



UNITED STATES  
DEPARTMENT OF THE INTERIOR BUREAU OF LAND  
MANAGEMENT

**TRANSMITTAL SHEET**

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I. INTRODUCTION.

This handbook sets forth policy and procedural guidelines for contract violations, contract suspensions, cancellations, debarment referrals, and settlements of uncompleted contracts.



## II. CONTRACT VIOLATION.

The Government and the purchaser are entitled to specific rights or benefits as provided under the terms of a forest products sale contract and contract supervision must be governed accordingly. If the purchaser fails to comply with the conditions, duties, or obligations as provided in the contract, a violation or breach of contract occurs and the contracting officer or the authorized officer must pursue corrective action, which may include contract suspension and cancellation. If the contracting officer has information that would lead one to question the purchaser's honesty, ethics, or competence, consideration should be given whether the matter should be coordinated with the DOI Office of the Inspector General - Administrative Remedies Division (OIG ARD) for a potential referral to the DOI Suspending and Debarring Official (SDO).

A. Processing Contract Violations. Some contract violations are more sensitive or critical than others; thus, good judgment should be exercised in the timeliness of enforcement actions based on such sensitivity. Many violations may simply be corrected with good verbal communication or an email between the contract administrator and the purchaser's representatives, and follow-up documentation in inspection reports. Other violations require more forceful action, including formal correspondence and complete documentation of such actions. Situations requiring formal communication should be hand delivered or via registered mail with return receipt requested. If confusing, ambiguous, or conflicting contract language caused the failure and resolution to the satisfaction of both parties is not possible, the contracting officer should consult with the state director prior to proceeding with formal enforcement actions.

When a purchaser is in breach of contract and a demand for payment is made, the purchaser may dispute the damages under section 38 of the contract. In such circumstances, demand should not be made on the purchaser's surety until after the contracting officer's decision that upholds the damage claim is issued and the purchaser fails to pay within 30 days of the date the decision is issued. If the purchaser disputes the claim for damages and does not pay, the purchaser is responsible for paying interest that accrues on the amount due from the time of the initial billing for damages. General procedures for handling various types of contract violations are set forth below.

1. Delinquent Payments. Timely payment of contract installments or billed amounts under the payment bond procedure is required under the terms of BLM contracts. The contracting officer must take action immediately to effect collection under the terms of the forest product sale contract. Failure to make timely payment is a violation or breach of the contract (refer to handbook 5460-1).

a. Cash Installment Systems.

(1) Overcutting and/or Over-Yarding. If the purchaser cuts or yards more forest product than the total amount of installments paid and credits earned, a payment violation has occurred. Additional installments are due and payable immediately. The purchaser should be advised by a documented telephone call or personal contact to submit the necessary payment to the office within one working day. Another option available to the purchaser is to submit an



increase to the bond, effective prior to the overcutting, using form 5460-3, Increase or Decrease Rider (refer to H-5460-1 Timber Sale Contract Administration), in an amount acceptable to the contracting officer.

If the Purchaser fails to respond with prompt payment, the operations must be suspended immediately. Interest should accrue on amounts due at the interest rate published quarterly by the Department of the Treasury beginning on the bill for collection billing date.

(2) Poor Payment Record. Timely installment payments are expected from the purchaser. If the purchaser develops a history of delinquent payments, written warning should be given that timely payments are a contractual responsibility and compliance is required. Furthermore, the purchaser should be advised that future payment violations will result in suspension of contract operations (refer to [illustration 1](#)).

b. Payment Bond Systems.

(1) Overcutting. If the purchaser overcuts the aggregate of the total amount paid, credits earned, and the bond coverage on a contract (or contracts), a payment violation has occurred. Note that the first installment or one-half the first installment when the contract is 60 percent paid is held in reserve for the final payment.

(2) Failure to Pay Billed Amounts. A payment violation occurs when the purchaser fails to make a billed payment within the 15-day payment period stipulated in section 3(f) of the contract. The purchaser should be advised immediately with verbal instructions and confirmed in writing to submit the delinquent payment to the office within one working day or face contract suspension and advised that if payment is not made within 30 days of the billing date shown on the delinquent bill, interest and administrative charges will begin to accrue as specified in section 3(j) of the contract. Furthermore, the purchaser should be advised that if it is necessary to suspend contract operations, the contracting officer will pursue the payment bond for the deficit payment. If the purchaser fails to respond with payment within 30 days of the billing date, the contracting officer will suspend further operations and simultaneously take action against the payment bond. If the bond is a corporate surety payment bond, make demand on the surety and include a copy of the contract suspension notice. If surety fails to pay within 60 days after the date of demand, notify the state director. If the bond is of negotiable securities of the United States, or an irrevocable letter of credit, proceed as described in sections III.C.1.a(2)(a) or III.C.1.a(2)(b), respectively.

2. Unauthorized Cutting, Removal, and Damage to Reserved Forest Products. The unauthorized cutting, injury, or removal of Government forest products within the contract area is a contract violation as well as a trespass. (An exception to this is an acceptable level of injury to other vegetative resources in the normal course of logging operations and is usually defined in the contract special provisions.) The purchaser is liable for damage to reserved materials arising from such violation if it is determined that the purchaser is at fault. Trespass damages should be assessed in accordance with 43 CFR 9239.1-3 or State law if it provides stricter penalties. Refer to Manual Section 9231 for more information.

a. Unauthorized Cutting or Removal. The authorized officer must promptly investigate all acts involving the cutting, removal, or injury of reserved materials. A complete investigation must be conducted prior to service of demand upon the party in violation. The purpose of the investigation is to determine the level of intent behind the unauthorized cutting and removal. The result of the investigation should determine whether the trespass was willful or not.

(1) Cooperation of purchaser. Section 10(e) of form 5450-3, Contract for the Sale of Timber and Other Wood Products – Lump Sum Sale, and form 5450-4, Contract for the Sale of Timber and Other Wood Products – Scale Sale, requires the purchaser to cooperate fully in the investigation of trespass. If the purchaser fails to do so, the contracting officer may suspend that portion of the purchaser's operations necessary to preserve evidence pending investigation or to permit safe investigation of the trespass. If the purchaser is uncooperative and the trespass is one of a continuing nature, contract operations must be suspended immediately pending resolution of the trespass. An immediate contract suspension is also necessary if the purchaser does not make restitution on demand.

(2) Willful Trespass and Apparent Criminal Intent. If the authorized officer's preliminary investigation indicates intent to steal Government materials under the cover of a sale contract, the case should be referred immediately to BLM law enforcement. The purchaser's operations must be suspended pending investigation and settlement of the case.

(a) The state director must be advised promptly of the referral action.

(b) If an investigation by law enforcement leads to the arrest, indictment, discovery of criminal conduct, or conviction of the purchaser, the authorized officer must consult with the state director relative to possible collection of civil damages and for the processing of a default or cancellation of the contract. The authorized officer should refer the matter to the Office of Inspector General's Administrative Remedies Division (OIG ARD) with the warrant, indictment, or criminal information for a potential suspension under 2 C.F.R. § 180.700 or the conviction for a debarment under 2 C.F.R. § 180.800.

(3) Civil Trespass. The majority of contract violations involving the unauthorized cutting or removal of reserved materials will normally fall within civil trespass (i.e., all cases other than willful trespass). To use the terms and conditions provided in the contract (e.g., sections 10, 12, and 13 of forms 5450-3 and 5450-4), the Notice of Trespass and Demand for Damages should include references to such provisions of the contract together with the applicable regulatory references.

(a) Normally, the purchaser should be allowed no more than 10 days from their receipt of the demand letter to make an offer of settlement. If the purchaser fails to respond within the stipulated time, operations under the contract should be suspended.

(b) Copies of the Notice of Trespass, Demand for Damages, and Contract Suspension Notice (if applicable) must also be sent to the surety.

(4) Processing Forms and Demand for Damages. Market value of trespass materials should be determined pursuant to BLM Manual Section 9350. Trespass investigation is

documented on form 9230-10, Initial Report of Unauthorized Use, form 9230-24, Unauthorized Use Investigation Report and form 9230-9, Materials Unauthorized Use Investigation Report, Notice of Trespass is made using form 9230-1, Trespass Notice. A Demand for Damages must be accompanied by a bill for collection.

(5) Settlement. When payment for damages is received, it is deposited by the district office pursuant to Manual Section 1372.

(a) Full Settlement. If full payment is received for the total amount of damages, the office sends an acceptance letter to the purchaser with a copy to the surety (refer to [illustration 2](#)). After payment is accepted, any trespass materials remaining on the contract area belong to the purchaser. The acceptance letter should provide for the removal of such materials under the terms of the contract (refer to [illustration 3](#)).

(b) Compromise Settlement. If a compromise offer of settlement is received, the authorized officer forwards the trespass case file along with their recommended course of action to the state director for review and processing and retains in a secure location any compromise offer payment received. Compromise offers that are less than \$100,000 require the Regional Solicitor's concurrence and district manager approval in accordance with BLM Manual 1203 Section 1375. Larger compromise offers require state director approval and Solicitor's Office concurrence. The contracting officer sends an acknowledgment letter to the purchaser (refer to [illustration 5](#)). The state director should subsequently advise the contracting officer of the acceptance or rejection of the offer. Unless the terms of the compromise settlement dictate otherwise, the BLM will retain title to any residual trespass materials on the contract area (refer to [illustration 6](#)). If a restrictive endorsement is indicated on a check for a compromise offer, the check should not be deposited but instead held in safekeeping pending the state director's instruction on disposition of the offer. Payment included with a compromise offer for timber trespass will be held in a secure location and will not be deposited.

(c) Funds Received in Settlement. If the full value of the damages are received, or after a compromise offer is accepted by the BLM, any funds received in settlement of a trespass are deposited in 5310 (O&C) or 5320 (PD), Repair of Damaged Lands. These accounts may then be drawn upon for use in rehabilitation of a trespass site. Settlement funds may only be received in guaranteed remittance, such as cash or cashier's check.

(d) Contract Extension Modification. If the purchaser's contract time for the cutting and removal of material sold has expired but the contract has not been terminated, the removal of residual trespass material may still be authorized under the terms of the expired but as yet un-terminated contract as the damage occurred during the time authorized for cutting and removal under the contract. The acceptance letter takes the form of a modified contract extension and stipulates the timeframe permitted for removal of such material (refer to [illustration 4](#)).

b. Logging Damage. Careless or negligent logging or removal of forest products often results in injury or destruction of reserved materials. A determination of damage should take into account the requirements of the land use plan that the sale is designed under (i.e., reserve trees in a regeneration harvest unit will, when dead, serve the needs of cavity-nesting birds, hence greater levels of damage may be acceptable). Attachment of cables or rigging,

improper yarding or felling practices, and burial or debarking of trees from road construction activities cause the most common types of damage related to forest product harvest activities. This kind of damage must be controlled, and any such damage outside the scope of normalcy should be treated as a trespass.

(a) If, after such discussions, the purchaser is found to be damaging reserved material, a courtesy letter should be sent (refer to [illustration 7](#)) advising that:

- i. Such actions are in violation of the sale contract;
- ii. The violation must be corrected within a specified period of time;
- iii. Recurrences of the same violation will result in a suspension of contract operations without further notice; and
- iv. The purchaser will be liable for damages caused by the violation.

(b) If the purchaser fails to respond to the courtesy notice, or repeats the violation, the operation will be suspended.

(1) Evaluation of Logging Damage. A realistic interpretation should be taken of the term "injuries" under the appropriate provision of the sale contract. Any tree unacceptably damaged to the extent that it will likely die or lose its value before planned probable harvest constitutes damage and the full market value will be used in the determination of trespass damages. The sale design should also be evaluated to ensure that it is not contributing to the damage of reserved trees. If that is the case, use of "rub" trees in yarding corridors should be considered to alleviate further damage.

3. Violations Associated with Fire Laws and Fire Provisions in Forest Product Sale Contracts. Violations associated with fire laws and fire provisions can be extremely serious and may lead to significant liability. If, during an official state-declared closed fire season, a purchaser is found to be in violation of statutory fire prevention, protection, control duty, or a fire provision in the sale contract, the purchaser must be advised to correct the deficiency immediately or cease operating until the situation is corrected. If the purchaser fails to respond to this instruction immediately, the operation must be suspended.

a. Fire Damage. Fire damage caused by a purchaser to Government resources is potentially a fire trespass. Work with fire program personnel to determine fire liability based on fire program policies. Fire damage trespass may not apply if the purchaser is under, and following, the direction of the contracting officer or authorized officer and fire damage occurs such as scorching a tree while burning a landing pile as required by the contract and within the given contract provisions. If fire damage does occur, the authorized officer should immediately investigate the case. The investigation must be documented and should include all available information, such as fire history, interviews and statements of witnesses, formal fire suppression reports, etc., that would have a bearing on determining liability of the purchaser.

(1) Determination of Liability. Determination of the purchaser's liability, if any, or the extent of liability, should be made by the state director in consultation with the

Regional Solicitor. The determination will be based on a review of the case file, including the investigative report. The authorized officer should withhold action pending advice from the state director on disposition of the case.

(2) Fire Damage Appraisal. Fire damage is to be appraised pursuant to Manual Section 9350. If a purchaser is determined to be liable for fire damage, the damages will be the difference between the before and after market values of reserved materials damaged or destroyed, as well as the cost of rehabilitating the burned area if damage is significant. For forest product damage cases, the normal elements that should be appraised are the volume loss of measurable forest product; value loss of measurable forest product (grade reduction for trees/logs); value loss of immature trees; cost of planting, erosion control, stream clearance, etc.

(a) Damaged Material with Residual Value. Fire damaged material may have residual value that is practical and economical to recover without further destruction of resources. In such cases, an after-fire value credit is to be deducted from the total before-fire value in determining the amount of damage. The after-fire value credit is to be determined by a market appraisal.

(b) Damaged Material without Residual Value. In cases where the fire damaged material has no tangible residual value, or the residual value cannot be recovered, the purchaser may be liable for the total before-fire value.

(3) Demand for Damages. Fire trespass cases are processed in the same manner as cases of unauthorized cutting or removal of reserved materials. Cases of arson are treated as criminal trespass; all other fire cases are treated as civil trespass.

(a) The cost of rehabilitating a burned area may or may not be subject to multiple damage assessments depending on the provisions of applicable State law. The state director, on request, should provide appropriate guidance to the authorized officer on this matter.

(b) Demand should be made on the purchaser for the total amount of actual damage computed in accordance with appropriate liability (refer to [illustration 8](#)). If, however, the damaged material has residual value, the contracting officer may extend an option to the purchaser of paying the total amount of damage computed plus the residual value and permit them to cut and remove the damaged material (refer to [illustration 9](#)).

(c) Normally, the contracting officer must address one of two situations if the purchaser fails to respond to the demand for damages.

i. If the fire occurs during an active operation (i.e., the purchaser has remaining forest product to cut and/or remove), proceed with contract suspension procedures.

ii. If the fire occurs after the purchaser is through with cutting and removal of forest product (such as a trespass associated with a slash fire), refer the case to the state director for collection action.

(4) Settlement.

(a) If the payment received represents a full settlement that includes the residual value together with the total amount of damages, the contracting officer should permit the purchaser to cut and remove the residual material under the terms of the contract.

(b) If the payment received represents a compromise offer or does not include payment for the residual value, the BLM will normally retain title to the residual material.

(c) Any funds received in settlement of a trespass are deposited in 5310 (O&C) or 5320 (PD), Repair of Damaged Lands. These accounts may then be drawn on for use in rehabilitation of a trespass site.

4. Violations Associated with the Sale of Additional Forest Products. Section 8 of forms 5450-3 and 5450-4 provides for the sale of additional forest products (increase volume and value modification) on a contract area if such disposal is in the interest of the Government and consistent with regulatory authority (refer to 43 CFR 5402.0-6). Direction for preparing a written modification for the sale of additional forest product is found in H-5470-1, Contract Modification – Extension – Assignment.

a. Premature Cutting of Additional Forest Product. Unless authorized by a contract provision, BLM employees may not authorize the cutting of reserved forest product prior to completion of the necessary appraisal and transmittal of written permission (approved contract modification). In the event a purchaser has an urgent and unavoidable need to cut an undesigned tree for safety reasons, or to continue operations (guy-line anchors) and it is physically impossible for the contracting officer or the authorized officer to visit the sale area in a timely manner, the purchaser may choose to leave the tree until they obtain verbal approval or fell the tree without approval.

Unauthorized cutting of trees constitutes a forest product trespass contract violation, notwithstanding the purchaser's right to cut trees that pose a legitimate and imminent danger or safety concern, pursuant Section 29 of the timber sale contract. After receiving oral authorization or after falling trees that pose a legitimate and imminent danger or safety concern, felled trees and resulting logs must be decked and marked in a manner that prevents them getting mixed in with the designated timber and prepared for sale. Cutting or removal of trees designated to be added to a contract before a modification has been approved constitutes a violation of the contract under section 8 rather than a trespass under section 13. Refer to [illustration 10](#) for an example of a letter to a purchaser who has cut trees before a modification has been approved and who disagrees with the volume and/or value of added trees. In this case, the letter is also a unilateral modification of the contract with the contracting officer exercising the rights of the Government under section 8 of the contract.

b. Purchaser Failure to Timely Complete Contract Modification. A few situations may occur wherein premature cutting of additional forest product may be construed to be a contract payment violation rather than a forest product trespass. One example would be if the purchaser signs and returns the modification but fails to make the necessary payment and subsequently cuts the trees. Another situation would occur when all essential elements of a modification are agreed to, however, a breakdown in processing occurs. For example, the

purchaser requests to purchase the additional forest product, the modification is sent to the purchaser, the purchaser signs the modification, but cuts the forest product prior to the return of the BLM's copy of the approved modification.

5. Violations Associated with Damage to Property, Improvements, or Environmental Degradation. If, in planning for a forest product harvest, it is determined that damage to property, improvements, or environment may be expected, appropriate contract terms that provide for the protection of such resources must be included in the contract.

a. Damage to Utilities and Improvements. Under the terms of the contract, the purchaser is responsible for the protection of utilities and improvements. This applies to utilities and improvements that are publicly- or privately-owned and that are located on the contract area as well as facilities used (such as roads) that are located off the contract area where such use is authorized under the terms of the contract. Damage to such facilities constitutes a contract violation.

Remedy: The contracting officer should instruct the purchaser to repair such damage immediately or to make restitution to the property owner if the damage, by necessity, is repaired by the owner. Normally, it is advisable to stipulate in writing a period of time in which the purchaser must repair or pay for such damage. If the purchaser fails to do so, the operations should be suspended.

b. Environmental Degradation. From a prevention viewpoint, appropriate monitoring of a purchaser's operation is critical in terms of anticipating the potential for damage or in identifying a problem in the early stage. Appropriate monitoring is also critical because determination of damages, and correction or repair of environmental damage, can be difficult to assess and/or achieve. Contract forms 5450-3 and 5450-4 are very specific relating to protection of cultural resources, water quality, erosion control, soil damage, refuse control, disposition of waste materials, and storage and handling of hazardous materials. Additionally, special provisions may be included in a contract for the specific care and protection of other resource values (e.g., requiring directional felling, full log suspension, and hauling road waste material to protect streamside buffers and/or fisheries). A purchaser's failure to comply with such contract requirements is treated as a contract violation.

Remedy: On discovery of such a violation, the contracting officer or the authorized officer should initiate immediate corrective action.

(1) For critical situations, such as a violation causing siltation of a municipal water supply or an important fishery, the purchaser's entire contract operation will be suspended immediately. Corrective actions are discussed with the purchaser, documented in a letter, and must be completed as a condition of lifting the contract suspension (refer to [illustration 11](#)).

(2) For less critical situations, the authorized officer advises the purchaser to cease that portion of the operation in violation of the contract and to initiate corrective action. Verbal discussions will be reinforced with appropriate written notification (refer to [illustration 12](#)). If the purchaser fails to respond to instructions or to correct the damage done within the timeframe granted for restoration work, the operation should be suspended.

6. Violations Associated with the Prohibition on Exporting Federal Timber. Section 41 of the 5450-3 and 5450-4 contracts specify the export restrictions for federal timber (refer to H-5460-1 for compliance procedures). The contracting officer should coordinate with the Regional Solicitor's Office for suspected export violations. If the contracting officer determines that a violation of the export law has occurred, the contract must be suspended for the contracting officer to determine whether the violation is willful and warrants cancellation of the contract. If the contracting officer determines the contract should be cancelled, several other actions will follow. The contracting officer will contact HQ-220 to coordinate with the Department of the Interior Office of Inspector General's Administrative Remedies Division (OIG ARD) to develop the case and for a potential suspension (2 CFR Part 180) or debarment referral to the DOI Suspending and Debarring Official (SDO). The state director may also refer the violation to the Secretary to hold a hearing in accordance with 16 USC 620d(c) to determine civil penalties.

7. Other Non-performance; Inadequate Performance. This section deals with all purchaser performance requirements under a sale contract not discussed above. Contracts often include performance standards and specifications covering such items as construction of roads, bridges, fire trails, fences, felling of forest product, yarding or removal of forest product, stream clearance, slash reduction, manipulation, or disposal, payment of road use and maintenance fees to third parties. Any time a purchaser fails to comply with or meet the performance standards and specifications stipulated in the contract for specific work or obligations, the purchaser is in violation of the contract. Notifications of non-compliance sent to the purchaser should also be sent to the surety. If there is serious poor performance that would lead one to question their honesty, ethics, or competence, consideration should be given whether the matter should be coordinated with the OIG ARD for a potential referral to the DOI SDO.

a. Violation prior to Complete Removal. If a contract violation is discovered before the complete removal of material sold (such as a failure to build a road to specifications), the contract suspension procedure, if necessary, will be implemented.

Remedy: On discovery of a violation, the purchaser must be informed immediately and instructed to correct the violation. Verbal instructions should be confirmed in writing (refer to [illustration 12](#)).

(1) If the violation caused significant resource damage, the purchaser should be advised of liability for the payment or restoration of such damage. An immediate contract suspension may be necessary to facilitate critical restoration work.

(2) If the purchaser fails to correct the violation, and/or perform restoration work required within the time allowed operations under the contract should be suspended.

b. Violation after Complete Removal. If a contract violation occurs or is discovered after the complete removal of all material sold (such as failure to perform slash reduction measures in accordance with the terms of the contract), contract suspension is likely to be ineffective.



Remedy: When such a violation occurs, the contracting officer must give verbal instruction and confirm in writing that their failure to perform is a violation of the contract. In the written notice, the contracting officer may allow a reasonable period of time in which the purchaser must perform the work or duty required to remedy the violation. If the purchaser again fails to complete the work or duty within the time granted, the contracting officer should take additional action, such as performing the work with BLM personnel or contracted labor and equipment and then billing the purchaser for the expense.

8. Enforcement Authority of the Government. The Government has the authority to enforce the terms and conditions of the contract, yet in some situations does not have the authority to determine if a violation has occurred. An example of this is found in section 29, Safety and Health, of forms 5450-3 and 5450-4 that requires the purchaser to “conduct all operations . . . in compliance with the applicable provision of Federal, State, and local safety, health, and sanitation laws, codes, and regulations.” State regulations usually govern safe operating practices during harvest operations. The state safety inspector has the sole authority to determine if violations have occurred and issue citations for any violations. An on-site inspection by the state safety inspector, and/or confirmation of a violation of State law or regulations by the State Safety Inspector is recommended prior to contract suspension.

The BLM does not have the authority to enforce State laws and regulations in lieu of the proper State regulatory agency, however, violations of State law and regulations are violations of several sections (e.g., 26, 27, 28, 29) of the BLM contract that requires compliance with State laws. If the authorized officer suspects a State law violation is occurring in conjunction with operations under a BLM forest products sales contract, and the purchaser is non-cooperative in ceasing the suspected violation, the contract should be temporarily suspended until an on-site inspection by the appropriate State enforcement authority is conducted prior to a longer contract suspension.

9. Computing Government Costs to Perform in Lieu of Purchaser. A purchaser’s failure to perform may necessitate action by the Government to perform the work with BLM or other agency personnel, and/or through a procurement contract for the necessary personnel and equipment. The costs are then billed to the purchaser with a copy sent to the surety.

An example is a special provision that requires the purchaser to provide specified personnel and equipment to assist the BLM in the disposal of slash. The purchaser is provided with timely instructions for the planned slash burning but fails to provide the specified personnel and equipment on the day of the burn. The office proceeds to burn as planned, using BLM personnel, state forestry department personnel and equipment, and Forest Service personnel and equipment. The contracting officer notifies the purchaser in writing that their failure to assist is a breach of contract and that they will be billed for costs incurred by the Government in accordance with section 12 of the contract. Description of the computation of costs, which would apply to any situation where the Government must perform work in lieu of the purchaser, is provided below in a question and answer format.

a. Question: Can the number of personnel used daily by the BLM exceed the number the purchaser was required to provide under terms of the contract?

Answer: Normally, the number of personnel for whom the defaulting contractor will be charged should not exceed the standard set by the contract. Unless foreseeable delay is involved, the burn could be performed by the resources called for in the contract. In any event, if during the normal execution of the contract more personnel are needed to complete the slash disposal, responsibility may fall on the Government to provide them and not the purchaser.

b. Question: Must the pay scale of personnel provided by the BLM be comparable to the pay scale of personnel whose services were to be furnished by the purchaser?

Answer: The limits to the pay scale of the persons substituted by the BLM in lieu of the purchaser's performance of the contract will depend on reasonableness of and necessity for such pay rates. If substitute workers are available and equally qualified with those to be provided by the contractor, the recoverable damages will be limited to those pay scales. If on the other hand, no comparable substitutes are available, the damages will generally be based on the wages of those persons who are reasonably available. This can include BLM, State, Forest Service, or contracted personnel. However, the BLM should not use highly paid technical personnel to perform a labor function unless more suitable lower cost personnel are unavailable.

c. Question: Can the BLM bill the purchaser for its costs of using more equipment, larger equipment, or better equipment than the special provision requires?

Answer: The cost of equipment used by the BLM to complete slash disposal should be comparable to the cost of the equipment required in the contract. However, if similar equipment is not available, the BLM may charge for the cost of reasonable substitute equipment. No charge should be made for excess equipment unless it has become necessary because of delays caused by the breach of contract.

d. Question: Can the combination of personnel and equipment used by the BLM be assessed in terms of its cost effectiveness relative to the number and type of personnel and equipment specified by the contract?

Answer: Because of the difficulty in making direct comparisons, it is recommended that charges be based on the quantity of equipment and manpower called for in the contract. On the other hand, the BLM may choose to use a different combination if it is willing to absorb the excess cost.

e. Question: Can the BLM's charges to the purchaser include administrative and other overhead costs?

Answer: The increase in administrative and other overhead costs that directly results from the breach of contract may be billed to the purchaser. Such costs could include the expense of contracting for slash disposal and the cost of any additional supervision made necessary by the use of substitute workers.

f. Question: If slash burning must be deferred due to the purchaser's default and is completed later under more adverse conditions, can additional costs for any extra personnel and equipment needed be charged to the purchaser?

Answer: It is generally recognized by both the Government and its timber sale purchasers that time is of the essence in the burning of slash. Weather conditions, air quality, fuel moisture, and the condition of vegetation dictate when and how slash may be burned. In view of this, the BLM has grounds for the recovery of any additional costs of slash disposal.

B. Purchaser with Record of Contract Violations. An office may experience a purchaser, a purchaser's representative, or a contract logger with a history of contract violations and a record of failure to cooperate. Such individuals may be difficult to communicate with, which may lead to an increased number of contract violations. When such a situation occurs, the contracting officer should send the purchaser a warning letter documenting past performance issues and requesting a more cooperative attitude in future operations and advising that failure to cooperate may result in the purchaser not receiving contracts to purchase Government forest products in the future (refer to [illustration 13](#); note that in this example, multiple offices are involved and the quantity and form of violations has become serious, hence the state director signed the letter.). The contracting officer should notify the OIG ARD with a copy of contract and the warning letter. OIG ARD may request additional documentation as a part of its review.

III. SUSPENSION OF CONTRACT. Contract suspension is an action taken to stop all contract operations except those directed by the contracting officer to address the reason for the suspension. Contract suspension can result from a violation of the contract or certain events that are beyond the control of the purchaser such as discovery of a protected species, wildfire in the contract area, or court order. Suspension is an intermediate step that can lead to contract cancellation or modification in accordance with 43 CFR 5462.1 and 5470.

A. Processing Contract Suspensions. Contract suspension is a formal notification to a purchaser that suspends all contract operations except those necessary to correct contract violations. Application of the contract suspension procedure can cause financial loss to the purchaser. If such notices are issued without good cause or in error, and/or are not properly documented, the Government may be held liable for damages. For contract violations, the suspension procedure should be used only after verbal and/or written communication with the purchaser fails to achieve the desired results.

B. Contract Suspension Notice Issued in the Field. The contracting officer, or the authorized officer if so authorized, may immediately suspend a purchaser's operation without warning on discovery of a critical contract violation where a correction grace period cannot be granted (examples below). The contracting and authorized officers should discuss in advance the potential occurrence of this type of situation to ensure they have a common understanding of suspension criteria. The contracting officer should be advised as soon as possible of a contract suspension issued by the authorized officer. A few examples of such emergency situations are listed below.

1. A disregard of contract fire stipulations, or State fire laws, during the closed fire season or periods of fire danger
2. Contamination of a municipal water supply resulting from improper logging practices
3. Other serious environmental degradation
4. Destruction of Government resources
5. Endangerment of life or limb

C. Contract Suspension Procedure. A contract should be suspended when it becomes clear that such action is necessary to stop or remediate a contract violation or other ongoing or imminent harm to person, property, or the environment. The circumstances necessitating contract suspension will be documented in the contract file. Generally, the BLM may provide the purchaser with a 30-day cure period to correct the violation or the damage done resulting from the violation under the terms of the contract suspension.

1. Preparation and Issuance of Contract Suspension Notice. The authorized officer prepares, and the contracting officer issues, a contract suspension notice on Form 5480-2. The reason for the contract suspension as well as a reference to the applicable section(s) of the contract must be shown in the space provided on this form. The form, however, may not be usable if there is insufficient space provided to document the reason and/or the contract

citation(s). In such cases, a letter can be used instead of the form to issue a contract suspension notice. If a letter is used, the language from the form should be used to the degree it fits the situation. It is crucial to maintain documentation of the history of warnings and non-compliance leading up to and following the issuance of the notice, including emails, instant messages, and all records of personal and virtual meetings and calls, including calendar entries and memoranda or notes of conversations. A copy of the letter and contract suspension notice should be provided to OIG ARD at [OIG\\_Debarment@doioig.gov](mailto:OIG_Debarment@doioig.gov).

a. Payment Violations. Immediately notify the state office of any contract suspensions issued for nonpayment. This enables the state office to notify all districts that the affected purchaser may be in financial difficulty and should be closely monitored during any operations.

(1) Cash Installment Systems (Includes Overcut of Bond Credit).

If the purchaser fails to make delinquent installment payment(s) within the timeframe provided by the courtesy contact, an appropriate contract suspension notice should be issued. The following is an example of language for use on form 5480-2 or in the contract suspension letter. “Failure to make timely payments on installments 5, 6, 7, 8, and 9 pursuant to section 3(b) of the contract. Your payment of \$50,000.00 is required as a condition of lifting the contract suspension.”

(2) Payment Bond Systems. If the purchaser fails to make a delinquent billed payment within the time frame provided by the courtesy contact, an appropriate contract suspension notice should be issued. The following is an example of language for use on form 5480-2 or in the contract suspension letter.

“Failure to make timely payment of \$125,000.00 billed to you on October 1, 2009, pursuant to section 3(f) of your contract for forest products removed from the contract area. Your payment of \$125,000.00 is required as a condition of lifting the contract suspension.”

(a) Payment Bond - Negotiable Securities. The purchaser must be advised that the BLM will take action against its bond if the deficit payment, including any accrued interest, is not paid within the 30-day suspension grace period (refer to [illustration 14](#)). In this case, the letter serves as the contract suspension notice.

(b) Cash Payment Bond - Irrevocable Letter of Credit (ILC). The purchaser must be advised that the BLM will take action against its irrevocable letter of credit if the deficit payment, including any accrued interest, is not paid within the 30-day suspension grace period (refer to [illustration 15](#)). In this case, the letter serves as the contract suspension notice.

(c) Payment Bond - Corporate Surety. The contract suspension letters in illustrations [14](#) and [15](#) suffice as examples of contract suspension letters for delinquent payment on a contract with a corporate surety payment bond. The duties of the purchaser and surety are separate contractual arrangements. The surety agrees to make a delinquent payment within 60 days after a demand for payment by the Government; thus, to activate the surety duty under the

payment bond and to provide surety the opportunity to escape or reduce the interest penalty, BLM must make a demand on the surety for the delinquent payment simultaneously with the issuance of the contract suspension notice to the purchaser (refer to [illustration 16](#)). If the delinquent payment is received from the purchaser before surety makes payment, the district should advise surety by sending them a copy of the written notice lifting the contract suspension.

b. Other Contract Violations. Other than payment violation contract suspensions, all other contract suspension notices or letters resulting from contract violations are generally prepared in the same manner. The 30-day grace period provided by section 10 of the contract is applicable.

(1) Contract Suspension. A contract suspension notice signed by the contracting officer must be delivered in-person or by certified mail. The suspension notice may have been preceded by verbal or email instructions to suspend operations by the authorized officer but the written notice is required to make the suspension effective. The contract suspension notice or letter should make reference to the verbal and/or written instructions given to the purchaser for correction of the violation or the damage it caused as well as reference to the section(s) of the contract that the purchaser has violated. Informal instructions may be issued using form 5460-18, Instructions to Purchaser and documented on the Inspection Report. The purchaser, the purchaser's representative, and any subcontractors must be made fully aware of the reason for the contract suspension.

Form 5480-2 can be used by the contracting officer to issue a contract suspension. If form 5480-2 is hand-delivered by the contract administrator, “Hand delivered to [insert name] on [insert date] at [insert time] by [insert authorized officer’s name]” must be printed below the text stating “Certified Mail Return Receipt Requested” at the upper right on the form.

An example of language for use on form 5480-2 or in the contract suspension letter follows:

“Violations of road specification and stream protection standards for failure to comply with: 1) Sec. 26, parts (a) and (c); 2) Exhibit C, Part 1, Sheet 15 of 25, Item 1009; and 3) Item 46 of Exhibit C, Road Plan Map, of the contract. Failure to comply with this letter of July 29, 2009, establishing deadline dates for correction of the violations.”

When an immediate contract suspension is required while a field visit is underway, the authorized officer should contact the contracting officer for authorization via two-way radio or cell phone to receive verbal approval of the suspension. In this case, the authorized officer can affect the contract suspension in the field using form 5460-18, Instructions to Purchaser, or verbally suspend operations and subsequently document the action on a Timber Sale Inspection Report. Then a contract suspension notice Form 5480-2 would be prepared in office for hand delivery to the purchaser’s place of business. When using form 5460-18, the printed text on the form, “purchaser is hereby instructed to” would be followed by “immediately cease operations due to purchaser’s failure to comply with section (xx) of the contract.”

Contracting officers should not pre-sign copies of form 5480-2, in anticipation of the authorized officer issuing field contract suspensions for violations that have not been identified yet.

(a) In-person Delivery. If the contract suspension notice is hand delivered on-site, the date, time of delivery, and the person to whom the notice is delivered should be noted on the notice. The purchaser must sign and date the note "hand delivered." A certified mail card may also be used for proof of delivery.. It is advisable to subsequently mail or hand deliver a copy of the notice to the purchaser as soon as possible.

(b) Notification to Surety. The surety copy of the contract suspension notice is normally sent by first-class mail to the performance bond surety; however, when demand is made under the terms of a blanket payment bond for a delinquent payment, the surety copy of the contract suspension notice and demand letter should be sent certified mail, return receipt requested, to the payment bond surety; subsequently, a photocopy of the notice is sent by first-class mail to the performance bond surety.

2. Permissible Operations. All operations under a sale contract are suspended under the terms of a contract suspension, except such operations that are necessary to remedy the violation or the damage caused by the violation. The purchaser may not cut and remove forest products sold while under contract suspension. Any such cutting or removal is treated as willful trespass.

a. Field Contract Suspension. If the purchaser is subjected to an "on the spot" field contract suspension, the authorized officer must subsequently contact the purchaser and arrange a meeting to discuss the actions that need to be taken to correct the violation or the damage caused by the violation. The form and degree of damage, and potential for further damage or pollution, may necessitate immediate remediation. Verbal instructions given to the purchaser should be confirmed in writing.

b. Repair of Damage by Government. In critical situations, such as a violation resulting in environmental degradation, the 30-day grace period provided in the contract suspension notice for the purchaser to correct damage may be inappropriate for achieving timely or adequate corrective action. If the purchaser lacks the capability to act quickly, or fails to recognize the urgency of the situation, the contracting officer may serve written notice to the purchaser that the Government will repair or restore the damage. The purchaser must then pay the Government for the actual cost of repair or restoration work as a condition of lifting the suspension. A copy of any subsequent demand letter should be sent to the surety.

#### D. Purchaser Failure to Respond to Contract Suspension Notice.

1. Payment Bond – Negotiable Securities. If the purchaser fails to make a billed payment for the full amount of the bill within the 30-day suspension grace period, the contracting officer will initiate appropriation of the negotiable securities under the terms of the bond in accordance with 43 CFR 5451.4.

a. Appropriation of Securities. The contracting officer will prepare a letter of appropriation issued to the purchaser to be sent by certified mail, return receipt requested (refer to [illustration 17](#)).

(1) Liquidation Process. The office will send a courtesy copy of the above-referenced letter of appropriation and a request for liquidation of the negotiable securities to the Division of Business Services, National Operations Center. The value of the securities to be appropriated is the total value obligated against the bond on the date appropriation will occur plus the accrued interest on the delinquent payment.

(a) If the cash value of the securities exceeds the total amount due, the contracting officer will refund the balance to the purchaser.

(b) If the cash value of the securities is less than the total amount due, the contracting officer must make demand on the purchaser for the deficit amount as a condition of lifting the contract suspension. If the purchaser fails to pay, demand must be made of the performance bond surety.

2. Cash Payment Bond - Irrevocable Letter of Credit. If the purchaser fails to make a delinquent billed payment within the 30-day suspension grace period, the contracting officer will prepare and deliver a sight draft, which is a written demand for payment to the financial institution issuing the Irrevocable Letter of Credit. The sight draft will be for the amount of the delinquent payment plus accrued interest. A signed statement will also be prepared and delivered to the financial institution certifying that the purchaser has failed to meet the contractual obligations with regard to payments.

3. Payment Bond - Corporate Surety. If the purchaser fails to make the delinquent payment plus accrued interest, the surety is obligated to pay an amount up to the penal amount of the payment bond plus accrued interest. If surety fails to pay within the 60-day period stipulated in the bond, the contracting officer forwards the file to the state director for appropriate action. If the penal amount of bond is paid by surety and the penal amount is less than the total amount of delinquent payment plus any accrued interest, the contracting officer must make demand on the purchaser for the balance of payment as a condition of lifting the contract suspension (refer to [illustration 18](#)). The maximum that can be demanded of the surety is the penal sum of the bond.

4. Warning Letter on Cancellation of Contract. Normally, if the purchaser fails to remedy the contract violation within the timeframe specified in the contract suspension notice or subsequent demand, the contracting officer sends the purchaser a formal written warning of cancellation of the contract; however, a warning letter may not be necessary if the nature, or status, of violation actions are such that this step is redundant. A warning letter should stipulate an additional period of time, not to exceed 30 days, in which the purchaser must correct the violation or the damage caused by the violation.

a. Preparation and Delivery of Warning Letter. The warning letter should include references to the nature of the violation, the contract suspension notice, subsequent demand and/or correspondence with the purchaser, and the appropriate provision of the contract concerning cancellation (refer to [illustration 19](#)). The letter is to be hand delivered or sent certified mail, return receipt requested. If hand delivered, a certified mail card should be used for proof of delivery and the purchaser must sign and date and note “hand delivered” on the card.



b. Purchaser's Request for Additional Time to Correct Violation. A purchaser's request for additional time to remedy the contract violation may be granted by the contracting officer if the request is reasonable and in the interest of the Government (refer to [illustration 20](#)).

c. Purchaser's Failure to Respond to Warning Letter. If the purchaser fails to respond to, or satisfy the requirements of, the warning letter, the contracting officer should proceed with cancellation of the contract.

E. Implementation of Species Protection, Stays, and Injunction Provisions.

1. General. Contract suspension in accordance with section 42 occurs to ensure compliance with:

a. Federal resource protection law (including but not limited to the Endangered Species Act and Clean Water Act);

b. A court order or Interior Board of Land Appeals (IBLA) order;

c. Records of Decision (ROD)/ Approved Resource Management Plans (RMP) as they relate to Federally listed species;

d. BLM Manual 6840 as it relates to Federally proposed, Federal candidate, BLM sensitive, or State listed species or habitat; or

The removal of cut timber should be allowed to the extent possible and expeditiously pursuant to the court or IBLA order unless the court or IBLA order would otherwise preclude removal of cut timber. The purchaser may also request reduction of first installment payment in accordance with section 42 and contract section 3(c). When allowable, the purchaser should be required to complete any work necessary to leave the contract area in a contract-compliant condition. Payment and performance bonding requirements, respectively, should be adjusted as appropriate after the aforementioned removal of cut timber and completion of remedial work.

The delay associated with a contract suspension can result in the purchaser incurring costs. Although section 42 seeks to limit the exposure of the Government, excessive delay by the Government may result in the filing of a claim and payment of damages. It is imperative that the Government proceed expeditiously in the resolution of the issue(s) necessitating the suspension and in the lifting of the suspension. In the notification of a lifted suspension, inform the purchaser of the requirement to restore bonding and/or the first installment prior to the resumption of operations.

2. Contract Modification or Cancellation. Under certain circumstances a contract may need to be modified (for example dropping acreage or adding seasonal restrictions) or cancelled entirely (refer to handbook Sec. V.), pursuant to contract provisions and in accordance with 43 CFR 5462.1 and 5470, to comply with:

a. Federal resource protection law;

b. A court order or Interior Board of Land Appeals order;

c. Management direction for species or habitat protection established in the Records of Decision (ROD)/Approved Resource Management Plans (RMP); or

d. BLM Manual 6840 as it relates to Federal proposed, Federal candidate, Bureau sensitive, or State listed species or habitat.

It is not the intent of this provision to require the deletion of volume from the contract unless the contracting officer makes a determination that deletion is necessary. Restrictions may only need to be applied to a portion of a contract area. If this is the case, this should be accomplished with a contract modification that deletes area, volume, and value from the contract.

If the purchaser incurs any unamortized out-of-pocket expenses due to contract modification or cancellation under this section, any refunds or transfers will be accomplished through a bilateral contract modification. For any construction refunds or transfers, the modification must document the extent, or stage of progress, of incomplete and/or complete/approved construction projects. However, if the purchaser has outstanding debt owed to the United States, the contracting officer must first offset against any expenses determined payable to the purchaser the amount of any outstanding debts owed in accordance with the Debt Collection Improvement Act (31 USC 3701 et seq). The consideration of expenses submitted by the purchaser may result in a contracting officer determination that the costs are not “reasonable” as provided for under the contract. Because of the possibility of a claim filing, this determination, including the factual basis, must be explained to the purchaser and fully documented in the contract file.

F. Resumption of Operations. With purchaser correction or remediation of the contract violation, including any restoration or payment of damages that resulted in the contract suspension, the contracting officer advises the purchaser in writing that operations may be resumed (refer to [illustration 21](#)).

1. Payment Bond - Negotiable Securities. If it is necessary for the Contracting officer to appropriate the negotiable securities to cover the total amount obligated against the bond, the contract suspension notice must remain in effect until the securities are liquidated and the account settled. The appropriation action voids the bond. When the suspension notice is rescinded, the purchaser then submits installment payments in advance of cutting in accordance with the terms of the contract unless another payment bond is filed by the purchaser and accepted by the contracting officer.

2. Cash Payment Bond - Irrevocable Letter of Credit. If it is necessary for the contracting officer to make demand for payment against an ILC, the contract suspension notice must remain in effect until payment has been made and the account settled. If the amount of the demand exhausts the penal sum of the ILC or the remaining balance is insufficient, the purchaser must then submit installment payments in accordance with the terms of the contract or make other payment bonding arrangements satisfactory to the contracting officer in order to resume operations.

3. Blanket Payment Bond - Corporate Surety. If payment by the surety covers the total amount of the delinquent payment and any accrued interest, the contract suspension notice may be rescinded; however, the payment bond provides that, upon demand by the Government to

surety for a delinquent payment, surety may cancel the payment bond 10 days after the Government's receipt of written notice of cancellation from surety. If surety cancels, the contracting officer must, within the 10-day period, evaluate all contracts covered by the bond to determine the extent of liability obligated against the bond. The contracting officer must then advise the purchaser that, before the effective date of cancellation, sufficient funds must be paid on each contract to cover the amount obligated against the bond, or a new blanket payment bond must be filed to cover such contracts. If the purchaser fails to make the necessary payments, or to file a new bond, contract suspension notices must be issued on all contracts covered by the bond and demand made on payment bond surety for payment for all forest product yarded to loading points or removed from the contract areas, but not paid for, through the effective date of bond cancellation.

#### IV. DISPOSITION OF MONIES COLLECTED FROM DEFAULTED FOREST PRODUCTS SALE CONTRACTS AND TRESPASS RESOLUTION.

This section covers the proper disposition of collections from defaulted forest products sale contracts; this direction also applies to sales of other vegetative resources.

A. Bond Forfeiture for Failure to Pay. Receipts from the sale of forest products, including the forfeiture of a bond as a result of failure to pay the purchase prices, should be deposited in the appropriate Treasury fund for regular forest product accounts. The Treasury funds align with the land status as follows.

1. Public Domain Lands. Deposit in the 14x5881 Treasury fund.
2. Oregon and California Lands. Deposit in the 14x5882 Treasury fund.
3. Coos Bay Wagon Road Lands. Deposit in the 14x5897 Treasury fund.
4. Bankhead-Jones Lands. Deposit in the 14x5896.011 Treasury fund.

B. Trespass Collections and Bond Forfeiture to Fulfill Contract Requirements. Provided trespass damages are paid in full or compromise offers are accepted, receipts from trespass collections or the forfeiture of a bond or other security for failing to fulfill contract requirements (except payment for forest products) will be deposited for use in improvement, protection, or rehabilitation work rendered necessary by the failure. (Funds accompanying a compromise offer for trespass damages will be held in the office safe until the decision is made whether or not to accept the offer.)

1. Public Domain Lands. Deposit in the 14x5017.2 Treasury fund, specifically for projects funded from the 5320 subactivity (requires the use of project codes).
2. Oregon and California and Coos Bay Wagon Road Lands. Deposit in the 14x5017.2 Treasury fund, specifically for projects funded from the 5310 subactivity (requires the use of project codes).

C. Compromise on Claim Settlement. Receipts from an accepted compromise on settlement of a claim involving damage to the public lands should be deposited for use in improvement, protection, or rehabilitation work rendered necessary by the action giving rise to the claim.

D. Proration of Receipts. In the event that all of the monies owed on a defaulted contract cannot be collected, monies actually collected should be prorated to the regular forest product Treasury funds and 14x5017.2 on the basis of percentages of the total amount owed. For example, if \$95,000 remains to be paid for timber and \$5,000 for BLM administrative expense and uncompleted work are owed, there is an outstanding balance of \$100,000. The outstanding balance is 95 percent timber value  $((95,000/100,000) \times 100)$  and 5 percent administrative costs  $((5000/100,000) \times 100)$ . If \$50,000 is collected, then 95 percent of \$50,000 (\$47,500) is deposited in a timber account and 5 percent of \$50,000 (\$2,500) is deposited in 14x5017.2.



V. CANCELLATION OF CONTRACT. Action taken by the contracting officer to rescind the purchaser's contract rights and determine any remaining obligations by parties for (1) failure to correct a contract violation or (2) when determined by the contracting officer that continued operation of the contract is not in the public interest. Suspension is not a prerequisite for cancellation.

There are six scenarios that cover the majority of modification/cancellation situations.

Scenario 1 No timber has been cut; no harvest is allowable. Issue a contract cancellation notice that, in effect, terminates the contract.

Scenario 2 No timber has been cut; harvest is permissible on a portion of the sale. Execute a bilateral contract modification that deletes the necessary volume from the contract at current appraised price after consultation with the purchaser on the terms of the modification. If the purchaser is no longer interested in the sale, the contracting officer may cancel the sale without assessing damages to the purchaser.

Scenario 3 Cut timber is on the ground (some may have been removed); no harvest is allowable. Issue a contract cancellation notice. Compensate the purchaser for unamortized costs, including the cost of timber falling for the cut/not removed volume and terminate the contract.

Scenario 4 Cut timber is on the ground (some may have been removed); the only removal permitted is the felled timber. Issue a notice that cancels cutting and removal rights on the standing timber, permits the cut timber to be removed, and delineates the remaining contract requirements on the harvested/to be harvested area(s). Compensate the purchaser for any unamortized costs. If removal of the felled timber will be more expensive than intended (e.g., skyline unit; cut timber located at the bottom of a unit that must be removed by helicopter), the BLM may execute a modification that changes the contract requirements and adjusts the total purchase price.

Scenario 5 Cut timber is on the ground (some may have been removed); the only removal permitted is the felled timber; and the purchaser refuses to remove the felled timber.

Consult with the purchaser in writing to ascertain their rationale for refusal; determine if removal of the timber is economically viable, if a contract default has occurred, and if the settlement-of-uncompleted contract procedure is appropriate to follow; or,

Issue a contract cancellation notice and compensate the purchaser for any unamortized costs; or

If there are remaining contract requirements on any harvested area(s), issue a notice that cancels cutting and removal rights on the unyarded timber and delineates the remaining contract requirements on the harvested area(s). Re-offer and sell the felled timber.

Scenario 6 Cut timber is on the ground (some may have been removed); and harvest of the felled timber and other area(s) is allowable. Combine the directions from scenarios 2 and 4.

In all cases, purchaser compensation should be authorized by a contract modification. Such a modification should first attempt to adjust the value of the subject contract or adjust the value of

another contract with the same purchaser. As a last resort, identify that compensation will be paid to the purchaser through the issuance of a refund check. In the event a bilateral modification cannot be successfully negotiated with the purchaser, the BLM may authorize the compensation with a unilateral modification letter that also advises the purchaser of their rights under the Contract Disputes Act. An example of a Government Liability Calculation follows.

A. Criteria for Processing Contract Cancellation. The process to cancel a contract and recover damages by the Government requires legal counsel. The contracting officer should take the following steps in this matter.

1. Notification of State Director. When time has expired for the purchaser to correct a contract violation and evidence is clear that such violation will not be corrected or the contracting officer has determined that continued operation of the contract would be averse to the public interest, the contracting officer will forward the contract file to the state director. In cases of contract cancellation for violation of the contract terms, the file must include a report documenting a complete history of the contract violation, the steps taken to resolve the violation, and any actions taken by the purchaser (refer to [illustration 22](#)). The contents of the report to the state director should contain the following:

a. All of the facts that support the contracting officer's recommendation to cancel the contract.

b. The contracting officer's recommendation of purchaser damage liability due to default of the contract and the approximate monetary amount of such damage (if it can be estimated).

c. Any additional supporting documents included as attachments (e.g., correspondence, inspection reports, computations).

2. Concurrence by State Director. If the state director concurs with the contracting officer's recommendations of contract cancellation, the state director will prepare, with the assistance of the Regional Solicitor's Office, a cancellation notice to the purchaser for signature by the contracting officer. Cancellation notices are prepared only in those cases where the cutting and removal rights under the contract have not expired and forest product remains to be cut. In cases where all forest products have been cut and removed and BLM has received payment in full, no real purpose is served by the cancellation notice and the contracting officer would instead proceed directly to contract termination (refer to H-5490 Contract Termination).

3. Determination of Damages. The Government is entitled to the benefits provided by the contract, including payment for the forest product and satisfactory completion of all contractual requirements. Failure to complete such contract requirements results in damages to the Government. On the other hand, the purchaser is entitled to a credit, against any amount that is due and owing the Government, for forest product remaining on the contract area. The determination of damages will consider these entitlements:

a. Determination of General Damages for contract cancellation. The formula for computation of general damages owed to Government is as follows.

$$D = T - N - P$$

- or -

$$D = T - (V - A - U - F - I) - P$$

Where:

D = General damages due the Government or refund due to purchaser

T = Total purchase price of contract

N = Net credit value = (V - A - U - F - I).

V = Value of remaining forest product (contract value of the remaining forest products [CV] or market value of remaining forest products [MV], whichever is less

A = Administrative costs of resale

U = Uncompleted contract requirements usually associated with forest product that has been cut and removed (e.g., roads, slash disposal).

F = Any unpaid fees and contributions, usually associated with forest product that has been cut and removed

I = Any unpaid interest for unpaid bills

P = Total amount paid by purchaser, including the first installment

b. Valuation of Remaining Forest Product. If sold forest products remain on the contract area and there is a balance due on the purchase price, such forest product will be reappraised and offered for competitive sale. The appraisal of such forest product should reflect the costs of completing all remaining contractual items. The forest product will be offered for sale under, if possible, the identical terms and conditions of the original sale.

The most recent version of the contract and any new and necessary special provisions should be used to develop the new contract for the resale of remaining forest product. If the remaining forest product is not sold, the reappraised fair market value price will be used as a measure of value of the remaining forest product. However, a defaulted purchaser may not make a profit on the default contract, therefore the amount of credit to be allowed the purchaser for the value of the remaining forest product, as determined by resale or reappraisal, may not exceed the total value of the remaining forest product based on the contract unit prices for the forest product set forth in the defaulted contract. [Illustration 23](#) displays several examples of computations resulting in damages owed to the Government. [Illustration 24](#) displays several examples of computations resulting in a refund owed to the purchaser.

4. Demand for Damages. A demand for damages must be made on the purchaser as soon as general damages have been determined. As a rule, the demand will be prepared by the contracting officer and approved by the state director with the assistance of the Regional Solicitor's Office. If the purchaser fails to pay the full amount of the damages within 30 days of receipt of the demand letter, demand for damages is then made on the purchaser's surety. If the purchaser disputes the damages under section 38 of the contract, a demand should not be made on the purchaser's surety until 30 days have passed without payment after the contracting officer's decision to uphold the claim. In either case, the purchaser would be responsible for interest that accrues from the time of the initial billing for damages.



5. Final Actions. The following actions will be taken depending on the circumstances of the case.

a. Payment in Full. When the total amount of damages is paid on demand by either the purchaser or surety or both, a receipt is issued in the normal manner and the purchaser is released from further liability. [Illustration 25](#) is a sample letter to use in such instances.

b. Payment of Penal Sum by Surety. When the surety pays the penal sum of the bond, but less than the damages to the Government, a receipt is issued to the surety for the sum received. The surety is advised that their obligation under the bond has been fulfilled and that they are released from further liability (refer to [illustration 26](#)). The cancelled bond is retained by the BLM. It is also necessary under such circumstances to notify the purchaser by letter that the obligation has been reduced by the amount paid by surety and to renew demands for the balance. [Illustration 27](#) is a sample letter to use in such instances.

c. Failure to Pay. When the purchaser or surety or both fail to respond to demand for payment of damages, the matter becomes a delinquent account and should be handled in accordance with BLM Collections Manual Section 1375, Delinquent Accounts.

B. Other Cancellations. Cancellations discussed thus far involve actions taken unilaterally by the contracting officer, as provided for under the contract, in cases of purchaser breach of contract and failure to remediate the breach. Instances may otherwise arise that are similar to the identified need for contract modifications that add or delete contract requirements, volume, or cutting area as discussed in H-5470-1, however cancellation of the entire contract may be in the interests of the Government.

The Government has the power to unilaterally cancel the contract. But, in the absence of specific authority in the contract, the Government may be subject to the payment of damages.

A situation could arise where a purchaser is unwilling to request an extension of time for cutting and removal when those rights expire during a long-term contract suspension authorized by the contract for reasons that are beyond the purchaser's control (such as an Endangered Species Act-related suspension). In this circumstance, a contracting officer may consider requesting state director authorization to negotiate a cancellation of the contract to avoid contract claims.

In any case concerning contract cancellations contracting officers must seek the advice of the state office and Regional Solicitor's Office prior to action when a problem on the sale area is first identified.

## VI. SETTLEMENT OF UNCOMPLETED CONTRACT.

An uncompleted contract is a contract where: (1) cutting and removal rights under the contract have expired and payment and/or contractual requirements have not been completed; (2) cutting and removal rights under the contract have not expired, payment and/or contractual requirements have not been completed, and the purchaser has executed a relinquishment of cutting and removal rights; or (3) the purchaser or trustee in bankruptcy has rejected the contract.

A. Procedures for Settlement of Uncompleted Contract. Like cancellation of a contract, settling uncompleted contracts and recovery of damages by the Government may warrant legal counsel. Steps the contracting officer should take are as follows.

1. Situations Involving Bankruptcy. If the purchaser has filed for bankruptcy, the contract file, together with a summary of contract status, will be sent immediately to the state director with a request for advice on how to proceed. Both the performance and payment sureties, if both exist, must be informed: (1) of any breach or default, the Government may expect the surety to pay damages; and (2) the existence of a bankruptcy filing as they may wish to file their own claim against the purchaser. Further action is dependent on advice of the state director.

2. Situations Not Involving Bankruptcy.

a. Notification of Purchaser and Surety. The purchaser and surety are notified that the time for cutting and removal as set forth in the contract has expired. If contractual requirements remain to be completed, including payment of the total purchase price, the notice should remind the purchaser of such remaining requirements. The purchaser should be allowed a maximum of 30 days to comply. Refer to [illustration 28](#) for an example letter to be sent to the purchaser and surety, which presumes a lump sum sale executed on contract form 5450-3.

b. Courtesy Notifications. Under standard operating procedures as set forth in H-5460-1 a purchaser is given both a 90-day courtesy notice of expiration of cutting and removal rights and a more forceful 30-day notice reminding the purchaser of remaining contractual obligations.

3. Notification of State Director. When the time allowed for the purchaser to complete contract requirements has expired and the purchaser has given clear evidence that the contract requirements will not be completed, the contracting officer will forward the contract file to the state director together with a report documenting a complete history of the contract, the steps taken to resolve the situation, and the actions, if any, taken by the purchaser. The contents of the report to the state director will contain the following (refer to [illustration 22](#) for a similar example provided for contract cancellation).

a. All the facts with regard to the situation.

b. The contracting officer's recommendation as to the various damages for which the purchaser may be liable due to failure to complete the contract and the approximate monetary amount of damages if such damages can be estimated at the time.

c. Supporting information that includes any necessary documents (e.g., correspondence, inspection reports, computations.) included as attachments.

4. Advice to Contracting Officer. After review of the facts of the case, the state director, in consultation with the Regional/Field Solicitor, will provide the contracting officer with instructions and actions to take. Generally, this will involve the computation of general damages the Government is entitled to because of failure on the part of the purchaser to perform.

5. Determination of Damages. The Government is entitled to the benefits provided by the contract, including payment for the forest product and satisfactory completion of all contractual requirements. Failure to complete any or all such contract requirements usually results in damage to the Government. On the other hand, the purchaser is entitled to a credit against any amount that is due and owing the Government if uncut forest products remain on the contract area.

6. Demand for Damages. A demand for damages must be made on the purchaser as soon as general damages have been determined. As a rule, the demand will be prepared by the contracting officer with required review by the state director along with the Regional Solicitor for signature by the contracting officer. If the purchaser fails to pay the full amount of the damages within 15 days of receipt of the demand letter, demand for damages is then made on the purchaser's surety.

If the purchaser disputes the damages under section 38 of the contract, a demand should not be made on the purchaser's surety until after the contracting officer's decision has been issued that upholds the claim and the purchaser fails to pay within 15 days of the decision. In either case, the purchaser would be responsible for interest that accrues as a result of the amount due from the time of the initial billing for damages. Refer to [illustration 29](#) for an example of a demand letter that takes the form of a contract modification.

7. Final Actions. The following actions will be taken depending on the circumstances of the case.

a. Payment in Full. When the total amount of damages is paid upon demand by either the purchaser or surety or both, a receipt is issued in the normal manner and the purchaser is released from further liability. [Illustration 25](#) is a sample letter to use in such instances.

b. Payment of Penal Sum by Surety. When the surety pays the penal sum of the bond, but the damages to the Government exceed this amount, a receipt is issued to the surety for the sum received. The surety is advised that their obligation under the bond has been fulfilled and that they are released from further liability. The canceled bond is retained by the BLM (Refer to [illustration 26](#)). It is also necessary under such circumstances to notify the purchaser by letter that the obligation has been reduced by the amount paid by surety and to renew demands for the balance. [Illustration 27](#) is a sample letter to use in such instances.

c. Failure to Pay. When the purchaser, surety, or both fail to respond to demand for payment of damages, they are in default and the matter becomes a delinquent account and should be handled in accordance with Manual Section 1375

VII. DEBT COLLECTION IMPROVEMENT ACT OF 1996.

All demands for payment, including attempted collections for non-payment for forest products cut and removed, trespass, Government performance of work in lieu of purchaser performance, default, settlement of uncompleted contracts, or cancellation damages, etc., must be entered into the Collections and Billing System (CBS) and accompanied with a Bill for Collection generated by CBS. By so doing, procedural compliance with Manual Section 1375 is better achieved and facilitates the proper collection processes required in the Debt Collection Improvement Act of 1996.



### VIII. SUSPENSION AND DEBARMENT OF INDIVIDUALS AND ENTITIES.

Suspensions and debarments of individuals and entities, including but not limited to purchasers, are administrative remedies used to prevent the Government from entering into contracts with parties who are not “presently responsible” – i.e., those that have engaged in criminal or other improper conduct, or demonstrated poor performance of such a compelling and serious nature that it would lead one to question their honesty, ethics, or competence. The Office of the Inspector General Administrative Remedies Division (OIG ARD) coordinates with BLM contracting officers and authorized officers, reviews and develops cases, and refers recommendations for administrative action to the Department of the Interior’s Suspending and Debarment Official (SDO). The SDO may also resolve a matter by an administrative agreement that addresses potential business risks, where the SDO determines that it is in the Government’s best interests. Under such administrative agreements, the purchaser could remain eligible for new Federal awards, including timber purchases.

A suspension of an individual or entity under 2 C.F.R. Part 180, which is distinct from a contract suspension, is a preliminary action taken by an SDO to temporarily exclude a party from eligibility for new Federal procurement and nonprocurement awards, including forest product sales contracts. Suspensions of individuals or entities usually occur pending completion of an investigation, audit or review, judicial proceeding, or administrative proceeding that may ensue.

A debarment is the final action taken by an SDO to exclude a party from eligibility for new Federal procurement and nonprocurement contracts. Debarment is for a fixed, specified time period, generally not to exceed three years. The SDO has the discretion to either reduce or extend that period depending on the need to protect the Government’s interest. Suspensions and debarments cannot be used as punishment, enforcement, or prosecutorial tools.

Timber sale contracts are “covered transactions” under the suspension and debarment rules for discretionary assistance, loan, and benefit award programs at 2 C.F.R. Part 180, implemented by DOI at 2 C.F.R. Part 1400. Absent a written compelling reasons determination by the Director of the Office of Acquisition and Property Management, no award shall be made to a suspended, debarred, or otherwise disqualified bidder or Purchaser during the period of ineligibility 2 C.F.R. §§ 180.135 and 1400.137, and 43 C.F.R. 5441.1(c)(1) and (2).

Prior to awarding a timber sale contract, a bidder or purchaser is required to certify to BLM that neither the entity nor any of its principals, as defined at 2 C.F.R. § 180.995, is suspended, debarred, or otherwise disqualified. Purchasers must also notify BLM if they or any of their principals have been convicted within the preceding three years or are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) of any of the offenses listed in 2 C.F.R. § 180.800(a) or had a civil judgment rendered against them within that period, or had one or more public transactions (Federal State, or local) terminated within the preceding three years for cause or default. 2 C.F.R. § 180.335(b), (c), and (d). If the contracting officer becomes aware that a purchaser has entered into a covered transaction with another person at the next lower tier (subcontract) that has been debarred, the contracting officer should notify the SDO. The purchasers are required by regulation to verify that the person with whom they intend to enter into that transaction is not suspended, debarred, or otherwise award disqualified. 2 C.F.R. §§ 180.300 and 1400.220.

Coordination with the OIG ARD for suspension or debarment should be pursued when corrective measures outlined in BLM Handbook 5460 have failed to improve the performance of purchasers and should also be considered for purchasers with a pattern of contract violations or cancellation. Complete and accurate records that demonstrate a purchaser's poor performance history, including poor performance on multiple BLM districts, provides support for a potential debarment. Only the Suspending and Debarring Official in the Department of the Interior is authorized to issue debarments of BLM forest product contract purchasers. If the contracting officer believes debarment is warranted, consultation with the state office and Regional Solicitor is required. The contracting officer will coordinate through the state office forestry lead and HQ-220 to submit evidentiary documentation to the OIG ARD, which reviews serious contract violations for potential suspension or debarment recommendations.

Debarment may begin with a letter from the OIG ARD to the purchaser that describes the issues and asks the purchaser to provide a rationale why they should not be debarred. The OIG can also advise on whether the matter should be brought before the SDO. In some cases, the SDO may issue a suspension notice to the contractor which prevents the contractor from obtaining new business with the Federal Government, pending further review or action (e.g., an investigation, audit, or civil, criminal, or administrative proceeding). A contractor's suspension or debarment by the SDO does not suspend or cancel any existing contracts that a contractor may have with the BLM or other Federal entities. The authorized officer should review any existing contracts with suspended or debarred contractors to determine if additional measures or actions are warranted in light of the SDO decision. Suspended or debarred contractors are not eligible for contract extensions.

Effects of Debarment. If the SDO determines that debarment is warranted, the SDO is responsible for entering the purchaser into the General Services Administration's System of Award Management (SAM) at [www.sam.gov](http://www.sam.gov). The purchaser will be ineligible from receiving new Federal awards for a specific period of time, as determined by the SDO, which is typically three years. Debarment action may be taken with respect to individual officers or principals of a debarred entity in a separate action. SAM. System for Award Management. Suspended and debarred parties are entered into the SAM system ([sam.gov](http://sam.gov)) so that other contracting officers can exclude those parties from receiving new timber sale contracts during the period of debarment. Contracting officers should query the SAM system prior to declaring a high bidder or awarding a contract (refer to H-5440 Conduct of Sale).

## Glossary of Terms

Additional sale. A sale of additional forest product to an existing contract for any variety of reasons. An "additional sale" is a form of "other than advertised sale."

Authorized Officer. Any employee of the Bureau of Land Management with authority to take action in connection with a contract.

Contract cancellation. Action taken by the contracting officer to rescind the purchaser's contract rights, including the right to cut and remove materials, and determine any remaining obligations by parties for: (1) failure to correct a contract violation; or (2) when determined by the contracting officer that continued operation of the contract would be adverse to the public interest.

Contract default. A condition where a purchaser fails to correct a contract violation after a remedy has been prescribed by the contracting officer.

Contract modification. A change in the terms of an approved forest product sale contract as documented in writing by the parties.

Contracting Officer. Bureau of Land Management official with authority conferred in the 1203 Manual Section (Delegation of Authority) to execute contracts and delegate authority to take action in connection with the contract.

Contract suspension. A formal notification to a purchaser that suspends all contract operations except those necessary to correct the contract violations or for certain non-violation circumstances.

Contract termination. Actions necessary to end entitlement of both parties to the contract to any further rights or benefits conveyed by a forest product sale or other vegetative resources contract after all the terms and conditions of the contract have been fulfilled.

Contract violation. purchaser's failure to perform in accordance with, or abide by, any of the contract terms or conditions. Synonym: breach.

Covered transaction. A nonprocurement or procurement transaction. A nonprocurement transaction does not require the transfer of Federal funds and includes Federal acquisition of a leasehold interest or any other interest in real property, concession contracts, disposition of Federal real and personal property and natural resources, an any other nonprocurement transaction between the Department and a person. 2 C.F.R. §1400.930.

Debarment. An action taken by the DOI Suspension and Debarment Official (SDO) to exclude a person or entity from participating in covered transactions and Federal contracts and certain subcontracts.

Export. The transporting or causing to be transported, either directly or through another party, unprocessed timber to a foreign country. Export occurs on the date that a person enters into an agreement to sell, trade, or otherwise convey such timber to a person for delivery to a



foreign country. If the date in the preceding sentence cannot be established, export occurs when unprocessed timber is placed in an export facility for preparation, including but not limited to, sorting or bundling, and container loading, for shipment outside the United States, or when unprocessed timber is placed on board an oceangoing vessel, rail car, or other conveyance destined for a foreign country, port, or facility.

Purchaser's representative. Any employee of the purchaser who has been duly authorized in writing by the purchaser to receive notices or instructions from the contracting officer.

Restrictive endorsement. An endorsement transferring commercial paper for a particular purpose (as for deposit or collection or payment to a named person only) thereby indicating negotiability is to cease.

Settlement of uncompleted contract. Action taken by the contracting officer to recover damages from the purchaser typically in situations where cutting and removal rights have expired, all sold forest products have not been removed or paid for, and other contract requirements not been satisfactorily completed.

Suspension. An action taken by the DOI Suspending and Debarring Official (SDO) that immediately prohibits a person from participating in covered transactions and Federal contracts and certain subcontracts. (Not to be confused with Contract Suspension).

Trespass. Is defined in 43 CFR 9239.0-7 Penalty for unauthorized removal of material. It states that the extraction, severance, injury, or removal of timber or other vegetative resources or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States and will be subject to prosecution for such unlawful acts. Additionally, 43 CFR 9239.1-1 states that the commission of any of the acts listed in §§ 5462. and 5511.4 of this title constitutes a trespass [Prohibited Acts].

Unprocessed timber. Trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term "unprocessed timber" does not include timber processed into any one of the following: (i) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture; (ii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness; (iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause (ii) and are sawn on 4 sides, with wane less than ¼ of any face, not exceeding 8¾ inches in thickness; (iv) Chips, pulp, or pulp products; (v) Veneer or plywood; (vi) Poles, posts, or piling cut or treated with preservatives for use as such; (vii) Shakes or shingles; (viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp; (ix) Pulp logs, cull logs, and incidental volumes of grade 3 and 4 sawlogs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the primary purpose of conversion of the logs into chips, or to the extent that a small quantity of such logs are processed, into other products at

domestic processing facilities.



**ILLUSTRATION 1-EXAMPLE OF WARNING LETTER FOR POOR CONTRACT PAYMENT RECORD**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). I am writing in regard to the over-cutting problem associated with operations under this contract.

The record shows that for the two-month period extending from August 1, 2008, through October 1, 2008, it was necessary for this office to contact you five times concerning over-cutting and submission of delinquent installment payments. Simply stated, the problem is that you are cutting at a much greater rate than submission of payments to maintain payment credits in advance of cutting. You have been advised a number of times to increase the level of your installment payment submissions; however, your payments continue to be submitted at inadequate levels.

Submitting timely payments is your responsibility. Section 3(b) of the contract provides: "a second installment shall be paid prior to cutting or removal of any forest products sold under this contract. Each subsequent installment shall become due and payable without notice whenever the value of the forest products cut or removed equals the sum of all payments not including the first installment or one-half of the first installment after one-half of the first installment has been released." Your failure to comply with this payment requirement is a violation of your timber sale contract.

Please be advised that any further over-cutting on this contract will result in a suspension of your operations without further warning. Section 10(c) of the contract provides: "If purchaser's operations are suspended because of purchaser's failure to make an installment payment when due, the authorized officer may require purchaser to *pay the entire remaining balance* of the total purchase price or any portion thereof as a condition of lifting the contract suspension."

To avoid this situation, we recommend that you take immediate steps to correct your installment payment submission problem. Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc:

Surety



**ILLUSTRATION 2- EXAMPLE OF ACCEPTANCE LETTER FOR TRESPASS; NO RESIDUAL MATERIAL**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

*[Purchaser's Name]*

*[Purchaser's Address]*

*[Salutation]*

Please refer to your BLM (insert sale name) timber sale contract number (insert number). Your payment of \$23,596.00 for the unauthorized cutting and removal of timber reserved (Trespass File No. OR-00-000) is acknowledged and accepted as payment in full for the timber damages and road maintenance fees. The case is hereby closed.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety



**ILLUSTRATION 3-EXAMPLE OF ACCEPTANCE LETTER FOR TRESPASS WITH RESIDUAL MATERIAL; CONTRACT CUTTING AND REMOVAL TIME NOT EXPIRED**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). Your payment of \$71,010.00 for the unauthorized cutting of reserved timber (Trespass File No. OR-09-0000) is acknowledged and accepted as full payment for the timber damages.

The stumps of the trespass trees have been marked with yellow paint. There remains on the contract area the estimated 153 thousand board feet (MBF) cut in trespass. You may remove this timber under the terms and conditions of your timber sale contract, and the contracting officer's approval of this letter, subject to the following:

1. The timber shall be high-lead yarded to the landing area in Cutting Area No.1 as shown on Exhibit A.
2. The fire trail to be constructed around Cutting Area No. 1 must be extended to include the two acres of trespass area.
3. Road maintenance fees of \$229.50 must be paid to the BLM for this timber. The total maintenance fees required to be paid under Sec. 41.h. of the contract is now \$8,729.50.
4. Road use fees of \$153.00 must be paid to ABC Lumber Co. for this timber. The total road use fees required to be paid under Sec. 41.m. of the contract is now \$4,250.00.

If you are in agreement with the above, please have an officer of your company who is authorized to sign Bureau of Land Management timber sale contracts execute all copies of this letter and return them to this office together with your check in the amount of \$229.50 to cover the additional road maintenance fees.

When this letter has been approved by the authorized officer for the BLM, your approved copy will be returned to you which will be your authority to remove the residual trespass volume under the terms of your contract as stipulated herein.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer



XYZ LUMBER COMPANY

UNITED STATES OF AMERICA

Accepted: \_\_\_\_\_ Signed and approved: \_\_\_\_\_  
(Date) (Date)

By: \_\_\_\_\_ By: \_\_\_\_\_  
\_\_\_\_\_  
(Title) (Title)

Attest: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

CC: Surety

**ILLUSTRATION 4- EXAMPLE OF ACCEPTANCE LETTER FOR TRESPASS WITH RESIDUAL MATERIAL; CONTRACT CUTTING AND REMOVAL TIME EXPIRED**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). We have received your payment of \$11,000.00 which represents full payment for timber damages resulting from the unauthorized cutting of reserved timber (Trespass File No. OR-08-0000).

There remains on the partial cut area of the contract approximately 25 thousand board feet (MBF) cut in trespass. The stumps of all the trespass trees have been marked with yellow paint. The area has been examined with your sale representative who is aware of the location of the residual material.

We will authorize you to remove this residual material under the terms of your sale contract subject to the following:

1. The time for cutting and removal of timber sold under the contract expired July 11, 2009; therefore, we will provide you an additional month to remove the residual material. Any residual trespass material remaining on the contract area after August 11, 2009, will become property of the Government.
2. Logging of the residual material must conform to the logging plan developed for the partial cut area.
3. Road maintenance fees of \$125.00 must be paid to the BLM for this timber. The total maintenance fees required to be paid under Sec. 41.o. of the contract is now \$3,450.00.

If you are in agreement with the above, please have an officer of your company who is authorized to sign Bureau of Land Management timber sale contracts execute all copies of this letter and return them to this office together with your check in the amount of \$125.00 to cover the road maintenance fee.

When this letter has been approved by the authorized officer for the BLM, your approved copy will be returned to you, which will be your authority to remove the residual trespass volume under the terms of your contract as stipulated herein.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

XYZ LUMBER COMPANY

UNITED STATES OF AMERICA

Accepted: \_\_\_\_\_  
(Date)

Signed and approved: \_\_\_\_\_  
(Date)

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

(Title)

Attest: \_\_\_\_\_

\_\_\_\_\_  
(Title)

CC: Surety

**ILLUSTRATION 5- EXAMPLE OF ACKNOWLEDGMENT LETTER; COMPROMISE OFFER ON MATERIAL TRESPASS CONTRACT VIOLATION**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). This is to acknowledge receipt of your offer of settlement and check in the amount of \$5,000.00 for the inadvertent but unauthorized cutting of 25 thousand board feet (MBF) of reserved timber (Trespass File No. OR-08-0000).

As the offer submitted is less than the double damage amount billed, it is consider a compromise offer that must be reviewed by our state director for a determination of acceptability. We will advise you as soon as that office has reached a decision.

There remains a portion of the trespass timber on the contract area (10 MBF). This residual material has been marked with yellow paint. You cannot remove this material at this time. Any such removal will be considered a willful trespass.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety



**ILLUSTRATION 6- EXAMPLE OF ACCEPTANCE LETTER; COMPROMISE OFFER  
ON MATERIAL TRESPASS CONTRACT VIOLATION**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). Please refer to our letter dated July 3, 2009, concerning your compromise offer of settlement for reserved timber cut (Trespass File No. L0RS-7456) and associated with operations under your timber sale contract.

This office has been advised by the state director that your compromise offer of single stumpage plus administrative costs is accepted. This trespass case is now closed. Title to the residual trespass material located on the contract area remains with the Government and you may not remove that material.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety



**ILLUSTRATION 7-EXAMPLE OF COURTESY NOTICE; WARNING OF CONTRACT  
SUSPENSION FOR LOGGING DAMAGE**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). On July 8, 2009, a review of your operations under the contract by Ms. Verna Smith of this office revealed that your logger, Mr. Ralph Doe, has continued to yard in the thinning area in a careless manner causing significant debarking of reserved timber. This is in violation of the logging plan developed for this sale and Sec. 13 of the contract.

Ms. Smith has repeatedly cautioned your sale representative, Ms. Carla Resnick, and your logger to exercise greater care in yarding the thinning area. These discussions occurred on June 10 and 18 of this year.

This letter is to serve notice that you are being held liable for trespass damages for the reserved trees seriously damaged. These trees have been marked with yellow paint. A Notice of Trespass and Demand for Damages will be sent to you as soon as the market appraisal is completed. You may not cut these marked trees.

Furthermore, please be advised that the careless yarding techniques must be corrected immediately, and you must comply with the conditions of the logging plan. If, upon our next inspection, the damage to reserved timber is continuing, or there is a reoccurrence of the same problem on this contract, your operations will be suspended pursuant to Sec. 10 of your contract without further warning.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer





**ILLUSTRATION 8- EXAMPLE OF DEMAND FOR FIRE DAMAGES; MATERIAL WITHOUT RESIDUAL VALUE****CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[Purchaser's Name]

[Purchaser's Address]

[Salutation]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). On December 22 2009, fires started by you or persons for whose actions you were responsible while burning slash on Cutting Area No. 1, located in (insert legal description) were allowed to escape and burn adjacent timber reserved under the terms of the timber sale contract.

Investigation of this escaped slash fire has revealed that you failed to follow the provisions of the slash disposal plan issued on September 9, 2008, in accordance with Sec. 15 of the contract. You did not follow four provisions of the slash disposal plan: (1) you failed to secure permission or arrange for appropriate supervision from the Bureau of Land Management prior to burning; (2) you failed to have required fire suppression equipment at the site of the slash burning operation; (3) you failed to have six persons at the site of the slash burning operation; and (4) you failed to burn out the upper and outer edges of the clear cut unit prior to lighting fires at the bottom edge. The weather conditions prior to and on December 22, 2009, were such that your failure to comply with the above mentioned provisions of the slash disposal plan constitutes gross negligence.

The following timber was destroyed by fire:

Species	Volume (MBF)	Unit Price (\$)	Market Value (\$)
Douglas fir	35.0	175.00	6,125.00
Western hemlock	3.5	100.00	350.00
Pacific Silver fir	7.5	80.00	560.00
Noble fir	3.5	90.00	315.00
Total	49.5		\$7,350.00

Because of the adverse location of the burned area and the small diameter of the trees burned, it is not economically feasible to recover any of the burned timber; therefore, it is our determination that the timber destroyed does not have tangible creditable residual value.

With respect to the rehabilitation of the eight acres burned: (1) the dead trees will be left standing for whatever wildlife value they may have; and (2) the estimated cost of grass seeding for erosion control and tree planting is \$680.00

The total amount of fire damage computed: the value of the timber destroyed (\$7,350.00) plus the cost of rehabilitation (\$680.00) is \$8,030.00.

From the facts now available to us, your liability is governed by ORS 477.040. Demand is hereby made on you for \$16,060.00, which is double the total amount of damages. In accordance with the enclosed Bill for Collection, please submit payment to this office within 30 days from your receipt of this demand.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

Enclosure: Bill for Collection

cc: Surety

**ILLUSTRATION 9- EXAMPLE OF DEMAND FOR FIRE DAMAGES; MATERIAL WITH RESIDUAL VALUE****CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[Purchaser's Name]

[Purchaser's Address]

[Salutation]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). On July 25, 2009, while building road under the terms of your contract, located in (insert legal description), a fire started by you or persons for whose actions you were responsible escaped off the right-of-way area and damaged adjacent timber reserved under the terms of the timber sale contract.

Investigation of this fire has revealed that you were utilizing fuses and blasting caps which caused the fire. The use of this blasting technique is prohibited during a state declared closed fire season. The State Forester has cited you for violation of ORS 477.510. Your failure to abide by State law is a violation of Sec. 15 of your contract, and you are liable for damages caused by the fire.

The trees killed or seriously damaged by the fire have been marked with yellow paint. These trees were jointly examined by Ms. Verna Smith of this office and Mr. Dennis Roe, your sale representative.

Our appraisal estimates of the volume and value of this timber are as follows:

A. Volume and value before fire:

Species	Volume (MBF)	Unit Price (\$)	Market Value (\$)
Douglas fir	50	240.00	12,000.00
Western Red Cedar	10	195.00	1,950.00
Total	60		\$13,950.00

B. Volume and value after fire:

Species	Volume (MBF)	Unit Price (\$)	Market Value
Douglas fir	45	144.00	6,480.00
Western Red Cedar	8	117.00	\$936.00
Total	53		\$7,416.00

The value loss suffered by the Government is the value before fire minus value after fire (Total Value A –Total Value B, above): \$13,950.00 minus \$7,416.00 equals \$6,534.00. The area burned over is so small that it will not require specific rehabilitation measures; thus, rehabilitation is not considered an element of damage for this case.

From the facts now available to us, your liability is governed by ORS 477.090, which provides for double the amount of damages; therefore, your damage liability is \$6,534.00 x 2 = \$13,068.00.

Now then, we may extend two alternatives to you in settlement of this case:

Alternative A: You may elect to gain title to the damaged timber under the terms and conditions of the original contract by submitting the sum of \$20,484.00 representing the damages prescribed by State Law plus full payment for the value of the timber before the fire minus the value loss due to the fire.

Alternative B: You may elect to pay only the amount of computed damages, \$13,068.00 and under this circumstance BLM will retain title to the damaged timber.

Within 10 days from your receipt of this letter, please elect either Alternative A or B, and submit payment to this office of \$20,484.00 for Alternative A or \$13,068.00 for Alternative B. If you elect Alternative I, subsequent authorization and instructions will be issued by this office relative to the cutting and removal of this timber.

Your failure to respond to this demand may result in suspension of operations on your timber sale contract. Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety

**ILLUSTRATION 10- EXAMPLE OF LETTER TO PURCHASER WHEN TREES ARE CUT BEFORE APPROVAL OF A WRITTEN MODIFICATION**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]  
[*Purchaser's Address*]

Modification No. 3  
OR080-TS08-010

[*Salutation*]

This is in reference to your refusal to execute a modification for trees cut on your Timber Sale Contract: OR080-TS08-010, Fly Speck.

On May 10, 2009, Contract Modification No. 3 was prepared in order to document the agreement, which had been reached for the cutting of two (2) danger trees within the guy line circle around your yarder on the north landing designated for Cutting Area No. 2 on Exhibit A. Verbal permission had been previously granted to your company representative, (insert name), and your logger, (insert name), by our authorized officer, (insert name), for you to cut these danger trees as a convenience to you by not disrupting your logging operations. Instructions were given to your representative to fall the trees and leave them in place for marking and cruising. The additional trees were subsequently marked and cruised and the modification prepared, which was to be signed by your designated representative. Because she failed to sign the modification, your operations were suspended on May 14, 2009.

On May 17, 2009, (insert name), your company representative again indicated she would not sign the modification because the value of \$230 per MBF for the Douglas-fir was too high and the Company would not buy the trees. This modification is in accordance with Section 8, Sales of Additional Timber, as the value was determined by following Bureau of Land Management prescribed procedures. Although requested of your representative, she did not present any log market or production cost data that would have caused us to make an adjustment in the unit price. Nonetheless, we have re-evaluated the value appraisal of this additional timber and find the value is reasonable. The cutting of the trees indicated your Company's intent and concurrence to purchase the additional volume according to Section 8 of your contract.

Section 8 of your contract reads as follows:

“Section 8. Sales of Additional Forest products – If the authorized officer and purchaser agree that additional forest products should be removed and the contracting officer determines that the sale will not be detrimental to the interests of Government and is within the provisions of 43 CFR 5402.0-6, the contracting officer, or authorized officer if designated, shall grant written permission to purchaser to cut and remove such forest products. If permission is granted, purchaser shall pay for such forest products at a price determined by the authorized officer in accordance with the BLM prescribed procedures. The value of such forest products shall be added to total purchase price in Sec. 2. Payment for such forest products shall be made in accordance with Sec. 3(b) or 3(f), *except that*, if all contract payments required by Sec. 3(b) or

3(f) have been made, payment for such forest products shall be made in advance as a condition of granting such permission.”

The additional timber cut by you to facilitate the safety and continuity of your logging operations on Modification No. 3 is shown below:

No. of Trees	Species	Estimated Volume (MBF)	Price Per MBF	Total Value
2	Douglas-fir	7	\$230.00	\$1,610.00

The fact that your company has failed to respond by not signing Contract Modification No. 1 makes it necessary for the Government to exercise its right under Section 8 of the contract by adding the above value and volume to Exhibit B of your contract for the purpose stated in Section 3(g) of the contract. In addition, the total purchase price of your contract shown in Section 2 is increased by \$1,610.00 to a total of \$251,300.00. If you disagree with this determination, you may submit a claim to the contracting officer in accordance with Section 38 of your contract.

Accordingly, the suspension notice issued on May 14, 2009, is hereby lifted and you may now resume all contract activities.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety

**ILLUSTRATION 11- EXAMPLE OF NOTICE TO CORRECT DAMAGE ASSOCIATED WITH ENVIRONMENTAL DEGRADATION**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number), and our Notice of Contract Suspension issued on September 18, 2009. Previous to this date, an inspection of your contract area had revealed that your road builder had side cast a considerable quantity of dirt and rock into Fall Creek. This side casting was in violation of Sections 26(a) and (b) of your contract.

We consider this a serious violation in view of the water quality and fisheries values associated with Fall Creek. To remedy the damage resulting from this violation, we will require that the items of work listed below be completed as soon as possible, but in no case later than the dates set forth by the listed items. Failure to complete work by these dates will perpetuate the suspension of operations on your contract and may result in cancellation of your contract pursuant to Section 10(a) of your contract.

1. Complete road reconstruction listed under Item 46 of Exhibit C by October 10, 2009.
2. Immediately after road construction is completed remove rocks and large debris from Fall Creek. Large rocks suitable for rip rap will be used to construct a rock blanket at the toe of the denuded slopes in a location selected by the BLM. This work is to be completed by November 10, 2009.
3. Seed the slopes denuded by side casting with a seed mixture satisfactory to BLM. Mulch seeded areas with straw and tie mulch down with netting. Other mulches and anchoring procedures may be used with the prior approval of the BLM. This work is to be completed by November 10, 2009.

All of these items were discussed in considerable detail at an on-site meeting on September 23, 2009, attended by representatives of the Oregon Department of Fish and Wildlife, Oregon State Department of Forestry, BLM and your company representative, Mr. Dennis Roe.



Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety

**ILLUSTRATION 12- EXAMPLE OF CONFIRMATION OF VERBAL INSTRUCTION  
TO CORRECT VIOLATION**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number). On October 3, 2009, Ms. Samantha Smyth of this office jointly reviewed the operations under your contract with Mr. Stewart Roe, your designated representative.

This examination revealed that road construction was not progressing pursuant to the plans and specifications stipulated in Exhibit C of the contract. Your road contractor is not building the road according to the road design (plan and profile), which is in violation of the road construction requirements of the contract.

Ms. Smyth instructed Mr. Roe to have your contractor immediately start over, beginning at Station 0+00, and building the road to its designed specifications. This letter is confirmation of that instruction.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety



**ILLUSTRATION 13- EXAMPLE OF DISQUALIFICATION WARNING LETTER;  
PURCHASER WITH HISTORY OF CONTRACT VIOLATIONS**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

This letter is to express concern relative to the frequency of your timber sale contract violations associated with operations under BLM sale contracts. A brief recent history is as follows:

Fiscal Year 2009 to date:

1. Contract No. OR080-TS07-000: Trespass violation involving the girdling of reserved timber; four violations with road construction and yarding.
2. Contract No. OR080-TS06-000: Trespass violation involving the cutting of reserved timber in the thinning area.
3. Contract No. OR090-TS08-000: Violation of State law operating power driven equipment during fire danger close-down period. Contract suspension for a payment violation.
4. Contract No. OR-090-TS8-000: Violation of State law for operating power driven equipment during fire danger shutdown period. Contract suspension for a payment violation.

Fiscal Year 2008:

1. Contract No. OR080-TS07-000: Trespass violation involving the removal of a log deck reserved under the contract and sold to another party.
2. Contract No. OR080-TS06-000: Trespass violation involving the cutting of reserved timber behind a clearly marked posted and painted cutting boundary.
3. Contract No. OR080-TS05-000: Two contract suspensions; one for a failure to build road to specifications and the other for a payment violation.
4. Contract No. OR090-TS04-000: Trespass violation involving the damaging of reserved timber in the thinning area.

The records show that our authorized officers discussed the special and standard provisions for each contract in detail with your company representative and contact loggers in the field prior to the start-up of operations. Our authorized officers were also readily available to provide for any additional timber needed for the normal conduct of logging. Additionally, they have repeatedly

warned your designated representative and contract loggers not to cut or damage reserved timber. The records also reveal that many contacts were made to you concerning over-cut situations, delinquent payments, and other types of contract violations. We have had a number of discussions with our corporate officials concerning this matter resulting in little noted improvement.

Your performance history leads us to believe your company is demonstrating laxity and negligence in communicating with our contact loggers relative to the need to comply with the terms and conditions of BLM contracts, as well as providing appropriate monitoring of contract supervision. We suggest that you study your organizational effectiveness and correct the problem area.

Monitoring your sale operations by BLM is requiring inordinate time and energy; thus, please be advised that if the contract violation problem continues at the present level, it will be necessary for this office to recommend that you be disqualified from the purchase of BLM timber as a non-responsible operator.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

State Director

cc: Surety

**ILLUSTRATION 14- EXAMPLE OF CONTRACT SUSPENSION LETTER TO  
PURCHASER CONCERNING FORFEITURE OF NEGOTIABLE SECURITY  
PAYMENT BOND FOR DELINQUENT PAYMENT**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Your cutting and removal of timber, associated with timber sale contract no. OR110-TS07-02 is covered under a Negotiable Security Payment Bond in the amount of \$300,000.00. The billing date agreed to for this contract is the first day of each month.

On October 1, 2008, you were billed for the amount of \$125,000.00 for timber removal from the contract area. Consistent with Sec. 3(f) of the contract, the billing notice stipulated that the payment be submitted to this office no later than October 16, 2008. In our telephone conversation with you on October 16, 2008, we advised you to have this payment into this office on or before October 17, 2008, or it would be necessary to suspend your operations. This payment was not received; therefore, your entire operation is hereby suspended. Payment of \$125,000.00 will be necessary in order to lift the suspension.

In accordance with Sec 3(j) of your contract, interest on the unpaid amount will accrue at the rate of (insert rate) percent per annum (\$insert amount/day) beginning on October 31, 2009.

If the subject payment together with any accrued interest is not paid within the 30-day period provided in the contract suspension notice, it will be necessary to appropriate your securities under the terms of the payment bond. The amount to be appropriated will be the total value obligated against the bond at the time of appropriation. An appropriation action will void the payment bond and you will no longer be able to operate under that bond. It will then be necessary for you to continue operations under a cash installment basis unless other payment bond arrangements are made prior to lifting of the suspension.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety



**ILLUSTRATION 15- EXAMPLE OF CONTRACT SUSPENSION LETTER TO PURCHASER CONCERNING ACTION AGAINST IRREVOCABLE LETTER OF CREDIT**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Your cutting and removal of timber, associated with timber sale contract No. OR080-TS7-000 is covered under a Cash Payment Bond (Irrevocable Letter of Credit) in the amount of \$100,000.00. The billing date agreed to for this contract is the first day of each month.

On October 1, 2009, you were billed for the amount of \$55,000.00 for the timber removal from the contract area. Consistent with Sec. 3(e) of the contract, the billing notice stipulated that the payment be submitted to this office no later than October 16, 2009. In our telephone conversation with you on October 16, 2009, we advised you to have this payment into this office on or before October 17, 2009, or it would be necessary to suspend your operations. This payment was not received; therefore, your entire operation is hereby suspended. Payment of \$55,000.00 will be necessary in order to lift the suspension.

In accordance with Sec 3.(j). of your contract, interest on the unpaid amount will accrue at the rate of (insert rate) percent per annum (\$insert amount]/day) beginning on October 31, 2009.

If the subject payment together with any accrued interest is not paid within the 30-day period provided in the contract suspension notice, it will be necessary to present a sight draft to ABC National Bank under the terms of Irrevocable Letter of Credit No. 000. The amount of the sight draft will be the amount of the delinquent payment plus accrued interest. This appropriation action will void the cash payment bond and you will no longer be able to operate under that bond. It will then be necessary for you to continue operations under a cash installment basis unless other payment bond arrangements are made prior to lifting the suspension.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: ABC National Bank





**ILLUSTRATION 16- EXAMPLE OF DEMAND ON CORPORATE BLANKET  
PAYMENT BOND SURETY FOR DELINQUENT PAYMENT**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

*[Payment Bond Surety's Name]*

*[Payment Bond Surety's Address]*

*[Salutation]*

Enclosed is a copy of a contract suspension notice sent to XYZ Lumber Company in connection with operations under timber sale contract OR090-TS07-000. Cutting and removal of timber sold under this contract is covered by Blanket Payment Bond No. BND 00-000-0 dated July 28, 2007, with your company.

On October 1, 2009, XYZ Lumber Company was billed in the amount of \$225,225.00 for timber cut and removed from the contract area. In accordance with the terms of the contract, this payment was to be made to this office no later than October 1, 2009. Interest on this unpaid amount will accrue at the rate of (insert rate) percent per annum (\$(insert amount)/day) beginning on October 31, 2009.

On October 16, 2009, we contacted XYZ Lumber Company advising them: 1) to have the delinquent payment into this office on or before October 17, 2009; and 2) if payment was not received by such date, their operation would be suspended and demand made upon surety for the deficit payment.

The company failed to respond to the payment requirement and their operations were suspended; therefore, pursuant to the terms of the blanket payment bond and the timber sale contract, demand is hereby made upon you, as payment bond surety, for the delinquent payment in the amount of \$225,225.00 together with any amounts that may become due as accrued interest.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

Enclosure: Copy Contract Suspension Notice

CC: Performance Bond Surety



**ILLUSTRATION 17- EXAMPLE OF NOTICE OF APPROPRIATION OF  
NEGOTIABLE SECURITIES UNDER PAYMENT BOND**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

On October 19, 2009, your operations under timber sale contract number LLORS00000-TS08-713 were suspended for failure to submit payment of \$125,000.00 for timber removed from the contract area and billed to you on October 1, 2009. The contract suspension notice was delivered to you on October 20, 2009.

In our letter to you on October 19, 2009, we advised that if the delinquent payment was not submitted within 30 days as stipulated in the contract suspension notice, an action would be taken against your payment bond to recover the total amount owing the Government.

You have failed to make the necessary payment; therefore, under the terms of your payment bond dated May 20, 2008, your negotiable securities are hereby appropriated. The total value of the timber you have cut obligated against the bond as of this date is \$250,000.00. Interest on the \$125,000.00 delinquent payment from October 31, 2009 through November 21, 2009 amounts to \$452.10 (22 days at \$20.55/day); thus, the total amount due and owing Government as of November 21, is \$250.452.10. Interest shall continue to accrue at this rate until payment in full is received.

The value of your securities at the time the bond was filed was approximately \$300.000.00. Upon the sale of these securities on the security market, the amount received in excess of approximately \$250,452.10 will be refunded to you. In the event that the market value of your securities has fallen below the total amount due and owing the Government demand will be made upon you for the unpaid balance, with notification of said demand forwarded to your performance bond surety.

The suspension of operations shall remain in effect until we receive notice that the security transaction is completed and the account settled. We will advise you at that time; however, unless another payment bond is filed, payments on this contract must be paid in advance of cutting pursuant to Sec. 3(b) of your contract when you are authorized to resume operations.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Division of Business Services (NOC), Performance Bond Surety



**ILLUSTRATION 18- EXAMPLE OF DEMAND ON PURCHASER FOR BALANCE OF PAYMENT; BLANKET PAYMENT BOND, CORPORATE SURETY**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

We again reference your payment default on Timber Sale Contract No. OR120-TS08-000. On September 9, 2009, we received payment of \$400,200.00 from your payment bond surety, ABC Surety Company. This payment represents the penal amount of the blanket payment bond.

Remaining to be paid on your original payment deficit is the amount of \$2,408.25 representing the total due (\$402,608.25) less payment from the bonding company (\$400,200.00) plus interest. Interest of \$4,301.70 has accrued on the \$402,608.25 delinquent payment through September 9, 2009. Interest on the remaining \$2,408.25 will accrue at the rate of \$0.40 per day beginning on September 10, 2009.

The contract suspension notice dated July 2, 2009, remains in effect and cannot be rescinded until the delinquent account is satisfied.

Please submit the amount of \$6,709.95 (remaining payment deficit of \$2,408.25 plus interest of \$4,301.70 together with the accumulated interest on the amount of \$2,408.25 from September 10, 2009) to this office to cover this deficit within 30 days from receipt of this letter. If not paid within this stipulated time, it will be necessary to proceed with cancellation of purchaser rights pursuant to Sec. 10 of the contract. You and your performance bond surety, ABC Surety Company will be liable for all damages due the Government resulting from your breach of contract.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Performance Bond Surety



**ILLUSTRATION 19- EXAMPLE OF WARNING LETTER ON CANCELLATION OF CONTRACT**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

On September 1, 2009, demand was made upon you for the payment of timber trespass damages in the amount of \$32,000.00 resulting from your unauthorized cutting and removal of reserved timber associated with operations under your timber sale contract No. OR110-TS09-02. You failed to respond to this demand; subsequently, your timber sale operations were suspended by notice dated September 12, 2009. Our records show you received this notice on September 14, 2009.

The suspension notice provided you with an additional 30 days in which to submit the necessary payment to remedy the contract violation. Ms. Verna Smith of this office contacted you on October 12, 2009, and advised you that the payment for damages must be submitted to this office no later than close of business on October 14, 2009, or it would be necessary to proceed with cancellation of the contract.

To date there has been no response from your company concerning this matter. Your continued refusal to pay the amount of damages leaves us no recourse but to cancel your contract. Section 10(a) of your contract provides that:

“If purchaser violates any provision of this contract, the contracting officer may, by written notice, suspend any further operations of purchaser under this contract, except such operations as may be necessary to remedy the violation. If purchaser fails to remedy the violation within thirty (30) days after receipt of a suspension notice, the contracting officer may, by written notice, cancel the rights of the purchaser under this contract and take appropriate action to recover all damages suffered by Government by reason of such violation, including application toward payment of such damages of any advance payments and any performance bonds or, where applicable, any payment bonds; *Provided, however*, that if the violation involves nonpayment of amounts due for forest products cut and/or removed under a payment bond of a corporate surety, the contracting officer must, in addition to the above requirements, allow sixty (60) days after making demand upon surety for any payment due before cancelling the rights of purchaser.”

Notice is hereby given that if you fail to pay, within 30 days from your receipt of this letter, the amount of damages specified above, your contract will be cancelled. You and your surety, ABC



Surety Company, will be liable for all damages due the Government resulting from your breach of contract.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Performance Bond Surety

**ILLUSTRATION 20- EXAMPLE OF LETTER ALLOWING ADDITIONAL TIME TO CORRECT VIOLATION PRIOR TO CANCELLATION OF CONTRACT**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

By letter dated October 15, 2009, we gave you 30 days to remedy your contract violation associated with operations under your timber sale contract No. OR080-TS2-000 or face cancellation of your contract. To remedy this violation requires the payment of \$32,000.00 in trespass damages for the unauthorized cutting and removal of reserved timber. You received this notice on October 17, 2009, which required settlement on or before the close of business on November 16, 2009.

We have received your letter dated November 1, 2009, in which you requested a 30-day extension of time to effect settlement citing acute financial hardship due to the recent loss of a portion of your plant from fire, and the inability to transport significant amounts of finished lumber to markets due to the current transportation strikes. You stated that you wish to complete the contract, and that payment for the violation will be made in full if the extension is granted. In view of your favorable record on past timber sale contract transactions with the Bureau, your request for additional time is granted.

Notice is hereby given that the period of time in which to remedy the contract violation specified in our 30-day cancellation notice dated October 15, 2009, is extended an additional 30 days. Your failure to make the necessary payment to effect settlement of the trespass on or before the close of business on December 16, 2009, will result in cancellation of your contract. You and your surety will be liable for all damages due the Government resulting from your breach of contract.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Performance Bond Surety



**ILLUSTRATION 21- LETTER LIFTING CONTRACT SUSPENSION AND  
AUTHORIZING RESUMPTION OF OPERATIONS**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

On September 7, 2009, we inspected the area of your timber sale contract OR090-TS07-000. This inspection revealed that the timber sale contract violations documented in our contract suspension notice dated August 19, 2009, have been corrected to our satisfaction.

The contract suspension is hereby lifted and you may now resume all contract activities. Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety



**ILLUSTRATION 22- EXAMPLE OF REPORT TO STATE DIRECTOR  
RECOMMENDING CONTRACT CANCELLATION**

Memorandum

To: State Director

From: District Manager

Subject: Recommended Cancellation due to Breach of Contract,  
Timber Sale Contract LLORS00000-TS08-999, Kryton Lumber Company

Kryton Lumber Company entered into the subject Blue Hill timber sale contract on April 1, 2008, for the purchase of 2,708 thousand board feet (MBF) at a bid price of \$682,902.50. The 24-month contract was approved April 12, 2008; the expiration of time for cutting and removal is April 12, 2010. In addition to the original contract volume, the purchaser has executed two modifications for this contract. The sale is comprised of two cutting areas. Cutting Area No. 1 is a thinning; Cutting Area No. 2 is a regeneration harvest prescription. Modification No. 1 located in Cutting Area No. 1 added 35 MBF to the contract at a market value of \$3,565.00. Modification No. 2 adjacent to Cutting Area No. 2 added 21.5 MBF to the contract at a market value of \$2,451.00. Thus, the total volume and value as modified is 2,764.5 MBF and \$688,918.50.

The purchaser began operations in May 2008, ending the 2008 logging season with the contract in reasonably good standing. However, the 2009 season has been another matter. Operating under the payment bond for a single contract procedure, the purchaser moved back into the sale area in May 2009, and within a month removed all remaining Cutting Area No. 2 volume including the volume from Modification No. 2. The purchaser did not operate in Cutting Area No. 1. There are no ongoing operations at this time; unseasonably early snowfall has restricted access to the contract area. There are no seasonal restrictions in the contract that would preclude operations on Cutting Area No. 1. The first of the month is the designated billing date. The following briefly lists the actions taken:

1. June 1, 2009 – Bill issued for \$402,608.25 for timber cut and removed from Cutting Area No. 2 and Modification No. 2. Payment of \$402, 608.25 was due on June 16, 2009.
2. June 16, 2009 – Payment of \$402,608.25 was not received for timber cut and removed from the contract area (15-day billing period had lapsed). Just at the end of the business day, the purchaser's representative, Mr. Perry White, was contacted and informed the overdue payment of \$402,608.25 was due into the office by the end of business hours on June 17, 2009, and if not paid by then it would be necessary to suspend all operations on the contract area.
3. June 17, 2009 – By the close of business the payment of \$402,608.25 was not received.

4. June 18, 2009 – At the beginning of the day a contract suspension notice was prepared and signed by the contracting officer using Form 5480-2 and hand delivered to the Krypton Lumber Company office in Metropolis, OR. The purchaser's representative was informed by telephone of the immediate contract suspension. He requested that further conversation regarding the overdue payment should be with the Company bookkeeper, Ms. Hazel Luthor.
5. June 21, 2009 – A routine demand letter was sent to KAL-EL Surety Company giving them 60 days to affect settlement of the penal amount of the payment bond, \$400,200.00.
6. June 22, 2009 – A check for \$204,608.25 was received from the purchaser at this office. When the purchaser's bookkeeper was informed of the error, she requested that the check be returned and indicated they would submit a check for the correct amount. She was reminded that they were in violation of their contract with all operations suspended, and that interest was accruing.
7. June 23, 2009 – Check for \$204,608.25 was sent back to the purchaser.
8. June 28, 2009 – The purchaser's bookkeeper was informed that a check for the correct amount had not yet been received. Bookkeeper indicated that a check would be sent out that day.
9. July 1, 2009 – Check for \$402,608.25 was received from the purchaser and deposited.
10. July 6, 2009 – Check for \$402,608.25 was returned to the office by the Lane County Branch of the Kent Bank with a "stop payment" notation.
11. July 7, 2009 – Letter was sent to the purchaser informing them that their check for \$402,608.25 was returned to this office with a "stop payment" notation. The purchaser was further advised that in addition to the unpaid debt of \$402,608.25, they were liable for interest charges beginning on July 1, 2009, at the rate of \$66.18 per day until the debt was paid.
12. August 16, 2009 – Payment was made by KAL-EL Surety Company in the amount of \$405,652.53. This represented the penal amount of the payment bond (\$400,200.00) plus interest on the total amount owed of \$66.18 per day for 46 days (\$3,044.28).
13. August 17, 2009 – A demand letter was sent to the purchaser giving them 30 days to pay the balance of \$2,408.25 (\$402,608.25 less the payment of \$400,200.00) plus interest at the rate of \$0.40 per day beginning with September 10, 1984.
14. August 19, 2009 – Payment of \$2,408.25 plus interest was past due and had not been received. Several inquiries (copies of interview sheets in file) were made by telephone on August 20 and 23 as to whether the purchaser intended to affect settlement, but no firm answers were obtained.
15. August 25, 2009 – The purchaser's representative informed the contracting officer that, due to financial difficulties, the Company could not make the payment at that time.

Relative to the payment of the total purchase price the status of the contract is as follows:

1. Total volume sold: 2,754.5 M bd. ft.
2. Total value sold: \$688,918.50.
3. Payments received from purchaser (including first installment) – \$271,803.00.
4. Payment received from payment bond surety – penal amount of bond \$400,200.00 plus interest of \$3,044.28.
5. Total payment received on timber – \$672,003.00.
6. Total volume removed: 2.634.5 MBF.
7. Total value removed: \$674,416.25.
8. Payment deficit – \$2,408.25 plus interest.
9. Volume remaining (Cutting Area No. 1) – 130 MBF.
10. Value remaining (Cutting Area No. 1) – \$14,502.25.
11. Balance due on contract – \$16,910.50 plus interest on \$2,408.25 from August 17, 2009.

Of the remaining volume (Cutting Area No. 1), the trees are predominantly salvage of windthrown trees; 110 MBF of the 130 MBF is western hemlock and noble fir, species subject to rapid deterioration. Most of this salvage has been down two to three years; very likely with substantial sap loss if measured at the present time. In addition, fresh windthrow has occurred in the Cutting Area No. 1. This makes an advertised reoffering somewhat questionable as an option for establishing current fair market value of the remaining timber due to the differing condition of the area compared to the time of sale. We recommend that credit for the remaining timber be based upon a market evaluation rather than a resale. If the first snows melt soon, we propose to re-cruise and appraise this timber.

In addition to the payment problem, several contractual obligations have not been met (refer to inspection report dated November 4, 2009):

1. A plugged culvert that will require backhoe and hand work.
2. Cutting Area No. 2 also requires some slash disposal and road clean-up.
3. Slash disposal work was allowed for and planned in Cutting Area No. 1.

As this sale is located in the Oregon City watershed, tributary to the critical South Fork Clackamas River drainage, remediation of the plugged culvert is very important at this time although of minor cost. Repeated attempts during this past summer to have the purchaser do this work were unsuccessful (refer to interview sheets in file). We plan to have the BLM Road Maintenance crew open the culvert. We will keep a record of cost on this. We have not yet decided how best to approach the uncompleted slash disposal and road clean-up work. Presently



there is some snow in the area and deep snows are imminent, which will likely last through the winter. Because of the abnormally heavy snow cover, completion of the removal of the remaining timber by the expiration date of April 12, 2010, is questionable at this point in time.

It is obvious from the purchaser's response to our actions that they have no intention of completing this contract; therefore, we recommend cancellation of the purchaser's rights under this contract with a corresponding demand for damages to the purchaser and performance bond surety.

Attached is the subject contract file. We would appreciate your staff's review and recommendations, together with the necessary procedural guidance.

District Manager

Attachment:

File LLORS00000-TS08-999 Cutting Area No.

**ILLUSTRATION 23-EXAMPLES OF DAMAGE COMPUTATIONS**

Value Factors / Formula Variables		Examples of Damage Computations (\$000)		
		Example A	Example B	Example C
		No timber removed; market value less than contract value of remaining timber.	30% of timber removed; market value greater than contract value of remaining timber.	80% of timber removed; market value less than contract value of remaining timber.
<b>T</b>	<b>Total Purchase Price</b>	\$100	\$100	\$100
<b>a</b>	<b>First Installment</b>	\$10	\$10	\$10
<b>b</b>	<b>Payments received for cut/removed timber, or sum of second and subsequent installment</b>	\$0	\$30	\$80
<b>P</b>	<b>Total payments (a+b)</b>	\$10	\$40	\$90
<b>c</b>	<b>Contract value of timber removed</b>	\$0	\$30	\$80
<b>CV</b>	<b>Contract value of remaining timber (T-c)</b>	\$100	\$70	\$20
<b>MV</b>	<b>Current market value of remaining timber</b>	\$65	\$46	\$13
<b>V</b>	<b>Credit value of remaining timber (CV or MV, whichever is less)</b>	\$65	\$46	\$13
<b>A</b>	<b>Cost of resale or reappraisal</b>	\$2	\$2	\$2
<b>U</b>	<b>Any uncompleted contract requirements</b>	\$0	\$5	\$8
<b>F</b>	<b>Any unpaid fees and contributions</b>	\$0	\$1	\$2
<b>I</b>	<b>Any unpaid interest from unpaid collections</b>	\$0	\$0	\$0
<b>N</b>	<b>Net credit value of remaining timber (V-A-U-F-I)</b>	\$63	\$38	\$1
<b>d</b>	<b>Net credit value plus payments (P+N)</b>	\$73	\$78	\$91
<b>D</b>	<b>Damages (T-d)</b>	\$27	\$12	\$9
	<b>Damages owed to Govt. if D is positive</b>	\$27	\$12	\$9
	<b>Refund owed to purchaser if D is negative</b>			



**ILLUSTRATION 24- EXAMPLES OF CREDIT COMPUTATIONS**

Value Factors / Formula Variables	Examples of Credit Computations (\$000)		
	Example D	Example E	Example F
	No timber removed; market value greater than contract value of remaining timber.	50% of timber removed; market value greater than contract value of remaining timber.	90% of timber removed; market value less than contract value of remaining timber.
<b>T</b> Total Purchase Price	\$100	\$100	\$100
<b>a</b> First Installment	\$10	\$10	\$10
<b>b</b> Payments received for cut/removed timber, or sum of second and subsequent installment	\$0	\$50	\$90
<b>P</b> Total payments (a+b)	\$10	\$60	\$100
<b>c</b> Contract value of timber removed	\$0	\$50	\$90
<b>CV</b> Contract value of remaining timber (T-c)	\$100	\$50	\$10
<b>MV</b> Current market value of remaining timber	\$110	\$55	\$11
<b>V</b> Credit value of remaining timber (CV or MV, whichever is less)	\$100	\$50	\$10
<b>A</b> Cost of resale or reappraisal	\$1	\$1	\$1
<b>U</b> Any uncompleted contract requirements	\$0	\$3	\$3
<b>F</b> Any unpaid fees and contributions	\$0	\$0	\$1
<b>I</b> Any unpaid interest from unpaid collections	\$0	\$0	\$1
<b>N</b> Net credit value of remaining timber (V-A-U-F-I)	\$99	\$46	\$4
<b>d</b> Net credit value plus payments (P+N)	\$109	\$106	\$104
<b>D</b> Damages (T-d)	-\$9	-\$6	-\$4
Damages owed to Govt. if D is positive Refund owed to purchaser if D is negative	\$9	\$6	\$4



**ILLUSTRATION 25- EXAMPLE OF LETTER RELEASING PURCHASER (SURETY)  
OF LIABILITY**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your BLM (insert sale name) timber sale contract number (insert number), which was cancelled on July 6, 2009, for breach of contract. As a result of this breach of contract, you were liable to the United States in the sum of \$1,830.00.

This sum has now been paid in full and you are hereby released from any further obligation thereunder.

(If a surety is involved and that surety has not previously been released from liability, add the following:) Liability under the bond, wherein the ABC Bonding Company appears as surety, is terminated as of this date. The cancelled bond is being retained by the Bureau of Land Management.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: Surety



**ILLUSTRATION 26- EXAMPLE OF LETTER RELEASING SURETY FROM LIABILITY**

ABC Bonding Company  
P.O. Box 000  
City, State, Zip Code

[*Salutation*]

We have reference to your letter dated July 26, 2009, transmitting the sum of \$5,000.00, which was the amount of damages billed you in conjunction with breach of timber sale contract No. OR010-TS09-000, XYZ Lumber Company.

Your liability under the performance bond, wherein your company appears as surety, is terminated as of this date. The cancelled bond is being retained by the Bureau of Land Management.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer

cc: XYZ Lumber Company





**ILLUSTRATION 27- EXAMPLE OF LETTER RENEWING DEMAND ON PURCHASER**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

We have reference to our demand letter dated August 4, 2009, for damages resulting from your breach of timber sale contract OR090-TS07-000, located in Section 25, T., 40 S., R. 6 W., W.M., for failure to complete the mainline road to the required standards.

As a result of this breach you were liable to the United States for the sum of \$76,000.00 in general damages. On August 25, 2009, we collected \$43,000.00 from ABC Surety Company whose bond was held as your surety.

You are, therefore, still liable to the United States for the sum of \$34,000.00 which is the amount of damages that is in excess of your bond. Unless payment is received by (insert date that is 30 days following the billing date on the Bill for Collection), civil action will be initiated against you for collection of the monies remaining due.

Please contact (insert contact name) at (insert contact phone number) if you have any questions.

Sincerely,

Contracting Officer



**ILLUSTRATION 28- GENERIC PURCHASER NOTIFICATION OF EXPIRED AND UNCOMPLETED CONTRACT**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

[*Purchaser's Name*]

[*Purchaser's Address*]

[*Salutation*]

Please refer to your Bureau of Land Management (BLM) (insert sale name) Timber Sale Contract No. (insert contract number). All contract references in this letter correspond to those found in the aforementioned contract. Section 3.(a). requires that the total purchase price, specified in Section 2, be paid no later than the expiration of time for cutting and removal as set forth in Section 4. Under Section 4, your rights to cut and remove timber sold under this contract expired on (insert expiration date). To date, the BLM has not received payment in full for the purchase price specified in Section 2. You are, therefore, in breach of your contractual obligation specified in Section 3.(a).

To date you have made payments of \$(insert amount paid) on the total purchase price of \$(insert total purchase price, as modified) leaving a balance due of \$(insert balance due).

In order to fully satisfy the terms of your contract, the following items must be completed:

- Complete payment of outstanding balance of \$(insert unpaid balance) for timber.
- Complete payment of \$(insert amount) for road maintenance.
- Complete payment of \$(insert amount) for road maintenance for rockwear.
- (insert other uncompleted obligations associated with the portion of timber that has been harvested in bullet form as needed).

Since your rights for cutting and removal of timber have expired, any further cutting or removal of timber will be considered a trespass. In addition, personal property must be removed from the contract area within the time frame specified in Section 40, which for this contract is (insert date). Any personal property that is not removed by this date will become the property of the Government.

Pursuant to Section 3(h) and Section 11, BLM will determine the credit value for timber remaining on the contract area and determine damages due to the Government. Damages may include, but are not limited to the administrative costs incurred by the Government to determine the credit value of remaining timber, the cost to complete uncompleted contract obligations associated with the timber removed, etc. Once the credit value has been determined, BLM will bill your company for damages. Payment will be due within fifteen days of the demand for damages. Interest on the unpaid balance will begin to accrue on the billing date.

Per Section 11, the contracting officer is required to establish the credit value of remaining timber as soon as possible after the date of expiration of time for cutting and removal. The credit

value of the remaining timber, as required by Section 11, will be based on the total market value as established by reappraisal or resale, or total value based upon contract unit prices, whichever is less.

If there are uncompleted performance obligations, such as (insert uncompleted performance obligations) associated with the timber that you have removed that you would like to complete, please notify the contracting officer, in writing, within 7 days of your receipt of this letter to request a mutually acceptable time schedule for completion of such obligations. The contracting officer may consider your request, provided that the work is not prohibited by seasonal factors, such as wet weather or fire closure, and will be completed by (insert date), and provided further that no cutting of additional timber for any reason (e.g., safety, access, etc.) would be necessitated to complete the performance obligation.

If you do not contact the contracting officer as stated above, the Bureau of Land Management will commence taking steps necessary to reoffer the remaining timber for sale so that damages and credit against purchase price can be determined in accordance with Section 11 of the contract.

If you have any questions about this process please call \_\_\_\_\_ of our office at (enter phone number).

Sincerely,

Contracting Officer

CC: Surety

**ILLUSTRATION 29- SAMPLE DEMAND LETTER TO PURCHASER FOR UNCOMPLETED CONTRACT DAMAGES**

LLORS00000-TS06-202

Hilltop Timber Sale

Modification No.8

CERTIFIED MAIL NO. RETURN RECEIPT REQUESTED

XYZ Timber Company

PO Box 42

Frogstar, Oregon 97420

[*Salutation*]

Please refer to your Timber Sale Contract LLORS00000-TS06-202, Hilltop Timber Sale. Section 3(a) of your contract requires that the total purchase price, as specified in Section 2, be paid no later than the expiration of time for cutting and removal as set forth in Section 4. Under Section 4, your rights to cut and remove timber sold under this contract expired on April 5, 2009. To date, the Bureau of Land Management has not received payment in full for the Section 2 total purchase price. You are, therefore, in breach of the contract.

In order to fully satisfy the terms of your contract, the following items must be completed:

- Complete payment of outstanding balance of \$26,332.88 for timber.
- Complete payment of \$281.64 for rockwear (Section 41y).

On May 4, 2009, your representative, [insert name], requested a credit for the remaining timber. Section 3(h) of your contract states that a credit against the purchase price will be determined pursuant to Section 11 of the contract.

Section 11 of your timber sale contract reads as follows:

**“Section 11. Credit Against Total Purchase Price** - If the time specified for cutting and/or removal of forest products has expired or the rights of purchaser have been cancelled, purchaser shall be entitled to a credit against any amount which is due and owing Government for forest products remaining on the contract area. The contracting officer shall determine the credit value of the remaining forest products as soon as possible after the date of expiration or cancellation. Credit value of the remaining forest products shall be total market value as established by the contracting officer by reappraisal or resale, or total value based upon contract unit prices as shown on Exhibit B, whichever is less. There shall be deducted from credit value such amounts as the contracting officer determines adequate to cover costs to Government resulting from purchaser's failure to perform, including but not limited to costs of appraising and administering any resale of forest products.”

The credit due XYZ Timber Company is calculated as shown below:

Timber Accounting							
Re-appraised Fair market value of remaining timber		\$22,740.10		<b>Re-appraised fair market value by species</b>		<b>Totals</b>	
Administrative costs		-\$906.22		Douglas-fir	\$29.70/MBF	\$7,098.30	
<b>net credit value of remaining timber</b>		<b>\$21,833.88</b>		noble fir	\$24.70/MBF	\$13,436.80	
				western hemlock	\$24.50/MBF	\$2,205.00	
Contract value of timber sale		\$425,620.20		<b>Total re-appraised value</b>		<b>\$22,740.10</b>	
net credit value of remaining timber		-\$21,833.88					
total payments to-date on timber		-\$399,287.32					
<b>Remaining balance on timber</b>		<b>\$4,499.00</b>		<b>Board feet per species</b>		<b>Totals</b>	
				Douglas-fir		239 MBF	
				noble fir		544 MBF	
				western hemlock		90 MBFbf	
						<b>873 MBF</b>	
Rockwear Accounting							
Initial obligation		\$1,446.41					
Modifications		\$281.64					
Rockwear balance		\$1,728.05					
Payments		-\$1,446.41					
Value of rockwear for timber not removed		-\$116.08					
<b>Remaining balance</b>		<b>\$165.56</b>					
Accounting for Timber and Rockwear							
Payment remaining on timber		\$4,499.00					
remaining rockwear balance		\$165.56					
<b>Final balance</b>		<b>\$4,664.56</b>					

In order to offset outstanding contract payments described above and pursuant to Section 11, your contract is modified as follows:

1. Exhibit B is modified to reduce total contract volume by 873 thousand board feet (MBF). All reference to Cutting Area Nos. 6 and 7 are deleted from Exhibit B.
2. The total purchase price expressed in Section 2 and Exhibit B of your contract is decreased by \$21,833.88. The total purchase price for the timber sold is now \$403,786.32.
3. The rockwear fees, as modified, are reduced by \$116.08. The total rockwear fee for timber hauled from the contract area is now \$1,611.97.
4. Exhibit A of the contract is modified by the attached revised Exhibit A to show that Cutting Area Nos. 6 and 7 are no longer part of the contract area.

If you are in accord with the terms of this modification, please have an officer from your company, who is authorized to sign Bureau of Land Management timber sale contracts, execute and return all copies of this modification to this office. When the modification has been approved by the contracting officer for the BLM, your approved copy will be returned to you.

Upon signature and return of this modification, the contracting officer will issue a final billing for timber and rockwear balances. Upon receipt of payment in full your current performance bond will be returned to you, and Timber Sale Contract LLORS00000-TS05-502 will be processed for termination. A copy of the fair market appraisal of the timber is available for your inspection at this office. If you disagree with this determination, you may submit a claim to the contracting officer in accordance with Section 38 of your contract.

Please contact Arthur Dent at (503) 375-4269 if you have any questions regarding this modification.

Sincerely,

Contracting Officer

Enclosure: Revised contract Exhibit A

cc: Surety

XYZ TIMBER COMPANY

UNITED STATES OF AMERICA

Accepted: \_\_\_\_\_  
(Date)

Approved: \_\_\_\_\_  
(Date)

By: \_\_\_\_\_

By: \_\_\_\_\_  
Field Manager

Title: \_\_\_\_\_