, Attention PRA Office, Bureau of Land Management, 440 W 200 S #500, Salt Lake City, UT 84101 or by email to BLM_HQ_PRA_Comments@blm.gov. Please reference OMB Control Number 1004-0058 and RIN 1004-AE61 in the subject line of your comments. Please note that due to COVID-19, electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: Marlo Draper, Division Chief of Forest, Rangeland, and Vegetation Resources, HQ-220, 208-373-3812. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion of the Changes to the Existing Forest Management Rule and Changes from the Proposed Rule to Final Rule.

III. Procedural Matters

I. Background

The BLM initiated this rulemaking on June 8, 2020, through publication of a notice of proposed rulemaking in the Federal Register seeking public comment for 60 days (85 FR 35049). The comment period closed on August 7, 2020, and the BLM received a total of 2,760 comments. The BLM received comments from individuals, organizations, business, county, state, and Federal entities or representatives. The BLM has provided a summary of substantive comments and its response to the comments in the discussion section of this final rule.

This final rule revises the BLM's regulations addressing its forest management decision process, sales of forest products, preparation for sale, award of contract, contract modifications, and non-sale disposal.

Pursuant to the Oregon and California Grant Lands Act (O&C Act) and the Coos Bay Wagon Road Grant Lands Act (CBWR Act) (43 U.S.C. 2601 *et seq.*), jointly referred to as the O&C Act, the BLM is required to manage approximately 2.4 million acres of lands in Western Oregon for forest production in conformity with the principle of sustained yield. In accordance with the O&C Act, the BLM declares the allowable sale quantity (ASQ) of timber for each sustained yield unit in its Resource Management Plans (RMPs) for western Oregon and then offers for sale a volume of timber equal to the declared ASQ on an annual basis. *See Swanson v. Bernhardt*, No. 1:15-cv-01419 (D.D.C) (September 30, 2019 Order). The O&C Act is a dominant use statute for sustained yield timber production. Under the Materials Act of 1947 (30 U.S.C. 601 *et seq.*); and other legal authorities, the BLM is authorized to convey timber and other vegetative materials on other lands that the BLM administers. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) charges the BLM with managing public lands on the basis of multiple use and sustained yield, unless otherwise specified by law.

The regulations pertaining to the Administration of Forest Management Decisions (43 CFR part 5000) were promulgated in 1984 (49 FR 28561 (July 13, 1984)), and 43 CFR part 5400 pertaining to the Sale of Forest Products were promulgated beginning in 1970 (35 FR 9785, June 13, 1970). These regulations were adopted to implement the Materials Act and the O&C Act. The BLM has amended these regulations since their original promulgation to expedite implementation of decisions relating to forest management, to improve agency procedures, and to update the regulations for consistency with statutory changes.

In 1984, the BLM proposed to add a 15-day public-protest process to certain forest management decisions, including advertised timber sales. This measure was expected to “expedite implementation of decisions relating to timber management” and “increase the probability that private businesses dependent upon the Bureau of Land Management’s timber management contracts would be able to accomplish their regularly scheduled activities” (49 FR 3884, Jan. 31, 1984). The BLM issued a final rule adopting a 15-day protest period and establishing that filing a notice of appeal with the Interior Board of Land Appeals under 43 CFR part 4 does not automatically suspend the effect of forest management decisions that are posted and protested as described under 43 CFR 5003.2 and 5003.3 later that year. The BLM has not revised the protest process since the final rule was issued in 1984, although the way that the BLM plans forest management projects and completes the environmental review of these projects has changed significantly since that time.

When the forest management rules were promulgated in 1984, the BLM designed individual timber sales that were based on the location and extent of the forest management activity. Over time, the BLM has changed the way it designs its timber sales and other forest management projects and often conducts its environmental review on multiple projects in a single watershed or on a biologically relevant scale, such as wildlife habitat for a particular species. Moreover, the BLM promotes collaboration and information-sharing during the National Environmental Policy Act (NEPA) process and concurrent RMP process, and today more interested individuals and parties participate in the public involvement opportunities during the decision-making process when their input is most helpful. While the protest process was originally proposed to “expedite implementation of decisions relating to timber management,” in some cases today individuals and organizations that are not satisfied with the final forest management decision are using the protest process to delay implementation by filing lengthy protests

with the same comments that were previously raised during the NEPA process and with no explanation of how the BLM failed to address these previously submitted comments. Responding to these protests can be costly to the BLM in terms of time and other resources, and in many cases may not improve the agency decision or reduce appeals and litigation.

The final rule eliminates the current administrative protest process after a forest management decision is issued. This change will facilitate expeditious development and implementation of forest management decisions while encouraging the BLM to consider relevant information earlier in its decision-making process, including in comments on any RMP or NEPA documents that the BLM circulates for public review. Under the existing regulations, the BLM regularly issued forest management decisions that could not be protested until the BLM issued a notice of an advertised timber sale, which, in many cases, occurred long after the completion of environmental review. The final rule streamlines the procedures governing forest management decisions by allowing a single forest management decision to cover all forest management activities covered in an environmental review document. This change allows the public to identify any resource conflicts or other issues of concern earlier in the BLM's forest management process and enhances the BLM's ability to resolve those issues before it advertises a timber sale or implements other forest management activities. The final rule also improves administrative efficiencies by allowing the BLM to simultaneously address issues associated with multiple individual sales and other forest management activities in a single decision. In addition, many of the BLM's decisions are time sensitive in nature, such as fire resilience thinning, thinning for insect and disease resilience, or post-fire salvage sales. The changes will help the BLM be more responsive to developing forest health issues and identified wildfire risks. In western Oregon, the final rule will help the

BLM to more expeditiously offer timber sales on O&C lands in order to achieve the declared ASQ in accordance with the O&C Act.

The final rule will facilitate the BLM's use of communications technology by requiring the BLM to make decisions available online on a designated agency website, in addition to other means of notification. These changes will increase efficiency for both the public and the BLM.

Additionally, the final rule contains multiple updates and revisions to part 5400 Sale of Forest Products. This rule amends the regulations to conform to statutes prohibiting the export of unprocessed Federal timber and makes changes that will allow the BLM to be more innovative and more effectively administer scale sales. In general, the final rule provides better clarity of the terms and conditions the BLM may include in future sale contracts and gives the BLM greater flexibility to conduct sales efficiently.

II. Discussion of the Final Rule and Comments on the Proposed Rule

PART 5000 ADMINISTRATION OF FOREST MANAGEMENT DECISIONS

While a protest process for forest management decisions is not required by statute, the BLM's existing regulations at 43 CFR 5003.3 included a discretionary protest process available for certain authorizations relating to forest management. This discretionary protest process was largely duplicative of other opportunities for public involvement, including through the NEPA process. In general, the best opportunity to influence management of resources is during the early stages of decision-making and not after the issuance of a decision or the publication of a notice of decision. At least in some instances, the protest process added time and expense to the decision-making process, contrary to the express purpose of the 1984 rulemaking; did not avert administrative appeals and judicial litigation as evidenced by the numerous appeals and multiple lawsuits since 1984; and, most importantly, cannot be shown to have produced better BLM decisions and resource management outcomes than could have otherwise occurred.

For example, the BLM reviewed 1,560 timber sale decisions from 2002 to 2017 that showed that 26 percent of the total volume those sales represented was protested. The average time between advertisement (also the beginning of the protest period) and award of those protested sales was 251 days. In addition, a significant number of timber sales are developed to reduce the potential for high-severity wildfire. Prolonged decision-making processes under the existing regulations delayed implementation of critical wildfire mitigation treatments that often had the objective of protecting human health and safety, and which may need to be implemented during a narrow window to take advantage of favorable weather. To address these issues, the BLM's final rule eliminates the protest process. The final rule maintains the public's ability to appeal those decisions to the Interior Board of Land Appeals (IBLA) or challenge them in Federal court.

The final rule adds a definition of "forest management activity," and specifies how the BLM must provide notice of forest management decisions.

Section 5003.1 Effect of decisions; general.

The revision to 43 CFR 5003.1(a) clarifies that forest management decisions issued under § 5003.2 may, at the discretion of the authorized officer, be implemented immediately or at a different date specified in the decision. Under existing regulations, the BLM could make decisions effective immediately after denial of protest in § 5003.3(f). The revision also clarifies that forest management decisions are not automatically stayed under 43 CFR 4.21(a) if notice of appeal or a petition for a stay pending appeal is filed with the IBLA which is the same as in the existing rule. The BLM did not make changes to § 5003.1 between the proposed and final rule.

Comment: The BLM received comments suggesting that removal of the administrative protest process, allowing the BLM to implement a forest management decision immediately, and specifying that filing a notice of appeal and a petition for a stay pending appeal under 43 CFR part 4 does not automatically suspend the effect of a

forest management decision, would not allow for an effective administrative review process for decisions and may result in increased litigation in Federal district court.

Response: The final rule eliminates the administrative protest process because the BLM found it to be redundant considering that under the existing rule the BLM allows for public comment on most proposed forest management decisions during the NEPA and RMP process. The final rule does not eliminate the public's opportunity to seek administrative appeal to the IBLA, nor does it prevent the IBLA from issuing a stay pending appeal where appropriate. Additionally, parties can continue to challenge forest management decisions in Federal court.

In general, the best opportunity to influence management of resources is during the early stages of public comment periods provided during the NEPA process and prior to the formulation of a decision. The final rule does not require the BLM to issue all forest management decisions in full force and effect when forest management decisions are issued. Instead, under the final rule the BLM authorized officer has discretion to determine, on a case-by-case basis, whether to identify a period of time before a decision can be implemented or whether the decision can be implemented immediately, which may be appropriate when authorizing critical wildfire mitigation treatments or help the BLM to more expeditiously offer timber sales on O&C lands in order to achieve the declared ASQ in accordance with the O&C Act. Moreover, under the final rule, once the BLM issues a forest management decision, there are typically additional processes that must occur before any actual on-the-ground work begins, such as advertising and conducting a timber sale auction and awarding a contract. The final rule does not change the ability of the IBLA to issue a stay and does not change any IBLA procedures. Changes to IBLA procedures to expedite cases are outside the scope of this rulemaking.

The final rule revises § 5003.2(a) to include a reference to a new definition for a forest management activity in § 5003.4 and clarifies that the BLM authorizes certain

forest management activities by issuing forest management decisions. The BLM added text to § 5003.2 to clarify that to be effective under § 5003.1, the BLM must publish notice of a forest management decision and post the decision on the BLM's website.

The BLM received multiple comments that it does not have authority under the existing regulations to issue forest management decisions in full force and effect. The final rule clarifies the BLM's authority in this regard. The comments also indicated the changes in the proposed rule were not clear.

Under existing § 5003.1(a), the BLM may make those forest management decisions where the BLM provided a protest process effective immediately upon issuance of the protest response. Filing an appeal under 43 CFR part 4, including an appeal with a stay request does not suspend the effectiveness of the decision under the existing regulations. Currently the BLM determines on a case-by-case basis whether to implement the decision immediately.

The final rule retains the BLM's ability in § 5003.1(a) to make certain decisions effective immediately. The BLM also retains the discretion that currently exists whether to go full force and effect on a case-by-case basis. Moreover, to ensure the public has adequate notice that the BLM may use its full force and effect authority under § 5003.1, the BLM has made changes in the final rule to § 5003.2(a) that require the BLM to post all forest management decisions that it may make effective immediately to ensure the public has notice of the activity. Only those decisions that are to be effective under § 5003.1 are required to be posted as described by § 5003.2.

Section 5003.2 Notice of forest management decisions

Revisions in the final rule to § 5003.2(a) change the primary medium of public notice from publication in a newspaper of general circulation in the area where the lands affected by the decision are located to posting the decision on a designated agency website. In general, web-based communication is now more convenient and accessible

than print newspapers. In many areas, print newspapers have transitioned to news websites, which makes the notice requirements in the existing regulations impractical in areas that lack print newspapers.

The final rule adopts those changes proposed to § 5003.2(a), which require the authorized officer to post forest management decisions on an agency website and provide notice of a forest management decision by publishing notice in a newspaper of general circulation in the area, sending notice to interested parties directly, or notifying the general public through various means, such as social media, email, or other mass-media. This change is intended to further facilitate notice reaching interested parties, including those who may not have internet access. Section 5003.2(b) also clarifies that the posting and publication of a forest management decision establishes the official date of the decision and not the notice of an advertised timber sale, as is the case under the existing regulations.

Section 5003.3 Reserved

The proposed rule proposed removing the public protest process in existing § 5003.3. The proposed rule, also indicated the BLM was considering replacing the public protest process with a 10-day public comment period, requesting comments on this potential change and other opportunities to foster public involvement in forest management decisions, such as through the NEPA process. The BLM has elected not to include a 10-day public comment process and is continuing with the elimination of the protest process in the final rule. The protest process is duplicative of the IBLA appeals process and most forest management decisions undergo a NEPA scoping and comment process that allow the public to participate. The original protest period was created administratively to expedite the timber sale process. It has not met its intent as established. As such, the BLM is removing this administratively-created provision to improve the expediency of the process.

Comment: The BLM received comments claiming that eliminating the protest process would violate section 309(e) of FLPMA, and that eliminating the protest process is arbitrary and capricious under the Administrative Procedure Act (5 U.S.C. 706(2)(A)) because the BLM failed to adequately explain the reasons for this change.

Response: The commenters describe how the timber sale protest process is an opportunity for public involvement and suggest that removal of the protest process would be contrary to Section 309(e) of FLPMA. The BLM disagrees.

Section 309(e) of FLPMA states that the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.

This rule does not change this process. This section vests the Secretary with broad discretion to identify appropriate public participation procedures when promulgating rules relating to the management of public lands. When exercising this authority, the Secretary accounts for the degree to which public participation is appropriate for the preparation and execution of specific BLM plans and programs. Section 309(e) of FLPMA, however, does not require public participation for every BLM implementation decision. Instead, it authorizes the Secretary to identify, through regulation, the appropriate public participation procedures, if any, that should apply to each type of BLM plan, program, and implementation decision.

This final rule does not change in any way the ability for public comment in the resource management process. BLM decisions to conduct timber sales often have their beginnings in an RMP that sets the general governance of the land-use over a specified

area, in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA).

In developing a viable resource management plan, the BLM starts first with a notice of intent, which begins a formal public scoping period during which time the public may submit input on issues that should be considered in the land management plan. At this time, the public may submit their input on forest management, or any number of issues that the resource management plan will address.

After the scoping process, the BLM next will issue a Draft RMP and draft Environmental Impact Statement (EIS), which initiates a 90-day public comment period. After all comments have been reviewed and evaluated, the BLM then revises the draft RMP as necessary and publishes a proposed RMP and final EIS. This publication initiates a 30-day protest period during which time the public may again protest resource management decisions included in the RMP. Concurrently, the BLM provides the proposed plan to the Governor's of those states included in the RMP, at which time a 60-day Governor's Consistency Review is initiated. The BLM may use this time to consider inconsistencies with state and local plans and has the discretion to resolve them to the extent practical. After this period is up, the BLM then may issue a Record of Decision which acts as a final management direction, and may include any changes resulting from protests, the Governor's Consistency Reviews, or other considerations.

From this RMP, the BLM then tiers subsequent decision making on smaller parcels of the land from the RMP in order to conduct a timber sale. For instance, the BLM Grants Pass Interagency Office issued a Decision Record for hazardous fuels reduction maintenance treatments for the Picket West Forest Management Project – which included in its decision record citations to several resource management plans and their associated NEPA documents, all of which included several of the public comment

opportunities outlined above. For this particular project, these forest management projects, which included timber sales, also tiered from a subsequent Environmental Assessment document, which re-analyzed smaller portions of the same acreage included in the relevant RMPs, and provided another public comment period (in this case, 48 days).

This rulemaking does not adjust in any material way BLM's regulations that establish procedures for preparation, revision, or amendment of land use plans pursuant to FLPMA, and the important opportunities for continued public comment contained therein. Instead, this rule removes an administratively burdensome process that has been found to not meet its original intent to expedite timber management decisions.

Individual forest management decisions are generally localized projects that concern local impacts and the advisability of uses for particular parcels of land; they tend not to be major management decisions that involve sweeping policy decisions affecting vast tracts of land.

Moreover, the existing Forest Management regulations provide an opportunity to protest some, but not all, forest management decisions. For forest management decisions that are not subject to protest, it has long been the BLM's practice to provide for public participation through a combination of land use planning, project-specific NEPA documents, opportunities for administrative appeal to the IBLA, and other public involvement opportunities. The final rule continues this approach. In addition to public participation opportunities during the planning process, most individual forest management projects would still have opportunities for public participation during the project-specific NEPA process, which may include scoping, public meetings, an opportunity for comment on draft analysis, and other opportunities that the BLM may provide.

Additionally, for those BLM lands in western Oregon managed under the O&C Act, the BLM develops annual timber sale plans that generally indicate the various tracts of timber that will be offered for sale. In the case of the lands that fall under the specific management of the O&C Act, the underlying RMPs for those areas must be guided by the statutory mandate under the O & C Act which states that: “[t]he annual productive capacity for [O & C] lands shall be determined and declared ... [and] timber from said lands in an amount not less than one-half billion feet board measure, or not less than the annual sustained yield capacity when the same has been determined and declared, shall be sold annually, or so much thereof as can be sold at reasonable prices on a normal market.” [43 USC 2601]. This textual direction has been determined by the courts to “[convey] a clear requirement.” *Swanson Group Mfg, LLC v. Salazar*, 951 F. Supp.2d 75, 81 (D.D.C. 2013), *vacated on other grounds Swanson Group Mfg., LLC v. Jewell*, 790 F.3d 235 (D.C. Cir. 2015). These plans are typically posted on the BLM’s website and suggestions from prospective purchasers may be received to assist in the development of the plan. See 43 CFR 5410.0-6.

Finally, the final rule preserves the public's ability to appeal forest management decisions to the IBLA.

Comment: The BLM received comments suggesting the protest process delays BLM timber sales on O&C lands which contributes to the BLM not meeting its obligations under the O&C Act, and therefore the process should be eliminated.

Response: The BLM acknowledges that the protest process is one of many factors that affect workloads and BLM’s capacity to fulfill its obligations under the O&C Act in western Oregon. As discussed above, eliminating the process will help the BLM achieve the declared ASQ in accordance with the O&C Act with more certainty.

Comment: The BLM received comments that support eliminating the protest process and not replacing it with a comment period. Commenters pointed out that the public already has multiple opportunities to provide input on the management of BLM-managed public lands during the Land Use Planning process and its associated NEPA process and the public would still have an opportunity to challenge BLM forest management decisions through available IBLA and judicial review if the protest process is eliminated. These commenters also noted that it would allow the BLM to more efficiently implement RMPs, prevent delay of certain forest thinning projects to reduce fire hazard, reduce delays of county payments derived from timber sale revenues; remove a duplicative process, and improve certainty to the forest products sector and local economy by reducing long delays. Some commenters stated the protest process was being abused to cause multi-year delays of projects that clearly conformed to activities described in RMPs and met the requirements of the O&C Act.

Response: The BLM cited similar justification for this rule and considers these comments as supportive of changes in the final rule to eliminate the protest process. As the BLM has explained, eliminating the protest process will help reduce delays on all BLM lands in the implementation of forest resilience treatments to mitigate the effects of wildfire, insect, disease, and drought and help fulfill BLM's statutory obligations for sustained yield timber harvest under the O&C Act on BLM's O&C lands in western Oregon. The impacts of the existing protest process on the BLM's implementation of forest management is well known. The 2020 Interior Appropriations committee report provided the following direction:

the Committee continues to be troubled by the disparity in timber targets compared with timber awarded and harvested on some districts. The Bureau is once again directed to prioritize response to administrative protests on timber sales in a timely manner and to report timber sale

accomplishments in volume of timber sold and awarded, rather than merely the volume offered for sale, and shall report to the Committee on its progress.

The BLM has prioritized responding to protests but responding to lengthy protests that are often similar to comments received during the NEPA process, comments unrelated to the project at issue, or are arguments against implementation, are still causing delays. The BLM has concluded that eliminating the protest process would help address the Committee's concerns.

Comment: The BLM received comments that claim only IBLA can establish when a decision becomes effective and what the effects of a stay petition involve.

Response: The BLM disagrees. 43 CFR 4.21, which governs the effective date of decisions subject to appeal, explicitly provides that another "pertinent regulation" may provide otherwise. This final rule is such a regulation. Indeed, the existing regulations allowed the BLM to implement a forest management decision immediately after resolving applicable protests, without waiting an additional 30 days as required for other kinds of BLM decisions under 43 CFR part 4. The existing regulations further provided that the filing of a notice of appeal to the IBLA did not automatically suspend the effect of a forest management decision. The final rule maintains the BLM's ability to issue forest management decisions in full force and effect while clarifying that the effect of any such decision would be suspended if the IBLA or a court issues a stay or other applicable injunctive relief, which is the current practice.

Comment: Some comments requested the BLM include changes to adopt a public review process similar to the U.S. Forest Service pre-decisional objection process.

Response: The proposed rule discussed how the BLM considered requiring a public comment period on a proposed decision for proposed forest management decisions, which is similar to the U.S. Forest Service objection process. The BLM has

determined, however, that public participation can otherwise be integrated into the BLM's decision-making process, including into the project-specific NEPA process for most forest management decisions, and that an additional comment period would be redundant and unlikely to raise new issues or lead to different outcomes.

Comment: One commenter suggested that if the BLM replaces the existing protest process with a comment process, then the comment process should be for 15 days instead of 10 days, so it is the same duration as the existing protest process. Other commenters supported removing the protest process and opposed replacing that process with a 10-day public comment period because the comment process would be redundant of the NEPA comment period.

Response: In the final rule, the BLM has elected to eliminate the protest process without requiring a comment period as discussed in the proposed rule. As explained, this change does not diminish the BLM's obligations to comply with NEPA, including the need to provide opportunities for public involvement through the NEPA process, nor does this change the BLM's discretion to offer other opportunities for public involvement on a case-by-case basis. These changes allow the Authorized Officer, who is most familiar with the local circumstances surrounding each decision, to determine if offering additional public participation opportunities would be beneficial for a particular project. The BLM expects a significant proportion of forest management decisions will be supported by an EA with public review and comment. The BLM also agrees that in instances where the public has an opportunity to comment on a proposed forest management action through the NEPA process, a separate public comment period would generally be redundant and has determined not to include a 10-day public comment period in the final rule.

Comment: The BLM received comments that the protest process and IBLA appeals process are often duplicative, addressing objections and issues already considered

during NEPA review. The comments supported eliminating the protest process and maintaining an appeal to IBLA for forest management decisions.

Response: The BLM agrees with these commenters that the purpose of a post-decision review process is to provide an opportunity for the affected and interested parties to request review when a decision allegedly violates law, regulation, or policy, and that both the protest process under the existing regulations and the IBLA appeal process provide this opportunity. The BLM also agrees that over time these processes have become duplicative, and that the BLM receives protests that identify issues that the BLM has already addressed during the NEPA process for the decision. The BLM has also found that protests generally result only in minimal changes to a small number of the total decisions that are protested. As such, the final rule amends section 5003.3 to remove the existing protest process.

Section 5003.4 Definitions: general.

The existing regulations address forest management decisions for forest management activities, but they do not define a forest management activity. Section 5003.4 of the proposed rule included a definition of forest management activity. The final rule adopts the definition in the proposed rule. This change clarifies the type of activities that will fall under the scope of this section of the regulations. The definition emphasizes that a forest management activity has a silvicultural or forest-protection objective. These activities result in changes to forest or forest adjacent vegetation that have an explicit forest output or ecological condition as the outcome of the activity and may include other activities that facilitate or complement the forest management activity. Examples of forest management activities may include: Cutting of trees and vegetation; harvesting; tree planting; seedling protection; vegetation type conversions; fuels reduction; fire pre-suppression; and road construction and maintenance, when these activities are intended to provide, for example, a commercial forest product, improve tree and forest health, reduce

fire risk, increase forest resiliency to environmental stressors, or address insect or disease infestations. A forest management activity would not include, for example, clearing trees for the construction of a power line in a right of way.

Comment: The BLM received a comment that the definition of Forest Management Activity should add the terms fuel reduction, non-commercial thinning, prescribed burning, vegetation reduction, and wildfire hazard reduction.

Response: The BLM did not make any changes in the final rule to address this comment because it believes the terms silviculture and forest protection in the rule encompass these described activities. The BLM considered providing an exhaustive list of terms in the regulations that silviculture and forest protection encompass, but determined it unnecessary since these terms are already defined in the professional Dictionary of Forestry published by the Society of American Foresters, and scientific literature and are well understood.

Section 5003.5 Severability

This new section would describe the legal principle of “severability” and apply it to the regulations in Group 5000. Under severability, if any portion of these regulations were found invalid or unenforceable as to a particular set of circumstances or particular people, the remaining portions of the regulations would remain valid and BLM could enforce them separately and legitimately. This principle has always applied to the regulations but is stated here for information and clarity.

Other comments related to Part 5000

The BLM received other comments related to aspects of the rule text in prior sections but which are more general and address the BLM’s or the DOI’s administrative processes, NEPA, other statutes, and other issues related to forest management. Those comments are addressed below.

Comment: The BLM received a comment that participation in the protest process is the only way to be a party for the purposes of an appeal to IBLA and removing the process from the regulations will eliminate a party's ability to appeal a forest management decision.

Response: It is not the intent of these changes to eliminate the ability to appeal forest management decisions to the IBLA. Separate regulations governing IBLA appeals, which are not amended by this final rule, provide that "any party to a case who is adversely affected by a decision of the Bureau" may appeal to the IBLA (see 43 CFR 4.410(a)). This includes any party "that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal," (43 CFR 4.410(b)), including by commenting on an environmental document. As discussed, in most cases a party would still have the opportunity to comment about a proposed forest management decision during the NEPA process, which is unaffected by the final rule.

Comment: The BLM received a comment asking whether the commenter must file an appeal to IBLA challenging the promulgation of this rule to exhaust administrative remedies before challenging this rule in Federal district court.

Response: This rulemaking is not appealable to the IBLA.

Comment: The BLM received a comment that the BLM failed to conduct adequate NEPA analysis on the environmental effects of the proposed rule.

Response: The BLM's adoption of the final rule complies with NEPA. The BLM does not believe this rule constitutes a major Federal action significantly affecting the quality of the human environment, and has prepared documentation to this effect, explaining that a detailed statement under the National Environmental Policy Act (NEPA) is not required because the rule is categorically excluded from NEPA review. Specifically, the BLM relied on 43 CFR 46.210(i), which provides for use of a

Categorical Exclusion for policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. The final rule changes the BLM's administrative procedures for forest management activities as well as some of the procedures to administer a timber sale. The rule does not authorize any on-the-ground actions or constrain the BLM's ability to exercise its substantive discretion when making future forest management decisions. Future forest management decisions will be subject to the NEPA process, as appropriate. The BLM has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Documentation of the reliance upon a categorical exclusion has been prepared with other supporting documents for this final rule.

Comment: The BLM received comments suggesting that the existing protest process ensures the BLM uses best available science in decision making.

Response: The protest process in the existing regulations is an administrative review process and does not address the use of science in the decision-making process. The final rule does not change the existing obligations under law, regulation or policy that address the use of science, including the BLM's obligations under the Information Quality Act, section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554, H.R. 5658), and implementing guidelines of OMB,¹

¹ Office of Management and Budget, "OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication," (67 FR 8452, February 22, 2002).

DOI,² and the BLM³ for “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies” and direction in Secretary’s Order 3369 *Promoting Open Science*.⁴ The BLM will also continue to adhere to NEPA requirements for using “high quality” information and “[a]ccurate scientific analysis” (40 CFR 1500.1(b)), and for ensuring the “professional integrity including scientific integrity of the discussions and analysis in [EISs]” (40 CFR 1502.24).

Comment: The BLM received comments that the proposed rule affects the NEPA process and the ability of the BLM to conduct environmental analysis on forest management activities.

Response: The changes amend the administrative processes in the BLM’s forest management regulations and do not change the laws, regulations or policies applicable to the BLM’s NEPA compliance for forest management decisions. Over time, since the existing rule was promulgated, the BLM has changed the way it designs its timber sales and other forest management decisions and now often conducts environmental review on multiple projects in a single watershed or on a biologically relevant scale, such as wildlife habitat for a particular species. Additionally, the BLM promotes collaboration and information-sharing during the NEPA process, and today more interested individuals and parties participate in the public opportunities during the decision-making process when their input is most helpful. The amendments update the administrative process in the

²U.S. Department of the Interior, “Information Quality Guidelines Pursuant To Section 515 Of The Treasury And General Government Appropriations Act For Fiscal Year 2001,” https://www.doi.gov/sites/doi.gov/files/migrated/ocio/information_management/upload/515Guides.pdf

³Bureau of Land Management, “Information Quality Guidelines—Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Bureau of Land Management,” (April 2 2018) <https://www.blm.gov/documents/national-office/public-room/guidebook/blm-information-quality-guidelines>

⁴ Secretarial Order 3369 A1 “Promoting Open Science” https://www.doi.gov/sites/doi.gov/files/elips/documents/so_3369a1_-_promoting_open_science.pdf

forestry management regulations to reflect these changes in forest management projects, but they do not authorize any forest management activities or change the BLM's NEPA obligations for future activities.

Comment: The BLM received comments related to the consolidation of sale decisions stating that this does not allow an opportunity for site specific comment.

Response: The final rule does not change how the BLM complies with NEPA for forest management activities. The BLM conducts site specific NEPA on timber sales and the final rule does not change the BLM's obligations to comply with NEPA for these and other forest management activities. Currently, multiple sales are often related in terms of geography, e.g. watershed or on a biologically relevant scale, such as wildlife habitat for a particular species, and the BLM evaluates these sales in one environmental document, which in many cases can lead to better informed decision-making. While the final rule removes the protest process for individual sales in 5003.3, the final rule does not change the public's ability to comment on or otherwise be involved in these sales during the NEPA process.

Comment: The BLM received comments that suggested the proposed rule would affect resources such as water quality, wildlife habitat, carbon storage, potential wildfire behavior, older trees, and other resources due to an increase in logging.

Response: The final rule addresses the BLM's administrative procedures for forest management decisions. It does not authorize any on-the-ground actions or constrain the BLM's substantive decision-making discretion with respect to harvest methods or the amount of timber harvest that will occur on public lands. Decisions on harvest levels, methods and prescriptions, and areas open to or reserved from harvest, are generally made through land use planning decisions consistent with the BLM's planning process provided in its planning regulations at 43 CFR part 1600, subpart 1610. These

planning and forest resource decisions are made through a separate decision-making process and must comply with NEPA as appropriate.

PART 5400 SALES OF FOREST PRODUCTS; GENERAL

Section 5400.0-3 Authority.

Section 5400.0-3 contains the authority for part 5400. Section 5400.0-3(a) updates the O&C Act citation due to renumbering that took place in the U.S. Code. Section 5400.0-3(c) references a law related to the prohibition of exporting unprocessed timber from Federal lands that was superseded by 16 U.S.C. 620. The final rule contains these updated references to the BLM's current statutory requirements. The BLM did not receive any substantive comments on this section and did not make changes to this section between the proposed and final rule.

Section 5400.0-5 Definitions.

Section 5400.0-5 contains the definitions for part 5400. The final rule adds new definitions for "lump sum sale" and "scale sale," which are used, but not defined, in the existing regulations. These two sale types are the only sale types the BLM uses. These definitions will ensure a common understanding of the key difference between these sale types, which relates to how the volume of the forest product is determined. The BLM did not make changes to this section between the proposed and final rules. The BLM did not receive substantive comments related to the change.

In the final rule, the Fair Market Value definition is updated by deleting the second sentence referencing a BLM Manual that is no longer effective. This change will have no effect because appraisal guidance was updated in 1996 to address this change. Changes in § 5400.0-5 add the terms "export" and "sourcing area" to provide a basis for determining a violation of the export prohibition. The substitution definition is also changed to update the time period from 12 months to 24 months to conform to 16 U.S.C. 620, and a reference to a substitution exception for rights-of-way that is not included in

the statute is deleted in the final rule. The BLM did not make changes to this section between the proposed and final rule.

Comment: The BLM received a comment on the definition of Fair Market Value suggesting that the definition should define the extent as well as methods for determining the fair market value.

Response: The definition for Fair Market Value reflects BLM's obligation to sell forest products to the highest bidder after advertisement (30 U.S.C. 601) with limited exception for small quantities (30 U.S.C. 602). It is generally accepted in commodity markets that the true value is determined through open competitive bidding. This is reflected in the changes and no additional changes are necessary.

Changes to § 5402.0-6(d) delete an exception to substitution restrictions that is not provided by the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620) as amended. This exception was established in the BLM's regulations prior to the passage of the statute. The BLM did not make changes to this section between the proposed and final rules. The BLM did not receive substantive comments related to the change.

Section 5402.0-6 Policy.

The final rule amends § 5402.0-6(e) to clarify how special forest product prices will be determined. The BLM sells permits to the public for special forest products, which include fuelwood, Christmas trees, edibles, pine nuts, cones, seedlings, and other forest products other than sawtimber. BLM State Offices generally publish a price list based on estimated values within a State. The existing § 5420.0-6 requires that all vegetative resources be appraised and in no case sold at less than appraised value. BLM offices are concerned that selling products at the published price for the State is not consistent with subpart 5420, because the value of products across a State can vary. The addition of § 5402.0-6(e) in the final rule clarifies that vegetative products can be sold by

permit without appraisal after payment of adequate compensation, which is the standard in the authorizing statute. This means that price lists developed by the BLM for special forest product permits can be used, and that individual appraisals for each permit will not be required. The BLM did not receive substantive comments related to the change. The BLM did not make changes to this section between the proposed and final rule.

PART 5420—PREPARATION FOR SALE

Section 5420.0-6 Policy.

The existing § 5420.0-6 requires appraisal of all timber and vegetative resources that are sold, and in no case sold for less than the appraised value. The final rule adds an exemption from appraisal for special forest products in § 5402.0-6(e) as described in the previous section. The final rule removes the phrase “prohibiting the sale of products at less than appraised value” to allow the BLM to award timber sale contracts or vegetative material permits if bids come in below the appraised value. The Materials Act of 1947 (30 U.S.C 601) requires the BLM to advertise timber sales and to award sales to the highest bidder. The BLM is not required by law to sell timber at or above the appraised value. Producing highly accurate appraisals is costly due to factors such as acquiring log price data, labor costs, and equipment costs, including fuel, maintenance, and depreciation. This has two potentially negative consequences. First, the BLM could incur a high cost to produce an appraisal, which is particularly counterproductive for lower value products. Second, an appraisal could over-price a sale and result in no bids. No-bid sales result in increased costs associated with reappraising and reoffering a sale and are particularly costly for salvage sales where the timber quality rapidly deteriorates. The changes to this section are intended to continue the practice of appraising timber as a guide to determining a reasonable price, but also to allow the BLM to sell products to the highest bidder at a price below the appraised price if the authorized officer receives a reasonable bid. This provision recognizes that an appraisal is an estimate of the market

price, but that competitive bidding through an auction or a sealed bid is generally superior at identifying the true market price. The BLM anticipates these changes will decrease costs, increase efficiency and result a reduction in no bid sales. The BLM did not make changes to this section between the proposed and final rules.

Comment: The BLM received comments indicating that the removal of the prohibition on selling a product at less than appraised value (43 CFR part 5420) would lead to the public not receiving fair compensation for the use of public resources. The BLM also received comments in support of the changes to use the competitive bidding process to determine the sale price regardless of the appraisal in order to avoid no-bid sales.

Response: Accurately appraising forest products can be technically challenging and costly. The BLM has had many instances where forest product sales receive no bids because of inaccurate appraisals or the inability to forecast market changes and the expense of contract requirements. For example, in 2018 there was a significant and rapid change in market conditions that led to over 25 percent of western Oregon timber sales receiving no-bid. Even with the best data and professional appraisers, appraisals have limitations in determining the market value and expenses because appraisals are based on retrospective analysis and markets and expenses can change rapidly. In addition, the BLM's current sale process does not allow for price adjustments once the sale is advertised which is a minimum of two weeks before receiving bids. The final rule will allow the BLM to avoid having to delay sales and incur additional administrative costs of reappraising and reoffering sales if no bids are received by allowing the Authorized Officer the discretion to select a high bid that is below the appraised value when it is determined that the appraisal overestimated the market price. This discretion is particularly important for salvage timber where appraisal accuracy is even more difficult

and the effect of a delay due to a sale going no-bid could result in the need to abandon the sale due to wood deterioration.

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

Section 5422.1 Lump-sum sales.

This final rule changes the title of § 5422.1 from “Cruise Sales” to “Lump-Sum Sales.” This section is also revised to say that a lump-sum sale is most often estimated using a tree cruise method. The BLM does not use the term “cruise sale,” though it is generally understood to mean lump sum. This revision is intended to clarify that both sale types are acceptable and may be used by an authorized officer. The BLM did not make changes to this section between the proposed and final rule. The BLM did not receive substantive comments related to the change.

Section 5422.2 Scale sales.

Changes to § 5422.2 revise some of the rules for the use of scale sales and reorganize the section for clarity. The existing regulations limit the use of scale sales to events such as timber disasters or imminent resource loss. Currently other circumstances in which its use is permitted are ambiguous. Implementation of this section in the existing rule has generally discouraged scale sales, despite the fact that it is a standard practice in the logging industry and its use is common among other sellers of timber, such as State governments and the U.S. Forest Service. The final rule removes the existing limitations and permits the use of scale sales at the discretion of the authorized officer. In the final rule the term “scale sales” includes the use of weight scales, including third party weight scales that are certified by a State government for timber sold on a per-ton basis. Section 5422.2 in the existing rule does not mention weight scales, which can lead to the incorrect conclusion that the term scale sale in the existing rule is only referring to log scaling using a log rule. The BLM did not make changes to this section between the

proposed and final rule. The BLM did not receive substantive comments related to the change.

Section 5424.0-6 Policy.

A minor change in § 5424.0-6(d) corrects a typographical error by replacing the word “from” with “form”.

Section 5424.1 Reporting provisions for substitution determination.

Section 5424.1 relates to the enforcement of the export prohibition. Timber export laws are designed to not only prohibit the timber cut from Federal land from being exported, but also to prohibit Federal timber from being used as a substitute for other timber the purchaser owns and exports. The final rule updates the time period for tracking and reporting the export of private timber for a purchaser or an affiliate of a purchaser of Federal timber from 1 year to 2 years. This revision is intended to bring the rule into conformance with the Forest Resources Conservation and Shortage Relief Act of 1990, as amended. The BLM did not receive substantive comments related to these changes and did not make changes to this section between the proposed and final rules.

PART 5430—ADVERTISEMENT

Subpart 5430—Advertisement; General

Section 5430.0-6 Policy.

Section 5430.0-6 of the final rule gives the BLM the option to advertise competitive timber sales on an agency website. The BLM did not make changes to this section between the proposed and final rules. The BLM did not receive substantive comments related to these changes.

PART 5440 --- CONDUCT OF SALES

Section 5441.1 Qualification of bidders.

Section 5441.1 of the final rule establishes the qualifications for bidders on BLM timber sales. Revisions to this section pertain to the debarment regulations at 2 CFR part

180. Under proposed § 5441.1(c), an individual or entity could be disqualified as a bidder on a BLM timber sale if that individual or entity is debarred in the Federal Government-wide debarment list. In accordance with 2 CFR part 180, there is a process for petitioning for an exception from debarment which is noted in the proposed §5441.1(c)(1). The revision to this section brings it into conformance with 2 CFR part 180. The BLM did not make changes to this section between the proposed and final rules. The BLM did not receive substantive comments related to these changes and did not make changes to this section between the proposed and final rules.

Section 5441.1-1 Bid deposits.

Section 5441.1-1 sets forth the requirements for a bid deposit that must accompany a bid on a timber sale. The final rule allows the BLM to refund up to half of the bid deposit if the award of the sale is delayed for more than 90 days. This change is to address current instances in which a sale is conducted, a high bidder is announced, and then before award of the contract, circumstances, such as a court injunction, delay the award of the timber sale contract. Given that bid deposits are 10 percent of the appraised value, a deposit can be substantial. The BLM recognizes that delays in the award of timber sale contracts is a burden for purchasers; thus, this revision helps reduce that burden. The BLM did not receive substantive comments related to these changes and did not make changes to this section between the proposed and final rules.

Section 5441.1-2 Special considerations.

Section 5441.1-2 refers to a Small Business Administration road construction loan program that no longer exists. This section is deleted because it is obsolete. The BLM did not receive substantive comments related to these changes and did not make changes to this section between the proposed and final rules.

PART 5450—AWARD OF CONTRACT

Section 5451.1 Minimum performance bond requirements; types.

Section 5451.1 pertains to performance bonds for timber sale contracts, which function to protect the government's interest in Federal lands and resources by helping to ensure the fulfillment of a purchaser's contract obligations and the BLM's resource objectives. Performance bonds may be held by the BLM when a purchaser is not in compliance with contract terms and conditions. The bond can be forfeited to the BLM to cover costs of remedying unfinished contract obligations. Currently, a performance bond is required for all contracts for the sale of products greater than or equal to \$2,500, and for installment contracts of less than \$2,500. For cash sales of less than \$2,500, bond requirements are at the discretion of the authorized officer. The final rule requires a performance bond for all contracts for the sale of products greater than or equal to \$10,000, and impose a minimum performance bond of not less than \$500 or 20 percent of the contract price, whichever is greater, for all installment contracts of less than \$10,000. For all cash sales less than \$10,000, bond requirements will be at the discretion of the authorized officer. Under the final rule, the BLM retains discretion to require performance bonds within the specific limits established in the regulations and determines the amount of bond required on a case-by-case basis after site-specific analysis. These changes account for estimated inflation, since the existing rule was established in 1970 when the amount of material covered by the bond was four to five times the amount of material covered at current prices. For example, three to five truckloads of timber might have been sold for \$2,500 in 1970, whereas, at current dollar valuation, a single truckload of the same quality timber might exceed the threshold for the bonding requirement. This change adjusts the BLM's risk exposure to a level that is similar to when the bond threshold in the existing regulations was originally published. The BLM did not receive substantive comments related to these changes and did not make changes to this section between the proposed and final rules.

PART 5460 – SALES ADMINISTRATION

Section 5461.3 Total payment.

The BLM changed the term “cruise sale” to “lump sum sale” consistent with other changes in the rule. The BLM did not receive substantive comments related to these changes and did not make changes to this section between the proposed and final rules.

Section 5463.1 Time for cutting and removal.

The BLM changed the maximum time for cutting and removal to 48 months in the final rule.

Comment: The BLM received comments requesting additional time for cutting and removal stating that the current maximum of 36 months (43 CFR 5463.1) is not adequate to complete sales with limited operating seasons and an increasing number of project design features that are required in BLM timber sale contracts.

Response: In response to comments on the proposed rule recommending that the BLM consider opportunities to provide greater flexibility in the amount of time to complete cutting and removal, the BLM’s final rule revises § 5463.1 to increase the maximum amount of time allowed for cutting and removal of timber in BLM timber sale contracts. In the existing rule, the maximum time for the cutting and removal of timber is 36 months and in the final rule this period is increased to up to 48 months. Although the BLM did not specifically propose this change in the proposed rule, the BLM raised the issue of contract performance timing in its proposed rule and specifically proposed changes in § 5473.3 to identify additional circumstances in which the BLM could extend the period of performance in BLM contracts. The BLM received no comments opposed to this specific proposed change, with all comments addressing this section expressing support. Commenters recommended that the BLM further address this issue by providing greater flexibility for the BLM to issue contracts with a longer performance term at the outset. These comments stated that the existing maximum of 36 months in § 5463.1 is no

longer adequate to complete sales with limited operating seasons and an increasing number of project design features intended to limit environmental impacts.

The BLM's review of comments it received on the proposed rule to address the period of performance issue, coupled with a second look from the BLM at the causes of increased need for contract extensions, led the BLM to make this change in the final rule. The BLM recognizes that the 36-month maximum contract term is no longer enough time to perform the terms of some contracts due to changed conditions since the existing rule was finalized, including an increasing number of contracts with additional restrictions to limit environmental impacts, seasonal restrictions, events such as weather, fire closure and other related conditions that interrupt operating time. Changed conditions was the basis for proposing changes to allow additional contract extensions, and this change has the same effect as the changes to § 5463.1.

Part 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

Section 5473.4 Approval of request.

The final rule also changed § 5473.4 to allow the authorized officer to grant a purchaser's request to extend the amount of operating time on a timber sale contract without reappraisal in certain circumstances. The revision to § 5473.4(c) adds unusual weather conditions and national, state, or local government emergency declaration such as a pandemic or natural disaster to the list of reasons the BLM may grant a request for a contract extension. It is the BLM's experience that some pause in operations occurs due to normal weather, such as a halt in log hauling during heavy rain events or a shutdown of yarding due to wet soils during spring melt, which would not amount to unusual weather conditions. Unusual weather conditions could be record drought leading to prolonged fire hazard or record rainfall leading to prolonged wet soil conditions.

Although allowing contract extension for national, state, or local emergency declarations was not specifically proposed, the BLM did receive a request from the timber industry to

grant blanket contracts extensions to BLM contracts due to operational disruptions as the result of Federal state and local restrictions responding to the COVID-19 pandemic. The BLM received multiple individual requests for extensions for these reasons during the public comment period for the proposed rule and has decided to include this additional circumstance as one where the BLM may grant contract extensions. Neither of these changes to § 5473.4 allow the BLM to grant blanket extensions for all BLM contracts. The BLM will continue to evaluate extension requests on a case-by-case basis.

Section 5473.4(d) also contains criteria for contract extension related to fire and other natural and man-made disasters. The purpose of this extension is to allow the BLM to extend contracts when a disaster results in significant salvage timber that needs to be harvested elsewhere. Timber impacted by a disaster often deteriorates rapidly and attracts insects and pathogens, and it is prudent that those sales be prioritized over sales that harvest live timber. The final revisions to this section expand the BLM's existing authority and allow the BLM to extend BLM timber contracts in response to disasters on both Federal and non-Federal lands. The revision also puts a 36-month limit on the amount of time that a contract can be extended, which is not in the existing regulations. The BLM recognizes that disasters can pose a serious hardship on local communities. The changes allow the BLM to extend the contract terms and provide additional time for a purchaser to harvest green timber in areas not impacted by the disaster, which could benefit businesses and land owners by allowing them to focus their resources on areas impacted by the disaster, including salvage removal.

PART 5500 – NONSALE DISPOSALS; GENERAL

Section 5500.0-5 Definitions

Section 5500.0-5(e) revises the definition of public lands to make it consistent with the definition in FLPMA at 43 U.S.C. 1702(e), and to clarify that for this part of the regulations, O&C grant lands are considered public lands. Moreover, this section clarifies

that there are conditions for the free use of vegetative and mineral materials on O&C grant lands. The BLM did not make changes to this section between the proposed and final rules. The BLM did not receive substantive comments related to these changes.

Miscellaneous

Technical Note: The BLM is changing the authority sections to reflect that the O&C Act, which was previously codified at Title 43, Chapter 28, Subchapter V, (43 U.S.C. 1181a-j), was transferred to Title 43, Chapter 44, (43 U.S.C. 2601-2634) on July 1, 2017. In the final rule the BLM also removes the Statute at Large citations that have already been codified.

TABLE 1 – ABBREVIATED DESCRIPTIONS OF THE MAJOR CHANGES MADE TO 43 CFR PARTS 5000, 5400, AND 5500 BY THIS RULE

SUBCHAPTER E - FOREST MANAGEMENT		
<u>43 CFR reference and description</u>	<u>Change between proposed rule and existing regulation</u>	<u>Changes between final rule and proposed rule</u>
PART 5000 ADMINISTRATION OF FOREST MANAGEMENT DECISIONS		
5003.1 Effect of Decisions	Clarifies that decisions may be effective immediately when issued rather than after a protest process	no changes
5003.2 Notice of forest management decisions	Provides that the BLM authorizes forest management activities by issuing forest management decisions. The Issuance of a decision authorizing forest management activities, including timber sales, is the decision for timber sales instead of advertisement of the timber sale under current regulations. The changes also allow web-based posting of decisions and that the posting date of the decision is the effective date for the decision for purposes of appeal under 43 CFR part 4.	In addition to changes in the proposed rule, the BLM added text to clarify that forest management decisions that may be effective immediately under §5003.1 must be posted.
5003.3 Protests	Eliminates the protest process.	no changes
5003.4 Definition of Forest Management Activity	Provides a definition for decisions that could be made under § 5003.2	no changes
5003.5 Severability		Adds a new section of severability for sections in Group 5000.
PART 5400 SALES OF FOREST PRODUCTS GENERAL		

5400.0-3 (a) and (c) Authority	Updates references to BLMs forest management authorities resulting from changes to the U.S. Code and passage of the Forest Resources Conservation and Shortage Relief Act	no changes
5400.0-5 Definitions	Added various definitions for terms used in the part 5400 rule	no changes
5402.0-6 (d) and (e) Other than Advertised Sales	Deleted export exemption for right-of-way timber to conform with law and clarified that special forest product permits do not require individual appraisals	no changes
5410.0-6 Annual Timber Sale Plan	Adds agency website to the ways BLM plans can be published	no changes
5420.0-6 Preparation for Sale	Removes prohibition of selling products at less than appraised value	no changes
5422.1 Lump-sum sales	Changes title from “Cruise sales” to “Lump-sum sales” to match contract name and common use of Lump-sum and revise to indicate that Lump-sum and Scale are both approved sale types	no changes
5422.2 Scale sales	Expands the discretion to use scale sales and clarifies that sale by weight is an approved method	no changes
5424.1 Reporting provisions for substitution determination	Updates the reporting requirement to conform with the Forest Resources Conservation and Shortage Relief Act	no changes
5430.0-6 Advertisement	Allows BLM to advertise sales on an agency website	no changes
5441.1 Qualification of Bidders	Updates the qualification of bidders to conform with Department of the Interior regulation pertaining to debarment 2 CFR part 180	no changes
5441.1-1 Bid Deposits	Allows BLM to refund a portion of the bid deposit if award of the sale is delayed	no changes
5441.1-2 Small business administration road loans	Removes the existing section text which was no longer valid and redesignates § 5441.1-3 as § 5441.1-2.	no changes
5451.1 Minimum performance bond requirements	Changes the sale value threshold that triggers a requirement for a performance bond from sales that are \$2,500 and greater to \$10,000 and greater	no changes
5461.3 Total Payments	Replaces the term “cruise sale” with “lump-sum sale” to be	no changes

	consistent with changes to § 5422.1	
5463.1 Time for cutting and removal	Not in the proposed rule but addresses an underlying issue related to the purposes for changes to § 5473.4	A change was added in § 5463.1 to address issues with increased use of extensions to deal with circumstances that interrupt sales as well as effects from increasingly complex sales.
5473.4 Approval of Requests	Expands the reasons for approving contract extension requests.	Adds emergency declarations or public orders as allowable extension reasons based on recent government mandated COVID-19 restrictions and related issues.
PART 5500 NONSALE DISPOSALS, GENERAL		
5500.0-5 Definitions	Updates the public lands definition to match the Federal Lands Policy Management Act definition.	no changes

III. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

The BLM reviewed the requirements of the final rule and determined that it will not adversely affect in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For more detailed information, see the Regulatory Impact Analysis (“Economic and Threshold Analysis for Proposed Forest Management Rule”) (RIA) prepared for this rule. The RIA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE61," click the "Search" button, open the Docket Folder, and look under Supporting Documents.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action as defined in E.O. 12866. Therefore, the rule is not an “E.O. 13771 regulatory action” as defined by Office of Management and Budget (OMB) guidance implementing E.O. 13771. As such, the rule is not subject to the requirement for “regulatory actions” under E.O. 13771.⁵

Regulatory Flexibility Act

This final rule 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.*) (RFA). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the RFA to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

⁵ Executive Office of the President, OMB Memorandum No. M-17-21, Guidance Implementing Executive Order 13771, Titled “Reducing Regulation and Controlling Regulatory Costs,” April 5, 2017.

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, which can be found in 13 CFR 121.201. For a specific industry identified by the North American Industry Classification System (NAICS), small entities are defined by the SBA as an individual, limited partnership, or small company considered at “arm’s length” from the control of any parent company, which meet certain size standards. The size standards are expressed either in number of employees or annual receipts. This rule will most likely affect entities that participate in timber sales or the related protest process. The industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards.

Industry	Size standards in millions of dollars	Size standards in number of employees
Timber Tract Operations	\$11.0	
Forest Nurseries and Gathering of Forest Products	\$11.0	
Logging		500
Support Activities for Forestry	\$7.5	
Environmental Consulting Services	\$15.0	
Environment, Conservation and Wildlife Organizations	\$15.0	

BLM timber sales are commonly bid on by, and awarded to, small businesses. The BLM is also required by the SBA regulations (13 CFR part 121) to set aside a proportion of BLM timber sales for small businesses. This final rule does not change this process. Four changes in the rule to subparts 5422, 5441, 5451, and 5463 will have small beneficial economic effects to small businesses by lowering financial requirements to enter into a sale contract and by providing more flexibility in the timber sale contract. Section 5441.1-2 refers to a SBA road construction loan program that has expired, and therefore the deletion of this section will have no effect. The revisions to the forest management decision process should benefit small entities that elect to submit comments by more clearly defining the process.

Based on the available information, we conclude that this rule will not have a “significant economic impact on a substantial number of small entities,” as that phrase is used in 5 U.S.C. 605. Therefore, a final regulatory flexibility analysis is not required.

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 total appraised value of all timber offered by the BLM over the last five years is approximately \$48 million per year. To the extent that the BLM can become more efficient and meet the increased timber volume offered when authorized in RMPs, this rule could have positive effects to the economy. Additional details can be found in the RIA for this rule.

(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 primary commodity affected by this rule is lumber. The BLM does not anticipate that a reduction in timber production will occur due to this final rule.

(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 BLM believes this rule will result in positive effects in each of these areas. This rule could have a small positive effect on competition by lowering the financial requirements for entering into a small sale contract. To the extent that the BLM can become more efficient and meet the increased timber volume authorized in RMPs, this rule could have positive effects on employment, investment, and productivity.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, 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. This rule will only affect the BLM's administrative process for protest of forest management decisions and provide minor revisions to enhance flexibility in developing and administering timber sales. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. There are no cases where a BLM timber sale or forest management decision has affected private property rights. The rule will revise the timber sale and decision protest processes and will not affect private property rights. A takings implication assessment is not required.

Federalism (EO 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects 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. The rule revises processes that have been implemented numerous times over decades and which have not been found to have effects on the relationship or distribution of power between the national government and the States.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (E. O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationships with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes, and that consultation under the Department's tribal consultation policy is not required. The BLM consults with tribes at multiple decision support stages, including the development of RMPs, NEPA scoping, consultation under the National Historic Preservation Act, as well as in other circumstances identified in the BLM Tribal Consultation policy. Decisions affected by this rule are included in all these decision support stages. The rule does not affect these tribal consultation processes.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This rule contains existing and revised information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The BLM may not conduct or sponsor and, notwithstanding any other provision of law, you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB previously reviewed and approved information collection requirements contained in 43 CFR 5003.3 and 43 CFR 5424.1 under OMB control number 1004-0058. Revisions to these previously approved requirements contained in this final rule are explained below.

The following proposed revisions to OMB Control Number 1004-0058 require OMB approval:

Final revisions to § 5003.3 eliminate the protest process, thereby eliminating a currently approved but now obsolete requirement for information collection. Revisions to § 5424.1 update the regulation in accordance with the Forest Resources Conservation and Shortage Relief Act of 1990, as amended. The revisions to §§ 5003.3 and 5424.1, explained in more detail below require approval by OMB:

(1) Revisions to §5003.3 remove the existing protest process:

(a) Section 5003.3(a) currently authorizes protests of a forest management decision to be filed within 15 days of the publication of a notice of decision or notice of sale in a newspaper of general circulation. This discretionary protest process was largely duplicative of other opportunities for public involvement, including through the NEPA process. The final rule eliminates the protest process for activities under § 5003.2 prior to issuing a decision. The elimination of the protest process results in an estimated reduction of 25 responses and 250 burden hours as currently approved by OMB. The total burden currently approved by OMB for this OMB control number is 325 annual responses and 550 annual burden hours. As a result of the final rule, the BLM estimates that there will be 300 annual responses and 300 annual burden hours.

(2) Revisions to § 5424.1(a)(1) and (2) update the reporting requirement for purchasers and affiliates to report the export of private timber from within 1 year to 2 years. The final rule makes no changes to the information collected pursuant to this reporting requirement nor is there a change to the reporting burden associated with collection of information.

Title: Forest Management Log Export and Substitution

OMB Control Number: 1004–0058.

Form Numbers: 5450-17, 5460-15, and 5460-17.

Type of Review: Revision of a currently approved collection.

Description of Respondents: Purchasers of Federal timber and their affiliates.

Estimated Number of Annual Respondents: 300.

Estimated Number of Responses: 300.

Estimated Completion Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 300.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Total Non-Hour Cost: \$0.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

On June 8, 2020, the BLM published a proposed regulation (RIN 1004-AE61, "Forest Management Decision Protest Process and Timber Sale Administration" 85 FR

35049). The proposed rule solicited comments on the proposed changes to the information collections for a period of 30 days, ending on July 8, 2020. The BLM did not receive any comments related to information collection in response to the proposed rule.

Written comments and recommendations for this information collection should be sent within 30 days of publication of this document to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to Darrin King, Information Collection Clearance Officer, Attention PRA Office, Bureau of Land Management, 440 W 200 S #500, Salt Lake City, UT 84101 or by email to BLM_HQ_PRA_Comments@blm.gov. Please reference OMB Control Number 1004-0058 and RIN 1004-AE61 in the subject line of your comments. Please note that due to COVID-19, electronic submission of comments is recommended.

National Environmental Policy Act

The BLM has determined that the changes made by this final rule are administrative or procedural in nature in accordance with 43 CFR 46.210(i), which provides that policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. Further, the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, this action is categorically excluded from environmental review under NEPA. Documentation of the reliance upon a categorical exclusion has been prepared and is available for public review with the other supporting documents for this rule.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Author

The principal authors of this rule are: Wade Salverson and Christian Schumacher, Division of Forest, Rangeland, and Vegetation Resources; Jennifer Noe, Division of Regulatory Affairs.

List of Subjects

43 CFR Part 5000

Administrative practice and procedure, Forests and forest products, Public lands.

43 CFR Part 5400

Administrative practice and procedure, Forests and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5420

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

43 CFR Part 5440

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

43 CFR Part 5450

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

Surety bonds

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 5470

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

43 CFR Part 5500

Forests and forest products, Public lands.

Katharine MacGregor,

Deputy Secretary, U.S. Department of the Interior.

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management amends 43 CFR parts 5000, 5400 5420, 5440, 5450, 5460, 5470, and 5500 as follows:

1. Revise part 5000 to read as follows:

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 [Reserved]

5003.4 Definitions: general.

5003.5 Severability.

Subpart 5004 [Reserved]

AUTHORITY: 43 U.S.C. 2601; 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1701.

Subpart 5003—Administrative Remedies

§ 5003.1 Effect of decisions; general.

Notwithstanding the provisions of 43 CFR 4.21(a):

(a) The authorized officer may make a forest management decision, as described in § 5003.2, effective immediately or on a date established in the decision. The filing of a petition for a stay pending appeal under 43 CFR part 4 shall not automatically suspend the effect of a forest management decision issued under § 5003.2.

(b) Where the Bureau of Land Management (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 subchapter 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.

§ 5003.2 Notice of forest management decisions.

(a) The BLM authorizes forest management activities, which are defined in § 5003.4, by issuing forest management decisions. Forest management decisions that the BLM may make effective immediately pursuant to § 5003.1(a) shall be posted on a designated agency website while also:

- (1) Publishing a notice in a newspaper of general circulation in the area;
- (2) Sending a notice by direct or electronic mail to a list of parties requesting direct notification; or
- (3) Broadcasting a notice on one or more mass-media platforms.

(b) The posting date of the forest management decision on the agency website establishes the effective date of the decision for purposes of an appeal under 43 CFR part 4.

§ 5003.3 [Reserved]

§ 5003.4 Definitions: general.

Forest management activity generally means activities with a silvicultural or forest protection objective including associated actions needed to carry out the silvicultural or forest protection objective, such as construction and maintenance of roads and improvements.

§ 5003.5 Severability.

If a court holds any provisions of the regulations in this subpart or their applicability to any person or circumstances invalid, the remainder of this subpart and its applicability to other people or circumstances will not be affected.

Subpart 5004 [Reserved]

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

2. The authority citation for part 5400 is revised to read as follows:

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

3. Amend § 5400.0-3 by revising paragraphs (a) and (c) to read as follows:

§ 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.

(c) Pub. L. 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.

4. Amend § 5400.0-5 by:

- a. Adding the definition for “Export” in alphabetical order;
- b. Revising the definition of “Fair Market value;”
- c. Adding the definitions for “Lump-sum,” “Scale sale,” and “Sourcing area” in alphabetical order; and
- d. Revising the definitions of “Substitution” and “Third party scaling.”

The additions and revisions read as follows:

§ 5400.0-5 Definitions.

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 forest products will return when offered for competitive sale on the open market.

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.

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.

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 private 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.

Subpart 5402 – Other Than Advertised Sales; General

5. Amend § 5402.0-6 by revising paragraph (d), adding paragraph (e), and removing the parenthetical authority citation at the end of the section to read as follows:

§ 5402.0-6 Policy.

(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, 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.

6. Revised part 5410 to read as follows:

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.

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

8. The authority citation for part 5420 is revised to read as follows:

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

Subpart 5420—Preparation for Sale; General

9. Revise § 5420.0-6 to read as follows:

§ 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.

Subpart 5422—Volume Measurements

10. Revise § 5422.1 to read as follows:

§ 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.

11. Revise § 5422.2 to read as follows:

§ 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 are not limited to, the following: to improve cruising standards, to check accuracy of cruising practices, and for volumetric analysis.

Subpart 5424—Preparation of Contract

12. Amend § 5424.0-6 by revising paragraph (d) to read as follows:

§ 5424.0-6 Policy.

* * * * *

(d) The contract or permit form 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.

* * * * *

13. Amend § 5424.1 by revising paragraphs (a)(1) and (2) to read as follows:

§ 5424.1 Reporting provisions for substitution determination.

(a) ***

(1) A purchaser who has exported private timber within two years preceding the purchase date of Federal timber; and/or

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

* * * * *

PART 5430—ADVERTISEMENT

Subpart 5430—Advertisement; General

14. The authority citation for part 54030, subpart 5430, is revised to read as follows:

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

15. Revise § 5430.0-6 to read as follows:

§ 5430.0-6 Policy.

Competitive timber sales shall be advertised in a newspaper of general circulation or agency website 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.

PART 5440 --- CONDUCT OF SALES

16. The authority citation for part 5440 is revised to read as follows:

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

Subpart 5441—Advertised Sales

17. Amend § 5441.1 by revising paragraph (c) to read as follows:

§ 5441.1 Qualification of bidders.

(c) Timber sale contracts are "covered transactions" under the suspension and debarment rules for discretionary assistance, loan, and benefit award programs at 2 CFR part 180, implemented as a regulation by the Department of the Interior (the Department) at 2 CFR part 1400. See 2 CFR 180.200, 180.210, and 1400.970.

(1) A bidder or purchaser that has been suspended, debarred, or otherwise determined to be ineligible for award is prohibited from bidding on a timber sale unless an award specific written compelling reasons exception determination pursuant to 2 CFR 180.135 and 1400.137 is issued by the Department's Director of the Office of Acquisition and Property Management to permit an excluded party to participate in the covered transaction.

(2) A bidder or purchaser suspended, debarred, or otherwise award ineligible may continue to bid on timber purchase contracts; however, absent issuance of a written

compelling reasons determination under paragraph (c)(1) of this section, no award shall be made during the period of award ineligibility.

(3) As required by 2 CFR 180.335, prior to awarding a timber sale contract, a bidder or purchaser (i.e., a nonprocurement award participant) shall certify to the Bureau of Land Management (BLM) that neither the entity nor any of its principals, as defined at 2 CFR 180.995, is suspended, debarred, or otherwise disqualified.

(4) If a participant enters into a covered transaction with another person at the next lower tier, the participant must verify that the person with whom they intend to enter into that transaction is not suspended, debarred, or otherwise award disqualified. See 2 CFR 180.300 and 1400.220.

18. Revise § 5441.1-1 to read as follows:

§ 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 or her discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers or certified checks made payable to BLM, or 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 to 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. If BLM fails to award the timber sale within 90 days of the determination of the high bidder, a portion of the bid deposit may be refunded to the high bidder upon written request to the authorized officer, such that BLM retains a

deposit of at least 5% of the appraised value. The remainder of the full bid deposit must be resubmitted to BLM once the high bidder is notified in writing that the delay of award has been remedied and the authorized officer is prepared to issue the contract. If the high bidder is unable to provide the full amount of the bid deposit within 30 days of the written notification, the sale will be re-auctioned and the high bidder will be barred from participating in any subsequent auctions for the same tracts.

§ 5441.1-2 [Removed]

19. Remove § 5441.1-2.

§ 5441.1-3 [Redesignated as § 5441.1-2]

20. Redesignate § 5441.1-3 as § 5441.1-2.

PART 5450—AWARD OF CONTRACT

21. The authority citation for part 5450 is revised to read as follows:

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

Subpart 5451—Bonds

22. Amend § 5451.1 by revising paragraph (a) introductory text to read as follows:

§ 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 \$10,000 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. A minimum performance bond of not less than \$500 or 20% of the contract price, whichever is greater, will be required for all installment contracts less than \$10,000. For cash sales less than \$10,000, bond requirements, if any, will be at the discretion of the authorized officer. The performance bond may be:

PART 5460 – SALES ADMINISTRATION

23. The authority citation for part 5460 is revised to read as follows:

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

Subpart 5461—Contract Payments

24. Revise § 5461.3 to read as follows:

§ 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 lump sum 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.

Subpart 5463—Expiration of Time for Cutting and Removal

25. Revise § 5463.1 to read as follows

§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 forty-eight months such time for cutting and removal may be extended as provided in 43 CFR part 5470, subpart 5473.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

26. The authority citation for part 5470 is revised to read as follows:

AUTHORITY: 30 U.S.C. 601; 43 U.S.C. 2604 and 1740.

Subpart 5473—Extension of Time for Cutting and Removal

27. Amend § 5473.4 by:

- a. Removing the word “or” at the end of paragraph (c)(4);
- b. Revising paragraph (c)(5);
- c. Adding paragraphs (c)(6) and (7); and

d. Revising paragraph (d).

The revisions and additions read as follows:

§ 5473.4 Approval of request.

(c) ***

(5) Closure of operations by Bureau of Land Management (BLM) or State fire protection agencies due to fire danger;

(6) Closure of operations due to unusual weather, where BLM restricted operations during periods with specific environmental conditions, including but not limited to restrictions for low soil moisture, sustained dry periods, frozen soils, or operations requiring snow cover of specific depth; or

(7) County, State, or Federal government issuance of an emergency declaration or public order affecting a purchaser's ability to conduct operations in a contract area, along a designated haul route or proximate processing facilities.

(d) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest timber as salvage from other Federal or non-Federal lands that have 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, or a maximum of 36 months. The State Director may also waive reappraisal for such extension.

PART 5500—NONSALE DISPOSALS; GENERAL

Subpart 5500—Nonsale Disposals; General

28. The authority citation for part 5500, subpart 5500, is revised to read as follows:

AUTHORITY: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 423.

29. Amend § 5500.0-5 by revising paragraph (e) to read as follows:

§ 5500.0-5 Definitions.

(e) *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, including O. and C. Lands, without regard to how the United States acquired ownership, except:

- (1) Lands located on the Outer Continental Shelf; and
- (2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

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