

**DEPARTMENT OF AGRICULTURE****Forest Service**

RIN 0596-AC45

**Stewardship Contracting, FSH 2409.19, Chapter 60****AGENCY:** Forest Service, USDA.**ACTION:** Notice of issuance of final directive; response to comment.

**SUMMARY:** The Forest Service is issuing a final directive to Forest Service Handbook 2409.19, chapter 60, Stewardship Contracting. The directive provides direction to implement the provisions as authorized in the Tribal Forest Protection Act (TFPA) of 2004 (25 U.S.C. 3115a). On December 26, 2006, the Forest Service published in the **Federal Register** for public notice and comments an interim directive regarding guidance for, TFPA proposals. The agency considered all the comments and made a number of changes to the final directive in response.

**DATES:** Final directive 2409.19\_60 is effective October 21, 2008.

**ADDRESSES:** The full text of the final directive is available electronically on the World Wide Web at <http://www.fs.fed.us/im/directives>. The administrative record for this final directive is available for inspection and copying at the office of the Director, Office of Tribal Relations, USDA Forest Service, 2nd Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, except holidays. Those wishing to inspect the administrative record are encouraged to call Marsha Butterfield at (202) 205-4095 beforehand to facilitate access to the building.

**FOR FURTHER INFORMATION CONTACT:** Marsha Butterfield, Office of Tribal Relations, USDA Forest Service, (202) 205-4095.

**SUPPLEMENTARY INFORMATION:** The Forest Service Directive System consists of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the Agency's policies, practices, and procedures and serve as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all agency programs are set out on the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>.

The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a

continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities, while the FSH is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

On December 26, 2006, the Forest Service published an interim directive in the **Federal Register** (71 FR 247) for 60-day public notice and comment. The Forest Service received six letters in response to the interim directive. Comments received were from Tribes or Tribal Organizations. A summary of comments received and the agency's responses follow:

**General Comments**

The Forest Service appreciates the comments that were provided. Generally, respondents like and support the policy. Respondents strongly supported the availability of sole source contracting authorities and the section giving clear direction that the agency may provide advice and information to Indian tribes in advance of tribes' submitting TFPA proposals. Several respondents felt partnerships and trust obligations seem to be what is missing from the draft policy. Forest Service Manual 1563.04g (FSM) directs Forest Supervisors to seek opportunities to develop partnerships with Tribes under all appropriate Forest Service authorities.

*Comment.* Several respondents felt the policy was difficult to figure out without the benefit and context of the surrounding provisions into which the new provisions are being inserted.

*Response.* The complete text of chapter 60, FSH 2409.19 was available for review. The agency did not receive any requests for the complete text.

**Comments on Specific Sections of the TFPA**

*Section 60.3 Policy.* This section adds new direction for preliminary collaboration and evaluations for a potential Tribal Forest Protection Act project.

*Comment.* Respondents strongly supported clear direction that the Forest Service may provide advice and information to Indian Tribes in developing TFPA proposals.

*Response.* The agency is committed to implementation of the TFPA and providing assistance and advice in potential TFPA proposals.

*Section 60.4 Responsibility.* This section updates responsibilities of the Regional Foresters, Forest Supervisors, District Rangers, Director of Forest Management, and Director of Office of Tribal Relations.

*Comment.* Respondents appreciated the policy including agency consultation with a potential applicant tribe before it develops and submits its application.

*Response.* The agency is committed to the implementation of the TFPA and consultation with Tribes.

*Section 60.5 Definitions.* This section adds definitions for Bordering on and Adjacent to, Indian Forest Land and Rangeland, Indian Tribe, National Forest System Lands, Public Lands, Secretary and Tribal Community.

*Comment.* Concerns were expressed regarding the word "proximity" used in the definition of "bordering on or adjacent to." There was concern that it may be too restrictive for appropriate implementation of the TFPA.

Respondents said there must be flexibility in the definition so that TFPA projects are not rejected based upon narrow interpretations because of the use of the word "proximity." The word "proximity" is not used in the Act.

*Response.* The definition for bordering on or adjacent to has been removed from the final directive. Section 60.4 Responsibilities provides direction on determination of what borders on or is adjacent to after consultation with the Indian tribe.

*Section 61.18 Response to Tribal Requests Made Under the Tribal Forest Protection Act.* This section provides direction for handling responses to tribal requests made under the Tribal Forest Protection Act.

*Comment.* Respondents were concerned that other options available for implementing TFPA projects, in addition to stewardship contracting, need to be included along with stewardship contracting. Respondents requested that "or other instrument" be added after "stewardship contracting" throughout the policy. Respondents said stewardship contracting will most likely not be the only means by which TFPA projects will be carried out.

*Response.* The words "or other instrument" was added after "stewardship contracting" where applicable throughout the policy.

*Section 61.7 Notice of Denial Under the Tribal Forest Protection Act.* This section provides direction for notice of denial for projects submitted under the Tribal Forest Protection Act.

*Comment.* Respondents requested "stewardship" be removed from Section 61.7—Notice of Denial. Respondents expressed that Tribes enter into agreements other than just stewardship contracts and agreements.

*Response.* The word stewardship was removed from the text.

*Comment.* Respondents wanted “pursuant to the TFFPA” added after “with the FS” to clarify the point.

*Response.* “Pursuant to the TFFPA” was added after “proposal” for clarification.

#### *Section 62.14 Contract Type Under the Tribal Forest Protection Act.*

*Comment.* Respondents strongly supported the availability of sole source contracting authorities.

*Response.* Under the Tribal Forest Protection Act of 2004 the Forest Service has the authority to consider a request made by a tribe to protect Indian forest or range lands by resource type projects on adjacent Federal lands. If the proposal holds merit, the Forest Service may award without further competition as long as the procedures under this authority are used.

#### **General Response**

Developing and sustaining partnerships is a fundamental action which facilitates the fulfillment of the Federal trust responsibility. The trust responsibility is a legally enforceable obligation, a duty, on the part of the U.S. Government to protect the rights of Federally Recognized Indian Tribes and Alaska Natives.

The United States Government has a unique legal and governmental relationship with American Indian tribes as set forth in the U.S. Constitution, treaties, statutes and Federal court decisions. The Forest Service shares in the Federal government's overall trust responsibility to Indian tribes. The primary step in fulfilling agency responsibilities is for line officers to contact Indian tribal governments through their elected officials and consult with them on proposed actions that may have an effect on tribal rights, resources or general interests.

#### **Regulatory Certifications**

##### *Regulatory Impact*

This final directive has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. This final directive would not have an annual effect of \$100 million or more on the economy, nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local Governments. This final directive would not interfere with an action taken or planned by another agency, nor raise new legal or policy issues. Finally, this final directive would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of

such programs. Accordingly, this final directive is not subject to OMB review under Executive Order 12866.

##### *Proper Consideration of Small Entities*

This final directive has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final directive would not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

##### *Environmental Impact*

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions” that do not significantly affect the quality of the human environment. This final directive sets forth administrative procedures for implementation of the TFFPA and, as such, has no direct effect on Forest Service decisions for land management activities.

##### *No Takings Implications*

This final directive is limited to establishment of administrative procedures to respond to American Indian and Alaska Native proposed work projects to enter into contracts and/or agreements with the Forest Service. Projects would conduct land management activities on Forest Service and BLM lands adjacent to Indian trust land and Indian communities.

This final directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the final directive does not pose the risk of a taking of private property.

##### *Federalism*

Executive Order 13132, Federalism, requires consultation with State and local officials when planned regulations and other policies have substantial direct effects on the States. This final directive establishes procedures for the TFFPA which will be administered by the Forest Service and implemented by participating Indian tribes. Therefore, the agency has determined that there are no direct effects on the States and no

further assessment of federalism implications is necessary.

##### *Consultation and Coordination With Indian Tribal Governments*

In accordance with Forest Service policy and Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, formal consultation was conducted with Indian tribes on development of this new policy in 2005. The draft TFFPA policy was sent to regional FS offices, where it was then sent to tribes in their respective regions that have tribal land, rangeland, or tribal communities bordering on or adjacent to NFS land, for consultation with those tribes. A 60-day comment period was provided for the consultation and comment.

##### *Energy Effects*

This final directive has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed guideline does not constitute a significant energy action as defined in the Executive order.

##### *Unfunded Mandates Reform*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this final directive on Tribal governments and the private sector. This final directive does not compel the expenditure of \$100 million or more by any Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

##### *Civil Justice*

This final directive has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final directive as final, (1) All State and local laws and regulations that conflict with this policy or that would impede full implementation of this policy will be preempted (2) no retroactive effect would be given to this final directive; and (3) this final directive would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

#### **Conclusion**

This final directive implements the provisions of the Tribal Forest Protection Act which provides a tool for Indian tribes, as defined by the Act, to propose work and enter into contracts and agreements with the Forest Service (FS) or Bureau of Land Management (BLM) to restore land under the

jurisdiction of either agency, or to reduce threats, including from fire or disease, on FS or BLM-administered lands adjacent to or bordering on Indian trust land and Indian communities.

The full text of this handbook is available on the World Wide Web at <http://www.fs.fed.us/im/directives>. Single paper copies are available upon request from the address and telephone numbers listed earlier in this notice as well as from the nearest regional office, the location of which are also available on the Washington Office headquarters homepage on the World Wide Web at <http://www.fs.fed.us>.

Dated: October 9, 2008.

**Charles Myers,**

*Associate Deputy Chief, National Forest System.*

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**BILLING CODE 3410-11-P**

## DEPARTMENT OF COMMERCE

### Membership of the Economic Development Administration Performance Review Board

**AGENCY:** Department of Commerce.

**ACTION:** Notice of Membership on the Economic Development Administration's Performance Review Board.

**SUMMARY:** In accordance with 5 U.S.C., 4314(c)(4), Department of Commerce (DOC) announce the appointment of persons to serve as members of the Economic Development Administration's (EDA) Performance Review Board (PRB). The EDA PRB is responsible for reviewing performance ratings, pay adjustments and bonuses of Senior Executive Service (SES) members, Presidential Rank Awards. The appointment of these members will be for a period of twenty-four (24) months.

**DATES:** *Effective Date:* The effective date of service of appointees to the Economic Development Administration Performance Review Board is upon publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Deborah Martin, Director, Office of Executive Resources—Operations, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482-3600.

**SUPPLEMENTARY INFORMATION:** The names, position titles, and type of appointment of the members of the EDA/PRB are set forth below:

### Department of Commerce, Economic Development Administration, 2008–2010 Performance Review Board Membership

*Department of Commerce/Economic Development Administration*

Lisa Casias, Director for Financial Management and Deputy Chief Financial Officer (Chairperson).  
Deborah Jefferson, Director for Human Resources Management.  
Otto Barry Bird, Chief Counsel for Economic Development.  
Matthew Crow, Deputy Assistant Secretary for External Affairs.

Dated: October 15, 2008.

**Deborah Martin,**

*Director, Office of Executive Resources—Operations.*

[FR Doc. E8-24942 Filed 10-20-08; 8:45 am]

**BILLING CODE 3510-BS-P**

## DEPARTMENT OF COMMERCE

### Membership of the National Telecommunications and Information Administration Performance Review Board

**AGENCY:** Department of Commerce.

**ACTION:** Notice of Membership on the National Telecommunications and Information Administration's Performance Review Board.

**SUMMARY:** In accordance with 5 U.S.C. 4314(c)(4), Department of Commerce (DOC) announce the appointment of persons to serve as members of the National Telecommunications and Information Administration's (NTIA) Performance Review Board (PRB). The NTIA PRB is responsible for reviewing performance ratings, pay adjustments and bonuses of Senior Executive Service (SES) members, and Presidential Rank Awards. The appointment of these members will be for a period of twenty-four (24) months.

**DATES:** *Effective Date:* The effective date of service of appointees to the National Telecommunications and Information Administration Performance Review Board is upon publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Deborah Martin, Director, Office of Executive Resources—Operations, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482-3130.

**SUPPLEMENTARY INFORMATION:** The names, position titles, and type of appointment of the members of the NTIA/PRB are set forth below:

### Department of Commerce, National Telecommunications and Information Administration 2008–2010 Performance Review Board Membership

*Department of Commerce/National Telecommunications and Information Administration*

Daniel C. Hurley, Director, Communications and Information Infrastructure Assurance Program (Chairperson).

Bernadette McGuire-Rivera, Associate Administrator for Telecommunications and Information Applications.

Renee Macklin, Chief Information Officer, International Trade Administration.

Alan W. Vincent, Associate Administrator for Telecommunications Sciences and Director, Institute for Telecommunication Sciences.

Michael J. Crison, Director, Requirements, Planning and Systems Integration Division.

Karl B. Nebbia, Associate Administrator for Spectrum Management.

Dated: October 15, 2008.

**Deborah Martin,**

*Director, Office of Executive Resources—Operations.*

[FR Doc. E8-24943 Filed 10-20-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-533-847)

#### 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to requests from interested parties, we are postponing for 60 days the final