

**Chapter 71**

**Timber and Material Sales**

**Article 1**

**Timber and Material Sale Procedures**

11 AAC 71.005. Applicability

This chapter applies to sales of timber or material by the State of Alaska.

11 AAC 71.010. Timber and material sale offering

(a) The director will determine the location and approximate volumes of timber and of material to be made available for sale under this chapter.

(b) The director will include each proposed timber sale on the five year sale schedule in accordance with AS 38.05.113, unless that sale is exempt under (c) or (d) of this section.

(c) A timber sale negotiated under AS 38.05.115 is a small sale exempt from AS 38.05.113.

(d) An emergency sale is exempt from AS 38.05.113. An emergency sale is a sale of timber that the director finds must be made on an expedited basis to

(1) avoid loss of the market value of timber that has been damaged by fire, insect infestation, or an act of nature;

(2) avoid loss of the market value of timber that is threatened by insect infestation;

(3) create fire breaks;

(4) reduce fuel-loading of the forest; or

(5) reduce the spread of insect infestation.

(e) The division will offer timber or material sales on land selected by a municipality under AS 29.18.201 - 29.18.213 with the concurrence of the municipality.

11 AAC 71.015. Timber or material requested by other state agencies

The division will, in its discretion, transfer timber or material to another state agency by an interagency land management assignment or negotiated sale pursuant to AS 38.05.810. However, the other state agency may not convey the timber or material to a third party. The division will not offer a timber or material sale within the area which is subject to the inter-agency land management assignment without the concurrence of the other state agency.

#### 11 AAC 71.020. Notice of sale

(a) The division will give public notice of a competitive sale of timber or material in accordance with AS 38.05.945. Public notice given under this subsection will state

- (1) the minimum acceptable bid, if applicable;
- (2) the method of bidding;
- (3) the time and place of sale;
- (4) the amount of deposit required;
- (5) whether additional information is available at division offices;
- (6) the duration of the contract;

(7) that the state reserves the right to reject any or all bids and that, unless all bids are rejected, the sale will be awarded to the responsible qualified bidder offering the highest total bid value for timber and the highest unit price for material; and

- (8) the amount of any bond required.

(b) The division will, in its discretion, make a negotiated sale of 500 M.B.M. or less of timber or 25,000 cubic yards or less of material without giving public notice of the sale.

(c) The division will give public notice of a negotiated timber sale authorized by AS 38.05.118 in accordance with AS 38.05.945.

(d) The division will, in its discretion, make a negotiated sale of timber or material authorized by AS 38.05.810(a) without giving public notice of the sale in accordance with AS 38.05.945.

#### 11 AAC 71.025. Applicable laws and regulations

A purchaser or licensee under this chapter and the purchaser's or licensee's employees, subcontractors, and assigns shall comply with the federal, state, and local laws and regulations which apply to the protection and use of the land on which the timber or material is located. Compliance with the

provisions of this chapter is a condition of a sale or license under this chapter. Failure to comply with the provisions of this chapter is cause for suspension or cancellation of the sale or license.

#### 11 AAC 71.030. Qualifications of applicant or bidder

(a) A person is qualified to apply or bid for a timber or material sale if he is

- (1) at least 18 years of age, if an individual;
- (2) legally competent to enter into and carry out the provisions of a sale contract; and
- (3) licensed to do business in the state, if the sale is for commercial intention.

(b) The director may require an applicant or bidder to submit conclusive evidence of his qualifications under (a) of this section.

#### 11 AAC 71.035. Application for negotiated sales

(a) A person seeking to negotiate the purchase of more than 10 M.B.M. of timber or more than 200 cubic yards of material must file an application at the regional office of the division nearest the desired purchase site on a form provided by the department. The applicant must file a separate application for each sale. The application fee, if any, prescribed by 11 AAC 05.010 must accompany the application. The application must contain the contract numbers of each timber or material contract the applicant has entered into with the state during the previous 12 months. The applicant need not list the applicant's log salvage licenses. For negotiated sales, the division will consider the subsidiaries, divisions, branches, partnerships, or joint ventures of the applicant to be the same applicant.

(b) A person who seeks to salvage unbranded or abandoned timber must apply for a log salvage license in accordance with 11 AAC 71.405.

#### 11 AAC 71.040. No rights before sale

Filing an application for the purchase of timber or material does not vest a right in the applicant to enter upon the land or to sever or remove the timber or material. If a person, while unauthorized to do so, enters upon state land and commences cutting, extraction, or salvage operations, the division will, in its discretion, refer the person to the Department of Law for appropriate civil or criminal action.

#### 11 AAC 71.045. Negotiated sales

(a) A purchaser may enter into more than one negotiated timber or material sale contract with the division, so long as the total amount purchased within any 12-month period does not exceed the negotiated timber or material sale limits set by AS 38.05.115. The negotiated timber sale limit set by AS 38.05.115 does not apply to timber acquired under a log salvage license under 11 AAC 71.400 - 11 AAC 71.435.

(b) Notwithstanding the provisions of (a) of this section, the division will not enter into a negotiated sale contract with a person to whom the division has previously sold timber or material if the director determines that the contract will unfairly exclude from participation in the sale of timber or material other interested persons to whom the division has not previously sold timber or material.

(c) The minimum price for a negotiated timber sale is the base price established by the director under 11 AAC 71.092.

(d) The director will establish a minimum deposit for a negotiated sale of more than 10 M.B.M. of timber or 200 cubic yards of material, which the purchaser must make at the time the sale contract is entered into. For a timber sale contract, the director will require a deposit of at least five percent of the negotiated price and may require as much as 100 percent. For a negotiated material sale contract, the director will require a deposit of at least ten percent of the negotiated price or \$250, whichever is more. The department will retain the deposit to cover administrative costs incurred in offering the negotiated material sale, except that if the purchaser removes and pays for at least 75 percent of the material volume covered by the contract, the deposit may be applied, in whole or in part, to the final payment that becomes due under the contract. A purchaser may make a deposit under this section in cash or by certified check, cashier's check, or money order.

(e) A negotiated timber sale, other than a timber sale negotiated under AS 38.05.118, is for a period of time that may not exceed one year. The division will not grant an extension of time under this subsection.

#### 11 AAC 71.050. Negotiated personal-use timber sales; limited material permits

(a) The division may negotiate with a person for the sale of timber for the person's personal use, or issue a revocable, nonexclusive permit for the removal of up to 200 cubic yards of material for personal or commercial use. Timber acquired by a purchaser in a sale under this section may not be sold, bartered, or used for commercial purposes.

(b) The division will, in its discretion, require a person applying for a negotiated personal-use sale of timber to be used other than for fuel wood to show proof of having land on which to use the timber and to show proof that timber acquired by the person in previous personal-use sales was actually used in accordance with the terms of that sale.

(c) The purchaser must make payment in full of the total sale price in order for a contract to be executed for a personal-use timber sale or to receive a limited material permit under this section. A formal application or application fee is not required for a limited material permit.

(d) A negotiated personal-use timber sale is for a negotiated period of time that may not exceed one year. The division will not grant an extension of time under this subsection.

#### 11 AAC 71.055. Negotiated sales under AS 38.05.118

(a) The division may negotiate with a local manufacturer for a timber sale under AS 38.05.118 if the director determines that

(1) the rate of unemployment in the area in which the timber is located is at least 135 percent of the statewide average rate of unemployment for the preceding 12-month period for which a statistical comparison is available, or the rate of unemployment is expected to exceed 135 percent of the statewide average within two years;

(2) a permanent manufacturing facility exists in the area in which the timber is located with the capacity to process at least 50 percent more on a board-foot-per-day basis than the average daily production of the manufacturing facility during the three-year period immediately preceding the date of the sale or such a facility is expected to exist within two years; and

(3) an economically operable state timber resource exists in the area in which the timber is located and the state timber resource has the capacity to sustain a level of harvest on a sustained-yield basis that is at least 20 percent greater than the level of harvest of the state timber resource on the date of the sale.

(b) In determining whether a negotiated sale under this section is in the best interests of the state, the commissioner will consider

(1) the local manufacturer's

(A) financial backing and capability;

(B) experience in the proposed undertaking; and

(C) ability to meet bonding or insurance requirements; and

(2) any other factors the commissioner determines to be in the best interests of the state.

#### 11 AAC 71.060. Competitive sales

The division will conduct public oral outcry auctions for the competitive sale of timber or materials in accordance with the procedures established for land auctions by 11 AAC 67.045. If the division sells timber or materials by sealed bid, the sealed bids must be on bid forms furnished by the division, signed, and submitted as specified in the notice of sale. In the event of a tie in high sealed bids, the division will determine the successful bidder by lot. The division will reject a bid containing or submitted with a condition or qualification on or a material alteration of the terms as specified in the notice of sale, or which is otherwise not in accordance with law.

#### 11 AAC 71.065. Competitive sale bid deposits

(a) A bidder at an oral outcry auction conducted under 11 AAC 71.060 must deposit with the selling agent, before being eligible to bid, at least 10 percent of the appraised value of the timber or materials on which he intends to bid if the appraised value is \$100,000 or less, and at least five percent or \$10,000, whichever is more, if the appraised value is between \$100,000 and \$500,000. If the appraised value is \$500,000 or more, the director will state the minimum deposit in the notice of sale.

(b) If the sale under 11 AAC 71.060 is by sealed bid, the bidder must deposit an amount determined in accordance with (a) of this section, based on the amount of the sealed bid.

(c) A bidder may make a deposit under this section in cash or by certified check, cashier's check, or money order.

#### 11 AAC 71.070. Pre-sale deposits for negotiated timber sales

(a) In addition to the deposit required under 11 AAC 71.045, if any, the director will, in his discretion, require an applicant for a negotiated timber sale under 11 AAC 71.035 to deposit an amount equal to the estimated cost of the appraisal, survey, and advertising required under this chapter.

(b) If the division awards the sale to the applicant, the division will credit the money deposited under this section to the amount owed the state for stumpage under the terms of the sale.

(c) If the division does not award the sale to the applicant, the division will refund the money deposited under this section which has not been spent to the applicant.

#### 11 AAC 71.075. Award of sale

(a) Within 30 days after receipt by certified mail of a contract under this chapter, the purchaser of timber or material must sign and return the contract, together with any required bond. However, the director may, in his discretion, extend the period an additional 30 days. If the purchaser fails to complete the contract as required in this section his deposit under 11 AAC 71.070 will be forfeited.

(b) For competitive sales, if the successful bidder fails to comply with the requirements of (a) of this section the director may offer the sale within 45 days to the next high bidder at the price which he bid and under the same terms and conditions. If the next high bidder accepts the offer of sale at the price he bid, he must sign and return the contract, together with a required bond, within 30 days of receipt of the contract by certified mail.

#### 11 AAC 71.080. Passage of title

Except for timber under a valid log-salvage sale license, all right, title, and interest in or to timber or material included in a contract remains with the state until the timber or material has been cut or severed, determined as to volume, removed from the site, and paid for in compliance with contract provisions and applicable laws and regulations. Timber or material which is not removed from the sale or license area by the purchaser or licensee within the period specified by the contract or license or by an extension to the contract or license remains the property of the state.

#### 11 AAC 71.085. Volume determinations

(a) The division will estimate timber volumes used in appraisals and as a basis for the volume of timber included in a timber sale offering by a timber cruise method prescribed by the director.

(b) Timber volumes reported in cutting reports by the purchaser as a basis for payment must be determined by scaling, unless otherwise specified in the contract.

(c) Material volumes shall be determined in the manner required by the contract.

#### 11 AAC 71.090. Pricing for sale of materials

(a) The commissioner will price material for sale under AS 38.05 and this chapter in accordance with this section.

(b) The commissioner will periodically establish base prices for material that represent the administrative cost to the state of conducting the sale. The base prices may vary by area to account for local conditions on administrative cost. The department will use the base prices for material sales at less than their appraised value to a government agency under AS 38.05.810(a).

(c) The commissioner will periodically establish representative sales prices for material that are an estimate of the material's fair market value. Representative sales prices may vary by area to account for local conditions, but may not be less than the base prices established under (b) of this section. The commissioner will, in the commissioner's discretion, sell up to 25,000 cubic yards of materials for the representative sales price without an appraisal.

(d) Except as provided in (b) and (c) of this section, material will be sold for its appraised fair market value. Appraisal methods will be those customarily used by the appraisal profession.

(e) The appraised fair market value for material sold under (d) of this section will consider operating costs unique to the material source. The sales price for material sold under (c) of this section will, in the discretion of the commissioner, allow for adjustments for operating costs unique to the material source, including

(1) testing for and removal of contamination caused by another party's previous use of the material; or

(2) road construction that will benefit the state after the sale is concluded.

(f) Repealed 6/21/98.

(g) Repealed 6/21/98.

#### 11 AAC 71.092. Pricing for sale of timber

(a) The commissioner will determine the price of timber for sale under AS 38.05 and this chapter in accordance with this section.

(b) When the commissioner considers entering into a timber sale contract under AS 38.05.123,

(1) the commissioner will establish a base price for timber stumpage that represents the cost to the Division of Forestry of administering the timber sale contract after purchase; the Division of Forestry may not sell the timber for less than its base price;

(2) the base price for timber determined under (1) of this subsection is subject to adjustment; the commissioner will, in the commissioner's discretion, establish an initial stumpage rate; the rate is set by adding adjustments to the base price based upon factors that include, but are not limited to,

(A) the projected or actual percentage of the volume of timber sold under the contract that is locally manufactured into high value-added wood products or other value-added wood products; and

(B) the projected or actual costs to the purchaser of the timber of establishing or improving local manufacturing facilities for the wood products.

(c) Except for timber that is subject to sale under a timber sale contract as provided in AS 38.05.123(a), the department will sell timber on the basis of its appraised price. The appraised price is a formal determination of the timber's fair market value and is determined by an appraisal conducted by the commissioner. The commissioner will, in the commissioner's discretion, select and apply one or more appraisal methods to determine the appraised price of the timber. Appraisal methods include, at

the discretion of the commissioner, comparative market or transactional evidence; end or residual values; other methods customarily used for appraising timber; or another method designed to yield fair market value as determined by the commissioner. To make the appraisal, the commissioner will, in the commissioner's discretion, use costs, prices, values, and other information obtained from prudent operators, state and federal agencies, industry associations, price or market reporting services, or other sources that the commissioner considers reliable.

(d) The commissioner will, in the commissioner's discretion, adjust the appraised price or adjust the method of appraisal under (c) of this section to allow for operating costs. Operating costs that the commissioner may allow include, but are not limited to, costs for activities such as recovering, removing, handling, storing, or transporting the timber.

(e) Except when a redetermination of the appraised value of unharvested timber is required by AS 38.05.118(a), a contract for the sale of timber will, in the discretion of the commissioner, provide for a redetermination of the appraised price of the timber at specified intervals in order to evaluate the original appraised price as a continued indicator of fair market value. The department may conduct a redetermination under 11 AAC 71.210 whenever a timber sale contract is extended. A timber sale contract must specify other conditions when a redetermination is required and must specify the method of redetermination.

#### 11 AAC 71.094. Number of high value-added contracts per region

(a) For the purpose of entering into timber sale contracts for local manufacture of high value-added timber products under AS 38.05.123, the commissioner will negotiate no more than the following number of timber sale contracts each year:

- (1) 10 sales per year in region I;
- (2) five sales per year in region II; and
- (3) five sales per year in region III.

(b) For the purposes of this section, the regions and their boundaries are the same as the regions and boundaries set out in AS 41.17.950 (State Forest Practices Act).

#### 11 AAC 71.095. Performance bond

(a) In connection with a timber or material sale, the director will, in his discretion, require the purchaser to provide a performance bond to guarantee performance of the terms of the contract.

(b) If the director requires a performance bond under this section, the bond amount will be based on the total value of the sale: If the total value of the sale is

(1) \$50,000 or less, the bond amount will be at least 10 percent of the total value of the sale;

(2) between \$50,000 and \$100,000, the bond amount will be at least \$5,000; or

(3) \$100,000 or more, the bond amount will be at least five percent of the total value of the sale, but will not exceed \$200,000.

(c) If the value of the sale is less than \$10,000, the bond amount will be rounded to the nearest \$100.

(d) If the value of the sale is more than \$10,000, the bond amount will be rounded to the nearest \$1,000.

(e) The performance bond must be executed on a form provided by the division and may be

(1) a corporate surety bond issued by a corporation licensed to do business in Alaska;

(2) a personal bond secured by cash or its equivalent or by negotiable securities acceptable to the director, in a sum equal to the amount of the bond, together with an assignment of the security to the state which is attached to and becomes a part of the security; or

(3) an individual surety bond guaranteed in a sum equal to the amount of the bond by each of at least two individual sureties who are not related to the purchaser, are of good financial standing, are acceptable to the director, and have liquid assets sufficient to meet any obligation arising from the contract.

(f) The performance bond must remain in effect for the duration of the contract or until released in writing by the director.

(g) If, as determined by the director, the removal of timber or material from a portion of the sale area has been satisfactorily completed, the director will, in his discretion and upon written request of the purchaser, reduce the amount of the performance bond.

#### 11 AAC 71.096. Definition of "high value-added wood product"

For the purposes of a negotiated timber sale made under AS 38.05.123, "high value-added wood product" has the meaning given that term in AS 38.05.123(j), and, in addition, means laminated veneer lumber, shakes, and shingles.

#### 11 AAC 71.098. Availability of processing facilities

(a) As part of a negotiated timber sale under AS 38.05.123, in addition to the requirements of AS 38.05.123(f), a prospective purchaser of state timber in the sale shall identify the facilities that the prospective purchaser will use for processing the timber.

(b) Timber purchased under AS 30.05.123 may not be harvested unless the facilities identified by the purchaser under (a) of this section are operational and capable of processing the timber.

#### 11 AAC 71.100. Rights-of-way

(a) The division will obtain options for the rights-of-way necessary to grant access to a timber sale area. The division, in its discretion, will require a timber purchaser under this chapter to convey to the state temporary easements satisfactory to the director for roads used in hauling timber across private land to the intersection with the nearest public road or public water. Before the acquisition of the easements, the director will consult with adjacent landowners whose interests may be affected by their location.

(b) A purchaser of material under this chapter is responsible for providing access to the material sale area. If a material purchaser obtains an easement or right-of-way over privately owned land, the purchaser shall ensure that the easement or right-of-way provides an easement or right-of-way to the state as well as to the purchaser.

## **Article 2**

### **Timber and Material Sale Contracts and Operations**

#### 11 AAC 71.200. Contract provisions

A timber or material sale contract must include, if applicable, but is not limited to

(1) a description of the sale area, the timber volume or material to be removed from the sale area, the method of payment by the purchaser, the method of removal of the timber or material, the bonds and deposits required of the purchaser, the method of scaling to be used by the purchaser, the purchaser's liability under the contract, the improvements to and occupancy of the sale area required of the purchaser, the reservation of timber or material within the sale area to the division, the provisions of 11 AAC 71.025, 11 AAC 71.080, 11 AAC 71.205, 11 AAC 71.225, 11 AAC 71.235 - 11 AAC 71.240, and 11 AAC 71.280 as they relate to the contract, the warranties made by the division, and the waiver of rights made by the purchaser;

(2) the purchaser's site-specific operating requirements including, but not limited to, requirements under 11 AAC 71.245, 11 AAC 71.255, 11 AAC 71.265, and 11 AAC 71.270 and

requirements relating to boundary markers and survey monument protection; erosion control and protection of water; fire prevention and control; roads; sale area supervision; protection of fish, wildlife and recreational values; sale area access and safety;

(3) provisions relating to logging methods, silvicultural practices, reforestation, snag felling slash disposal, and stump heights; and

(4) provisions relating to the removal of included timber. Except for timber required or authorized to be left, the purchaser shall fell and buck all trees meeting or exceeding minimum contract utilization standards and shall remove the trees from the sale area.

#### 11 AAC 71.205. Amendments to contract

(a) A timber or material sale contract may, upon approval of the director, be amended to include at the same unit price additional timber or material in the sale area or in an area adjacent to, or in the immediate vicinity of, the sale area if the amount of timber or material to be included in the amended contract does not exceed 25 percent of the volume provided for in the contract before amendment and if

(1) the volume of timber or material estimated to be in the sale area by the division was grossly in error; or

(2) timber in the sale area has been blown down or infested with insect or disease and prompt harvest is in the interest of full and efficient utilization.

(b) Amendments to the contract will be made in writing and become part of the contract upon mutual agreement of the director and purchaser. However, an amendment under this subsection may not materially affect or change the meaning or intent of the contract.

#### 11 AAC 71.210. Contract extension

(a) A contract under this chapter must state the date upon which the severance or extraction of timber or material under the contract is to be completed.

(b) A contract may be extended before its expiration if the director determines that the

(1) delay in completing the contract is due to unforeseen events beyond the purchaser's control, but not including events that a prudent bidder would take into account such as market fluctuations, equipment failures, or typical weather conditions; or

(2) extension is in the best interests of the state.

(c) A written request for a timber sale contract extension must be submitted to the division of forestry at least 30 days before the contract expiration date. A contract extension may not exceed one year.

#### 11 AAC 71.215. Assignments

(a) A purchaser may not assign all or part of a contract under this chapter without the written approval of the director. The director will, in his discretion, approve an assignment of all or part of a contract upon written request of the purchaser if the director determines that the assignment will not prevent timely completion of the contract.

(b) A purchaser is responsible for complying with the provisions of a contract regardless of whether he assigns all or part of a contract to another person.

#### 11 AAC 71.220. Suspension

The director will, in his discretion, suspend all or part of the operations under a contract if he determines, after notice, that the purchaser has breached a provision of the contract. At the request of the purchaser a hearing will be scheduled by the director as soon as possible after the suspension has been imposed to review the director's determination.

#### 11 AAC 71.225. Termination of contract

If the purchaser breaches a provision of the contract, the director will, in his discretion, give the purchaser written notice of the breach. If, after giving the purchaser notice of the breach, the breach is not remedied in the time specified by the director, the director will, in his discretion, terminate the contract. If the director terminates the contract, title to the timber or material which has not passed to the purchaser vests in the state, and the purchaser is liable for damages sustained by the state arising from the purchaser's breach.

#### 11 AAC 71.230. Primary manufacture of timber

(a) The director will, in his discretion, require that primary manufacture of timber removed under this chapter be accomplished within the state to the extent consistent with law.

(b) For the purposes of this section, the director will consider timber which has been manufactured into a product for use without further processing as having been primarily manufactured only if the director determines that there is a market for the product.

#### 11 AAC 71.235. Use of roads and facilities

The state has the right to use, for the protection and administration of state lands, a road constructed by the purchaser for access to the timber or material acquired by the purchase under this chapter. The division will, in its discretion, authorize other persons to use roads and facilities constructed and maintained by the purchaser if the use does not interfere with the operations of the purchaser and if the other persons either perform a share of maintenance of the roads and facilities based on their use of the road and facilities or pay to the purchaser the cost of their share of the maintenance as agreed upon by the purchaser and the other persons. If the purchaser and the other persons cannot agree upon the cost of the other persons' share of maintenance of the road and facilities, the director will determine that cost.

#### 11 AAC 71.240. Sale of other timber and materials

The division reserves the right to sell from the sale area during the time that a purchaser's contract is in effect timber or material which is not covered by the contract if the removal of the timber or material will not interfere, in the director's judgment, with the operations of the purchaser.

#### 11 AAC 71.245. Damages

(a) A purchaser shall conduct operations under a contract under this chapter in a workmanlike manner and may not unnecessarily damage the land or resources in the sale area. Damage attributable to the purchaser's operations which, as determined by the director, is excessive or was avoidable must be corrected by the purchaser to the satisfaction of the director within the time designated by the director. The division will assess a purchaser's liability for damage in accordance with the purchaser's contract.

(b) If a purchaser cuts or removes timber or material which is not designated for cutting or removal under the purchaser's contract, the purchaser is liable for damages as provided in the purchaser's contract.

#### 11 AAC 71.250. Protection of improvements

A purchaser under this chapter shall promptly restore improvements damaged by the purchaser's operations. The purchaser shall keep roads and skid trails designated for forest protection or other purposes free of logs, slash, and debris and shall promptly repair the roads and skid trails if they are damaged by the purchaser's operations. The purchaser shall maintain roads during the term of the contract with allowance for normal wear and tear.

#### 11 AAC 71.255. Sanitation

A purchaser under this chapter shall maintain improvements located on state lands and used by the purchaser in connection with the purchaser's operations in a clean condition. If a purchaser constructs, operates, or maintains buildings, toilets, garbage pits, or other structures in the sale area, the purchaser must do so in accordance with applicable regulations of the Department of Environmental Conservation and Department of Fish and Game. If a purchaser moves a structure, camp, or other improvement located on state land from one location to another or if the purchaser abandons the improvement, the purchaser shall burn or otherwise dispose of the debris and the abandoned improvement and shall clean and restore the site of the improvement unless otherwise specified in the contract. A purchaser shall dispose of refuse in a manner which prevents it from entering a body of water.

#### 11 AAC 71.260. Notice or demand

A notice or demand which, under the terms of a contract under this chapter or under a statute, must be given or made by a party to the contract, must be in writing, and must be given by registered or certified mail addressed to the other party at the address of record. Notice is effective upon receipt by the other party.

#### 11 AAC 71.265. Rehabilitation and intensive management practices

(a) The director will, in his discretion, require a purchaser of material to rehabilitate the sale area. The contract will include a special provision requiring the rehabilitation and the appraised unit cost of the material for sale shall reflect this requirement. The director will, in his discretion, require the purchaser to submit a complete mining plan for a large material-sale area which must be rehabilitated under this subsection.

(b) The director will, in his discretion, require a purchaser of timber to provide site-specific measures for intensive management practices on the sale area. The intensive management practices may include, but are not limited to, seedbed preparation, seeding, planting, thinning, and pruning. The director will arrange for intensive management practices under this subsection by including specific provisions in the contract and allowing for the intensive management practices in setting the appraised price of timber for the sale.

#### 11 AAC 71.270. Proper location by purchaser

A purchaser is responsible for the accurate location of operations under the purchaser's contract under this chapter and for a survey necessary for the accurate location, unless otherwise specified in the contract.

#### 11 AAC 71.275. Purchaser's representative

During the time that operations under a purchaser's contract under this chapter are in progress, the purchaser shall have an authorized representative available on the site of the operations to receive and carry out, on the purchaser's behalf, a notice or instruction given by an agent of the division relating to the performance of the contract.

#### 11 AAC 71.280. Inspection and reports

(a) Activities conducted on state land under timber or material sale contracts or under log salvage licenses are subject to inspection by agents of the division. Books and records of a purchaser or licensee, and of the purchaser's or licensee's contractors and subcontractors, relating to operations under the contract or license are also subject to inspection by agents of the division. Upon request of the purchaser or licensee, the division will keep information obtained under this section confidential to the extent permitted by law.

(b) In a material sale the director will, in his discretion, require the purchaser to submit monthly, semiannual, annual, or other periodic reports, including a final report, on a form provided by the division. The reports must provide an accurate accounting of the quantity of materials removed.

### **Article 6**

#### **General Provisions**

#### 11 AAC 71.900. Warranty

The state warrants neither the quantity nor the quality of the timber or material to be removed from an area under a contract or license under this chapter. However, to the extent practicable and within the limits of funding, the division will attempt to estimate volumes of upland timber in conjunction with a sale using accepted methods in the trade with a standard error factor of plus or minus 10 percent.

#### 11 AAC 71.910. Definitions

In this chapter

(1) "competitive sale" means a sale which is open to competitive bidding by either oral outcry auction or sealed bid;

(2) "contract of sale" or "contract" means a written agreement in which the state agrees to sell and the purchaser agrees to buy certain timber or material;

(3) "cruise" means an inventory of the timber in a sale area to determine the quantity and quality of forest products which can be derived from it;

(4) "director" means

(A) for timber sales, the director of the division of forestry; and

(B) for material sales, the director of the division to whom the commissioner's material sale authorities under AS 38 are delegated;

(5) "division" means the division to which the authority of the director of lands has been delegated;

(6) "fair market value" means the highest price described in terms of money, which timber or material would bring if offered for sale for a reasonable time in the open market by a seller willing, but not forced, to sell to a buyer willing, but not forced, to buy, both being fully informed of the purposes for which the timber or material is best adapted or could be used;

(7) "lost timber" means timber property as defined in AS 45.50.232 relating to reporting of lost logs to the department;

(8) "material" includes, but is not limited to, the common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, topsoil, peat, and sod;

(9) "M.B.M." means 1,000 board foot measure;

(10) "negotiated sale" means a timber sale not exceeding 500 M.B.M. or its equivalent except as authorized under AS 38.05.118, or a material sale not exceeding 25,000 cubic yards or equivalent measure;

(11) "primary manufacture" means manufacture which is first in order of time or development; the term

(A) when used in relation to a sawmilling operation, means the breakdown process in which logs are reduced in size by a headsaw, gang saw, or edger to the extent that the residual cants, slabs or planks do not exceed a nominal eight and three-quarters inches in thickness;

(B) when used in relation to a pulp operation, means the breakdown process to the point at which wood fibers have been separated;

(C) when used in relation to an operation for veneer for plywood production, it means the production of green veneer;

(D) when used in relation to poles or piling, whether treated or untreated, means manufacture for the purpose of use as poles or piling; and

(E) when used in relation to timber processing wastes, means manufacture into chips;

(12) "public auction" has the meaning provided in (1) of this section for "competitive sale";

(13) "purchaser" means a person who has purchased timber or material and has entered into a contract under this chapter;

(14) "sale" means the transfer of title to timber or material from the state to the purchaser for consideration;

(15) "sale area" means the land area on which the designated timber or material of the sale is located; "sale area" includes roads or other transportation facilities necessary for the removal of the timber or material.

(16) "scaling" means the determination of log volume by measuring, sample measuring, linear measuring, counting, or weighing or by another method acceptable to the director;

(17) "timber" means a tree, log, pole, bolt, or other wood product;

(18) "timber processing wastes" means timber, mill residue, logging residue, or other timber processing products not presently being used or in demand for higher-value products;

(19) "unbranded or abandoned timber property" has the meaning provided in AS 45.50.230(a)(3) and 45.50.235.