

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 163**

RIN: 1076-AC44

**General Forestry Regulations**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

**SUMMARY:** The purpose of this rulemaking action is to revise the General Forestry Regulations to implement the provisions of the National Indian Forest Resources Management Act enacted November 28, 1990.

The National Indian Forest Resources Management Act reaffirmed many aspects of the existing Indian forestry program and established new program direction for cooperative agreements, forest trespass, Secretarial recognition of tribal laws pertaining to Indian forest lands, Indian forestry program assessments, Indian forest land assistance accounts, tribal forestry programs, Alaska Native technical assistance and forestry education assistance.

EFFECTIVE DATE: November 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Stires, Forester, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana, 59101, Phone (406) 657-6358; or Mr. Terry Viriden, Acting Chief, Division of Forestry, Department of the Interior, Bureau of Indian Affairs, Division of Forestry, 1849 C Street, NW, Mail Stop 4545 MIB, Washington, DC 20240, Phone (202) 208-6067.

**SUPPLEMENTARY INFORMATION:****I. Background**

The final rule has been developed with full participation and consultation of the affected Indian and Alaska Native public. Prior to drafting the proposed rule, public scoping meetings were announced and held in Minneapolis, Portland, Phoenix and Anchorage in February and March, 1991. Input from those meetings was considered and addressed in the rule. Additional consultation with the affected public was accomplished while drafting the rule by maintaining close communication with the Intertribal Timber Council (ITC) and including ITC members on the project steering committee and in project working groups.

Proposed regulations were published on January 27, 1994, at 59 FR 3952.

Following publication, a 60-day public comment period was held extending through March 28, 1994. Early in the comment period, copies of the proposed rule and the schedule of planned regional public comment meetings were provided to tribes and Alaska Native Corporations to encourage the maximum possible review and critique of the proposed rule. During the comment period, regional public comment meetings were held in Phoenix, Minneapolis, Portland, Anchorage, and Fairbanks. A total of 142 written or oral comments made at public comment meetings were received from individuals and attorneys representing tribes, tribal enterprises, and Federal agencies, as well as from individuals commenting on their own behalf. The comments and the Department's response are summarized below. Public comments are arranged by section of the proposed rule as printed in the Federal Register on January 27, 1994.

**II. Review of Public Comments**

1. *Comment:* The Regulatory Flexibility Act requires that the certification of no impact on a substantial number of small entities must be accompanied by a succinct statement explaining the certification. The proposed rule did not contain the required statement.

*Response:* The statement explaining the certification of no impact was unintentionally omitted from the Supplementary Information section of the published proposed rule. The statement explaining the certification has been included under Part III of the preamble, Findings and Certifications.

**Subpart A—General Provisions****163.1 Definitions**

2. *Comment:* The definition of advance payment should be dropped since advance payments and advance deposits are essentially used in the same way.

*Response:* The rule has not been revised because advance payments and advance deposits are not the same, are requirements of timber sale contracts, and must be addressed in regulations establishing policy and guidance for such contracts.

3. *Comment:* The 30-day payment requirement in the definition of advance payments is unnecessary.

*Response:* The rule has not been revised because the definition is made in reference to standard timber contracts and provisions of the definition must conform to the term as used in such contracts.

4. *Comment:* The definition of bid deposit should include the option to convert bid deposits to performance bonds and advance payments in timber sale contracts.

*Response:* The rule has not been revised because contracts are more appropriate than regulations for providing specific guidance on the disposition of bid deposits. The definition of bid deposit in § 163.1 of the rule does not preclude use of bid deposits for performance bonds or advance payments if so stipulated in timber contracts.

5. *Comment:* The term "expenditure plan" used in § 163.25(f) of the rule should clarify the type of plan required to budget and use forest management deductions.

*Response:* The rule has been revised to include a definition of expenditure plan in § 163.1 to clarify plan requirements.

6. *Comment:* In the definition of forest or forest land, the phrase "more or less dense" is ambiguous and unnecessary.

*Response:* The rule has not been revised because the wording of the definition is taken directly from 25 U.S.C. 3103(3) and is appropriate in the context used.

7. *Comment:* The definition of forest land management activities in § 163.1 of the rule should include the comprehensive list of such activities contained in 25 U.S.C. 3103(4).

*Response:* The definition of forest land management activities in § 163.1 of the rule has been revised to include the comprehensive list of forest land management activities contained in 25 U.S.C. 3103(4) to clarify activities addressed by the rule.

8. *Comment:* Include a definition of forest officer in § 163.1 of the rule.

*Response:* The rule has not been revised because forest officer is defined in the standard provisions used for all timber sale contracts. For ready reference, the definition of forest officer is the person of highest rank assigned to the supervision of forestry work at the Indian Agency having jurisdiction over the sale area, or his authorized representative.

9. *Comment:* The definition of forest products in § 163.1 of the rule is too broad for use in context with stumpage rate, and, therefore, may create confusion on basis of payment and accounting for proceeds from the sale of forest products.

*Response:* The rule has not been revised because the wording of the definition is taken directly from 25 U.S.C. 3103(6) and the definition is intentionally broad to encompass the many products from Indian forest land.

10. *Comment:* The definition of forest management plan in § 163.1 of the rule should be expanded to include language requiring that such plans meet the objectives of individual land owners in addition to those of tribes.

*Response:* The rule has not been revised because the wording of the definition is taken directly from 25 U.S.C. 3103(5).

11. *Comment:* The definition of forest management plan in § 163.1 of the rule implies that an integrated resource management plan must be completed prior to developing a forest management plan. This seems to contradict § 163.11(b) of the rule which states that a forest management plan may be developed without an integrated resource management plan.

*Response:* The preparation of forest management plans is required by 25 U.S.C. 3104(b)(1). The National Indian Forest Resources Management Act also requires that forest management plans be consistent with integrated resource management plans whenever such plans exist. However, while the act encourages preparation of integrated resource management plans it does not require them. The rule has not been revised because it provides clear direction in regards to the requirements for integrated resource management plans and the forest management plans in § 163.11 of the rule.

12. *Comment:* The definition of Indian land in § 163.1 of the rule is not clear on whether Indian land is only trust land or includes fee land owned by a tribe.

*Response:* The rule has not been revised because the wording of the definition is substantively the same as in 25 U.S.C. 3103(10) and the language offers clear guidance on the type of land that constitutes Indian land for the purpose of the rule.

13. *Comment:* The definition of noncommercial forest land in § 163.1 of the rule does not adequately define land so categorized.

*Response:* The definition in § 163.1 of the rule has been revised to clarify criteria for categorizing forest land as noncommercial. The revision made emphasizes that such land is incapable of producing sustainable forest products within the general rotation period but allows for harvest from such lands.

14. *Comment:* The definition of productive forest land in § 163.1 of the rule is confusing because it states that such lands are unavailable for harvest.

*Response:* The rule has not been revised because the definition of productive forest land was developed to fit the land classification system used by the BIA Forestry Program and, therefore,

must address forest land which has productive capacity but has been administratively withdrawn from the land base identified for management to produce forest products.

15. *Comment:* The definition of reservation in § 163.1 of the rule should specifically include Alaska Native allotments since they are a separate class of allotments which should be given the same status as reservations under the rule.

*Response:* The definition of reservation in § 163.1 of the rule has been revised to specifically include Alaska Native allotments to allow regulations in the rule to better address the unique situation of Alaska Native allotments.

16. *Comment:* The definition of reservation in § 163.1 of the rule should be expanded to clarify what lands constitute "former reservations in Oklahoma".

*Response:* The rule has not been revised because the definition of reservation in 25 U.S.C. 3103(12) refers to the Oklahoma Indian Reservations solely as "former Indian reservations in Oklahoma" and that description is adequate to identify such lands for the purpose of this rule.

17. *Comment:* The definition of sustained yield in § 163.1 of the rule should be related to a given level of production rather than a given intensity of management.

*Response:* The rule has not been revised because the wording of the definition is the same as in 25 U.S.C. 3103(14) and the definition is in harmony with the technical meaning of the term as used by the forestry profession.

18. *Comment:* The definition of trespass does not relate to § 163.29 of the rule and does not capture the intent of 25 U.S.C. 3106, especially in regards to damage resulting from fire.

*Response:* The definition of trespass in § 163.1 of the rule has been revised to better encompass the intent of 25 U.S.C. 3106 and specifically address trespass related to fire.

19. *Comment:* Is the word "initiated" in the definition of tribal forest enterprise in the rule necessary?

*Response:* The rule has not been revised because restricting tribal enterprises to those both "initiated and organized" by a reservation's recognized tribal government appropriately emphasizes the tribe's role in formation of such enterprises. The requirement of tribal sole ownership is excluded from the definition to provide tribes the flexibility needed to initiate and organize tribal forest enterprise through joint ventures or other business

arrangements where enterprise ownership may not be possible or advantageous.

20. *Comment:* The definition of woodland in § 163.1 of the rule does not adequately provide for the classification of lands used for other than production of wood products.

*Response:* The definition of woodland in § 163.1 of the rule has been revised to emphasize that land classified as woodland may produce any forest product rather than just wood products.

### 163.3 Scope and Objectives

21. *Comment:* The objectives enumerated in § 163.3 of the rule are contradictory and lack specificity.

*Response:* The rule has not been revised because the objectives must be broad based to address the wide range of objectives tribes may have for managing their lands. The objectives are not contradictory in that tribes and the Secretary would not manage to achieve all objectives on a given tract of land at one time.

22. *Comment:* Include a clause requiring ecosystem management in the objectives enumerated in § 163.3 of the rule.

*Response:* The rule has not been revised because the concept of ecosystem management is embodied in the diverse objectives included in § 163.3 of the rule.

23. *Comment:* § 163.3(b)(2) of the rule should require that forest management plans be approved by tribes rather than requiring their consultation and participation in plan development.

*Response:* The rule has not been revised because the existing language appropriately acknowledges the intent of the National Indian Forest Resources Management Act which is to maintain the Secretary's trust responsibility on Indian land while emphasizing tribal sovereignty. Under normal circumstances the Secretary would not approve a forest management plan in the absence of the tribe's approval; however, the language in § 163.3(b)(2) of the rule intentionally maintains discretionary authority to fulfill the Secretary's trust responsibility.

24. *Comment:* Objectives enumerated in § 163.3(b)(2) of the rule should be expanded to provide for the improvement and maintenance of the road system.

*Response:* The definition of forest land management activities in § 163.1 of the rule has been revised to include all such activities enumerated in 25 U.S.C. 3103(4).

25. *Comment:* Suggest making the following language changes to § 163.3 of the rule. In § 163.3(b)(1) change the

phrase "in forest management plans by providing" to "by the tribe to provide." In § 163.3(b)(4) delete the word "all" from the phrase "all the labor and profit." In § 163.3(b)(5) change the term "natural state" to "existing state." In § 163.3(b)(7) substitute "range quality" for "grazing," "maintenance and/or improvement" for "maintenance and improvement" and add "water quality" to the list of values.

*Response:* The rule has not been revised because the objectives in § 163.3 of the rule are taken directly from 25 U.S.C. 3104.

#### 163.4 Secretarial Recognition of Tribal Laws

26. *Comment:* Additional guidance is needed in regards to the type of assistance in the enforcement of tribal laws provided for in § 163.4(a) of the rule.

*Response:* The rule has not been revised because guidelines on the type of law enforcement assistance are intentionally broad to encompass the wide range of situations which may arise under different tribal laws.

27. *Comment:* In § 163.4 of the rule, state that Indian land shall be considered private land for the purposes of the Endangered Species Act.

*Response:* The rule has not been revised because the proposal to consider Indian land as private land for the purposes of the Endangered Species Act is outside the scope of these regulations.

#### Subpart B—Forest Management and Operations

##### 163.11 Forest Management Planning and Sustained Yield Management

28. *Comment:* In § 163.11(a) of the rule, require that a forest management plan be prepared every ten years rather than as needed.

*Response:* The rule has not been revised because requiring forest management plan preparation and revision as needed rather than at fixed time intervals gives land owners and land managers flexibility needed in the forest management planning process.

29. *Comment:* § 163.11(a) of the rule implies that forest management planning is reserved for tribal land when it should be for all Indian land.

*Response:* § 163.11(a) of the rule has been revised to emphasize that forest management plans shall be prepared and revised as needed for all Indian forest land.

30. *Comment:* What are requirements for integrated resource management plans in respect to preparation of forest management plans in § 163.11 of the rule?

*Response:* The preparation of forest management plans is required by 25 U.S.C. 3104(b)(1). The National Indian Forest Resources Management Act also requires that forest management plans be consistent with integrated resource management plans whenever such plans exist. However, while the act encourages preparation of integrated resource management plans it does not require them. The rule has not been revised because it provides clear direction in regards to the requirements for integrated resource management plans and the forest management plans in § 163.11 of the rule.

31. *Comment:* Is it appropriate to require that harvest of forest products be accomplished under the principle of sustained yield management in § 163.11(c) of the rule?

*Response:* The rule has not been revised because 25 U.S.C. 3104(b)(1) requires that sustained yield management be practiced on Indian forest land. The definition of sustained yield management in the rule is sufficiently broad to allow the needed flexibility in how this management requirement is applied.

32. *Comment:* § 163.11(c) of the rule should require that harvest schedules achieve a balance between experienced net growth and harvest rather than between planned net growth and harvest.

*Response:* § 163.11(c) of the rule has been revised to require that harvest schedules achieve an approximate balance between net growth and harvest at the earliest possible time.

33. *Comment:* Does the requirement to practice sustained yield management in § 163.11(c) of the rule apply to allotments and small reservations?

*Response:* The rule has not been revised because, even though it is technically more difficult to strictly apply the principles of sustained yield management to small land areas, it is possible. Also, 25 U.S.C. 3104(b)(1) requires that sustained yield management be practiced on all Indian forest land, so the requirement does apply to allotments and small reservations.

34. *Comment:* § 163.11(c) of the rule should provide for basing harvest level on silvicultural treatment needs rather than on net growth.

*Response:* The rule has not been revised because, while the time period over which the balancing of growth and harvest may vary depending on treatment needs, harvest levels should be based on the objectives of the beneficial owners and growth. The rule does not preclude consideration of silvicultural treatment needs when

harvest planning but, over the long term, the rule correctly requires that growth and harvest be in balance.

##### 163.12 Harvesting Restrictions

35. *Comment:* The term "forestation" in § 163.12(a) of the rule should be changed to "reforestation" to comply with standard forestry terminology.

*Response:* § 163.12(a) of the rule has been revised to use the term "reforestation" since the intent is to provide for reestablishing tree cover on land that previously was forested.

36. *Comment:* The term "harvest plans" referred to in § 163.12(a) of the rule should be defined.

*Response:* The rule has not been revised because the term "harvest plans" in the context of use in § 163.12(a) is sufficiently explicit to cover the wide range of operations to be conducted under the rule.

37. *Comment:* Language restricting clearcutting to situations when it is silviculturally good practice in § 163.12(b) of the rule is confusing because it implies that clearcutting and silviculture are one and the same.

*Response:* § 163.12(b) of the rule has been revised to emphasize that clearcutting and silviculture are not one and the same.

##### 163.13 Indian Tribal Forest Enterprise Operations

38. *Comment:* How is the term "Indian owners" in § 163.13(c) of the rule different from "beneficial Indian owners" used in § 163.13(a)?

*Response:* In the context used, the terms are the same. Since beneficial owner is defined within the rule, the rule has been revised so that "beneficial Indian owner" is used uniformly.

39. *Comment:* § 163.13(c) of the rule should explicitly require tribal approval of sales to Indian tribal forest enterprises.

*Response:* The rule has not been revised because § 163.14 of the rule requires tribal approval for all sales of tribal timber.

40. *Comment:* § 163.13(c) of the rule should define Indian owner for the purpose of timber sales to tribal forest enterprises.

*Response:* The rule has not been revised because the term Indian owner is adequately defined in § 163.1 for the purpose of conducting any timber sale under the rule.

##### 163.14 Sale of Forest Products

41. *Comment:* § 163.14 of the rule should include more detailed instruction on timber sale procedures.

*Response:* The rule has not been revised because policy in § 163.14 of the

rule is adequate to establish uniform operating policy for the sale of Indian forest products. Specific procedural information is more appropriately a matter for inclusion in the BIA forestry manual.

42. *Comment:* § 163.14(e) of the rule should use the phrase "appraised by the Secretary" rather than "established by the Secretary."

*Response:* The rule has not been revised because use of the phrase "established by the Secretary" gives needed flexibility to procedures for value determination.

43. *Comment:* In § 163.14 of the rule, why are sales of forest products from allotted land subject to tribal economic objectives?

*Response:* The rule has not been revised because tribal governments have jurisdiction over all land within reservation boundaries.

44. *Comment:* § 163.14 of the rule should include specific forest product sale policy for trust allotments located off reservations.

*Response:* The rule has not been revised because policy in § 163.14 of the rule applies to Indian forest land which, by definition, can include trust allotments located off reservations.

45. *Comment:* § 163.14(b) of the rule should emphasize the need for the Secretary's consultation with the beneficial owner(s) in catastrophic situations where the sale of forest products is necessary to prevent loss of value.

*Response:* § 163.14(b) of the rule has been revised to emphasize the need for consultation in cases where catastrophe necessitates the sale of Indian forest products.

#### 163.15 Advertisement of Sales

46. *Comment:* In § 163.15(a) of the rule, add the requirement that the beneficial Indian owners consent of advertisement be obtained in sales of forest products to Indian forest enterprises.

*Response:* The rule has not been revised because the approving officer has adequate authority to protect allottee economic interests in sales of forest products to Indian forest product enterprises.

47. *Comment:* Agency Superintendents at some BIA field office locations do not have authority to issue advertisements due to limitations imposed by 10 BIA manual, so the superintendent advertising authority in § 163.15(a) of the rule could create administrative problems in the advertisement of sales of forest products.

*Response:* The rule has not been revised because the intent of the rule is to establish uniform operating procedures for the national program, not to tailor the rule to unique BIA field office situations.

48. *Comment:* § 163.15 of the rule provides for advertising open market sales of forest products except as provided in §§ 163.13, 163.14, 163.16, and 163.26. The provision in § 163.14 for other than advertised sales is not apparent.

*Response:* The rule has not been revised because the exceptions to open market advertised sales enumerated in § 163.15 apply to both procedure and policy and are therefore appropriate.

50. *Comment:* Forest product threshold values used to establish forest product advertisement types in § 163.15(a) of the rule are too low in light of present day forest product values.

*Response:* The rule has not been revised because values established for different types of advertisement requirements (e.g. circulars, posters, newspaper advertisements) are appropriate for thresholds identified.

#### 163.16 Forest Product Sales Without Advertisement

51. *Comment:* § 163.16(a) of the rule seems to repeat the conditions for unadvertised sales of forest products stipulated in § 163.13(c).

*Response:* The rule has not been revised because the conditions for unadvertised sales enumerated in § 163.16(a) are in the context of any sale of forest products while those in § 163.13(c) are for unadvertised sales to Indian tribal forest enterprises.

#### 163.17 Deposit with Bid

52. *Comment:* Does § 163.17 of the rule change the BIA policy regarding deposits with bids that requires such deposits to be held as a separate bond in cases where purchasers provide a performance bond and execute a contract, but fail to perform the contract?

*Response:* BIA policy in regards to the disposition of bid bonds has not changed. The intent is to allow the Bureau to retain the bid deposit on behalf of the beneficial owner(s) of the timber if the bidder does not furnish the required performance bond, execute the contract or perform the contract.

53. *Comment:* The meaning of the term "escrow account" in § 163.17(f) of the rule is unclear.

*Response:* The rule has not been revised because the term "escrow account" is generally understood to be

a third party holding account and is appropriate in the context used.

54. *Comment:* § 163.17(b) of the rule should be modified to delete cash as an acceptable form of deposit.

*Response:* The rule has not been revised because cash is an acceptable form of payment for deposit.

55. *Comment:* The minimum bid deposit of \$1,000.00 in § 163.17(a)(1) of the rule should be deleted because it is believed to be burdensome to small timber operators.

*Response:* The rule has not been revised because the bid deposit requirement is needed to safeguard the interests of the beneficial Indian owner(s) and such a deposit is an accepted sound business practice.

56. *Comment:* The requirement to perform the contract in § 163.17(d)(3) of the rule is redundant and should be deleted.

*Response:* The rule has not been revised because failure to perform the contract may be legitimate grounds for forfeiture of a bid deposit.

57. *Comment:* Change the title of § 163.17 from Deposit with bid to Deposit for primary forest products purchased by non-tribal enterprises.

*Response:* The rule has not been revised because the title of § 163.17 accurately describes policy covered in this section of the rule.

58. *Comment:* § 163.17 of the rule should allow for tribal forest enterprises to not submit bid deposits when purchasing trust timber.

*Response:* The rule has not been revised because § 163.13 Indian tribal forest enterprise operations of the rule provides sufficient flexibility to waive requirements for bid deposits in cases where such deposits would serve no purpose.

#### 163.18 Acceptance and Rejection of Bids

59. *Comment:* In § 163.18(b) of the rule, the term "approving officer" should be changed to the term "approving tribal officer" to emphasize the role of the tribe in the bid rejection process.

*Response:* The rule has not been revised because it provides the approving officer with discretion to consult with the beneficial Indian owners in the process of determining the course of action when rejecting a high bid.

#### 163.19 Contracts for the Sale of Forest Products

60. *Comment:* § 163.19(b) of the rule should specify that electronic fund transfer (EFT) is the preferred method of payment for forest products.

*Response:* The rule has not been revised because § 163.19(b) provides for payment by remittance and remittance includes EFT. If EFT is the preferred method of payment, contracts or permits may so stipulate.

#### 163.21 Bonds Required

61. *Comment:* The term "approving officer" in § 163.21(a) of the rule should be changed to "tribal approving officer" to emphasize the tribe's role in the performance bonding process.

*Response:* The rule has not been revised because it provides the approving officer with discretion to consult with the beneficial Indian owners in the process of determining performance bonding requirements.

62. *Comment:* § 163.21 of the rule should provide for more flexibility in bonding tribal loggers.

*Response:* The rule has not been revised because approving officers have sufficient discretion on bonds to provide the needed flexibility in bonding tribal loggers.

63. *Comment:* § 163.21(b)(1) of the rule should be deleted because of the difficulty in recovering corporate surety bonds.

*Response:* The provision in the rule allowing for the use of a corporate surety bond as a legitimate form of bond has not been revised. However, provisions in 163.21(b) (2) and (3) of the rule stipulating use of an appropriate power of attorney cause concern because a power of attorney expires upon death of the principal and can be revoked by the principal. For this reason, 163.21(b) (2) and (3) of the rule have been revised to require an appropriate trust instrument instead of a power of attorney to ensure access to cash or government securities used as a performance bond. Regardless of which type of performance bond is offered by a contractor, approving officers have discretion to determine whether or not they are acceptable for use with contracts.

#### 163.23 Advance Payment for Timber Products

64. *Comment:* § 163.23 of the rule should include additional language that would require agreement between a tribe and their tribal forest enterprise before advance payments can be required.

*Response:* The rule has not been revised because advance payments as provided for in § 163.23(b) are optional on tribal lands, therefore making a formal agreement unnecessary.

65. *Comment:* § 163.23 of the rule should not require advance payments on tribal land.

*Response:* The rule has not been revised because advance payments as provided for in 163.23(b) are optional on tribal lands.

#### 163.25 Forest Management Deductions

66. *Comment:* The provision in § 163.25(f) of the rule which requires that any forest management deductions not incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld shall be collected into the general funds of the U.S. Treasury does not provide a reasonable time period for tribes to prudently expend such funds and may result in their loss.

*Response:* The rule has not been revised because, as stated in the rule, the provisions set forth in § 163.25(f) of the rule are required by 25 U.S.C. 413. § 163.25(f) of the rule only requires that forest management deductions be incorporated into an approved expenditure plan within the prescribed time period, not that they be expended, so they may be used prudently.

67. *Comment:* The term "summarizing" should be substituted for the term "detailing" in § 163.25(h) of the rule because "detailing" implies too exact a level of reporting.

*Response:* The rule has not been revised because the exact form of the report which will be required is more appropriately a matter for the BIA forestry manual.

68. *Comment:* Allottees should be given discretionary authority to decrease or waive collection of forest management deductions in § 163.25 of the rule.

*Response:* The rule has not been revised because discretionary authority for establishing forest management deduction rates is reserved for the Secretary except where limited by statute.

69. *Comment:* The 10 percent forest management deduction provided for in § 163.25(d) of the rule is excessive in light of the high value of forest product sales from allotments.

*Response:* The rule has not been revised because, absent tribal approval and Secretarial action as provided for in § 163.25(e), the lessor or the percentage in effect on November 1990 or 10 percent must be collected.

70. *Comment:* § 163.25 of the rule should require that forest management deductions collected from allotted land be spent on the land from which they were earned.

*Response:* The rule has not been revised because 25 U.S.C. 3105 and 25 U.S.C. 413 do not require that the benefits of forest management

deductions accrue to the specific land from which they were earned and establishing such a requirement would unnecessarily constrain Indian forest land management activities.

71. *Comment:* Provide authority for administrators of allotment forestry programs to submit expenditure plans and reports in § 163.25(f)(1) of the rule.

*Response:* The rule has not been revised because § 163.25(f)(3) of the rule provides the requested authority in the cases of public domain and Alaska Native allotments where absence of such authority could be a problem.

72. *Comment:* Does § 163.25 of the rule require that forest management deduction collections cannot exceed agency forestry program appropriations?

*Response:* There is no statutory or § 163.25 rule requirement which limits the amount of forest management deductions collected to an amount less than an agency's forestry program appropriation.

73. *Comment:* Does the reporting requirement in § 163.25(h) of the rule apply to the Yakima tribe?

*Response:* The reporting requirement in § 163.25(h) of the rule applies universally.

74. *Comment:* In regards to § 163.25 of the rule, can a tribe receive forest management deductions prior to expending its own funds?

*Response:* § 163.25(f)(1) of the rule provides that approval of an expenditure plan by an Indian tribe constitutes appropriation of tribal funds and approval by the Bureau constitutes authority to credit forest management deductions to tribal accounts.

75. *Comment:* § 163.25 of the rule should be modified to allow forest management deductions not incorporated into an approved expenditure plan to be deposited into an Indian forest land assistance account.

*Response:* The rule has not been revised because the absence of an approved expenditure plan triggers application of the general rule of 25 U.S.C. 413 which requires that such funds be deposited into the U.S. Treasury as miscellaneous receipts.

76. *Comment:* 25 U.S.C. 3105 does not allow for waiving forest management deductions under specified circumstances as provided for § 163.25(c)(1) of the rule.

*Response:* The rule has not been revised because the Secretary has determined that it is not administratively feasible or reasonable to collect forest management deductions in cases where the total consideration furnished under a contract, permit or other document for the sale of forest products is less than \$5,001.

77. *Comment:* § 163.25(e) states that the Secretary shall increase the forest management deduction upon receipt of a written request from a tribe supported by a tribal resolution. Since provisions of 25 U.S.C. 3105 do not require such an action to be mandatory upon receipt of the stipulated documents, the Secretary's decision on such matters should be discretionary.

*Response:* The rule has been revised to change the word "shall" to "may" in the first sentence of § 163.25(e) to preserve the Secretary's discretionary authority on requests to increase forest management deductions.

78. *Comment:* § 163.25 of the rule must provide for incorporating interest earned on forest management deductions into expenditure plans to ensure that interest income is available for use.

*Response:* The rule has not been revised because existing Bureau accounting regulations require that interest earned on forest management deductions follow principal so interest earned on forest management deductions may be incorporated into expenditure plans.

79. *Comment:* The prohibition on withholding forest management deductions from monies collected or derived from trespass, defaulted contracts or other civil judgments in § 163.25(c)(2) of the rule should be deleted because it is appropriate that forest management deductions be collected on single stumpage value in such cases.

*Response:* The rule has been revised by deleting § 163.25(c)(2) of the rule because this recommendation is consistent with past policy and 25 U.S.C. 3105 does not prohibit the change.

80. *Comment:* Modify the definition of gross proceeds in § 163.25(b) of the rule by adding a provision to take into consideration Indian investments and using formulas and methods approved by the Secretary for individual locations.

*Response:* The rule has not been revised because the definition in § 163.25(b) of the rule accurately reflects the language in 25 U.S.C. 3105(a) which describes gross proceeds of sales of forest products and the definition is appropriate for establishing uniform operating procedures for the Indian forestry program.

81. *Comment:* § 163.25 of the rule should be modified to allow timber sale special purchaser payments to be added to forest management deductions so their use can be determined in consultation with tribes.

*Response:* The rule has not been revised because timber sale special purchaser payments are required payments for contract specified activities and, therefore, cannot be commingled with forest management deductions.

82. *Comment:* Modify § 163.25(j) of the rule by adding the word "miscellaneous" to describe the type of U.S. Treasury receipt account.

*Response:* § 163.25(j) of the rule has been revised by adding the word "miscellaneous" before U.S. Treasury receipt account to emphasize that such funds may not be used to augment any appropriated fund.

#### 163.26 Forest Product Harvesting Permits

83. *Comment:* In §§ 163.26 (b) and (c) of the rule, increase the annual value of forest products that can be harvested under free use forest permits to \$10,000 and under paid permits to \$50,000.

*Response:* The rule has not been revised because the \$5,000 free use and \$25,000 paid permit maximum annual harvest values in the rule provide sufficient flexibility for the harvest of forest products under permits.

84. *Comment:* In § 163.26(d) of the rule, does the condition to issuance of a special allotment timber harvest permit which requires terms that protect the Indians' interests conflict with § 163.14(d) of the rule?

*Response:* There is no conflict between the two parts of the rule. § 163.14(d) of the rule requires appraising the beneficial owners of forest product values and Secretarial approval to sell products at less than their appraised value. § 163.26(d) of the rule stipulates that issuance of a special allotment timber harvest permit requires terms that protect the Indians' interests.

85. *Comment:* § 163.26 of the rule should provide for issuance of special allotment timber harvest permits in the case of multiple owners.

*Response:* The rule has not been revised because issuance of special timber harvest permits when there is more than one beneficial owner would make it difficult or impossible for the Secretary to fulfill the trust responsibility to all beneficial owners involved in such cases.

#### 163.27 Free-Use Harvesting Without Permits

86. *Comment:* There should be a \$15,000 annual limit on harvest authority under § 163.27 of the rule.

*Response:* The rule has not been revised because § 163.27 of the rule appropriately provides that the limit on products harvested under the free-use

authority be established by the Indian owners and that products harvested under the authority be limited to personal use.

#### 163.28 Fire Management Measures

87. *Comment:* Include authority for the Secretary to expend funds for the procurement of Smokey Bear and other promotional materials utilized for fire prevention purposes in § 163.28(b) of the rule.

*Response:* The rule has not been revised because implicit in § 163.28(b) of the rule which requires the Secretary to conduct a wildfire prevention program is an authorization to expend funds for that purpose.

88. *Comment:* Use of the phrase "The Secretary will" rather than "The Secretary is authorized to" conduct a wildfire prevention program in § 163.28(b) of the rule is inappropriate because lack of funds may prevent the Secretary from being able to conduct the program.

*Response:* The rule has been revised to make the requested change.

89. *Comment:* In § 163.28(d) of the rule, require the approval of the beneficial Indian owners be obtained rather than merely requiring consultation with the beneficial owners before using fire as a management tool.

*Response:* The rule has not been revised because use of fire as a management tool is carried out under the framework of resource management plans which must be approved by the Secretary and beneficial Indian owners.

#### 163.29 Trespass

90. *Comment:* § 163.29 of the rule should allow the Federal government to recover the expense of trespass investigation.

*Response:* § 163.29 of the rule has been revised to provide for recovering trespass associated expenses of the Federal government and tribes.

91. *Comment:* § 163.29(a)(3)(i) of the proposed rule appears to limit trespass to trees, timber or shrubs. In light of the comprehensive list of products included in the definition of forest products in § 163.1 of the rule, such a limitation is inconsistent with the intent of 25 U.S.C. 3106.

*Response:* § 163.29 of the rule has been revised to include all forest products as listed in the definition of forest products in § 163.1 of the rule to ensure providing for the broad scope of trespass protection intended by 25 U.S.C. 3106.

92. *Comment:* Determining trespass damages will be difficult and controversial if the highest valued product obtainable as called for in

§ 163.29(a)(3)(i) of the proposed rule must be used.

*Response:* § 163.29 of the rule has been revised to require using the highest stumpage value of raw materials rather than the highest valued product obtainable for the purpose of establishing trespass damages.

93. *Comment:* Does the Secretary have seizure authority on lands not under the government's supervision in the absence of a court order as provided for in § 163.29(e) of the proposed rule?

*Response:* Indian forest products are real property owned by the United States in trust for individual Indians and Indian tribes. In the National Indian Forest Resources Management Act, Congress has directed the Secretary to promulgate regulations which establish civil penalties for the commission of forest trespass and provide for collection of the value of the products. Seizure of forest products owned by the United States and situated on Indian land is one such civil penalty. The proposed language regarding seizure of forest products off-reservation and seizure of property and equipment is too broad and not supported by law as drafted in the proposed rule. Therefore, the seizure regulations as drafted in §§ 163.29 (e), (f) and (g) of the proposed rule have been revised and clarified to comport with existing federal, tribal and state law.

94. *Comment:* Does the Secretary have authority to seize and sell equipment belonging to someone else in the absence of a court order?

*Response:* The seizure regulation as drafted in the proposed rule is too broad and raises questions as to the Secretary's private property seizure authority both on and off Indian land. § 163.29 of the rule has been revised to reflect two categories of seizure: Seizure of trespass Indian forest products on or near Indian land and notice of possible trespass where such products are not on or near Indian land and now includes specific notice provisions.

Provisions for seizure of property and equipment situated on or off-reservation which was used in committing trespass have been deleted from § 163.29 of the rule because such seizure actions lack Federal statutory authority. However, if tribal law provides for seizure of property and equipment situated on-reservation which was used in committing trespass, tribes may take such action under their own law and jurisdictional authority.

95. *Comment:* § 163.29(f) of the proposed rule should confer trespass enforcement authority upon forest officers rather than on individuals.

*Response:* § 163.29 of the rule has been revised to clarify the term "individual" in the context of trespass enforcement.

96. *Comment:* § 163.29(k) of the proposed rule should affirm Indian sovereignty over wildlife matters by making it a trespass for local, state, and Federal government officials to conduct wildlife studies on Indian land without prior authorization.

*Response:* The rule has not been revised because the proposal to make it a trespass for local, state, and Federal government officials to conduct wildlife studies on Indian land without prior authorization is outside the scope of these regulations.

97. *Comment:* To be consistent with the definition of forest products in § 163.1 of the rule, the phrase "timber and related trespass" in §§ 163.29(a)(1) and (2) of the proposed rule should be replaced with the word "trespass."

*Response:* § 163.29 of the rule has been revised to replace the phrase "timber and related trespass" with the term "trespass."

98. *Comment:* Provisions in §§ 163.29(a)(3) (i) and (ii) of the proposed rule should be revised to ensure that beneficial Indian owners receive the full measure of damages, even when long periods of time have elapsed between a trespass act and its discovery.

*Response:* § 163.29 of the rule has been revised to capture the highest stumpage value and provide for interest on such value from the date of trespass. The interest provision will ensure that beneficial owners are compensated for time delays which may occur from the time of taking until recovery of damages.

99. *Comment:* 25 U.S.C. 3106 authorizes treble damages as the value of damages for trespass but §§ 163.29 (a)(3) (i) and (ii) of the proposed rule provide for double or triple damages depending on circumstances. Given that 25 U.S.C. 3106 authorized triple damages as the exclusive remedy for trespass and that providing for two different levels of damages could cause confusion in damage collection for trespass, the rule should only provide for a single category of treble damages.

*Response:* § 163.29 of the rule has been revised to only provide for a single category of treble damages.

100. *Comment:* § 163.29(a)(3)(iii) of the proposed rule should be revised to provide for interest as a payable cost associated with damages to ensure that owners are made whole in cases where there is a long delay between the trespass act and collection of damages.

*Response:* § 163.29 of the rule has been revised to provide for the collection of interest as a part of trespass damages.

101. *Comment:* The last sentence in § 163.29(b) of the proposed rule requires that penalty damages collected be equitably distributed among beneficial owners. In the event of underrecovery of civil penalties, there is no provision to share damages recovered with other than the beneficial owners. Enforcement agencies will not be able to recover any payment for reasonable costs associated with detection or prosecution. § 163.29 of the proposed rule should be revised to allow for the prorated distribution of collections to both payment of damages to beneficial owners and payment of reasonable costs to the enforcement agency.

*Response:* § 163.29 of the rule has been revised to provide for sharing of payment for damages between beneficial owners and tribal or federal enforcement agencies under some circumstances. Historically, where recovery in trespass is deficient, the United States has foregone its entitlement to damages in favor of reimbursing beneficial Indian owners to the greatest extent possible. However, since under the revised rule the amount due to Indian beneficial owners was expanded to include the product value plus double-value penalty recoveries, it is reasonable to provide for paying costs associated with detection and prosecution to enforcement agencies in situations when beneficial Indian owners have been fully reimbursed for loss due to trespass. This is true since part of the increased recovery right is compensatory and part is a penalty or "windfall" recovery.

102. *Comment:* § 163.29(c) of the proposed rule should specify how to dispose of damage payments not distributed to owners trespassing on their own land.

*Response:* § 163.29 of the rule has been revised to stipulate that the defaulted share of owners who trespass on their own land shall go first to any restoration costs resulting from the trespass, second to law enforcement costs resulting from the trespass, and third to the reservation forest management deduction account.

103. *Comment:* Should § 163.29(d) of the proposed rule stipulate treating civil penalties collected for damages in trespass actions as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred?

*Response:* The purpose of this rule is to ensure that proceeds recovered in consequence of trespass remain

available to pay their fair share of forest management deductions, as if the trespass products had been harvested under a normal harvest operation. As drafted in 25 U.S.C. 3106, civil penalties is broadly defined to include among other things the recovery of compensatory damages, restoration costs and enforcement costs. As such, gross proceeds (amount recovered as compensatory damages, less restoration costs and enforcement costs) should remain subject to applicable forest management deductions. Restoration costs and enforcement costs are clearly not the proceeds from sale. § 163.29 of the rule has been revised to reflect this fact.

104. *Comment:* Procedures on concurrent civil jurisdiction and administrative appeals in § 163.29(j) of the proposed rule are confusing and cumbersome.

*Response:* The comment references the confusion from a possible dual remedy when pursuing trespass civil damages in federal or tribal court and an administrative appeal under 25 CFR part 2 as provided for in §§ 163.29 (f) and (g) of the proposed rule. We agree that the provisions of the proposed rule are cumbersome in this regard and have revised § 163.29 of the rule so that the administrative appeal remedy in 25 CFR part 2 only applies to seizure of trespass products still situated on an Indian reservation, where the seizure is initiated by federal officials. The revision provides that the remedy for challenging a federal seizure of trespass Indian products situated on an Indian reservation is exclusively within agency jurisdiction to ensure that a judicial proceeding could not proceed until completion of the 25 CFR part 2 process. The revision does not allow a tribal seizure through concurrent jurisdiction to be challenged separately through 25 CFR part 2. The revision provides that seizure of trespass forest products off-reservation is contingent upon other legal authority and that seizure of property or equipment used in trespass on Indian land is similarly restricted.

In recognition of this request for clarification of concurrent jurisdiction, the three categories of seizure have been expanded in the revision of § 163.29 to provide for dual federal and tribal procedures.

The comment further addresses the confusion inherent in the proposed regulation regarding concurrent trespass jurisdiction between the Bureau and tribes, and suggests redrafting to clarify. § 163.29 of the rule has been revised to clarify the interrelationship of the tribes and United States as to implementing concurrent jurisdiction, and the noted

confusion has been eliminated. The intent of the revision is to implement Congress' grant of concurrent jurisdiction to qualifying tribes to pursue Indian trespass matters. At the suggestion of the commentator, the revision clarified that a tribe's exercise of the new, concurrent jurisdiction created through the National Indian Forest Resources Management Act and these regulations in no way affects any existing tribal authority to prosecute trespass matters. The revision provides that in cases where the Secretary defers to a tribe's exercise of its concurrent jurisdiction, the tribe rather than the United States would pursue and prosecute any tribal court litigation. In such cases, the United States would not appear as counsel, although BIA witnesses would be involved as appropriate. Tribal officials would not be acting on behalf of the United States, but on behalf of their separate jurisdiction granted by the National Indian Forest Resources Management Act. The revision adds further clarification consistent with these comments providing for discretionary United States' prosecution of Indian trespass matters in tribal courts in non-deferral situations. Also, seizure remedies in § 163.29 were revised to separate federal action from concurrent tribal action.

105. *Comment:* § 163.29 of the proposed rule should provide guidance on how to deal with trespass forest products located in different settings at time of trespass detection.

*Response:* Traditional judicial remedies are very different for dealing with trespass forest products located in different settings (e.g. in the woods, at a mill or buying station or after products have been converted and sold) at time of trespass detection. § 163.29 of the rule has been revised to provide more specific guidance on how to deal with trespass forest products located in different settings.

106. *Comment:* The provision of § 163.29(a)(1) of the proposed rule which applies the measure of damages in tribal law before applying state law is inconsistent with § 163.29(a)(2) of the proposed rule. Both should provide for the same priority of applicable law.

*Response:* § 163.29 of the rule has been revised to give tribal law precedence over state law so that provisions for applicable law for cases in tribal court and in Federal court are consistent.

107. *Comment:* What does the term "enforce" in the first sentence of § 163.29(f) of the proposed rule reference?

*Response:* The term "enforce" references the clarifying phrase "against trespass" in § 163.29 of the rule.

108. *Comment:* § 163.29(h) of the proposed rule seems to make the tribe responsible for the Bureau's regulations. Is this possible?

*Response:* § 163.29 of the rule allows either a tribe or the United States to assume control over enforcement/prosecution of a trespass.

#### 163.31 Insect and Disease Control

109. *Comment:* Does § 163.31(a) of the rule require that the Secretary consult with the tribe to initiate insect and disease control measures on an allotment?

*Response:* § 163.31(a) of the rule requires that tribes be consulted in cases where control measures would be initiated on allotments within the reservation boundary.

#### 163.32 Forest Development

110. *Comment:* Modify the first sentence in § 163.32 of the rule to state that both tribes and the Secretary may undertake activities to improve the productivity of commercial Indian forest land.

*Response:* The rule has not been revised because the wording of § 163.32 allows either the Secretary or the tribe to perform forest land management activities called for by the forest development program.

111. *Comment:* § 163.32 of the rule should be modified to emphasize that forest development activities can be applied to both timberland and woodland.

*Response:* The rule has not been revised because § 163.32 states that forest development pertains to forest land management activities undertaken on commercial Indian forest land. Since the definition of Indian forest land includes woodland, no change to emphasize applicability to woodland is needed.

112. *Comment:* § 163.32 of the rule should emphasize that forest land management activities undertaken in the forest development program be designed to improve sustained production of forest products on forest lands.

*Response:* The first sentence of § 163.32 has been revised to emphasize that forest development activities should be undertaken to improve the sustainable productivity of commercial Indian forest land.

113. *Comment:* The last sentence of § 163.32 of the rule should be modified to include environmental and ecological impact analyses as determinants in



establishing priorities for project funding.

*Response:* The rule has not been revised because § 163.32 provides sufficient flexibility to include determinants appropriate to a broad range of circumstances which may include environmental and ecological analysis.

### 163.33 Administrative Appeals

114. *Comment:* The commentor requests that § 163.33 of the rule establish criteria to tighten the legal standing required to file appeals. Specifically, the commentor suggests limiting standing to file administrative appeals to the recognized beneficial Indian tribe in the case of management on tribal trust status lands, to a majority interest of the heirs in the case of management actions on allotted trust land, and to timber sale contractors for actions taken in the administration of the terms of their timber sale contracts.

*Response:* The authors agree with the commentor in part; however, the commentor's suggested criteria to limit standing are too restrictive. Limiting standing to only a majority interest of the heirs in the case of management actions on allotted trust land is inappropriate. Instead, legal standing should be based on criteria as defined by earlier 25 CFR part 2 regulations which require an interested party to be an entity whose direct and substantive economic interest is adversely affected by a BIA action. § 163.33 of the rule has been revised to provide more explicit guidance on parties that have legal standing in the administrative appeals process.

115. *Comment:* The commentor requests clarification on § 163.33 of the rule in regards to the impact of staying appeals on contract execution and performance.

*Response:* Historically, BIA Area Offices have acted differently in regards to the issue of staying appeals. Some have allowed disputed actions to proceed (relief from stay) and others have not allowed disputed actions to proceed (not halting stay). § 163.33 of the rule provides that an administrative appeal of an action within these forestry regulations does not stay that action. To further clarify policy on staying appeals, § 163.33 of the rule has been revised to emphasize that appeals filed under 25 CFR part 2 shall not stay any action unless otherwise directed by the Secretary.

### 163.34 Environmental Compliance

116. *Comment:* § 163.34 of the rule should be modified to require

consideration of environmental concerns of Indian communities.

*Response:* The rule has not been revised because the scoping process required by the National Environmental Policy Act (NEPA) embodied in the rule provides for an adequate means to identify and address environmental concerns of Indian communities.

117. *Comment:* § 163.34 of the rule should be revised to provide useful guidance on how to achieve compliance with NEPA by identifying which program actions usually require environmental impact statements or environmental assessments and which are normally categorically excluded from NEPA requirements.

*Response:* The rule has not been revised because existing Departmental (516 DM 1-7) and Bureau of Indian Affairs Environmental Program manuals (30 BIAM Supplemental 1) provide the needed policy guidance and including the requested guidance is outside the scope of this rule.

118. *Comment:* § 163.34 of the rule should require that actions taken under the rule explicitly require compliance with applicable tribal environmental laws and regulations rather than merely requiring use of such laws and regulations for guidance.

*Response:* § 163.34 of the rule has been revised to emphasize that actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969, Council on Environmental Quality regulations and applicable tribal laws and regulations.

### 163.35 Indian Forest Land Assistance Account

119. *Comment:* § 163.35 of the rule should provide guidelines to assure the equitable distribution of funds into forest land assistance accounts at multi-tribe agencies.

*Response:* The rule has not been revised because distribution of funds is a procedural process which is more appropriately addressed in the BIA forestry manual.

120. *Comment:* What are acceptable sources of funding for deposit into Indian forest land assistance accounts addressed in § 163.35 of the rule?

*Response:* The rule has not been revised because § 163.35 of the rule provides the comprehensive list of funding sources which can be deposited into Indian forest land assistance accounts identified in 25 U.S.C. 3109.

121. *Comment:* The reference to a tribe's trust fund account in § 163.35(a) of the rule is technically incorrect. Such accounts should be referred to as tribal accounts within the trust fund system.

*Response:* § 163.35(a) of the rule has been revised to reflect the technically correct accounting terminology.

122. *Comment:* Modify § 163.35(b) of the rule to reflect the existence of both forest transportation and general forest land management accounts.

*Response:* § 163.35(b) of the rule has been revised to reflect the existence of both forest transportation and general forest land management accounts.

123. *Comment:* Modify § 163.35(c) of the rule to reflect the existence of both forest transportation and general forest land management accounts.

*Response:* § 163.35(c) of the rule has been revised to reflect the existence of both forest transportation and general forest land management accounts.

124. *Comment:* Remove reference to a tribe's organization code in § 163.35(d) of the rule because such reference is limiting and adds unnecessary procedural detail to the rule.

*Response:* The rule has been revised to delete the reference to the tribe's organization code from § 163.35(c) to clarify the rule by removing unnecessary procedural detail.

125. *Comment:* Modify § 163.35(h) of the rule to remove reference to the annual audit performed by the Secretary to oversee trust funds. That function is separate and distinct from the 25 U.S.C. 3109 requirement to audit Indian forest land assistance accounts and should be deleted.

*Response:* § 163.35(h) of the rule has been revised to delete the reference to the Secretary's annual audit to oversee trust funds to clarify the requirement to audit Indian forest land assistance accounts in 25 U.S.C. 3109.

### 163.36 Tribal Forestry Program Financial Support

126. *Comment:* § 163.36 of the rule should provide for giving category 2 and 3 reservations with Tribal forestry programs a higher priority in funding.

*Response:* The rule has not been revised because the funding allocation system in §§ 163.36 (f) and (g) provide for equity in distribution of funds appropriated for tribal forestry program financial support and emphasizes allocation of funds to locations with the greatest resource management needs. Further, category 2 and 3 reservations which do not qualify for funding as individual locations can form cooperatives to qualify for the highest level of funding under § 163.36(c) of the rule.

127. *Comment:* Level one funding assistance provided for in § 163.36(e)(1) is insufficient to employ and support an experienced forester.

*Response:* The rule has not been revised because forestry program management experience of tribes and the Bureau is that the base funding assistance provided for in § 163.36(e)(1) is adequate to employ and support a professional forester. Also, if the minimum funding assistance provided was increased, fewer tribes would benefit from the program.

128. *Comment:* Given that one of the variables to determine eligibility for tribal forestry financial support is the allowable annual cut, would a reservation lose funding provided under § 163.36 if they did not harvest timber in a given year?

*Response:* Funding would not be lost if harvest did not occur. If a reservation qualifies under the criteria established in § 163.36 and funds are appropriated for tribal forestry program financial support, the program will be funded regardless of harvest activity in a given year.

129. *Comment:* Can public domain allotments in Alaska qualify for tribal forestry program financial support funding under § 163.36 of the rule?

*Response:* Alaska Native allottees could qualify for tribal forestry program financial support if they formed cooperatives and such cooperatives met qualification criteria set forth in § 163.36 of the rule.

#### *Subpart C—Forestry Education, Education Assistance, Recruitment and Training*

##### 163.40 Indian and Alaska Native Forestry Education Assistance

130. *Comment:* § 163.40 of the rule should provide for standardization of salary and benefits for participants in the forester intern and cooperative education programs and should provide a housing allowance for students in the cooperative education program.

*Response:* The rule has not been revised because it provides for and standardizes salary and benefits to the extent the National Indian Forest Resources Management Act allows. Also, salary and benefits of program participants are regulated by other Federal statutes and regulations which address personnel management.

131. *Comment:* The education committee provided for by § 163.40(a)(1) of the rule should be comprised of a minimum of two instead of one Indian or Alaska Native members.

*Response:* The rule has not been revised because the intent of the program is to provide the maximum funds possible for Indian and Alaska Native forestry students. The four person committee provided for in

§ 163.40(a)(1) of the rule is believed to be adequate to conduct program business. Therefore, increasing program overhead and associated costs would contradict the program intent to provide the maximum funds possible for Indian and Alaska Native forestry students. If the number of committee members stipulated is inadequate to complete required program work, the number of committee members may be increased at the discretion of the Secretary.

132. *Comment:* The scope of the intern program provided for in § 163.40(b) of the rule should be increased to provide training needed to develop forestry technicians as well as professional resource managers.

*Response:* The rule has not been revised because the purpose of the intern program is to develop professional Indian foresters and resource managers which, historically, have been in critically short supply.

133. *Comment:* § 163.40(b) of the rule should provide for establishing regional quotas for intern program positions to ensure that all areas receive their fair share.

*Response:* The rule has not been revised because the education committee provided for in § 163.40(a)(1) of the rule can develop criteria other than merit and past performance to ensure fairness and equity in selection for the program.

134. *Comment:* § 163.40(b)(1)(ii) of the rule should be modified to encourage Indians and Alaska Natives in the intern program to include courses on indigenous culture related to their field of study.

*Response:* § 163.40(b)(1)(ii) of the rule has been revised to emphasize that courses on indigenous culture related to their field of study could be included in the curriculum of interns.

135. *Comment:* Shouldn't the term "articulation" in § 163.40(d)(5) of the rule be "matriculation"?

*Response:* Even though use of the term "articulation" in § 163.40(d)(5) of the rule is correct, the rule has been revised to delete the word from the rule and add the minimum requirements of such agreements to the rule for the purpose of clarification.

136. *Comment:* § 163.40(e)(1)(ii) of the rule should be modified to promote forestry career awareness that includes both native indigenous and modern forest technologies.

*Response:* § 163.40(e)(1)(ii) of the rule has been revised to emphasize the need for both native indigenous and modern technologies in forestry career awareness programs.

137. *Comment:* § 163.40(f)(3) of the rule should be modified to encourage

Indians and Alaska Natives in the postgraduate studies program to choose a research topic that will include native indigenous knowledge and technologies applied to forestry.

*Response:* The rule has not been revised because including the suggested language as a requirement of the postgraduate study program in 163.40(f)(3) of the rule would be inappropriate.

#### *Subpart D—Alaska Native Technical Assistance Program*

##### 163.60 Purpose and Scope

138. *Comment:* Include the forest land management activity objectives enumerated in § 163.3(b) of the rule in § 163.60 of the rule.

*Response:* The rule has not been revised because the purpose of § 163.60 of the rule is to provide policy guidance for the administration of the Alaska Native Technical Assistance Program, not to reiterate the objectives of forest land management activities.

139. *Comment:* Broaden the scope of the definition of technical assistance in § 163.60(a) to include all forest land management activities as defined in § 163.1 Definitions of the rule.

*Response:* The rule has not been revised because including all forest land management activities as defined in § 163.1 of the rule would expand technical assistance activities far beyond those envisioned by 25 U.S.C. 3112.

140. *Comment:* Funding appropriated for managing Alaska Native forest lands should be comparable to that appropriated for the management of Indian forest land in the lower 48.

*Response:* The rule has not been revised because the issue of appropriations is outside the scope of the rule. Congress has discretionary authority for appropriating funds for the Alaska Native technical assistance program.

141. *Comment:* The definition of technical assistance in § 163.60(a) should be modified to allow ANCSA corporations to engage in on-the-ground field activities necessary to managing forest resources on their lands.

*Response:* The rule has not been revised because the definition in § 163.60(a) of the rule is sufficiently flexible to provide for the activities envisioned by 25 U.S.C. 3112 needed to promote sustained yield management of ANCSA forest resources, local processing and other value added activities with such forest resources. Further, the definition does not prohibit on-the-ground activities so long as such activities are required to promote

sustained yield management of ANCSA forest resources, local processing and other value-added activities.

#### Subpart F—Program Assessment

##### 163.82 Annual Status Report

142. *Comment:* In § 163.82 of the rule delete the requirement to report the value of timber available for sale and the condition to report required information only for lands managed under an approved forest management plan.

*Response:* The reporting requirements in § 163.82 of the rule have been changed to conform with reporting requirements stipulated in 25 U.S.C. 3111(c) so the change requested by the comment has been made.

### III. Findings and Certifications

The major purpose of the revision has been to provide uniform Indian forestry program operating policy that complies with the National Indian Forest Resources Management Act.

The Department has certified to the Office of Management and Budget (OMB) that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These regulations have no preemptive or retroactive effect.

The Department of the Interior has determined that this rule is not a significant regulatory action under Executive Order 12866, and therefore will not be reviewed by the Office of Management and Budget.

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The proposed 25 CFR part 163, General Forest Regulations, will have a positive impact on small business entities. Section 163.13, Indian tribal forest enterprise operations, § 163.14, Sale of forest products, and § 163.22, Payment for forest products provide streamlined rules for the sale and collection of proceeds from the sale of Indian forest products. The rule should benefit both Indian and non-Indian forest product businesses on and adjacent to Indian lands by simplifying sale procedures and improving cash flow to Tribes engaged in forest product industry. Further, the rule will provide a means to deliver technical assistance to Alaska Native Regional and Village Corporations to promote and develop value-added forest product industry. Such assistance will create a positive impact by facilitating initiation of new,

small forest product businesses and enhancing existing enterprises. Other than these positive effects, the rule will not cause significant impacts to small business entities because other sections of the rule serve to affirm uniform Indian forest resource management standards, policy and procedures which have been in effect for many years.

The Department has determined that this rule does not have significant federalism effects.

The Department has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The primary author of this document is Mr. Jim Stires, Forester, in the Billings Area Office, Bureau of Indian Affairs, Branch of Forestry, Billings, Montana.

#### List of Subjects in 25 CFR Part 163

Forests and forest products; Indian lands; education.

For the reasons set forth in the preamble, part 163 of Title 25 of the Code of Federal Regulations is revised as set forth below.

## PART 163—GENERAL FORESTRY REGULATIONS

### Subpart A—General Provisions

Sec.

- 163.1 Definitions.
- 163.2 Information collection.
- 163.3 Scope and objectives.
- 163.4 Secretarial recognition of tribal laws.

### Subpart B—Forest Management and Operations

- 163.10 Management of Indian forest land.
- 163.11 Forest management planning and sustained yield management.
- 163.12 Harvesting restrictions.
- 163.13 Indian tribal forest enterprise operations.
- 163.14 Sale of forest products.
- 163.15 Advertisement of sales.
- 163.16 Forest product sales without advertisement.
- 163.17 Deposit with bid.
- 163.18 Acceptance and rejection of bids.
- 163.19 Contracts for the sale of forest products.
- 163.20 Execution and approval of contracts.
- 163.21 Bonds required.
- 163.22 Payment for forest products.
- 163.23 Advance payment for timber products.
- 163.24 Duration of timber contracts.
- 163.25 Forest management deductions.

- 163.26 Forest product harvesting permits.
- 163.27 Free-use harvesting without permits.
- 163.28 Fire management measures.
- 163.29 Trespass.
- 163.30 Revocable road use and construction permits for removal of commercial forest products.
- 163.31 Insect and disease control.
- 163.32 Forest development.
- 163.33 Administrative appeals.
- 163.34 Environmental compliance.
- 163.35 Indian forest land assistance account.
- 163.36 Tribal forestry program financial support.
- 163.37 Forest management research.

### Subpart C—Forestry Education, Education Assistance, Recruitment and Training

- 163.40 Indian and Alaska Native forestry education assistance.
- 163.41 Postgraduation recruitment, continuing education and training programs.
- 163.42 Obligated service and breach of contract.

### Subpart D—Alaska Native Technical Assistance Program

- 163.60 Purpose and scope.
- 163.61 Evaluation committee.
- 163.62 Annual funding needs assessment and rating.
- 163.63 Contract, grant, or agreement application and award process.

### Subpart E—Cooperative Agreements

- 163.70 Purpose of agreements.
- 163.71 Agreement funding.
- 163.72 Supervisory relationship.

### Subpart F—Program Assessment

- 163.80 Periodic assessment report.
- 163.81 Assessment guidelines.
- 163.82 Annual status report.
- 163.83 Assistance from the Secretary of Agriculture.

Authority: 25 U.S.C. 2, 5, 9, 13, 406, 407, 413, 415, 466; and 3101–3120.

### Subpart A—General Provisions

#### § 163.1 Definitions.

*Advance deposits* means, in Timber Contract for the Sale of Estimated Volumes, contract-required deposits in advance of cutting which the purchaser furnishes to maintain an operating balance against which the value of timber to be cut will be charged.

*Advance payments* means, in Timber Contract for the Sale of Estimated Volumes, non-refundable partial payments of the estimated value of the timber to be cut. Payments are furnished within 30 days of contract approval and prior to cutting. Advance payments are normally 25 percent of the estimated value of the forest products on each allotment. Advance payments may be required for tribal land.

*Alaska Native* means native as defined in section 3(b) of the Alaska

Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604).

*ANCSA corporation* means both profit and non-profit corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1604).

*Approval* means authorization by the Secretary, Area Director, Superintendent, tribe or individual Indian in accordance with appropriate delegations of authority.

*Approving officer* means the officer approving instruments of sale for forest products or his/her authorized representative.

*Authorized representative* means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority.

*Authorized tribal representative* means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority from an Indian tribe.

*Beneficial owner* means an individual or entity who holds an ownership interest in Indian land.

*Bid deposit* means, in Timber Contract for the Sale of Estimated Volumes or in Timber Contract for the Sale of Predetermined Volumes, a deposit with bid furnished by prospective purchasers. At contract execution, the bid deposit of the successful bidder becomes a portion of the contract required advance deposit in estimated volume contracts or an installment payment in predetermined volume contracts.

*Commercial forest land* means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.

*Expenditure plan* means a written agreement between an Indian tribe and the Secretary documenting tribal commitment to undertake specified forest land management activities within general time frames.

*Forest or forest land* means an ecosystem at least one acre in size, including timberland and woodland, which: Is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

*Forest land management activities* means all activities performed in the management of Indian forest land including:

(a) All aspects of program administration and executive direction such as:

(1) Development and maintenance of policy and operational procedures, program oversight, and evaluation;

(2) Securing of legal assistance and handling of legal matters;

(3) Budget, finance, and personnel management; and

(4) Development and maintenance of necessary data bases and program reports.

(b) All aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re-inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans where such plans exist.

(c) Forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment.

(d) Protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of fire breaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements.

(e) Protection against insects and disease, including:

(1) All aspects of detection and evaluation;

(2) Preparation of project proposals containing project descriptions, environmental assessments and statements, and cost-benefit analyses necessary to secure funding;

(3) Field suppression operations and reporting.

(f) Assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance and report, demand letter, and testimony preparation.

(g) All aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents, including:

(1) Cruising, product marketing, silvicultural prescription, appraisal and harvest supervision;

(2) Forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on

maximization of return on forest products;

(3) Archeological, historical, environmental and other land management reviews, clearances, and analyses;

(4) Advertising, executing, and supervising contracts;

(5) Marking and scaling of timber; and

(6) Collecting, recording and distributing receipts from sales.

(h) Provision of financial assistance for the education of Indians and Alaska Natives enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses.

(i) Participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands.

(j) Improvement and maintenance of extended season primary and secondary Indian forest land road systems.

(k) Research activities to improve the basis for determining appropriate management measures to apply to Indian forest land.

*Forest management deduction* means a percentage of the gross proceeds from the sales of forest products harvested from Indian land which is collected by the Secretary pursuant to 25 U.S.C. 413 to cover in whole or in part the cost of managing and protecting such Indian forest lands.

*Forest management plan* means the principal document, approved by the Secretary, reflecting and consistent with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods ensuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include: Standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan.

*Forest products* means marketable products extracted from Indian forests, such as: Timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice,

mushrooms, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest land.

*Forestry-related field or forestry-related curriculum* means a renewable natural resource management field necessary to manage Indian forest land and other professionally recognized fields as approved by the education committee established pursuant to § 163.40(a)(1).

*Forest resources* means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land.

*Forester intern* means an Indian or Alaska Native who: Is employed as a forestry or forestry-related technician with the Bureau of Indian Affairs, an Indian tribe, or tribal forest-related enterprise; is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields; and is appointed to one of the Forester Intern positions established pursuant to § 163.40(b).

*Indian* means a member of an Indian tribe.

*Indian enterprise* means an enterprise which is designated as such by the Secretary or tribe.

*Indian forest land* means Indian land, including commercial, non-commercial, productive and non-productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.

*Indian land* means land title which is held by: The United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe; or by an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation.

*Indian tribe or tribe* means any Indian tribe, band, nation, rancheria, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation.

*Installment payments* means, in Timber Contract for the Sale of Predetermined Volumes, scheduled partial payments of the total contract

value based on purchaser bid. Payments made are normally not refundable.

*Integrated resource management plan* means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of the natural resources of such tribe's reservation.

*Noncommercial forest land* means forest land that is available for extensive management, but is incapable of producing sustainable forest products within the general rotation period. Such land may be economically harvested, but the site quality does not warrant significant investment to enhance future crops.

*Productive forest land* means forest land producing or capable of producing marketable forest products that is unavailable for harvest because of administrative restrictions or because access is not practical.

*Reservation* means an Indian reservation established pursuant to treaties, Acts of Congress, or Executive Orders and public domain Indian allotments, Alaska Native allotments, rancherias, and former Indian reservations in Oklahoma.

*Secretary* means the Secretary of the Interior or his or her authorized representative.

*Stumpage rate* means the stumpage value per unit of measure for a forest product.

*Stumpage value* means the value of a forest product prior to extraction from Indian forest land.

*Sustained yield* means the yield of forest products that a forest can produce continuously at a given intensity of management.

*Timberland* means forest land stocked, or capable of being stocked, with tree species that are regionally utilized for lumber, pulpwood, poles or veneer products.

*Trespass* means the removal of forest products from, or damaging forest products on, Indian forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.

*Tribal forest enterprise* means an Indian enterprise that is initiated and organized by a reservation's recognized tribal government.

*Unproductive forest land* means forest land that is not producing or capable of producing marketable forest products and is also unavailable for harvest because of administrative restrictions or because access is not practical.

*Woodland* means forest land not included within the timberland classification, stocked, or capable of being stocked, with tree species of such form and size to produce forest products that are generally marketable within the region for products other than lumber, pulpwood, or veneer.

#### § 163.2 Information collection.

The information collection requirements contained in 25 CFR part 163 do not require the approval of the Office of Management and Budget under 44 U.S.C. 3504(h) et seq.

#### § 163.3 Scope and objectives.

(a) The regulations in this part are applicable to all Indian forest land except as this part may be superseded by legislation.

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives:

(1) The development, maintenance and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to the harvesting of forest products, forestation, timber stand improvement and other forestry practices;

(2) The regulation of Indian forest land through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives;

(3) The regulation of Indian forest land in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) The development of Indian forest land and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) The retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) The management and protection of forest resources to retain the beneficial

effects to Indian forest land of regulating water run-off and minimizing soil erosion; and

(7) The maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

**§ 163.4 Secretarial recognition of tribal laws.**

Subject to the Secretary's trust responsibilities, and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest land, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest land. Such cooperation does not constitute a waiver of United States sovereign immunity and shall include:

- (a) Assistance in the enforcement of such laws;
- (b) Provision of notice of such laws to persons or entities undertaking activities on Indian forest land; and
- (c) Upon the request of an Indian tribe, the appearance in tribal forums.

**Subpart B—Forest Management and Operations**

**§ 163.10 Management of Indian forest land.**

(a) The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve objectives enumerated in § 163.3 of this part.

**§ 163.11 Forest management planning and sustained yield management.**

(a) To further the objectives identified in § 163.3 of this part, an appropriate forest management plan shall be prepared and revised as needed for all Indian forest lands. Such documents shall contain a statement describing the manner in which the policies of the tribe and the Secretary will be applied, with a definite plan of silvicultural management, analysis of the short term and long term effects of the plan, and a program of action, including a harvest schedule, for a specified period in the future. Forest management plans shall be based on the principle of sustained yield management and objectives established by the tribe and will require approval of the Secretary.

(b) Forest management planning for Indian forest land shall be carried out

through participation in the development and implementation of integrated resource management plans which provide coordination for the comprehensive management of all natural resources on Indian land. If the integrated resource management planning process has not been initiated, or is not ongoing or completed, a stand-alone forest management plan will be prepared.

(c) The harvest of forest products from Indian forest land will be accomplished under the principles of sustained yield management and will not be authorized until practical methods of harvest based on sound economic and silvicultural and other forest management principles have been prescribed. Harvest schedules will be prepared for a specified period of time and updated annually. Such schedules shall support the objectives of the beneficial land owners and the Secretary and shall be directed toward achieving an approximate balance between net growth and harvest at the earliest practical time.

**§ 163.12 Harvesting restrictions.**

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

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

**§ 163.13 Indian tribal forest enterprise operations.**

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

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

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

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

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

(e) Performance bonds may or may not be required in connection with operations on Indian land by such enterprises as determined by the Secretary.

**§ 163.14 Sale of forest products.**

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

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

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

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

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

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

(e) Except as provided in § 163.14(d) of this part, in all such sales, the forest products shall be appraised and sold at

stumpage rates not less than those established by the Secretary.

**§ 163.15 Advertisement of sales.**

Except as provided in §§ 163.13, 163.14, 163.16, and 163.26 of this part, sales of forest products shall be made only after advertising.

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

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

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

**§ 163.16 Forest product sales without advertisement.**

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually owned Indian land, and the approval of the Secretary when:

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

(2) Granting an authorized occupancy;

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

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

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

(6) Otherwise specifically authorized by law.

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

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

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

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

**§ 163.17 Deposit with bid.**

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

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

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

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

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

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be forfeited and distributed as damages to the beneficial owners if the bidder does not:

(1) Furnish the performance bond required by § 163.21 of this part within the time stipulated in the advertisement for sale of forest products;

(2) Execute the contract; or

(3) Perform the contract.

(e) Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or terms of the contract.

(f) In the event of an administrative appeal under 25 CFR part 2, the Secretary may hold such bid deposits in an escrow account pending resolution of the appeal.

**§ 163.18 Acceptance and rejection of bids.**

(a) The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement; or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids; or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as typographical errors and misplaced entries.

**§ 163.19 Contracts for the sale of forest products.**

(a) In sales of forest products with an appraised stumpage value exceeding \$15,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary.

(b) Unless otherwise directed, the contracts for forest products from individually-owned Indian land will be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Upon the request of the tribe, the contracts for tribal forest products may require that the proceeds be paid promptly and directly into a bank depository account designated by such tribe, or by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent.

(c) By mutual agreement of the parties to a contract, contracts may be extended, modified, or assigned subject to approval by the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

**§ 163.20 Execution and approval of contracts.**

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the beneficial Indian owner(s) or the Secretary acting pursuant to a power of attorney from the beneficial Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and beneficial Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for a decedent's estate where ownership has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the forest management deductions from such payments.

(4) When consent of only a majority interest has been obtained, the Secretary may execute the sale on behalf of all owners to fulfill responsibilities to the beneficiaries of the trust. In such event, the contract file must contain evidence of the effort to obtain consent of all owners. When an individual cannot be located, the Secretary, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale for particular interests. For Indian forest land containing undivided restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest has been obtained.

**§ 163.21 Bonds required.**

(a) Performance bonds will be required in connection with all sales of forest products, except they may or may

not be required, as determined by the approving officer, in connection with the use of forest products by Indian tribal forest enterprises pursuant to this part in § 163.13 or in timber cutting permits issued pursuant to § 163.26 of this part.

(1) In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed \$15,000, the bond shall be at least 20 percent of the estimated stumpage value.

(2) In sales in which the estimated stumpage value exceeds \$15,000 but is not over \$150,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than \$3,000.

(3) In sales in which the estimated stumpage value exceeds \$150,000, but is not over \$350,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than \$22,500.

(4) In sales in which the estimated stumpage value exceeds \$350,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than \$35,000.

(b) Bonds shall be in a form acceptable to the approving officer and may include:

(1) A corporate surety bond by an acceptable surety company;

(2) A cash bond designating the approving officer to act as trustee under terms of an appropriate trust;

(3) Negotiable U.S. Government securities supported by an appropriate trust instrument; or

(4) An irrevocable letter of credit.

**§ 163.22 Payment for forest products.**

(a) The basis of volume determination for forest products sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of Indian tribal forest enterprises pursuant to § 163.13 of this part, payment for forest products will be required in advance of cutting for timber, or removal for other forest products.

(b) Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document to make advanced deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to § 163.25 of this part, into accounts designated by such Indian tribe. Such accounts may be in one or more of the following formats:

(1) Escrow accounts at a tribally designated financial institution for receiving deposits with bids and advance deposits from which direct disbursements for timber harvested shall be made to tribes and forest management deductions accounts; or

(2) Tribal depository accounts for receiving advance payments, installment payments, payments from Indian tribal forest enterprises, and/or disbursements from advance deposit accounts or escrow accounts.

(c) The format must allow the Secretary to maintain trust responsibility through written verification that all required deposits, payments, and disbursements have been made.

(d) Terms and conditions for payment of forest products under lump sum (predetermined volume) sales shall be specified in forest product contract documents.

**§ 163.23 Advance payment for timber products.**

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from allotted, trust or restricted Indian forest land shall provide for an advance payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be specified in contracts. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each ownership in a sale exceed 50 percent of the bid stumpage value. Advance payments shall be credited against the timber of each ownership in the sale as the timber is cut and scaled at stumpage rates governing at the time of scaling. Advance payments are not refundable.

(b) Advance payments may be required on tribal land. When required, advance payments will operate the same as provided for in § 163.23(a) of this part.

**§ 163.24 Duration of timber contracts.**

After the effective date of a forest product contract, unless otherwise authorized by the Secretary, the maximum period which shall be allowed for harvesting the estimated volume of timber purchased, shall be five years.

**§ 163.25 Forest management deductions.**

(a) Pursuant to the provisions of 25 U.S.C. 413 and 25 U.S.C. 3105, a forest



management deduction shall be withheld from the gross proceeds of sales of forest products harvested from Indian forest land as described in this section.

(b) Gross proceeds shall mean the value in money or money's worth of consideration furnished by the purchaser of forest products purchased under a contract, permit, or other document for the sale of forest products.

(c) Forest management deductions shall not be withheld where the total consideration furnished under a contract, permit or other document for the sale of forest products is less than \$5,001.

(d) Except as provided in § 163.25(e) of this part, the amount of the forest management deduction shall not exceed the lesser amount of ten percent (10%) of the gross proceeds or, the actual percentage in effect on November 28, 1990.

(e) The Secretary may increase the forest management deduction percentage for Indian forest land upon receipt of a written request from a tribe supported by a resolution executed by the authorized tribal representatives. At the request of the authorized tribal representatives and at the discretion of the Secretary the forest management deduction percentage may be decreased to not less than one percent (1%) or the requirement for collection may be waived.

(f) Forest management deductions are to be utilized to perform forest land management activities in accordance with an approved expenditure plan. Expenditure plans shall describe the forest land management activities anticipated to be undertaken, establish a time period for their completion, summarize anticipated obligations and expenditures, and specify the method through which funds are to be transferred or credited to tribal accounts from special deposit accounts established to hold amounts withheld as forest management deductions. Any forest management deductions that have not been incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld, shall be collected into the general funds of the United States Treasury pursuant to 25 U.S.C. 413.

(1) For Indian forest lands located on an Indian reservation, a written expenditure plan for the use of forest management deductions shall be prepared annually and approved by the authorized tribal representative(s) and the Secretary. The approval of the expenditure plan by the authorized tribal representatives constitutes

allocation of tribal funds for Indian forest land management activities.

Approval of the expenditure plan by the Secretary shall constitute authority for crediting of forest management deductions to tribal account(s). The full amount of any deduction collected by the Secretary plus any income or interest earned thereon shall be available for expenditure according to the approved expenditure plan for the performance of forest land management activities on the reservation from which the forest management deduction is collected.

(2) Forest management deductions shall be handled in the same manner as described under § 163.25(f)(1) of this part if the expenditure plan approved by an Indian tribe and the Secretary provides for the conduct of forest land management activities on Indian forest lands located outside the boundaries of an Indian reservation.

(3) For public domain and Alaska Native allotments held in trust for Indians by the United States, forest management deductions may be utilized to perform forest land management activities on such lands in accordance with an expenditure plan approved by the Secretary.

(g) Forest management deductions withheld pursuant to this section shall not be available to cover the costs that are paid from funds appropriated for fire suppression or pest control or otherwise offset federal appropriations for meeting the Federal trust responsibility for management of Indian forest land.

(h) Within 120 days after the close of the tribal fiscal year, tribes shall submit to the Secretary a written report detailing the actual expenditure of forest management deductions during the past fiscal year. The Secretary shall have the right to inspect accounts, books, or other tribal records supporting the report.

(i) Forest management deductions incorporated into an expenditure plan approved by the Secretary shall remain available until expended.

(j) As provided in § 163.25(f) of this part, only forest management deductions that have not been incorporated into an approved expenditure plan may be deposited to a U.S. Treasury miscellaneous receipt account. No amount collected as forest management deductions shall be credited to any Federal appropriation. No other forest management deductions or fees derived from Indian forest land shall be collected to be covered into the general funds of the United States Treasury.

#### **§ 163.26 Forest product harvesting permits.**

(a) Except as provided in §§ 163.13 and 163.27 of this part, removal of forest products that are not under formal contract, pursuant to § 163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only with the written consent of the beneficial Indian owner(s) or the Secretary, for harvest of forest products from Indian forest land, as authorized in § 163.20 of this part. To be valid, permits must be approved by the Secretary. Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.

(b) Free use harvesting permits issued shall specify species and types of forest products to be removed. It may be stipulated that forest products removed under this authority cannot be sold or exchanged for other goods or services. The estimated value which may be harvested in a fiscal year by any individual under this authority shall not exceed \$5,000. For the purpose of issuance of free use permits, individual shall mean an individual Indian or any organized group of Indians.

(c) Paid permits subject to forest management deductions, as provided in § 163.25 of this part, may be issued. Unless otherwise authorized by the Secretary, the stumpage value which may be harvested under paid permits in a fiscal year by any individual under this authority shall not exceed \$25,000. For the purpose of issuance of paid permits, individual shall mean an individual or any operating entity comprised of more than one individual.

(d) A Special Allotment Timber Harvest Permit may be issued to an Indian having sole beneficial interest in an allotment to harvest and sell designated forest products from his or her allotment. The special permit shall include provision for payment by the Indian of forest management deductions pursuant to § 163.25 of this part. Unless waived by the Secretary, the permit shall also require the Indian to make a bond deposit with the Secretary as required by § 163.21. Such bonds will be returned to the Indian upon satisfactory completion of the permit or will be used by the Secretary in his or her discretion for planting or other work to offset damage to the land or the timber caused by failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian shall be required to provide evidence acceptable to the Secretary

that he or she has arranged a bona fide sale of the forest products, on terms that will protect the Indian's interests.

**§ 163.27 Free-use harvesting without permits.**

With the consent of the beneficial Indian owners and the Secretary, Indians may harvest designated types of forest products from Indian forest land without a permit or contract, and without charge. Forest products harvested under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services.

**§ 163.28 Fire management measures.**

(a) The Secretary is authorized to maintain facilities and staff, hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation as needed, to maintain an adequate level of readiness to meet normal wildfire protection needs and extinguish forest or range fires on Indian land. No expenses for fighting a fire outside Indian lands may be incurred unless the fire threatens Indian land or unless the expenses are incurred pursuant to an approved cooperative agreement with another protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for fire fighting services that are currently in use by public and private wildfire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may also enter into reciprocal agreements with any fire organization maintaining protection facilities in the vicinity of Indian reservations or other Indian land for mutual aid in wildfire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid in fire protection pursuant to the Act of May 27, 1955 (69 Stat. 66).

(b) The Secretary is authorized to conduct a wildfire prevention program to reduce the number of person-caused fires and prevent damage to natural resources on Indian land.

(c) The Secretary is authorized to expend funds for emergency rehabilitation measures needed to stabilize soil and watershed on Indian land damaged by wildfire.

(d) Upon consultation with the beneficial Indian owners, the Secretary may use fire as a management tool on Indian land to achieve land and/or resource management objectives.

**§ 163.29 Trespass.**

(a) Trespassers will be liable for civil penalties and damages to the

enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(1) *Cases in Tribal Court.* For trespass actions brought in tribal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this § 163.29 of this part. All other aspects of a tribal trespass prosecution brought under these regulations will be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, unless otherwise prescribed under federal law. Absent applicable tribal or federal law, the measure of damages shall be that prescribed by the law of the state in which the trespass was committed.

(2) *Cases in Federal Court.* For trespass actions brought in Federal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this § 163.29. In the absence of applicable federal law, the measure shall be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law, the law of the state in which it was committed.

(3) Civil penalties for trespass include, but are not limited to:

(i) Treble damages, whenever any person, without lawful authority injures, severs, or carries off from a reservation any forest product as defined in § 163.1 of this part. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

(ii) Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

(iii) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(iv) Interest calculated at the statutory rate prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed,

or in the absence of tribal law in the amount prescribed by federal law. Where tribal law or federal law does not supply a statutory interest rate, the rate of interest shall be statutory rate upon judgments as prescribed by the law of the state in which the trespass was committed. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered.

(b) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under § 163.29(a) of this part. After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

(1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass land; or

(2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

(c) Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the reservation in which the trespass took place.

(d) Civil penalties and other damages collected under these regulations, except for penalties and damages provided for in §§ 163.29(a)(3) (ii) and (iii) of this part, shall be treated as

proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

(e) When a federal official or authorized tribal representative pursuant to § 163.29(j) of this part has reason to believe that Indian forest products are involved in trespass, such individual may seize and take possession of the forest products involved in the trespass if the products are located on reservation. When forest products are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. Where the official initiates seizure under these regulations only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through administrative appeal pursuant to part 2 of Title 25, and shall provide the name and the address of the official with whom the appeal may be filed. Alternately, an official may exercise concurrent tribal seizure authority under these regulations using applicable tribal law. In such case, the Notice of Seizure shall identify the tribal law under which the seizure may be challenged, if any. A copy of a Notice of Seizure shall be given to the possessor or claimant at the time of the seizure. If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products. If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the representative of the Secretary, or authorized tribal representative where deferral has been requested, may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an administrative appeal nor by a challenge of the seizure action through a tribal forum. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is

found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

(f) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the federal official or authorized tribal representative pursuant to § 163.29(k) of this part responsible for the trespass shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

(1) That such products could be Indian trust property involved in a trespass; and

(2) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or tribe.

(g) A representative of the Secretary or authorized tribal representative pursuant to § 163.29(j) of this part will promptly determine if a trespass has occurred. The appropriate representative will issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the processor:

(1) That a determination has been made that a trespass has occurred;

(2) The basis for the determination;

(3) An assessment of the damages, penalties and costs;

(4) Of the seizure of forest products, if applicable; and

(5) That disposition or removal of Indian forest products taken in the trespass may result in civil and/or criminal action by the United States or the tribe.

(h) The Secretary may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, the Secretary will determine the procedure and approve acceptance of any settlements negotiated by a tribe exercising its concurrent jurisdiction pursuant to § 163.29(j) of this part.

(i) The Secretary may delegate by written agreement or contract, responsibility for detection and investigation of forest trespass.

(j) Indian tribes that adopt the regulations set forth in this section, conformed as necessary to tribal law, shall have concurrent civil jurisdiction to enforce 25 U.S.C. 3106 and this section against any person.

(1) The Secretary shall acknowledge said concurrent civil jurisdiction over trespass, upon:

(i) Receipt of a formal tribal resolution documenting the tribe's adoption of this section; and

(ii) Notification of the ability of the tribal court system to properly adjudicate forest trespass cases, including a statement that the tribal court will enforce the Indian Civil Rights Act or a tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(2) Where an Indian tribe has acquired concurrent civil jurisdiction over trespass cases as set forth in § 163.29(j)(1) of this part, the Secretary and tribe's authorized representatives will be jointly responsible to coordinate prosecution of trespass actions. The Secretary shall, upon timely request of the tribe, defer prosecution of forest trespasses to the tribe. Where said deferral is not requested, the designated Bureau of Indian Affairs forestry trespass official shall coordinate with the authorized forest trespass official of each tribe the exercise of concurrent tribal and Federal trespass jurisdiction as to each trespass. Such officials shall review each case, determine in which forums to recommend bringing an action, and promptly provide their recommendation to the Federal officials responsible for initiating and prosecuting forest trespass cases. Where an Indian tribe has acquired concurrent civil jurisdiction, but does not request deferral of prosecution, the federal officials responsible for initiating and prosecuting such cases may file and prosecute the action in the tribal court or forum.

(3) The Secretary may rescind an Indian tribe's concurrent civil jurisdiction over trespass cases under this regulation if the Secretary or a court of competent jurisdiction determines that the tribal court has not adhered to the due process or equal protection requirements of the Indian Civil Rights Act. If it is determined that said rescission is justified, the Secretary shall provide written Notice of the rescission, including the findings justifying the rescission and the steps needed to remedy the violations causing the rescission, to the chief judge of the tribal judiciary or other authorized tribal official should there be no chief judge. If said steps are not taken within 60 days, the Secretary's rescission of concurrent civil jurisdiction shall become final. The affected tribe(s) may appeal a Notice of Rescission under part 2 of Title 25.

(4) Nothing shall be construed to prohibit or in any way diminish the authority of a tribe to prosecute

individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals.

**§ 163.30 Revocable road use and construction permits for removal of commercial forest products.**

(a) In accordance with 25 U.S.C. 415 as amended, the Secretary may request tribes and/or other beneficial owners to sign revocable permits designating the Secretary as agent for the landowner and empowering him or her to issue revocable road use and construction permits to users for the purpose of removing forest products.

(b) When a majority of trust interest in a tract has consented, the Secretary may issue revocable road use and construction permits for removal of forest products over and across such land. In addition, the Secretary may act for individual owners when:

(1) One or more of the individual owner(s) of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant, in total or for an interest therein, will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The whereabouts of the owner(s) of the land or those with an interest therein are unknown so long as the majority of owner(s) of interests whose whereabouts are known, consent to the grant;

(3) The heirs or devisees of a deceased owner of the land or interest have not been determined, and the Secretary finds the grant will cause no substantial injury to the land or any land owner; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain the consent of the majority and finds that such grant in total or an interest therein will cause no substantial injury to the land or the owner(s), that cannot be adequately compensated for by monetary damages.

(c) Nothing in this section shall preclude acquisition of rights-of-way over Indian lands, under 25 CFR part 169, or conflict with provisions of that part.

**§ 163.31 Insect and disease control.**

(a) The Secretary is authorized to protect and preserve Indian forest land from disease or insects (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary shall consult with the authorized tribal representatives and beneficial owners of Indian forest land concerning control actions.

(b) The Secretary is responsible for controlling and mitigating harmful

effects of insects and diseases on Indian forest land and will coordinate control actions with the Secretary of Agriculture in accordance with 92 Stat. 365, 16 U.S.C. 2101.

**§ 163.32 Forest development.**

Forest development pertains to forest land management activities undertaken to improve the sustainable productivity of commercial Indian forest land. The program shall consist of reforestation, timber stand improvement projects, and related investments to enhance productivity of commercial forest land with emphasis on accomplishing on-the-ground projects. Forest development funds will be used to re-establish, maintain, and/or improve growth of commercial timber species and control stocking levels on commercial forest land. Forest development activities will be planned and executed using benefit-cost analyses as one of the determinants in establishing priorities for project funding.

**§ 163.33 Administrative appeals.**

Any challenge to action under 25 CFR part 163 taken by an approving officer or subordinate official exercising delegated authority from the Secretary shall be exclusively through administrative appeal or as provided in the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended). Such appeal(s) shall be filed in accordance with the provisions of 25 CFR part 2, Appeals from administrative actions, except that an appeal of any action under part 163 of this title shall:

(a) Not stay any action unless otherwise directed by the Secretary; and

(b) Define "interested party" for purposes of bringing such an appeal or participating in such an appeal as any person whose own direct economic interest is adversely affected by an action or decision.

**§ 163.34 Environmental compliance.**

Actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969, applicable Council on Environmental Quality Regulations, and tribal laws and regulations.

**§ 163.35 Indian forest land assistance account.**

(a) At the request of a tribe's authorized representatives, the Secretary may establish tribal-specific forest land assistance accounts within the trust fund system.

(b) Deposits shall be credited either to forest transportation or to general forest land management accounts.

(c) Deposits into the accounts may include:

(1) Funds from non-federal sources related to activities on or for the Indian forest land of such tribe's reservation;

(2) Donations or contributions;

(3) Unobligated forestry appropriations for the tribe;

(4) User fees; and

(5) Funds transferred under Federal interagency agreements if otherwise authorized by law.

(d) For purposes of § 163.35(c)(3) of this part; unobligated forestry appropriations shall consist of balances that remain unobligated at the end of the fiscal year(s) for which funds are appropriated for the benefit of an Indian tribe.

(e) Funds in the Indian forest land assistance account plus any interest or other income earned shall remain available until expended and shall not be available to otherwise offset Federal appropriations for the management of Indian forest land.

(f) Funds in the forest land assistance account shall be used only for forest land management activities on the reservation for which the account is established.

(g) Funds in a tribe's forest land assistance account shall be expended in accordance with a plan approved by the tribe and the Secretary.

(h) The Secretary may, where circumstances warrant, at the request of the tribe, or upon the Secretary's own volition, conduct audits of the forest land assistance accounts and shall provide the audit results of to the tribe(s).

**§ 163.36 Tribal forestry program financial support.**

(a) The Secretary shall maintain a program to provide financial support to qualifying tribal forestry programs. A qualifying tribal forestry program is an organization or entity established by a tribe for purposes of carrying out forest land management activities. Such financial support shall be made available through the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) The authorized tribal representatives of any category 1, 2, or 3 reservation (as defined under § 163.36(b)(1)-(3)) with an established tribal forestry program or with an intent to establish such a program for the purpose of carrying out forest land management activities may apply and qualify for tribal forestry program financial support. Reservation categories, as determined by the Secretary, are defined as:

(1) Category 1 includes major forested reservations comprised of more than 10,000 acres of trust or restricted commercial timberland or having more than a one million board foot harvest of forest products annually.

(2) Category 2 includes minor forested reservations comprised of less than 10,000 acres of trust or restricted commercial timberland and having less than a one million board foot harvest of forest products annually, or whose forest resource is determined by the Secretary to be of significant commercial timber value.

(3) Category 3 includes significant woodland reservations comprised of an identifiable trust or restricted forest area of any size which is lacking a timberland component, and whose forest resource is determined by the Secretary to be of significant commercial woodland value.

(c) A group of tribes that has either established or intends to establish a cooperative tribal forestry program to provide forest land management services to their reservations may apply and qualify for tribal forestry program financial support. For purposes of financial support under this provision, the cooperative tribal forestry program and the commercial forest acreage and annual allowable cut which it represents may be considered as a single reservation.

(d) Before the beginning of each Federal fiscal year, tribes applying to qualify for forestry program financial support shall submit application packages to the Secretary which:

(1) Document that a tribal forestry program exists or that there is an intent to establish such a program;

(2) Describe forest land management activities and the time line for implementing such activities which would result from receiving tribal forestry program financial support; and

(3) Document commitment to sustained yield management.

(e) Tribal forestry program financial support shall provide professional and technical services to carry out forest land management activities and shall be based on levels of funding assistance as follows:

(1) Level one funding assistance shall be equivalent to a Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs;

(2) Level two funding assistance shall be equivalent to an additional Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such

a position to pay for fringe benefits and support costs; and

(3) Level three funding assistance shall be based on equal distribution of remaining funds among qualifying applicants.

(f) Determination of qualification for level of funding assistance shall be as follows:

(1) A funding level qualification value shall be determined for each eligible applicant using the formula below. Such formula shall only be used to determine which applicants qualify for level one funding assistance. Acreage and allowable cut data used in the formula shall be as maintained by the Secretary. Eligible applicants with a funding level qualification value of one (1) or greater shall qualify for level one assistance.

#### *Funding Level Qualification Formula*

$$\left[ \frac{.5 \times CA}{\text{Tot. CA}} + \frac{.5 \times AAC}{\text{Tot. AAC}} \right] \times 1000$$

where:

CA=applicant's total commercial Indian forest land acres;

Tot. CA=national total commercial Indian forest land acres;

AAC=applicant's total allowable annual cut from commercial Indian forest land acres; and

Tot. AAC=national total allowable annual cut from commercial Indian forest land acres.

(2) All category 1 or 2 reservations that are eligible applicants under § 163.36(d) of this part are qualified and eligible for level two assistance.

(3) All category 1, 2 or 3 reservations that are eligible applicants under § 163.36(d) of this part are qualified and eligible for level three assistance.

(g) Tribal forestry program financial support funds shall be distributed based on the following:

(1) All requests from reservations qualifying for level one funding assistance must be satisfied before funds are made available for level two funding assistance;

(2) All requests from reservations qualifying for level two funding assistance must be satisfied before funds are made available for level three funding assistance; and

(3) If available funding is not adequate to satisfy all requests at a particular level of funding, funds will be evenly divided among tribes qualifying at that level.

#### **§ 163.37 Forest management research.**

The Secretary, with the consent of the authorized Indian representatives' is authorized to perform forestry research activities to improve the basis for

determining appropriate land management activities to apply to Indian forest land.

#### **Subpart C—Forestry Education, Education Assistance, Recruitment and Training**

##### **§ 163.40 Indian and Alaska Native forestry education assistance.**

(a) *Establishment and evaluation of the forestry education assistance programs.* (1) The Secretary shall establish within the Bureau of Indian Affairs Division of Forestry an education committee to coordinate and implement the forestry education assistance programs and to select participants for all the forestry education assistance programs with the exception of the cooperative education program. This committee will be, at a minimum, comprised of a professional educator, a personnel specialist, an Indian or Alaska Native who is not employed by the Bureau of Indian Affairs, and a professional forester from the Bureau of Indian Affairs.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, shall monitor and evaluate the forestry education assistance programs to ensure that there are adequate Indian and Alaska Native foresters and forestry-related professionals to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for tribes and ANCSA Corporations. Such monitoring and evaluating shall identify the number of participants in the intern, cooperative education, scholarship, and outreach programs; the number of participants who completed the requirements to become a professional forester or forestry-related professional; and the number of participants completing advanced degree requirements.

(b) *Forester intern program.* (1) The purpose of the forester intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native forest land. In keeping with this purpose, the Bureau of Indian Affairs in concert with tribes and Alaska Natives will work:

(i) To obtain the maximum degree of participation from Indians and Alaska Natives in the forester intern program;

(ii) To encourage forester interns to complete an undergraduate degree program in a forestry or forestry-related field which could include courses on indigenous culture; and

(iii) To create an opportunity for the advancement of forestry and forestry-related technicians to professional resource management positions with the

Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, subject to the availability of personnel resource levels established in agency budgets, shall establish and maintain in the Bureau of Indian Affairs at least 20 positions for the forester intern program. All Indians and Alaska Natives who satisfy the qualification criteria in § 163.40(b)(3) of this part may compete for such positions.

(3) To be considered for selection, applicants for forester intern positions must meet the following criteria:

(i) Be eligible for Indian preference as defined in 25 CFR, part 5 subchapter A;

(ii) Possess a high school diploma or its recognized equivalent;

(iii) Be able to successfully complete the intern program within a three year maximum time period; and

(iv) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that such a letter of acceptance will be acquired within 90 days.

(4) The Bureau of Indian Affairs shall advertise vacancies for forester intern positions semiannually, no later than the first day of April and October, to accommodate entry into school.

(5) Selection of forester interns will be based on the following guidelines:

(i) Selection will be on a competitive basis selecting applicants who have the greatest potential for success in the program;

(ii) Selection will take into consideration the amount of time which will be required for individual applicants to complete the intern program;

(iii) Priority in selection will be given to candidates currently employed with and recommended for participation by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation; and

(iv) Selection of individuals to the program awaiting the letter of acceptance required by § 163.40(b)(3)(iv) of this part may be canceled if such letter of acceptance is not secured and provided to the education committee in a timely manner.

(6) Forester interns shall comply with each of the following program requirements:

(i) Maintain full-time status in a forestry related curriculum at an accredited post-secondary school having an agreement which assures the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at a bachelor degree granting

institution accredited by the American Association of Universities;

(ii) Maintain good academic standing;

(iii) Enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, the recommending tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program; and

(iv) Report for service with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation during any break in attendance at school of more than three weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service.

(7) The education committee established pursuant to § 163.40(a)(1) of this part will evaluate annually the performance of forester intern program participants against requirements enumerated in § 163.40(b)(6) of this part to ensure that they are satisfactorily progressing toward completing program requirements.

(8) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an accredited post-secondary school.

(c) *Cooperative education program.*

(1) The purpose of the cooperative education program is to recruit and develop promising Indian and Alaska Native students who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional foresters and other forestry-related professionals by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The program shall be operated by the Bureau of Indian Affairs Division of Forestry in accordance with the provisions of 5 CFR 213.3202(a) and 213.3202(b).

(3) To be considered for selection, applicants for the cooperative education program must meet the following criteria:

(i) Meet eligibility requirements stipulated in 5 CFR 213.3202;

(ii) Be accepted into or enrolled in a course of study at a high school offering college preparatory course work, an accredited institution which grants bachelor degrees in forestry or forestry-related curriculums or a post-secondary education institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary

institution which meet the program requirements for a forestry related program at the bachelor degree-granting institution.

(4) Cooperative education steering committees established at the field level shall select program participants based on eligibility requirements stipulated in § 163.40(c)(3) of this part without regard to applicants' financial needs.

(5) A recipient of assistance under the cooperative education program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a recommending tribe, tribal forest enterprise or ANCSA Corporation for one year in return for each year in the program.

(6) The Secretary shall pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for participation in the cooperative education program.

(d) *Scholarship program.* (1) The Secretary is authorized, within the Bureau of Indian Affairs Division of Forestry, to establish and grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) The education committee established pursuant to this part in § 163.40(a)(1) shall select program participants based on eligibility requirements stipulated in §§ 163.40(d)(5), 163.40(d)(6) and 163.40(d)(7) without regard to applicants' financial needs or past scholastic achievements.

(3) Recipients of scholarships must reapply annually to continue funding beyond the initial award period. Students who have been recipients of scholarships in past years, who are in good academic standing and have been recommended for continuation by their academic institution will be given priority over new applicants for selection for scholarship assistance.

(4) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and, therefore, may be subject to yearly changes.

(5) Preparatory scholarships are available for a maximum of two and one half academic years of general, undergraduate course work leading to a degree in forestry or forestry-related curriculums and may be awarded to individuals who meet the following criteria:

(i) Must possess a high school diploma or its recognized equivalent; and

(ii) Be enrolled and in good academic standing or accepted for enrollment at an accredited post-secondary school which grants degrees in forestry or forestry-related curriculums or be in a post-secondary institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry-related curriculum at the bachelor degree granting institution.

(6) Prerequisite scholarships are available for a maximum of three academic years and may be awarded to individuals who meet the following criteria:

(i) Have completed a minimum of 55 semester hours towards a bachelor degree in a forestry or forestry-related curriculum; and

(ii) Be accepted into a forestry or forestry-related bachelor degree-granting program at an accredited college or university.

(7) Graduate scholarships are available for a maximum of three academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in forestry or forestry-related fields.

(8) A recipient of assistance under the scholarship program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for one year for each year in the program.

(9) The Secretary shall pay all scholarships approved by the education committee established pursuant to this part in § 163.40(a)(1), for which funding is available.

(e) *Forestry education outreach.* (1) The Secretary shall establish and maintain a forestry education outreach program within the Bureau of Indian Affairs Division of Forestry for Indian and Alaska Native youth which will:

(i) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(ii) Promote forestry career awareness that could include modern technologies as well as native indigenous forestry technologies;

(iii) Involve students in projects and activities oriented to forestry related

professions early so students realize the need to complete required precollege courses; and

(iv) Integrate Indian and Alaska Native forestry program activities into the education of Indian and Alaska Native students.

(2) The program shall be developed and carried out in consultation with appropriate community education organizations, tribes, ANCSA Corporations, and Alaska Native organizations.

(3) The program shall be coordinated and implemented nationally by the education committee established pursuant to § 163.40(a)(1) of this part.

(f) *Postgraduate studies.* (1) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native foresters and forestry-related professionals working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporations so that the best possible service is provided to Indian and Alaska Native publics.

(2) The Secretary is authorized to pay the cost of tuition, fees, books and salary of Alaska Natives and Indians who are employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation who have previously received diplomas or degrees in forestry or forestry-related curriculums and who wish to pursue advanced levels of education in forestry or forestry-related fields.

(3) Requirements of the postgraduate study program are:

(i) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a forestry or forestry-related field;

(ii) The duration of course work cannot be less than one semester or more than three years; and

(iii) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program during their course of study.

(4) Program applicants will submit application packages to the education committee established by § 163.40(a)(1). At a minimum, such packages shall contain a complete SF 171 and an endorsement, signed by the applicant's supervisor clearly stating the needs and benefits of the desired training.

(5) The education committee established pursuant to § 163.40(a)(1) shall select program participants based on the following criteria:

(i) Need for the expertise sought at both the local and national levels;

(ii) Expected benefits, both to the location and nationally; and

(iii) Years of experience and the service record of the employee.

(6) Program participants will enter into an obligated service agreement in accordance with § 163.42(a), to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program. However, the obligated service requirement may be reduced by the Secretary if the employee receives supplemental funding such as research grants, scholarships or graduate stipends and, as a result, reduces the need for financial assistance. If the obligated service agreement is breached, the Secretary is authorized to pursue collection in accordance with § 163.42(b) of this part.

**§ 163.41 Postgraduation recruitment, continuing education and training programs.**

(a) *Postgraduation recruitment program.* (1) The purpose of the postgraduation recruitment program is to recruit Indian and Alaska Native graduate foresters and trained forestry technicians into the Bureau of Indian Affairs forestry program or forestry programs conducted by a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary is authorized to assume outstanding student loans from established lending institutions of Indian and Alaska Native foresters and forestry technicians who have successfully completed a post-secondary forestry or forestry-related curriculum at an accredited institution.

(3) Indian and Alaska Natives receiving benefits under this program shall enter into an obligated service agreement in accordance with § 163.42(a) of this part. Obligated service required under this program will be one year for every \$5,000 of student loan debt repaid.

(4) If the obligated service agreement is breached, the Secretary is authorized to pursue collection of the student loan(s) in accordance with § 163.42(b) of this part.

(b) *Postgraduate intergovernmental internships.* (1) Forestry personnel working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation may apply to the Secretary and be granted an internship within forestry-related programs of agencies of the Department of the Interior.

(2) Foresters or forestry-related personnel from other Department of the Interior agencies may apply through

proper channels for internships within Bureau of Indian Affairs forestry programs and, with the consent of a tribe or Alaska Native organization, within tribal or Alaska Native forestry programs.

(3) Forestry personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an internship within the Bureau of Indian Affairs and, with the consent of a tribe or Alaska Native organization, within a tribe, tribal forest enterprise or ANCSA Corporation.

(4) Forestry personnel from a tribe, tribal forest enterprise or ANCSA Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise or ANCSA Corporation forestry program.

(5) The employing agency of participating Federal employees will provide for the continuation of salary and benefits.

(6) The host agency for participating tribal, tribal forest enterprise or ANCSA Corporation forestry employees will provide for salaries and benefits.

(7) A bonus pay incentive, up to 25 percent of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and will be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

(c) *Continuing education and training.* (1) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of forestry personnel employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation. This program will emphasize continuing education and training in three areas:

(i) Orientation training, including tribal-Federal relations and responsibilities;

(ii) Technical forestry education; and

(iii) Developmental training in forest land-based enterprises and marketing.

(2) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, an orientation program designed to increase awareness and understanding of Indian culture and its effect on forest management practices and on Federal laws that affect forest management operations and administration in the Indian forestry program.

(3) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, a continuing technical forestry education program to assist foresters and forestry-related professionals to perform forest management on Indian forest land.

(4) The Secretary shall implement, within the Bureau of Indian Affairs Division of Forestry, a forest land-based forest enterprise and marketing training program to assist with the development and use of Indian and Alaska Native forest resources.

**§ 163.42 Obligated service and breach of contract.**

(a) *Obligated service.* (1) Individuals completing forestry education programs with an obligated service requirement may be offered full time permanent employment with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If such employment is not offered within the 90-day period, the student shall be relieved of obligated service requirements. Not less than 30 days prior to the commencement of employment, the employer shall notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the Bureau of Indian Affairs, the employer shall notify the Secretary of the offer for employment.

(2) Qualifying employment time eligible to be credited to fulfilling the obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the forester intern program, which includes the special provisions outlined in § 163.40(b)(6)(iv). The minimum service obligation period shall be one year of full-time employment.

(3) The Secretary or other qualifying employer reserves the right to designate the location of employment for fulfilling the service obligation.

(4) A participant in any of the forestry education programs with an obligated service requirement who receives a degree may, within 30 days of the degree completion date, request a deferral of obligated service to pursue postgraduate or postdoctoral studies. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for deferral. The Secretary may grant such a request, however, deferrals granted in no way waive or otherwise affect obligated service requirements.

(5) A participant in any of the forestry education programs with an obligated service requirement may, within 30 days of the date all program education requirements have been completed, request a waiver of obligated service based on personal or family hardship. The Secretary may grant a full or partial waiver or deny the request for waiver. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for waiver.

(b) *Breach of contract.* Any individual who has participated in and accepted financial support under forestry education programs with an obligated service requirement and who does not accept employment or unreasonably terminates such employment by their own volition will be required to repay financial assistance as follows:

(1) *Forester intern program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the forester intern received while occupying the intern position. The amount of salary paid to the individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise, or ANCSA Corporation, shall not be included in this total.

(2) *Cooperative education program*—Amount plus interest equal to the sum of all tuition, books, and fees that the individual received under the cooperative education program.

(3) *Scholarship program*—Amount plus interest equal to scholarship(s) provided to the individual under the scholarship program.

(4) *Postgraduation recruitment program*—Amount plus interest equal to the sum of all the individual's student loans assumed by the Secretary under the postgraduation recruitment program.

(5) *Postgraduate studies program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the individual received while in the postgraduate studies program. The amount of salary paid to that individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, a tribal enterprise, or ANCSA Corporation, shall not be included in this total.

(c) *Adjustment of repayment for obligated service performed.* Under forestry education programs with an obligated service requirement, the amount required for repayment will be adjusted by crediting time of obligated service performed prior to breach of contract toward the final amount of debt.



**Subpart D—Alaska Native Technical Assistance Program****§ 163.60 Purpose and scope.**

(a) The Secretary shall provide a technical assistance program to ANCSA corporations to promote sustained yield management of their forest resources and, where practical and consistent with the economic objectives of the ANCSA Corporations, promote local processing and other value-added activities. For the purpose of this subpart, technical assistance means specialized professional and technical help, advice or assistance in planning, and providing guidance, training and review for programs and projects associated with the management of, or impact upon, Indian forest land, ANCSA corporation forest land, and their related resources. Such technical assistance shall be made available through contracts, grants or agreements entered into in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) Nothing in this part shall be construed as: Affecting, modifying or increasing the responsibility of the United States toward ANCSA corporation forest land, or affecting or otherwise modifying the Federal trust responsibility towards Indian forest land; or requiring or otherwise mandating an ANCSA corporation to apply for a contract, grant, or agreement for technical assistance with the Secretary. Such applications are strictly voluntary.

**§ 163.61 Evaluation committee.**

(a) The Secretary shall establish an evaluation committee to assess and rate technical assistance project proposals. This committee will include, at a minimum, local Bureau of Indian Affairs and Alaska Native representatives with expertise in contracting and forestry.

**§ 163.62 Annual funding needs assessment and rating.**

(a) Each year, the Secretary will request a technical assistance project needs assessment from ANCSA corporations. The needs assessments will provide information on proposed project goals and estimated costs and benefits and will be rated by the evaluation committee established pursuant to § 163.61 for the purpose of making funding recommendations to the Secretary. To the extent practicable, such recommendations shall achieve an equitable funding distribution between large and small ANCSA corporations and shall give priority for continuation

of previously approved multi-year projects.

(b) Based on the recommendations of the evaluation committee, the Secretary shall fund such projects, to the extent available appropriations permit.

**§ 163.63 Contract, grant, or agreement application and award process.**

(a) At such time that the budget for ANCSA corporation technical assistance projects is known, the Secretary shall advise the ANCSA corporations on which projects were selected for funding and on the deadline for submission of complete and detailed contract, grant or agreement packages.

(b) Upon the request of an ANCSA corporation and to the extent that funds and personnel are available, the Bureau of Indian Affairs shall provide technical assistance to ANCSA corporations to assist them with:

- (1) Preparing the technical parts of the contract, grant, or agreement application; and
- (2) Obtaining technical assistance from other Federal agencies.

**Subpart E—Cooperative Agreements****§ 163.70 Purpose of agreements.**

(a) To facilitate administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements between Indian tribes and any agency or entity within the Department. Such cooperative agreements include engaging tribes to undertake services and activities on all lands managed by Department of the Interior agencies or entities or to provide services and activities performed by these agencies or entities on Indian forest land to:

- (1) Engage in cooperative manpower and job training and development programs;
- (2) Develop and publish cooperative environmental education and natural resource planning materials; and
- (3) Perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

(b) The Secretary may enter into such agreements when he or she determines the public interest will be benefited. Nothing in § 163.70(a) shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

**§ 163.71 Agreement funding.**

In cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment without regard to the provisions of 31 U.S.C. 3324, relating to the advance of public moneys.

**§ 163.72 Supervisory relationship.**

In any agreement authorized by the Secretary, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise, as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of 28 U.S.C. 2671 through 2680, and 5 U.S.C. 8101 through 8193.

**Subpart F—Program Assessment****§ 163.80 Periodic assessment report.**

The Secretary shall commission every ten years an independent assessment of Indian forest land and Indian forest land management practices under the guidelines established in § 163.81 of this part.

(a) Assessments shall be conducted in the first year of each decade (e.g., 2000, 2010, etc.) and shall be completed within 24 months of their initiation date. Each assessment shall be initiated no later than November 28 of the designated year.

(b) Except as provided in § 163.83 of this part, each assessment shall be conducted by a non-Federal entity knowledgeable of forest management practices on Federal and private land. Assessments will evaluate and compare investment in and management of Indian forest land with similar Federal and private land.

(c) Completed assessment reports shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

**§ 163.81 Assessment guidelines.**

Assessments shall be national in scope and shall include:

- (a) An in-depth analysis of management practices on, and the level of funding by management activity for, specific Indian forest land compared with similar Federal and private forest land;
- (b) A survey of the condition of Indian forest land, including health and productivity levels;
- (c) An evaluation of the staffing patterns, by management activity, of

forestry organizations of the Bureau of Indian Affairs and of Indian tribes;

(d) An evaluation of procedures employed in forest product sales administration, including preparation, field supervision, and accountability for proceeds;

(e) An analysis of the potential for streamlining administrative procedures, rules and policies of the Bureau of Indian Affairs without diminishing the Federal trust responsibility;

(f) A comprehensive review of the intensity and utility of forest inventories and the adequacy of Indian forest land management plans, including their compatibility with other resource inventories and applicable integrated resource management plans and their ability to meet tribal needs and priorities;

(g) An evaluation of the feasibility and desirability of establishing or revising minimum standards against which the adequacy of the forestry program of the Bureau of Indian Affairs in fulfilling its

trust responsibility to Indian forest land can be measured;

(h) An evaluation of the effectiveness of implementing the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended) in regard to the Bureau of Indian Affairs forestry program;

(i) A recommendation of any reforms and increased funding and other resources necessary to bring Indian forest land management programs to a state-of-the-art condition; and

(j) Specific examples and comparisons from across the United States where Indian forest land is located.

**§ 163.82 Annual status report.**

The Secretary shall, within 6 months of the end of each fiscal year, submit to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes, a report on the status of Indian forest land with respect to attaining the

standards, goals and objectives set forth in approved forest management plans.

The report shall identify the amount of Indian forest land in need of forestation or other silvicultural treatment, and the quantity of timber available for sale, offered for sale, and sold, for each Indian tribe.

**§ 163.83 Assistance from the Secretary of Agriculture.**

The Secretary of the Interior may ask the Secretary of Agriculture, through the Forest Service, on a nonreimbursable basis, for technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by § 163.80 of this part.

Dated: July 14, 1995.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

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