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MANAGEMENT

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Letter:

1. Updates, supersedes, or rescinds:

This handbook updates information previously contained in the rescinded MS-5420

2. Explanation of Materials Transmitted:

This handbook updates and incorporates changes in the forestry program since the last release of the Preparation for Sale manual in 1984. In addition, this handbook provides new policies and procedures on activities not previously covered.

3. Reports Required:

Rel. 5-166 will now be (01/19/2023) H-5420-1 Preparation for Sale
Rel. 5-153 (06/18/1992) is H-5470-1 Contract Modification-Extension-Assignment and (01/19/2023) H5420-1 Preparation for Sale. Rel. 5-153 will remain H-5470-1 Contract Modification-Extension Assignment.

4. Delegations of Authority Updated:

None

5. Filing Instructions: File as directed below.

REMOVE

None

INSERT

All of H-5420-1 (Rel. 5-166)
(Total: 94 Pages)

S:/ David Jenkins
Assistant Director
Resources and Planning

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I. INTRODUCTION.

This handbook provides policy and detailed instructions for sale planning, sale layout, forest product measurement and appraisal, and preparation of prospectuses, contracts, and exhibits.

II. PROJECT-SPECIFIC PLANNING AND DECISIONS.

A. Augmentation of Appropriations. Frequently the question is asked, “What is appropriate to include in a timber sale contract and what is not?” This question is partly answered through the concept of Augmentation of Appropriations. The augmentation of appropriations concept is explained by the Government Accountability Office (GAO): “an agency may not augment its appropriations from outside sources without specific statutory authority.” Furthermore, “the objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.” In the context of a timber sale this concept relates to determining the appropriateness of contract requirements that affect timber receipts.

The following four-point test is useful to help determine if a required activity in a provision of a timber sale contract may constitute augmentation and should therefore not be included in a contract. In general, the BLM may include a provision in a contract that would require a timber purchaser to do that which is (1) relevant to the sale of timber, (2) not unusual in such transactions, (3) reasonably calculated to make effective the power to sell government timber, and (4) in the best interest of the United States. A contract provision requiring an activity that meets all four parts of this test would generally not be considered augmentation. The determination of what activities meet these tests is one which may be determined by the BLM in the exercise of reasonable discretion.

The BLM should coordinate any questions related to the potential augmentation of appropriations through the BLM state office forestry lead.

B. Mandatory Contributions versus Optional Buyout Securities. There may be situations in which the contracting officer wants to include a contract provision that specifies a mandatory contribution or the option to provide a buyout security in lieu of completing specified work required under the contract. When a mandatory contribution or buyout security is provided, the BLM receives funds from the purchaser to complete the work, rather than the purchaser completing the work as a contract performance item.

The requirement of a fee payment must be authorized by statute. The Federal Land Policy and Management Act of 1976, section 502, grants the BLM authority to require the payment of road maintenance and use fees under the terms of a timber sale contract.

The contract may also include the option for the purchaser to provide a buyout security for specified contract requirements such as slash disposal, subsoil ripping, or the application of grass seed. These activities are similarly constrained by the augmentation of appropriations concept described in II.A. Offices must only allow a buyout option in which the BLM has the capacity to reasonably implement the work within required timeframes (through in-house labor, contract, or agreement). The buyout security cost must only include the minimum amount necessary for the BLM to complete the work plus any necessary administrative costs (administrative costs must at

a minimum include the National Operations Center indirect cost for collected funds, which is recalculated annually). Funds must remain in the suspense account until after the purchaser completes yarding and hauling on the relevant portion of the contract area, or upon contract expiration. If the BLM begins performing work the buyout security was designated for before the contract is complete, offices are encouraged to request that the purchaser relinquish rights to the relevant portion of the contract area prior to commencing work.

Once the funds are moved from the suspense account, they will be earned (deposited into the appropriate Treasury account) for future BLM expenditure. Funds collected as a buyout security on Oregon and California Railroads Grant Lands in western Oregon and Coos Bay Wagon Road Grant Lands in Western Oregon (O&C/CBWR) must be entered into the BLM's Collections and Billings System (CBS) and Timber Sale Information System (TSIS) (TSIS/CBS) as "Contract Expense – L53100000: West OR Buyout Security," and will be tracked under work breakdown structure (WBS) code LVDOTREE0000 in the Financial and Business Management System (FBMS). For funds collected on Public Domain (PD) lands, collections must be entered into TSIS/CBS as "Contract Expense – L53200000: PD Buyout Security," and will be tracked under the WBS code LVDPTREEXX00 in FBMS – where XX represents the two-character State/Center code. In rare cases, excess funds may remain after the BLM has completed the contractually required work, or an unexpected change in circumstances may cause the completion of that work to no longer be necessary. Excess funds in L5310 must be expended on BLM-administered O&C lands for work that "benefits O&C lands." Excess funds in L5320 may be expended on any BLM-administered public lands (O&C or PD) to "rehabilitate public lands." Because unobligated funds collected for buyout securities may be rescinded by Congress, the authorized officer should consider if the work could be completed in a timely manner to avoid loss of the funds.

C. NEPA Compliance. All management actions accomplished through a forest product sales contract will be designed using an interdisciplinary team approach to achieve necessary multi-program objectives. Refer to BLM H-1790-1 (Rel. 1-1710), National Environmental Policy Act Handbook for direction on how to comply with NEPA for forest product sale decisions. To ensure that resulting timber sale contracts are both economically viable and operationally feasible, project design features developed through the decision-making process and associated NEPA compliance should be outcome based whenever possible and should not require specific or specialized equipment or methodology unless necessary. Design features need to be disclosed in the prospectus and in the forest product sale contract.

D. Development of a Silvicultural Prescription. Depending on existing forest stand conditions, one or more silvicultural prescriptions should be developed for a forest management action. A silvicultural prescription is a planned series of treatments designed to change current stand structure and composition to one that meets management goals. The silvicultural prescription provides the written direction for treatment(s) and should contain the rationale for the treatment. Silvicultural prescriptions should be designed to meet the management direction outlined in the applicable land use plan and other applicable management plans for the forest stand, including

any forest health and fuels management objectives. Silvicultural prescriptions should include information such as:

1. Silvicultural objectives (timber production, forest health, fuels treatment, wildlife habitat improvement, etc.).
2. Site data (productivity, soils, topography, slope, aspect, elevation, hydrology, etc.).
3. Forest stand data, including:
 - Species composition
 - Stocking levels
 - Structure
 - Age and vigor for the forest stands being treated
 - Qualitative description of volume and commercial viability
 - Wood quality
 - Fire regime condition class
 - Down wood and snags
 - Projected future condition with no management
4. Description of the range of potential treatment alternatives that will attain the desired condition (include future proposed treatments needed to attain the desired condition).
5. Analysis of the alternatives, and selected alternative with rationale.
6. Marking/designation criteria to achieve desired forest stand condition.

The silvicultural prescription should address the full series of treatments for the identified forest stand at a specific location and may result in the identification of additional future actions. It is advisable that the silvicultural prescription be developed as part of the interdisciplinary harvest planning effort for the forest management action. Not only will the silvicultural prescription have good documentation of potential alternative actions, it will also contain information on potential future activities that may inform cumulative effects analyses.

E. Harvest Unit Design. The harvest unit design process will determine the final location, size, and shape of a harvest unit, also referred to as the cutting area, in a given tract. Its design should take into consideration any potential future harvest activities; environmental effects, if any, identified in supporting NEPA documents; best management practices and other necessary environmental protection measures; the management direction identified in the relevant land use plan; long-term access needs; fuels management; and other relevant factors. Harvest unit design includes determination of road locations and preliminary cutting area boundaries, and, if not

determined through the silvicultural prescription, determination of the appropriate cutting method (e.g., regeneration harvest, selection, seed tree, coppice) and harvest system(s) (such as tractor or cable yarding).

1. Roads. Road design is a critical element in overall harvest unit design. Where needed to fulfill short- and long-term management needs (i.e., improved motorized public access or fire management access), roads should be located, designed, and constructed to the standards in management direction set out in the applicable land use plan (refer to Manual Section 9113, Rel. 9-405).

a. Road Closure. Road closure may be necessary to, for example, ensure public safety, during the harvest of forest products.

b. Temporary Roads. Temporary roads (either natural or rock surface) may be needed to enable the harvest of forest products but are not intended to be part of the permanent or designated transportation network system. Temporary roads must be closed or decommissioned when their intended purpose has been fulfilled in accordance with the NEPA specifications. When dry season use of natural surface temporary roads is planned, analysis should also consider the same temporary road for all weather use with rock surface, in case the purchaser requests rocking, at their own expense, in order to expand the operating season.

2. Choice of Harvest System. Harvest unit design considerations include planning for the use of harvest systems that will not only remove timber in an economically viable and operationally feasible manner, but also limit site disturbance to not exceed the level of impact disclosed in the associated land-use plan. The economics of one harvesting system versus another is an important consideration where multiple harvesting systems could be in conformance with the management direction in the applicable land use plan. The harvest systems for a given unit could include ground-based equipment (processor/forwarder systems, crawler tractors, etc.), and/or cable systems, and/or aerial systems (helicopter). Consider expertise and equipment of available purchasers when planning harvest units, landings, and new roads in order to reduce the potential for contracts to receive no-bids at auction, or additional contract modifications that would be required to facilitate completion of the planned treatment of a poorly designed harvest unit. Where multiple harvest systems are feasible in an area, analysis should consider the use of alternative harvest systems to increase operational flexibility (e.g., cable yarding gentle ground to avoid wet season skidding restrictions).

3. Landings. Landing size should be limited to the size necessary to provide safe operations given the equipment and log handling requirements of the contract. Landings should also be located on stable areas.

4. Forest Product Utilization Standards. Forest products sales should be designed to facilitate maximum use of all trees designated for removal. This may include marginal logs, submerchantable trees, and non-commercial species. Non-sawlog material should be considered for woody biomass products when possible provided that such use is consistent with management direction in the land use plan.

5. Fuels Treatment, Slash Disposal, and Site Preparation. The silvicultural prescription should include recommended fuels and slash disposal treatments, if applicable. The prescription should also include recommended post-harvest site preparation treatments to provide for reforestation and other forest management opportunities, if applicable. Factors to be considered for meeting these objectives include, but are not limited to, removal and utilization of material for woody biomass or other products, fire protection, and consideration of other resource protection consistent with the management direction in the land use plan.

III. HARVEST UNIT LAYOUT.

A. Harvest Unit Layout Plan. Harvest unit layout begins by identifying the parameters and project design features. For more complex forest product sales, a harvest unit layout plan can be useful to synthesize the requirements and may include the following.

1. Harvest Systems. The layout plan may specify the selected harvest system and include the necessary information on topography, road locations, silvicultural prescriptions, size of timber and cutting areas, protection of sensitive sites, riparian buffers, and other requirements.

2. Road and Harvest Area Boundary Location Mapping. On aerial photos, maps, and geographic information system (GIS) products, identify the following:

- Location of cutting areas by silvicultural prescription, special cutting areas, and special yarding areas.
- Location of reserve areas or trees to be reserved.
- Special fuels treatment areas.
- Location of property lines.
- Location of existing roads, and approximate location of proposed new permanent and/or temporary roads, and landing areas.

3. General Harvest Unit Layout Considerations. Development of the layout plan should involve consideration of the following items:

- Location and identification of section corners, corner monuments, and property lines.
- Location and mapping of existing roads.
- Location, survey, design, staking and location referencing of permanent and temporary roads to be constructed, road improvements, and landings.
- Rights-of-way boundaries.
- Cutting area acreage determination.
- Designation of boundaries.

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- Mapping of reserve areas and areas where trees are to be individually marked for removal in reserve areas.
- Designation of individual trees, and/or clusters of trees to be reserved within cutting areas.
- Designation and mapping of any special falling or yarding areas.
- Designation, mapping, and protection of special areas.
- Slash disposal, reforestation, and fuels treatment plans for cutting areas.
- Designation and mapping of fire protection areas such as fuel-free areas, water sources, etc.

B. Harvest Unit Boundary Designation. The boundaries of individual harvest units should be marked or otherwise designated in a manner that clearly distinguishes between areas where harvest is permitted and areas where harvest is not permitted. A timber sale or other forest product sale contract must accurately describe the manner in which trees or products to be sold and trees or products reserved from harvest have been designated in the field. Inadequate designation can lead to trespass and the associated administrative burden and cost of investigation, documentation, and collection. Refer to [illustration 1](#) for standard BLM signs available by order through the National Operations Center.

1. Man-made or Natural Cutting Area Boundaries. Boundaries formed by roads, rivers, cliffs, lava beds, vegetation changes or other distinguishable land features may be used without additional designation provided Exhibit A clearly references the feature serving as a boundary. Refer to [illustration 4](#) for an Exhibit A example.

2. Virtual Boundaries. Virtual boundaries may be established through the use of GPS technologies when the risk of cutting trees not designated for cutting can be mitigated. The purchaser may be authorized to use GPS technologies during felling to identify the boundary where sufficient accuracy can be achieved. Generally, GPS should not be used as the sole boundary determinant for lump sum sales.

3. Designating Boundaries in Forested Areas. Boundaries requiring designation are the perimeter of reserve areas and the various harvest units within a contract area. The method of boundary designation such as paint color or signage must be described in the contract.

For boundaries designated by marking paint, trees will be marked both above and below stump height with sufficient frequency to permit ready identification of the boundary. An ideal location (trespass prevention/investigation) for painting below stump height (the “butt mark”) is deep within any longitudinal grooves (flutes) that may have formed on the tree stem just above the ground line. It is recommended that if painted boundaries must be moved (i.e., to correct an oversight in the sale planning) that the obliteration of the first (incorrect) boundary be documented in the contract file to minimize the likelihood of mistakenly interpreting such obliteration as a trespass during contract administration.

4. Visual Effects of Boundary Marking. When in sensitive public areas (e.g., recreation sites, scenic highways, and urban interface areas) consideration needs to be given to the long-term visual effects of paint, blazes, or other long-lasting boundary markers.

5. Property Boundaries. When the boundary of a cutting area is also a property line between BLM and private land and reliable corner markers do not exist, boundary location and line monumentation should be strongly considered by standard cadastral survey policy and procedures. When cadastral survey is not warranted, treatment unit boundaries should be established by other acceptable means that minimize the likelihood of trespass by either party. The line officer will determine the most appropriate method. Caution must be exercised when marking BLM trees along the property line to avoid marking and reserving those BLM trees that are planned for inclusion in the harvest. Use designation methods of harvest unit boundaries that will enhance, not confuse, accurate identification of the property line.

When cadastral surveyors blaze and post a property line, all trees marked with boundary identification are posted on Federal timber only. Tagged trees are posted at stump height and/or at breast height. When laying out a harvest unit or road location that will require the cutting of tagged line trees, the person responsible for layout will ensure that the tags on trees to be cut are moved from diameter at breast height (DBH) level and placed below stump height (if the line trees are not already marked below stump height). Boundary identification faces private ownership to inform the public and adjacent landowner that all resources (including the tagged trees) behind the boundary are managed by the BLM.

Trees along the property line are blazed according to their proximity to true line (actual property line location). If a tree is bisected by the property line (a line tree), the tree is blazed so that two blazes are situated 180 degrees from each other, on the intersected true line bisecting the tree. If a tree is close to property line, the stem is marked with quarter blazes oriented toward the true line location. Only trees that are clearly on public land are tagged.

In general, trees standing on a boundary line are considered the common property of the adjoining landowners. In general, neither of the adjoining owners has the right to cut down or remove trees from the boundary line without the consent of the other. This common ownership necessitates some form of agreement, preferably written, that establishes the disposition of line trees.

Trees along the boundary may need to be felled because they represent a nuisance or hazard. In this case, and any time boundaries occur along private land or there are line trees that must be addressed, unless there is an immediate safety hazard consult adjacent landowners prior to conducting any falling, blazing, or painting of trees.

6. Other Boundaries. Harvest unit layout may entail designation of areas on the ground where special requirements of the timber sale contract will apply. Temporary boundary posters or flagging may be used for that purpose. For example, for special yarding area, sign S-150, Boundary of Special Yarding Area, may be used to delineate an area within the cutting area

where a special yarding method or particular yarding restrictions apply under the terms of the timber sale contract.

C. Designating Individual Trees to be Sold or Reserved.

1. Designation with Paint. One of two approaches are employed in tree marking – either the trees to be sold are individually marked (generally referred to as “cut tree mark” [CTM]), or the trees that are reserved from cutting within the treatment unit are marked (generally referred to as “leave tree mark” [LTM]). The LTM approach is usually taken when there are more trees to be removed than the number of leave trees, and/or the leave trees are of higher value than the cut trees.

Cut and/or leave trees must be distinctively marked to provide easy identification by the purchaser before cutting. Marking must include painting above and below stump height to permit easy identification before and after the tree is cut and removed.

2. Designation by Contract Language. Trees can also be designated for removal by the contract language. Application of marking paint within cutting areas is not required by either the BLM or the purchasers. However, there may be situations where certain trees must be reserved with paint if there must be certainty as to their persistence after falling operations are complete. The boundaries of such cutting areas must be clearly identifiable. These methods are often applied in partial cut situations where the method of payment is by log scale or weight. In other than the simplest of prescriptions, a separate exhibit attached to the contract delineating the cutting specifications is recommended. This should also include direction for “pre-certification” of fallers and a contract remedy when failures to follow the specifications are repeated. Pre-certification is simply a process to verify that the fallers understand and can implement the designation. When utilizing designation by contract language staff should keep in mind that some actions are both required and prohibited by regulation. Contract writers should be familiar with 43 CFR Subpart 5462, Contract and Permit Requirements.

Two methods of designation by contract are recognized:

a. Designation by Description (DxD). When using DxD, individual trees are NOT marked for reserve or cutting by the BLM nor is the purchaser required by contract to mark trees. Designation by description is a method of contractually designating trees for removal by describing the trees to be removed based on characteristics that can be readily verified before and after removal (e.g., lodgepole pine trees less than a specified stump diameter).

b. Designation by Prescription (DxP). When using DxP, individual trees are NOT marked for reserve or cutting by the BLM nor is the purchaser required by contract to mark trees. Designation by prescription is a method of contractually designating trees for removal by describing the desired end result of the treatment (e.g., retain trees in a 10- by 10-foot spacing and/or a specified basal area per acre). Refer to [illustration 2](#) for a sample of DxP specifications contained in a contract exhibit.

As a general practice, a contract clause requiring a purchaser to individually mark trees for reserve or removal should not be used unless this is the contract remedy for the fallers failing to follow the DxD or DxP specifications. The use of DxD and DxP for lump sums sales presents

challenges with accurately estimating volume and should be used in limited circumstances after consultation with the state office forestry program lead.

3. Safety Considerations in the Retention of Reserved Trees. Safety considerations are a high priority in project planning and implementation in the retention of reserve trees and snags in timber harvest units. This refers specifically to trees and snags that are reserved inside and along the perimeter of cutting areas. The intent of the BLM is to provide for the safety of both BLM employees and contract workers. A primary objective during timber tract planning and layout should be to identify trees that will not become hazards during harvest or site preparation operations. In addition, Section 29 of the 5450-003 and 5450-004 contracts allows for a purchaser to fell any trees that they determine pose an imminent danger or imminent safety concern to its employees, the public, or government employees, in accordance with applicable provisions of Federal, state, and local safety laws, codes, and regulations.

D. Deletion of Marking of Boundaries and/or Individual Trees. To correct a mistake made in the selection and paint marking of a "cut" or "leave" tree, the paint marks on the tree must be removed or obliterated. When establishing boundaries on a new sale, make sure any boundary markings from previously sold tracts and/or rights-of-way that may interfere with recognizing the new boundaries are removed or obliterated. Paint can be removed by chipping off the surface layer of bark with an axe, or it can be completely covered with approved black paint containing a tracer additive if necessary.

E. Tree or Boundary Marking with Service Contracts. It is permissible to use contracted labor to conduct individual tree marking of leave trees with non-tracer paint. While tract boundary trees may be marked under contract with non-tracer paint, it is recommended that contract labor be used only for the marking of leave trees. Paint with tracer additive is not to be used by contractors.

F. Approved Marking Paint and Disposal. Certain tree marking paints have been associated with complaints of illness and adverse health effects. Due to these concerns, the U.S. Forest Service commissioned the development of a special paint formula. This formula does not contain any substance which results in any worker exposure while applying tree marking paint which exceeds the most conservative occupational exposure limit of the Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL), the National Institute for Occupational Safety and Health (NIOSH) recommended exposure limit (REL), or the American Conference of Governmental Industrial Hygienists (ACGIH) threshold limit value (TLV). This tree marking paint is available to BLM employees through a Lighthouse of the Blind (LHB) ordering portal. It is strongly recommended that BLM personnel use this paint formulation, especially for employees who are routinely marking timber or are doing a substantial amount of marking on a project and have extended exposure. If another commercially available marking paint is used for a small project or light use, a Safety Data Sheet (SDS), formerly Material Safety Data Sheet, must be obtained and reviewed along with a Risk Assessment to use the paint safely. A copy of the SDS must also be at the storage site. LHB paint prices and ordering information may be obtained by contacting the BLM's National Tree Marking paint committee representative(s). In addition, when a project necessitates tracer paint to control unauthorized cutting, the LHB paint contains tracer.

Empty paint containers and containers with unused paint must be returned to the field or district office and disposed of in accordance with all applicable regulations concerning hazardous materials.

G. Personnel Safety While Using Tree Marking Paint. The Interagency National Tree Marking Paint Committee has developed a Job Hazard Analysis for tree marking paint (TMP). BLM employees responsible for applying tree marking paint should review and retain the analysis which can be obtained from the BLM National Tree Marking paint committee representative(s) so as to be advised of the hazards of paint exposure and use. Employees should be supplied with appropriate personal protective equipment to protect them from paint spraying, handling, and cleanup. Recommended clothing in the above-referenced Job Hazard Analysis is similar to normal field clothing used by BLM employees (long sleeve shirts, boots, gloves, eye protection, etc.). The need for respirators should be addressed on an individual case-by-case basis.

H. Paint Security. The benefits of using special TMP that contains an identifiable tracer additive are negated in the absence of a program of security and accountability for such marking paint. Therefore, when using paint that includes a tracer additive each district (or detached field office) will establish a paint security program to ensure that TMP is safeguarded. At a minimum, the paint security will include the following provisions.

1. Locked Storage. Store TMP supplies at the district office or detached field office in a fire-safe, secure, locking location to prevent unauthorized use or theft.

2. Transporting Tree Marking Paint. Transport cans of TMP inside a locked vehicle or in a locking box to prevent unauthorized use or theft. Ensure that the box and its contents cannot jeopardize occupant safety. Remove TMP from the inside of a vehicle prior to delivering the vehicle for repair or scheduled maintenance.

3. Accountability. Track and document TMP inventories including the documentation of paint returned to the office for future use. All personnel will sign a register when obtaining TMP from the district or field office storage areas. The register will include, at a minimum, the following information:

- a. Signature of the person obtaining the paint
- b. Date the paint was obtained
- c. Number, type of cans, and color of paint obtained
- d. Batch number(s) for all the paint obtained
- e. Purpose for using the paint, including the name of the project (i.e., timber sale name, for modifications to timber sales, etc.)

4. Restrictions. In general, limit TMP use to BLM employees. Certain non-BLM personnel may use TMP only under the following conditions.

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a. Non-BLM personnel must be:

- (1) Volunteers for the BLM with fully executed volunteer agreements;
- (2) Members of a group working with the BLM under the terms of Interagency agreement or cooperative agreements; or
- (3) Cooperating entity under a Good Neighbor Authority agreement. Use is limited to employees of the cooperating entity and cannot be provided to subcontractors.

b. For either H.4a(1) or H.4a(2), non-BLM personnel must be under close supervision of a BLM employee responsible for completing the task for which the TMP is issued. For H.4a(3), the cooperating entity must follow BLM security protocols and work closely with the BLM on paint accountability.

c. Issue TMP to non-BLM personnel (as previously defined) in the field at the start of each workday. The BLM employee issuing the TMP will ensure that all TMP cans issued at the start of the day are returned at the end of the day prior to leaving the field. The check out and check in of TMP will be documented in a daily log as part of the project file. This documentation will include the following information:

- Name of project
- Date
- Name of the BLM employee issuing the TMP
- Name of non-BLM person receiving TMP
- Color of TMP
- Batch number of TMP
- Number of cans issued
- Number of cans returned

I. Approved Paint Colors for Marking Boundaries and Individual Trees. Red paint is reserved for use by cadastral survey in marking BLM property lines. Under no circumstances should red paint be used on timber sale projects for any purpose other than marking property lines.

For consistency and for ease of purchaser compliance and sale administration, it is recommended that offices follow the paint color designations presented in table 1 for initial marking and for the marking of additional timber in an existing sale.

Table 1. Tree marking paint color designation for use on boundary and individual trees

Work Item	Primary Color	Secondary Color	Tertiary Color
Cut Trees Salvage Take Mark Partial Cut Modifications	Blue	Yellow	Green (for trees added during contract administration)
Leave Trees Residual in Partial Cuts Cultural Resources Wildlife Trees Cutting Area Boundary	Orange	Pink	White
Cancel Prior Work	Black		
Property Lines	Red		

1. Timber Harvest Unit Boundaries. Orange is the primary paint color for marking timber harvest unit boundaries. Alternate colors should be used only in rare exceptions, such as where crews are marking a new project where paint is still visible from a previous project in the same area.

2. Initial Marking of Timber. For timber sold under a contract, cut and leave trees should be painted with a color of paint that is identified in the timber sale contract. Colors of paint used for cut tree and reserve tree marking should stay consistent throughout the contract area.

J. Timber Sale Contract Area Mapping. The scale and accuracy of the Exhibit A map should be driven by the reliance of the BLM to administer and the purchaser to comply with the contract. Contract maps can be used for planning harvest operations including transportation as well as yarding and processing facilities.

The Exhibit A map should include detailed elements of the contract area (harvest units, reserve areas, etc.) and should complement signs, flagging, marking paint, and other on the ground visual indicators to facilitate the contract. Contract Exhibit A maps are public documents and should not have Privacy-Act-protected information, such as the name or contact information of an adjacent landowner, included on them. Displayed information should be limited to tax lot owner name.

1. Use of Global Positioning System (GPS) Technology. Use of GPS to collect spatial data for timber sales is approved. Since accuracy can vary, it is important to spot check whether way points are within tolerable variances by comparing way point locations with site physical features. Spatial information used to expand plot-based cruise data should be at a high level of accuracy.

IV. FOREST PRODUCT MEASUREMENT.

BLM policy for forest products measurement is maintained in the Timber Measurement Manual MS-5300 (Rel. 5-163).

All timber to be sold will be measured by tree cruise, log scale, weight, or such other form of measurement as may be determined by the state director to be in the public interest. For scale sales, third party scaling organizations approved by the BLM, BLM employees, or state certified weight scales must be used.

Retention of Cruise Data, Scale Data, and Reports. Summary reports of cruise data, scale data, and sale volumes must be retained in the sale file. Raw cruise or scale data (notes or electronic files) must be retained, although not necessarily in the official sale file, until the sale is terminated.

V. FOREST PRODUCT VALUE APPRAISALS.

All timber or other vegetative resources to be sold, except materials that qualify under 43 CFR 5402.0-6(e) special forest products, will be appraised to estimate fair market value. The appraisal sets the minimum value for other than advertised sales (negotiated) and oral auction sales. The appraised value is also used to determine the bid deposit. For sealed bid sales, an appraisal is conducted, but the advertisement may indicate no minimum bid and the sale may be awarded at less than appraised value. This option is designed to avoid no-bid sales caused by uncertainties in the market such as demand for salvage timber or volatile lumber prices. Minimum values for timber or other forest products may be established by the state director.

VI. PREPARATION OF CONTRACTS AND EXHIBITS.

A. Contract Forms. This section provides guidance on the appropriate forms to use for various types of sales and products.

B. Lump Sum Contracts. The lump sum sale contract, form 5450-003 is used for sales where the purchaser agrees to pay the total purchase price that is based on the BLM's volume estimate regardless of the quantity of timber actually cut or removed. When the total purchase price is \$500 or more, the contract provides for payment by installments. A total purchase price of \$499 or less must be paid when the contract is executed.

It is important to go through each provision and understand how to administer it prior to the sale. When questions on interpretation occur, seek additional information or advice from the state forestry lead. Refer to [appendix 1](#) for an explanation of the standard provisions found in this contract form.

1. Standard Provisions. Form 5450-003 contains standard provisions that appear as sections 1 through 43. Sections 1–4, 39, 40, and 43 require insertion of specific information to complete the provision. Section 43 must be completed by insertion of specific information that identifies timber reserved from cutting. Should there be insufficient room on form 5450-003 for insertion of the reserve provisions, this information can be attached and included in the same

document as the section 44 special provisions. Reference language must then be placed into section 43 in a like manner as the printed language of section 44. To incorporate the attachment containing sections 43 and 44 into the contract form, a statement such as “refer to ‘sheet 1’ that is attached hereto and made a part hereof” should be typed in the appropriate space on the contract form. A list of timber reservation provisions for use in section 43 are maintained by the Division of Forest, Range, and Vegetation Resources (HQ-220); additional reservation provisions may be developed and maintained by each State Office.

2. Special Provisions. Section 44 special provisions are contained in an attachment to the lump sum contract. This section provides for inclusion of all special provisions needed to accomplish the intent and purpose of the contract and guide the operations under the contract. Special provisions must be written to be legally enforceable and consistent with the contract standard provisions. It is recommended that the development of new special provisions be coordinated with the Office of the Solicitor. A list of special provisions that have been reviewed by the Office of the Solicitor are maintained by the Division of Forest, Range, and Vegetation Resources (HQ-220).

a. Standardized Organization in Contract. It is beneficial to purchasers and sale administrators that all contracts use a standardized outline of the major sections in section 44 of the contract. The standardized outline format, with corresponding letter designations as the sections that would appear in the contract are as follows:

(1) Section 43. (if included in the same attachment as the section 44 special provisions)

(2) Section 44. Special Provisions

- Logging
- Road construction, maintenance, and use
- Environmental protection
- Miscellaneous
- Fire protection
- Slash disposal and site preparation
- Quarry development
- Buyout Security

b. Export Restrictions. Timber sales from Federal lands west of the 100th Meridian in the contiguous 48 states including timber from Federal rights-of-way are restricted from export. Section 41 of the 5450-003 specify the purchaser’s responsibilities for compliance with the log export restrictions.

c. Exhibits. Contract exhibits are attached to and made a part of the contract as needed to provide additional details concerning performance requirements contained in either the standard or special provisions of the contract. Such exhibits include Exhibit A (contract maps), Exhibit B (listings of species sold, estimated quantity, unit values and apportionment of total purchase price) and others, including road construction plans and specifications, road maintenance specifications, and erosion control diagrams.

Field offices may elect to request state office and/or solicitors office review of any exhibits.

(1) Contract Designation. Exhibit A and B are referenced in the contract and will always be the contract/cutting area map and summary of species and estimated quantities and values, respectively. Exhibits C and D will typically be Timber Sale Road Specifications and Road Maintenance Specifications if the contract includes road construction and road maintenance requirements. If there are no requirements for road construction and/or maintenance, the designations Exhibit C and Exhibit D may be used for any other needed exhibits in order that the lettering used is consecutive with no gaps in letter designations at the discretion of the contracting officer.

(2) Exhibit A. Section 1 requires that the contract area is shown on an attached map marked “Exhibit A.” This map must show the contract area together with appropriate cutting areas (harvest units) and reserve areas. Normally, data and legends concerning existing and proposed roads, improvements, topographic features, harvest type, found corners, and monuments are shown on Exhibit A (refer to [illustration 4](#) for example).

(a) The contract area boundary should coincide with legal subdivision boundaries wherever possible. The description of contract area in section 1 and the mapped contract area must agree. A recommended map scale for Exhibit A is 1 inch = 1,000 feet (1:12,000) to minimize the likelihood of errors in computing acres and volume cut for accounting/billing purposes. If a scale other than 1:12,000 is warranted, Exhibit A will be marked clearly with the actual scale.

(b) For contract modifications referencing Exhibit A, the exhibit header must be changed to “Exhibit A, Modification No. [insert modification number].”

(3) Exhibit B. Sections 1 and 3(g) of the contract require attachment of Exhibit B (form 5450-3a may be used, or it may be produced using TSIS, or a custom version may be developed in coordination with the State Forestry Lead) on which forest products sold are shown in terms of species, estimated volume or quantity, price per unit, total value, and apportionment of total value by cutting areas. Exhibit B is the basis for determining price adjustments or credits, payment due dates, or value of timber subject to special bonding provisions of the contract. The unit values per acre expressed in Exhibit B are the basis for calculating the value of cutting and yarding completed on the contract. For the purposes of billing, these calculations are made in TSIS.

(4) Other Exhibits. Section 44, Special Provisions, can be used to include all additional contract requirements not contained in the contract form. The option to create

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additional exhibits such as C, D, E, etc., may be used for diagrams, figures, or to help organize numerous requirements. Examples of work that may be included in separate exhibits are:

- Road construction or improvement (typically contract Exhibit C);
- Access and maintenance map;
- Stream protection or debris removal;
- Fence, gate, and/or cattle guard construction;
- Corner and/or bearing tree protection; and
- Slash disposal.

(5) Other Documents. Other documents may be included in the contract by reference. For example, the purchaser may be required to comply with the conditions of a specific road-use agreement. Such documents are not usually attached to the timber sale contract.

C. Scale Sale Contracts. Form 5450-004 is the contract form developed for the sale of timber on a scale for payment basis. In a scale for payment sale contract, the purchaser agrees to pay at the bid rate per measurement unit for wood products sold under the contract instead of paying a lump sum for the timber as per forms 5450-003. All direction written for lump sum contracts applies to scale for payment contracts unless otherwise addressed in this section.

1. Standard Provisions. Form 5450-004 contains standard provisions that are the same as the standard provision in form 5450-003 except that Sections 2, 3, 7-9, 11, 19, 34, and 39 in 5450-004 differ from the corresponding sections in 5450-003, and are discussed in [appendix 2](#), which must be read along with [appendix 1](#) for interpretation of the standard provisions of the scale sale contract.

2. Exhibit B, Purchase Price Schedule, and Measurement Specifications. Sections 1 and 2(a) of contract form 5450-004 require attachment of an Exhibit B on which wood products sold is shown in terms of species, estimated volume, unit of measure, price per measurement unit, total estimated purchase price, and apportionment of total estimated value by cutting areas. Total volume in a scale sale must include both the estimated volume from trees designated for cutting and additional volume resulting from harvest operations (i.e., corridor, skid trails, landing, etc.). Therefore, the total estimated volume must be included in the prospectus and Exhibit B and a modification for additional volume resulting from harvest operations will not occur. It is recommended to differentiate the additional volume from the volume designated in Section 43 so that the purchaser can consider the uncertainty of volume estimated since they will not actually know in advance which trees will be cut. Exhibit B also lists the minimum log specifications for what is considered merchantable timber and scaling provisions. Refer to illustration 3 for an example of a customized version. Additional customized Exhibit B versions can be developed in coordination with the State Forestry Lead.

3. Other Documents. Scale for payment sales using form 5450-004 typically requires the use of load tickets used to account for each load of wood products removed from Federal

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land and the location of the delivery point. Load tickets are accountable forms. The purchaser must sign a property transfer slip acknowledging their receipt of the load tickets.

D. Contract for the Sale of Vegetative Resources. Form 5450-1 is for the sale of other vegetative resources not normally measured in board feet, including biomass if sold by weight. This contract can be used for advertised or negotiated sales. When the total purchase price is over \$500, the form provides for payment by installments. Sales are made in terms of a specific quantity of the vegetative resource sold for a lump-sum value. All vegetative resources in excess of the specified quantity are reserved. There is no limit to the value sold. The contract contains a disclaimer of warranty as to quantity and quality of vegetative resources sold.

1. Rationale for Use. The reasons that form 5450-1 would be used in lieu of sales of other vegetative resources on forms 5450-5 or 5450-024 include:

- a. Value to be sold exceeds \$9,999.
- b. Payments can be made in installments if the value exceeds \$500.
- c. There are significant resource values or roads, utilities, or other improvements at stake that may be better protected with the standard provisions of the contract.
- d. A performance bond can be required in the amount of 20 percent of the total purchase price. If bonding is deemed necessary, it is likely more advantageous to use a contract with the standard provisions found in form 5450-1.

2. Standard Provisions. The form contains standard provisions that appear as sections 1 through 4, which require insertion of specific information and sections 5 through 16, which are complete as written. [Appendix 3](#) is an explanation of the preamble and sections 1 through 17.

3. Special Provisions. Section 17 of form 5450-1 provides for inclusion of all special provisions needed to accomplish the intent and purpose of the contract. A list of special provisions is maintained by the Headquarters Division of Forest, Range, and Vegetation Resources (HQ-220).

4. Exhibits. Section 1 requires attachment of an Exhibit A, which is a map showing the location of the contract area. Exhibit B is not needed because the type of product, unit of measure, and value information is placed in section 2 of the contract form. Other contract exhibits may be attached to, and made a part of, the contract as needed to provide additional details concerning performance requirements contained in the special provisions.

E. Contract Preparation Checklist and Contract Review. In the preparation of contracts using forms 5450-1, 5450-003, and 5450-004, use of a checklist is recommended to facilitate complete and accurate sale preparation (refer to [illustration 5](#) for a sample checklist).

F. Vegetative Material Negotiated Cash Sale Contract. Form 5450-5 is an accountable four-part carbonized form designed for on-the-ground use by field personnel to sell forest products (timber or other vegetative resources) having a value of \$9,999 or less. Multiple 5450-5 contract forms are bound into books that must be transferred via a DI-105 transfer of property

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slip to an individual who is an authorized collections officer, who then becomes accountable for the forms (refer to section F.3). Each blank form is individually pre-numbered for accountability. If a contract form is voided, all four carbonized copies are to be retained in the book. Completed books are transferred back to the BLM. Cash payment in full is required before the contract is signed by the authorized officer. The 5450-5 contract form is the only sales contract form that may be used for both in-the-field sales of timber and other vegetative resources and in situations where on-line Interagency Forest Products Removal Permit and Cash Receipt (form 5450-24) is not available.

Form 5450-24 should be used for contracts issued at the field office only. It is not permissible to print blank copies of form 5450-24 for later completion in the field; form 5450-24 may only be completed using computer data entry at the time of issuance.

The BLM also has a form 5450-5a which is a modified form 5450-5 that is specifically for public self-service online permit sales. The 5450-5a is not for use other than in electronic format through the public self-serve website.

1. Recommended Use. Form 5450-5 is best used for making prompt, cash sales of vegetative materials or small amounts of timber where a minimum amount of contract administration is needed. Examples of such use are:

- a. Sales of small quantities of vegetative materials.
- b. When location of the sale can be readily identified by the purchaser; when feasible, mark or otherwise identify material to be sold.
- c. For firewood, chip logs, salvage timber, etc., where minimal operational controls are needed.
- d. For contract issuance (in lieu of form 5450-24) when computer access is not available or when at-the-counter customer demand is high. Field offices must ensure that data from paper copies of form 5450-5 are entered into the computer-based form 5450-5 once computer access is available.

2. Restrictions.

- a. BLM regulations and policy regarding negotiated sales, including log export and substitution restrictions, apply to sales of unprocessed timber made on form 5450-5.
- b. Avoid use when operations necessary to remove the material sold have the potential for costly damage to resources or improvements, which is a risk that could be mitigated by the use of a performance bond.

3. Delegation of Authority. Use of form 5450-5 for making sales of vegetative material in the field, including collection of money, requires coordinated delegation of authority, and designation and authorization of collection officers (refer to Manual Section 1203 (Rel. 1-1809) and Manual Section 1384 (Rel. 1-944)).

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4. Citizenship Requirements. When form 5450-5 is used for the sale of timber, the purchaser must certify that they are a U.S. citizen using form 5450-9, Citizenship Affidavit unless the purchaser has certified citizenship previously.

5. Contract Terms and Issuance.

a. An original and three copies are to be completed for each contract. The money received as check, cash, bank draft, or money order is to be collected at the time the sale is made and deposited in the appropriate account in accordance with accounting procedures.

b. Maximum contract periods should not exceed two years. Provide adequate, reasonable time for removal of materials sold; but for administrative control, avoid excessive contract time.

c. Write brief, but specific special provisions as needed. Special provisions may be entered in section 3 or added as a referenced attachment. An Exhibit A may be made a part of the contract by reference in section 3 when needed to clarify sale location.

6. Service First Issuance. Field offices that have Service First agreements with the U.S. Forest Service (USFS) may allow USFS units to use form 5450-5 to sell vegetative permits. USFS employees cannot access the BLM's web-based SFP (special forest products) computer program to issue permits on form 5450-24.

G. Forest Products Removal Permit and Cash Receipt. Form 5450-24 Interagency web-based form.

1. Recommended Use. This is an interagency web-based form that is recommended for issuing permits in the field office for vegetative resources that do not exceed \$9,999 in value.

a. The purchaser must, at a minimum, be at the age of majority (must not be a minor citizen) for the state in which they reside.

b. If purchasing products that are convertible to board feet, the purchaser must be a U.S. citizen.

c. The individual issuing the permit must fully explain the conditions contained within the permit, especially if there is a local requirement for them to complete a Product Quantity Removal Record whenever they are transporting the product(s) harvested under the permit.

d. Unless unusual circumstances exist, load tags are to be issued with the permit, and their numbers are to be input onto the permit form.

2. Use of the Multi-Agency Permit. The BLM and USFS formed a partnership in 2003 to develop a single permit form for use by either agency to sell special forest products. Refer to [appendix 4](#), BLM/U.S. Forest Service Interagency Memorandum – August 4, 2003, for more direction. Refer to [appendix 5](#), BLM/U.S. Forest Service Memorandum of Understanding, to access an example for BLM/USFS Service First agreements for using form 5450-24.

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H. Contract File Organization. The following discussion presents good, workable arrangements for the required contract file organization.

1. Advertised Sales Using Contract Forms 5450-003 and 5450-004. Standardized timber sale contract files can improve efficiency of administration. The following example can be used to prepare a contract file.

a. Side 1.

- Contract Preparation and Review Checklist.
- Logging and Operations Plan.
- Fire Prevention and Fire Control Plan.
- Slash Disposal Plan.

b. Side 2.

- Performance Bond (standard form 25) or Cash Bond (form 1822-004).
- Contract with special provisions, exhibits, plans, and specifications or attachments.
- Modifications of the contract, including sales of additional timber under contract section 8 or special provisions.
- Commitment of Surety to be Bound by Assignment (form 5470-4).
- Assignment (form 5470-3).
- Certificate Terminating Contract Rights (form 5480-004).

c. Side 3.

- Increase or Decrease Rider (form 5460-3), usable with either a performance bond or blanket payment bond.
- Blanket Payment Bond (form 5450-20) or copy when used with more than one contract.
- Timber Payment Reports (form 5460-010), filed chronologically along with payment vouchers.
- Payment Vouchers.
- Cutting Reports

d. Side 4.

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- Copy of newspaper or web-based advertisement, and any announcements read at the auction.

- Any acknowledgements signed by the bidders, or high bidder, such as acknowledging that the decision to sell timber was appealed or litigated.

- Deposit and Bid for Timber/Vegetative Resources (form 5440-009).

- Timber Sale Bid Record (form 5440-010).

- Bid Bond (form 1822-3) or bid deposit collection record.

- Self-Certification Clause (form 5430-1) for Small Business Administration (SBA) set-aside timber sales.

- Export Determination (form 5450-017).

- First letter (acceptance of high bid, award of contract).

- Second letter (contract approval and transmittal).

- License Agreement(s).

- Timber Sale Inspection Reports (form 5460-4).

- Roadwork Inspection Reports (use form 5460-4).

- Contract administration correspondence.

- Suspension Notice (form 5480-001 or 5480-002).

- Notice of Expiration of Cutting and Removal Rights (form 5460-5).

- Log Scale and Disposition of Timber Removed Report (form 5460-15).

- Road Use Fees Paid Report (form 5450-8).

- Timber Sale Contract Relinquishment (form 5480-003).

- Contract Termination Inspection Report (form 5480-5).

e. Side 5.

- Decision Record, CX, FONSI, EA, DNA, or Record of Decision and EIS, and supporting documentation when prepared on individual sale decision basis. Timber sale decisions resulting from aggregate/landscape EAs or EISs should include a completed tracking procedures worksheet that describes design features and mitigation measures adopted on individual decisions and included in the associated timber sale contract special provisions. If the

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EA/EIS and supporting documentation is so voluminous that filing it within the contract file is not feasible, at a minimum a reference to the file location and the file designation is required.

- Presale correspondence concerning access, road use and construction, maintenance, etc.
- Documentation memorandum outlining special objectives, problems, considerations, treatments, etc.
- Timber type map and timber depletion record.

f. Side 6.

- Preliminary sale preparation data including maps, photos, and pre-cruise data.
- Master title plat or copy of title records.
- Survey data including cadastral corner control, property line surveys, harvest area boundary traverses, and maps.
- Computer printouts for timber volume and log values. Log scale reports for scale for payment contracts on form 5450-004.
- Road construction appraisal including survey, plans, and plats.
- Timber appraisal.

J. Contract Numbering Procedure. Use of the uniform system of contract numbering using a 15-character alphanumeric code is mandatory. This system is applicable to forest product sale contracts executed on forms 5450-003, and 5450-004. The numeric code will be used to identify contracts in the TSIS and the CBS as follows.

Timber sale contracts will use the following timber sale number format:

AAA99 – TS – YYYY.NNNN

Where:

AAA99 = Cost Center

TS = refers to timber sale

YYYY = fiscal year originally offered

NNNN = Office timber sale number

Use VG in place of TS if sale is for vegetative resources (form 5450-1)

K. Contract Filing and Records Retention. All forest product sales contracts must be filed in the district central files, or field office central files for detached resource areas (refer to BLM Manual 1270, Rel. 1-1804, Records Administration for more information). Record retention policies apply to forest product sale files (records). At no time should district contract folders be

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kept in personal areas or files. Duplicate copies of the district contract file should be used by the authorized officer(s) and other staff for the purpose of administering contract activities.

GLOSSARY OF TERMS

Affiliates. A business entity including but not limited to an individual, partnership, corporation, or association, which controls or is controlled by a purchaser, or, along with a purchaser, is controlled by a third business entity.

Appraised price. An estimate of the market value. The price at which other than advertised (negotiated) sales may be sold. This also sets the minimum acceptable price for oral auction sales and is used to set the bid deposit on all advertised sales.

Authorized Officer. Any employee of the Bureau of Land Management to whom has been delegated the authority to take action in connection with a timber sale contract, BLM's delegation manual, or BLM regulations.

Cadastral Survey. Surveys that create, mark, define, retrace, or reestablish the boundaries and subdivisions of U.S. public lands based on law and not science.

Contract area. Area in which timber harvest activities occur as legally defined within the contract. The contract area is comprised of the quarter-quarter sections (forties or lots) within which: (1) the cutting areas, including rights-of-way; and (2) reserve area, including reserve area where trees are individually marked for removal, are located.

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

Designation by description (DxD). A method of designating timber to be removed under the terms of a timber sale contract (typically by attaching an exhibit) where timber is not marked (designated by paint) for removal prior to offering the sale. The written cutting direction in the contract is relatively simple and likely to result in the same trees being cut by two different timber fallers, such as by requiring the cutting of all trees below a certain diameter.

Designation by prescription (DxP). A method of designating timber to be removed under the terms of a timber sale contract (typically by attaching an exhibit) where timber is not marked (designated by paint) for removal prior to offering the sale. The written cutting direction in the contract is more complex and includes such criteria as basal area per acre, spacing, and tree species, form, and vigor.

Haul route. Roads authorized for timber and/or mineral haul that comprise the most economical route considering safety, distance, road type, road control, improvement needs, and mitigation required by law and/or in land use plans.

Other than-advertised sale. A sale of forest products that is made without formal publication and posting notice of the sale and without use of competitive bidding procedures. (Synonym: Non-advertised sale, negotiated sale.)

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Penalty scaling. Scaling of timber that is felled or wasted in high stumps, tops, chunks, long butts; or broken by careless falling, bucking or logging; or allowed to deteriorate due to abnormal delay in scaling caused by the purchaser under the terms of a scale sale contract.

Pond value. Delivered value of logs at the site of utilization or processing into consumer goods or products.

Reserve area. Areas within the contract area in which no trees, or only a limited number of individual trees marked for removal and designated on Exhibit A, may be cut.

Road closure. Control of road access to reduce sedimentation, restore hydrological processes, and/or enhance habitat. Road closure methods may be defined in travel or transportation management plans (e.g., temporary/seasonal closure, decommission, full decommission (hydrologic obliteration), and obliteration (full site restoration)).

Sale preparation. Process or series of activities that culminates in a sale that is ready to advertise or negotiate and meets all legal requirements including project-specific planning, NEPA compliance, special status species policy compliance (completion of consultation for listed species) layout, and contract preparation.

Sides. A discrete logging operation using the necessary equipment and personnel to function independently of other logging operations, presumably from separate locations.

Special cutting or yarding area. An area on which a specified type, size, or species of tree is designated for cutting, or where trees must be felled or yarded in a specified manner.

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.

ILLUSTRATIONS**Illustration 1****Approved Signs and Posters for Boundary and Individual Tree Designation**

These signs along with other available forestry signs can be ordered through the Printed Material Distribution Services (PMDS) at the BLM National Operations Center.		
Sign Number	Sign Wording	Sign Use
S-032	BOUNDARY OF TIMBER RESERVE NO UNAUTHORIZED CUTTING BEYOND THIS POINT	Dual purpose sign used to post reserve area boundaries when: (1) no cutting is authorized in the reserve area; or, (2) limited cutting is authorized or required within the reserve area.
S-149	BOUNDARY OF PARTIAL CUT AREA	Use to post the outer boundary of an area in which a portion of the timber is designated for cutting, e.g., commercial thinning, shelterwood cutting.
S-148	RIGHT-OF-WAY NO UNAUTHORIZED CUTTING BEYOND THIS BOUNDARY	Use to post the reserve area boundary adjacent to the area to be cleared along a right-of-way. May be used to post the right-of-way clearing limits on private land when such clearing is required in the BLM contract.
S-150	BOUNDARY OF SPECIAL YARDING AREA	Use to post areas within the timber sale boundary that require special yarding methods.
S-154	TIMBER CUTTING BOUNDARY	Use to mark the boundary of a BLM cutting area, which adjoins private land. Do not post on trees designated for cutting. Posting of trees along private land may require permission.
S-007	BOUNDARY NO TIMBER MAY BE CUT OR REMOVED WITHOUT AUTHORIZATION	Aluminum sign for use along well-defined property boundaries. May be affixed to a post, tree, fence, etc. This sign faces away from BLM land
S-129	WILDLIFE TREE DO NOT DISTURB	May be used to post trees intended for wildlife use, which are reserved from cutting.
S-035	POST SALE AREA	Post along routes used to reach the sale area. Remove after sale is sold. Posting of trees on private land may require permission.

Illustration 2**Example Exhibit S Designation by Prescription (DxP) Selection Criteria**

Contract No.: OR-014-TS2-2
Sale Name: Slim Chicken Timber Sale
Issuing Office: Klamath Falls Field Office

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT (BLM)**

EXHIBIT S

Designation by Prescription (DxP) Selection Criteria

I. Training.

A. In the required logging plan, the purchaser shall provide a list of operators who will be operating the mechanical harvesters and/or chainsaws.

B. Prior to any harvesting operations in a density management DxP cutting area as shown on Exhibit A, the authorized officer will designate test mark areas. Any mechanical harvester operator and/or fallers designated to conduct falling operations within a density management DxP cutting area will be required to mark (with paint or flagging) a two-acre test mark area to demonstrate their ability to meet the selection criteria stated below. The test mark area marking must be approved by the authorized officer prior to any falling in the density management DxP cutting area.

II. Cutting Operations.

A. Purchaser Pre-Marking. In the event the purchaser elects to mark (paint) the cutting areas prior to falling, the authorized officer shall approve such marking prior to falling.

B. Approved Cutting Areas. No yarding of felled timber will be allowed until the cutting operations have been approved in writing by the authorized officer.

C. Cutting operations will proceed no more than twenty (20) acres ahead of the total acreage that has been approved by the authorized officer.

III. Selection Criteria For Trees Over Seven (7) inches DBH. The selection criteria subsequently shown shall be used by the purchaser in determining which trees greater than seven (7) inches diameter at breast height (DBH defined as four and one-half feet (4.5 feet), above ground level on the uphill side of the tree) are designated for retention and which are designated for falling:

- A. Retain all snags (dead trees) except those marked for cutting with green paint for cutting and removal.
- B. Retain the following density measurement requirement expressed as basal area, measured in square feet/acre, of live trees larger than seven (7) inches DBH on each density management DXP cutting area.

If the existing density of all trees within fifty (50) feet of plot center is (square feet/acre):	The purchaser shall retain the following density within fifty (50) feet of plot center (square feet/acre).
≥ 200	120
100-199	80-100

- C. In selecting which trees greater than seven (7) inches DBH to retain to meet the density measurement requirement shown in Section III.B., apply the following criteria in the hierarchically designated order of importance:

1. All unmarked trees twenty (20) inches or larger in diameter outside bark measured at DBH are reserved from cutting. Note: This equates to approximately a twenty-two (22) inch diameter tree inside bark at one (1) foot above the ground on the uphill side.
2. Where available, retain vigorous trees exhibiting the desired form and vigor. Such vigorous trees are defined as:
 - a. Trees that have a live crown ratio of forty (40) percent or greater. The live crown ratio is determined by dividing the height of the tree containing a live crown by the total height of the tree.
 - b. Trees that exhibit mostly dark green needles with very little yellowing of the needles.
 - c. Trees that are free from severe mistletoe, disease, wounds, insects, or poor form (dead or forked tops, sweep, or crook, etc.).
3. Where available, on a per-acre-basis, seventy-five (75) percent or more of retained trees shall consist of the dominant and co-dominant trees of the initial stand.
4. Where available, retain the following preferred tree species in the designated order of preference:
 - a. Sugar pine.

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- b. Ponderosa pine or Douglas-fir.
- c. Incense cedar.
- d. White fir.

5. In selecting between a Douglas-fir or ponderosa pine of comparable form and vigor, or two trees that are of the same species and of comparable vigor and form, retain the largest tree.

6. Uniformity of spacing.

IV. **Compliance Inspection Criteria.** Compliance inspection will consist of visual observation of on-going felling operations and collecting plot data after the trees have been felled as specified below:

A. Visual observation compliance will consist of subjective monitoring by the authorized officer for compliance with the selection criteria. Compliance will be considered satisfactory if ninety (90) percent of the observed cut or retained trees are determined by the authorized officer to meet the selection criteria.

B. The authorized officer shall inspect felling operations by random plot selections through felled areas. At each plot, the following will be inspected to determine if the approval level is being met:

- 1. Diameter and species of stumps measured at one (1) foot or less above ground on the uphill side.
- 2. DBH and species of residual trees.
- 3. Basal area of the residual trees seven (7) inches DBH and larger.
- 4. Average spacing between the residual trees seven (7) inches DBH and larger.
- 5. Number of trees significantly damaged by the purchaser's operation at each plot.
- 6. The selection of residual trees and the work quality.

C. The purchaser's operations will be considered approved if:

- 1. Ninety (90) percent of the residual trees meet the selection criteria in Section III; and
- 2. The average basal area of all plots measured during one-day's inspection is within eighty (80) percent of the density measurement requirement (the objective is for the average basal area of all plots measured during one-day's inspection to be between 80 and 140 square feet); and

3. The basal area of each plot is within eighty (80) percent of the density measurement requirement. For plots where the initial basal area was ≥ 200 square feet, a minimum of 100 square feet and a maximum of 140 square feet is acceptable for retention. For plots where the initial basal was < 200 square feet, a minimum of 80 square feet and a maximum of 120 square feet is acceptable; and
4. More than ninety-five (95) percent of the residual trees are not significantly damaged by operations under the contract. Significant damage is defined as any tree having greater than thirty (30) percent of the bark removed from the circumference of the tree, any tree with top diameter broken at three (3) inches in diameter or greater, or any tree being visually root-sprung.

If the purchaser's operations fall below any one of these approval levels, a written warning will be immediately issued to the purchaser.

VI. **Non-Compliance.** If the purchaser does not comply with the DxP selection criteria to the satisfaction of the authorized officer applying the compliance inspection criteria in Section IV., and after a written warning has been issued, the contracting officer may suspend felling operations until corrective measures have been taken by the purchaser. It will be the responsibility of the purchaser to pay any costs incurred in the implementation of the corrective measures required by the authorized officer. Corrective measures, as specified in writing by the authorized officer, may include but are not limited to:

A. **1st Warning.** Approval of original or additional mechanical harvester operators and/or fallers by the authorized officer based on operator's satisfactory completion of a five (5) acre test mark area.

B. **2nd Warning.**

1. Approval of original or additional mechanical harvester operators and/or fallers by the authorized officer based on operator's satisfactory completion of a twenty-five (25) acre test mark area; or

2. Replacement of mechanical harvester operator and/or fallers by the purchaser.

C. **3rd Warning.** The purchaser will mark all reserve trees in the density management DxP cutting areas shown on Exhibit A for approval by the authorized officer prior to falling.

VII. **Reserved Timber.** The provisions of Section 43 of the contract are repeated below for convenience of reference:

Section 43.

A. Timber Reserved from Cutting

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The following timber on the contract area is hereby reserved from cutting and removal under the terms of this contract and is retained as the property of the Government:

All timber on the reserve areas as shown on Exhibit A, all orange painted and/or posted trees which are on or mark the boundaries of the reserve areas and thermal clumps as shown on Exhibit A and all trees within the areas designated as thermal clumps.

In all cutting areas, all down trees and logs eighteen (18) inches or larger in diameter at the large end except those marked by the Government for removal with green paint.

All snags in the cutting areas shown on Exhibit A, except those marked for removal with green paint.

Illustration 3
Example Scale Sale Exhibit B

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT**

Contract No.:

Sale Name:

Issuing Office:

**EXHIBIT B
SCALE SALE
PURCHASE PRICE SCHEDULE AND MEASUREMENT SPECIFICATIONS**

I. **Total Actual Purchase Price** - In accordance with Sections 2 and 3 of the contract, the purchaser agrees to pay the Government for the forest products sold under the contract in accordance with the following schedule and measurement requirements. Forest products sold are comprised of *Merchantable Timber*, *Other Timber*, *Other Forest Products*, *Remaining Volume*, and *Defect Caused by Abnormal Delay* as defined in this Exhibit. In the event an Extension of Time is approved, the prices per measurement unit are subject to readjustment (refer to Section 9 of the contract).

Schedule of Products, Species, Measurement Units, and Prices		
Species	Measurement Units	Price Per Measurement Unit
Merchantable Timber:		
Other Timber:		
Other Forest Products:		

II. **Merchantable Timber** - All timber which can be cut into logs, which equal or exceed the following specifications, shall be considered merchantable timber. The purchaser shall pay for merchantable timber in accordance with Section 3 of the contract at the prices per measurement unit shown in Section I of this Exhibit.

Schedule of Minimum Merchantable Log Specifications			
Species and Products	Length	Diameter (inside bark at small end)	Net Scale

III. **Other Timber** - If the purchaser elects to remove any logs which do not meet the above minimum merchantable log specifications in Section II of this exhibit, are not designated as other forest products in Section I of this exhibit, and have not been reserved to the Government in Section 43 of the contract, such logs shall be scaled for their merchantable content as provided herein and be paid for in accordance with Sections 2 and 3 of the contract and the prices per measurement unit in Section I of this exhibit. If any timber is of a species or size not listed in Section II of this exhibit (above) or is of a quality different from merchantable timber described herein, the authorized officer shall establish volumes and values in accord with BLM prescribed procedures.

IV. **Deterioration Caused by Abnormal Delay** - Scaling deductions made for rot, checks, or other deterioration resulting from abnormal delay in scaling caused by purchaser shall be recorded separately and charged to the purchaser in accordance with Section 3(g) of the contract.

V. **Remaining Volume** - *Remaining volume* is defined in Section 3(g) of the contract. The remaining volume of any forest products sold under the contract and any deterioration due to abnormal delay shall be determined as provided in Section 3(g) of the contract. Purchaser shall pay for same in accordance with Section 3 of the contract at the prices per measurement unit shown in Section I of this exhibit. To maximize utilization, the purchaser shall buck logs to variable merchantable lengths. If the purchaser fails to buck logs to variable merchantable lengths, the contracting officer may measure unyarded log segments and bill the purchaser for their value.

The contracting officer may determine during operations that the amount of remaining volume found is excessive and/or preventing the attainment of BLM treatment objectives. Upon such determination as directed in writing by the contracting officer, the purchaser shall restring cable yarding lines, re-traverse ground-based yarding areas, and/or re-fly aerial yarding areas; and yard, remove, and present for scaling the material which would otherwise be designated as remaining volume.

VI. Scaling

A. **Scaling Service** - Log scaling services shall be provided and performed by Government scalers or parties under contract to the BLM, as determined by the contracting officer. The purchaser shall notify the Authorized Officer three (3) days prior to commencing any hauling, including any hauling shutdowns longer than two (2) days, and at the earliest opportunity when ceasing hauling operations performed under the contract. A scaling authorization must be completed and approved by the authorized officer prior to beginning operations. A Yard Scaling Agreement must be completed for

each utilization facility that will receive logs from the sale, which must be scaled, and executed by the purchaser, scale site owner, and contracting officer prior to the delivery of any logs to that facility. Government scalers or contract scalers are authorized to collect scale data from all loads.

B. Log Rule and Measurement – (Choose one option below:)

(For offices using the Northwest Log Rules.) All logs shall be scaled according to the Eastside Scribner Log Rules found in the Northwest Log Rules Eastside and Westside Log Scaling Handbook in the Official Rules for Log Scaling and Grading Bureaus developed by the Northwest Log Rules Advisory Group dated July 1, 2003 (reprinted June 1, 2006). The contracting officer may elect to utilize sample scaling in lieu of 100 percent scaling of log loads. The sample log scaling procedures, including sample design and number of log sorts, will be determined by the authorized officer in accordance with BLM prescribed procedures.

(For all other offices – Option 1.) All logs shall be scaled using the total taper methods. Volumes shall be derived from local taper tables based on Scribner Decimal C log rule or from computer output using a Scribner log rule approximation formula. The contracting officer may elect to utilize sample scaling in lieu of 100 percent scaling of log loads. The sample log scaling procedures, including sample design and number of log sorts, will be determined by the authorized officer in accord with BLM prescribed procedures.

(For all other offices – Option 2.) Government or contracted scalers will be guided by the following rules in measuring merchantable and other timber sold under the contract:

1. **Diameter** – All diameters shall be measured inside bark and averaged to the nearest inch. For logs twenty (20) feet or less in length, only the small end diameter is recorded. For logs over twenty (20) feet in length, diameters of both ends are recorded to determine total taper. Use standard butt log taper guides in common usage by BLM in recording butt end diameter.
2. **Length** – Maximum segment length used in BLM scaling standards is twenty (20) feet. Logs over twenty (20) feet in length shall be divided into two (2) or more segments. Logs twenty-one (21) through forty (40) feet shall be scaled as two logs. Logs forty-one (41) through sixty (60) feet shall be scaled as three segments, etc.
3. **Trim** – For all species, trim allowance shall not exceed twelve (12) inches for logs forty (40) feet in length. For logs over forty (40) feet in length, an additional two (2) inches of trim shall be allowed for each additional ten (10) feet in length or fraction thereof. No minimum trim allowance is specified. Logs exceeding allowable trim shall be scaled to the next one-foot measure in length.
4. **Deductions for Defects** – The following standard BLM deduction guidelines will be used:

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- a. Diameter deductions shall be made for defects such as check, pitch seam, pitch rings, sap rot, lighting scars, and weather checks.
- b. Length deductions shall be made for defects such as shake, rot, conk, sweep, crook, break, spangle, massed pitch, crotch, knot clusters, and stump shot.
- c. Diameter or length deductions shall be made for waste defects such as cat face, rotten knows, slab, and burls.

C. **Log Presentation** – The purchaser shall present logs so that they may be scaled in an economical and safe manner in accordance with the Yard Scaling Agreement(s) required in Section VI.A. of this exhibit.

E. **Accountability**

1. Any log painting and branding will be performed at the landing and accounted for in accordance with the contract. Other forest products will be accounted for in accordance with the contract. Each truck driver shall obtain a load receipt and a BLM scaler receipt from the Log Truck Ticket Book issued by the authorized officer and comply with the instructions specified on the cover of said book. (All log/load tickets will be marked with the [insert sort or cutting area number, etc.] using a permanent marker or indelible stamp as directed by the authorized officer.) While products are in transit, the truck driver shall display the load receipt and BLM scaler receipt on the bunk or wing log at the front of the load on the driver's side, or as directed by the authorized officer in the case of other forest products. All forest products on each load shall be delivered to the destination listed on the load receipt. The BLM scaler receipt shall be surrendered at the location of BLM scaling, the unloading location, or as requested by BLM.
2. The purchaser shall not haul forest products from the contract area on weekends or Federal holidays; or outside the hours of _____ to _____ daily, unless otherwise approved in writing by the Authorized Officer or designated in the Approved Logging Plan (refer to Section 44____ of the contract).
3. The purchaser shall furnish the BLM a map showing the route which shall be used to haul forest products from the forest product sale area to the scaling location(s). Such route shall be the most direct haul route between the two points, unless another route is approved by the BLM. The route of haul may be changed only with advance notice to the authorized officer and approval by the BLM. The haul route map shall be attached to the scaling authorization.
4. All log loads will be scaled at scale locations listed on the scaling authorization as approved by the authorized officer. The purchaser shall ensure that all scale site owners listed on the scaling authorization enter into a Yard Scaling Agreement

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before requesting BLM approval of the scaling authorization. Areas for scaling BLM logs will be designated on the ground and identified on the yard map as required in the Yard Scaling Agreement.

5. Any removal of logs from loaded trucks prior to their arrival at the delivery point as required by the contract shall be considered a willful trespass and render the purchaser liable for damages under applicable law. Any payment made for purchase of such logs shall be deducted from the amount due because of trespass.

F. Scaling Lost Forest Products - The value of forest product loads represented by missing load tickets shall be equal to the highest value load for the month in which the lost load is hauled regardless of where the highest value load is scaled. If no loads have been scaled in that month, value will be determined from the closest month in which loads were scaled.

(VI. or VII.) Estimated Volumes and Values - The following volume estimates and calculations of value of forest products sold are made solely as an administrative aid for determining payment amounts, when payments are due, the value of forest products subject to any special bonding provisions, and other purposes specified in various portions of the contract. The cutting areas are shown on Exhibit A of the contract.

A. Forest Product Volume Removed from Contract Area - The total volume of removed forest products shall be determined using the Government's records of scaled volumes of forest products skidded or yarded monthly, or a shorter period if agreed to by the purchaser and Government, to loading points or removed from the contract area.

B. Forest Products Not Yet Removed from Contract Area – The value of forest products which have not been removed will be determined by multiplying the value per acre as subsequently shown times the amount of acreage subject to the purpose of the value determination, as determined by the authorized officer. The estimated volume and value per acre used for determining payment amounts may be modified by the authorized officer based upon scale report data on forest product volume removed from the contract area.

(If the sale does not involve acreage, e.g., selling log decks, the two columns for "Volume per Acre" and "Value per Acre" in the following table may be deleted.)

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Total Estimated Purchase Price and/or Schedule of Volumes and Values for Forest Products Not Yet Removed from Contract Area					
Cutting Area		Total Estimated Volume (MBF)		Total Estimated Purchase Price	
Cutting Area Number	Exhibit A Acres	Volume per Acre	Total Volume	Value per Acre	Total Value
Sale Total					

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Illustration 4 Example Exhibit A

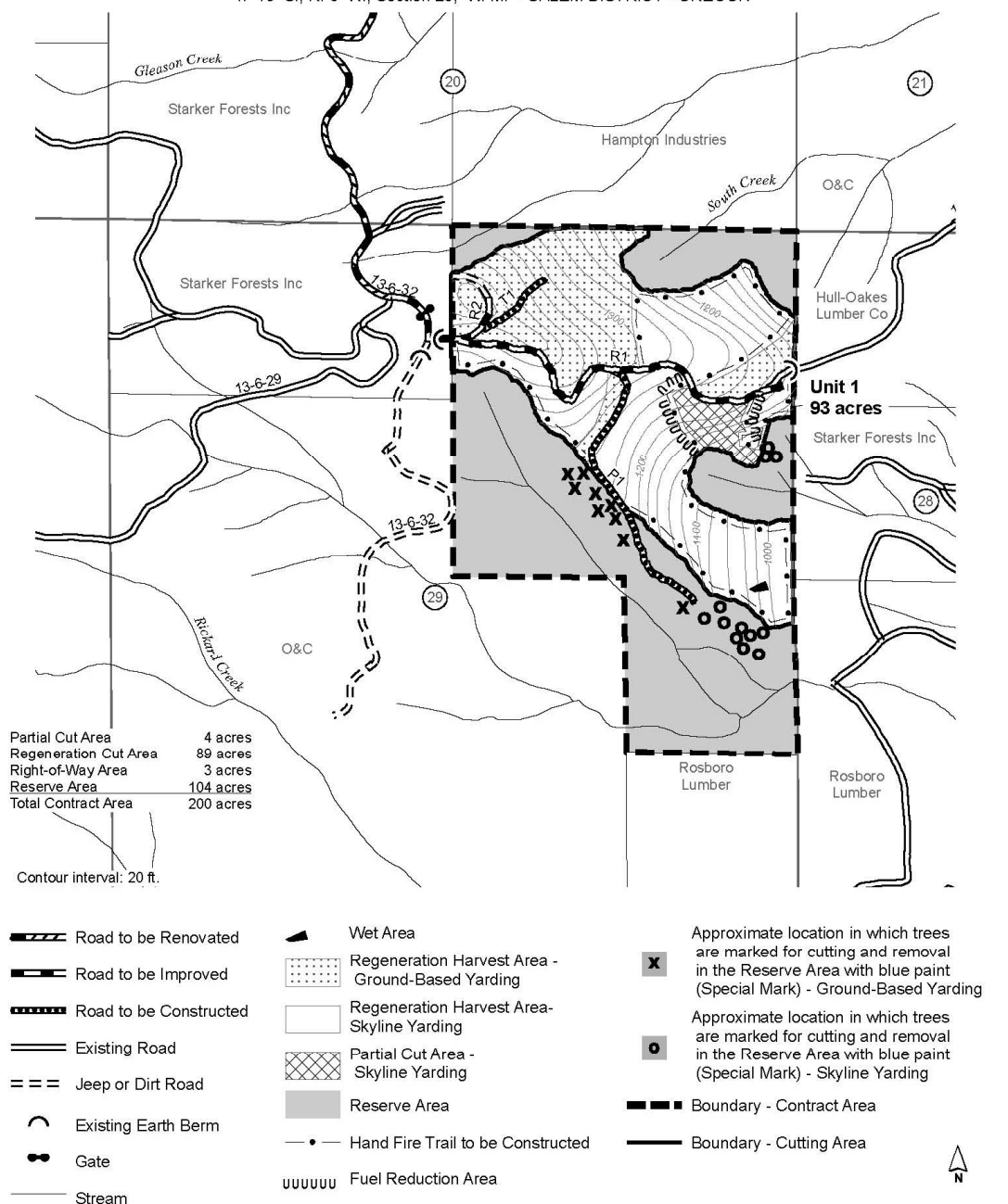
April 16, 2009

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Salem District - Oregon

Rickard Creek Timber Sale

EXHIBIT A**TIMBER SALE CONTRACT MAP - CONTRACT NO. LLORS00000-TS09-302**

T. 13 S., R. 6 W., Section 29, W. M. - SALEM DISTRICT - OREGON



NOTES: Boundary of Regeneration Harvest Area, Partial Cut Area and Rights of Way of roads to be constructed are painted orange and posted. Unit acres do not include existing or new roads. Acres shown on Exhibit A have been computed using a Trimble Geo XT Global Positioning System receiver. Acreage was calculated based on Global Positioning System traverse procedures including differential correction.

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Illustration 5

Example Timber Sale Preparation Checklist

TIMBER SALE NAME	CONTRACT NO.
NEPA NO.	
<input type="checkbox"/> Decision Record signed <input type="checkbox"/> All documents are uploaded in ePlanning	
ADVERTISEMENT DATES	SALE DATE
<input type="checkbox"/> Advertisement drafted and approved <input type="checkbox"/> Advertisement method identified (online, newspaper, etc.)	
PROSPECTUS	
APPRAISED PRICE	BID DEPOSIT 10%
\$	\$
<input type="checkbox"/> 1. Appraisal <input type="checkbox"/> 2. Volume estimate(s) <input type="checkbox"/> 3. Determine contract elements for Sections: 1, 2, 3, 4, 39, 40, and 43. <input type="checkbox"/> 4. Determine Section 44 Special Provisions <input type="checkbox"/> 5. Prepare Prospectus (include link to timber sale form, location of sale area, volumes by species, any relevant sample statistics, appraised prices, summary of special provisions, road information, and sale date and instructions for bidding) <input type="checkbox"/> 6. Prepare pre-filled Form 5440-9, Deposit and bid <input type="checkbox"/> 7. Distribute Prospectus	
CONTRACT	
Contract Type: <input type="checkbox"/> 5450-003, Lump Sum Sale <input type="checkbox"/> 5450-004, Scale Sale <input type="checkbox"/> 1. Complete contract elements for Sections: 1, 2, 3, 4, 39, 40, and 43. <input type="checkbox"/> 2. Complete Section 44 Special Provisions <input type="checkbox"/> 3. Prepare Exhibit A maps <input type="checkbox"/> 4. Prepare Exhibit B (TSIS, scale) <input type="checkbox"/> 5. Determine the use of additional Exhibits if not covered in Section 44 <input type="checkbox"/> 6.	
TIMBER SALE NOTICE	
<input type="checkbox"/> 1. Plan advertisement strategy <input type="checkbox"/> 2. Post timber sale notice	

APPENDICES

Appendix 1

Explanation of Form 5450-003, Contract for the Sale of Timber and Other Wood Products – Lump Sum Sale

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Contract Strategy. Certain of the regulations found in 43 CFR Part 5400, Sales of Forest Products, as manifested in the contract, were crafted as a unified strategy to avoid speculative bidding and facilitate timely harvest (encourage prompt performance) to avoid defaults and meet forest management objectives. The regulatory and contractual elements of this strategy include:

- a. A forty-eight (48) month maximum contract term. A forty-eight (48) month contract term is considered by BLM to be brief enough to allow a purchaser to make an offer that can be considered to represent fair market value during the entire contract term, hence the absence of price escalation/de-escalation clauses in the contract.
- b. Payment of a substantial first installment (down payment) of 10 percent of the total purchase price with one-half of the amount held (essentially a “last month’s rent”) to satisfy the final payment under the contract (refer to section 3(b)).
- c. Inducement of one-half of the first installment being credited as payment (refer to section 3(b)) when the contract is 60 percent performed (payment plus the value of completed road construction).
- d. Payment of a first anniversary payment of 20 percent of the total purchase price, a second anniversary payment of 40 percent, and a third anniversary payment of 60 percent of the total purchase price, including credit associated with the value of completed road construction (refer to section 3(b)).
- e. Inducement of a 50 percent reduction of the performance bond when the contract is 60 percent performed (payment plus the value of completed road construction) (refer to section 39(c)).
- f. A relatively restrictive authority for granting contract extensions necessitating cause beyond the control of the purchaser, no purchaser fault or negligence, and requiring a re-appraisal with provision that the value cannot decrease below the purchase price (refer to section 9).

Preamble.

The preamble is the opening statement of the contract. It serves to establish the parties to the contract, the date the contract is made and entered into (approved), and the laws and regulations which authorize the action.

In the preamble, the first party of the contract is the United States of America, acting through the BLM. For brevity, this party is identified throughout the contract as the “Government.”

The second party to the contract is the purchaser. The contract form provides a space for entry of the name and address of the purchaser. It is important to properly identify the purchaser. In the case of a corporation, the name should appear in the contract in the exact manner of use as established by the company. If more than one individual is the purchaser, each name must appear in the space provided. Assumed business names (i.e., Doing Business As (DBA)) may be shown, but it is most important that all individuals are included. If the purchaser is a partnership or Limited Liability Corporation (a form of partnership), the names of all parties must be listed as well as the name of the firm under which they are doing business. The address of the purchaser is entered following the name of the purchaser.

Section 1. Wood Products Sold.

Section 1 of the contract establishes that the Government sells and the purchaser buys certain forest products subject to the terms and conditions of the contract. Section 1 requires that the location of the forest products be described in the body of the contract by legal description (township, range, section, and subdivision), including identification of county and State. Lands thus described comprise the contract area. Standard procedure for listing legal descriptions is to list township and range in ascending numerical order, followed by the section and subdivisions of the section. List lots by lot number first, then the quarter section and 40-acre subdivisions in counterclockwise order commencing with the NE $\frac{1}{4}$ NE $\frac{1}{4}$. Examples are as follows:

T.15S., R.7W., Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$
S $\frac{1}{2}$ SE $\frac{1}{4}$

T.15S., R.8W., Sec. 31, Lot 1, Lot 2, SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$
Sec. 32, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$

Section 1 of the contract also specifies that the general location of the contract area be shown on a map which is identified as Exhibit A. The Exhibit A is attached to and becomes a part of the contract. Every contract must have a map showing the contract area.

The contract map generally consists of a topographic map showing the land ownerships, improvements, and cutting areas comprising the contract area. It is important that the map be a reasonably accurate representation of the ground conditions and adequately portrays the contract terms. The boundaries of the contract area must be shown on the map.

Section 2. Total Purchase Price.

Section 2 of the contract establishes the total purchase price which the purchaser agrees to pay the Government for the forest products sold pursuant to the terms and conditions of the contract. The total purchase price is the amount bid/negotiated by the purchaser. It is expressed in the contract in both words and figures in the spaces provided in section 2, and must correspond to the total value in Exhibit B. The purchase price must agree with information on form 5440-009, Deposit and Bid for Forest Products, which is written confirmation of the purchaser's bid. A contract executed on form 5450-003 is a "lumpsum" contract. A "lumpsum" contract requires payment of a fixed dollar amount, regardless of the quantity of forest products involved. This contrasts to a contract on a "scale" or "unit" basis where the total payment is dependent upon a measure of the quantity of forest products actually removed.

The total purchase price may be adjusted in accordance with certain sections of the contract. These sections of the contract provide the authority to adjust the total purchase price. There is no authority to adjust the total purchase price or Exhibit B volume because the purchaser is dissatisfied with the amount or quality of volume that they actually harvest (unless there is a failure of title; refer to section 6); to do so undermines the validity of the subject contract and other lump sum contracts. Additionally, there is no authority to add volume (mark additional

timber) at no price; additional volume must be sold to the purchaser at fair market value. The discussion under the appropriate sections should be reviewed, in addition to the following:

Under section 6, Inspection of Wood Products and Disclaimer of Warranty, part (b), adjustments would be downward if there is a failure of title to any of the forest products sold. Timber designated for removal that is burned in a wildfire that is not caused by the purchaser would be an example of failure to title, since the timber remains the property of the Government until removed from the contract area (section 7).

Under section 7, Passage of Title and Risk of Loss, adjustments would be downward in the event of forest products losses, particularly damage to forest products for which the Government bears the risk of loss such as natural disasters.

Under section 8, Sales of Additional Wood Products, adjustments would be upward following sales (contract modifications) of additional forest products to the contract.

Under section 9, Extension of Time and Reappraisal, adjustments would be upward in the event of increase in value of the remaining forest products following reappraisal for certain contract extensions.

Under section 19, Cost Adjustment for Physical Changes, adjustments would be downward in use of this option as a method for Government to share the purchaser's cost of repairing major damage which occurs to required road construction prior to acceptance of the completed construction.

Under section 20, Design Change, adjustments would be either downward or upward in the event of a necessary, substantial road design change.

Under section 44, Special Provisions, adjustments could be downward in the event of delay caused by the Government when that special provision has been included in the contract.

Section 3. Payment.

43 CFR Subpart 5461, Contract Payments sets out the regulatory requirements for the payment provisions.

Section 3 of the contract is divided into subsections, all of which relate to payment for, or the manner of payment of, the total purchase price set forth in section 2 of the contract.

Section 3(a) introduces the whole of section 3 stating payment must be made prior to the cutting and removal of forest products. Section 3(a) requires that the total contract purchase price must be paid prior to the expiration of the time for cutting and removal of forest products designated in the contract (43 CFR 5461.3). If the purchaser has a payment bond, and considering the bond represents "payment," and harvest operations finish on, or less than 30 days before the expiration of cutting and removal rights, the actual billing and payment may occur after the expiration date.

Failure to pay the total purchase price by the contract expiration is a default of the contract and 43 CFR 5450.1 identifies a purchaser who has defaulted on a contract for failure to pay by the expiration date as a risk for purposes of being awarded future forest products sale contracts. 43 CFR 5450.1 further prescribes the possible consequences to a purchaser in default in terms of establishing bidder responsibility by additional payments or bonding in order to be awarded a new sale.

If the total of the forest products purchased is \$500 or more in value, 43 CFR 5452.2 permits payment by installments. This regulatory requirement is brought forward into section 3(b) of the contract. Sales for under \$500 must be paid in full prior to the time the contracting officer signs (approves) the contract.

Section 3(b) establishes the amount of the minimum installment payment. This amount varies with the total value of the contract. The regulations in 43 CFR 5461.2(a) establish the minimum amount of installments based upon the value of the contract. The amount of the individual installment is expressed in both words and figures. Section 3(b) prescribes the sequence of installment payments. It specifies that the first installment must be paid on or before the date the contract is signed by the contracting officer. The first installment must be paid within the time provided after the purchaser receives the contract for signature. The successful bidder is required by regulation to sign and return the contract, together with any required performance bond and payment, within a 30-day period unless additional time is provided (refer to 43 CFR 5450.1(b)). Failure of the successful bidder to comply with these requirements within the stipulated time may result in forfeiture of the bid deposit.

Section 3(b) provides that one-half of the first installment will be applied as payment on the total purchase price when no less than 60 percent of the total purchase price is paid, or road construction required under the contract has been completed the value of which when added to the payments made is equal to no less than 60 percent of the total purchase price. The other half of the first installment will be held to satisfy the final payment on the contract.

Section 3(b) requires that the second installment must be paid prior to the cutting or removal of any forest products sold under the contract, except when payment is guaranteed through Sections 3(e), increased performance bond, or 3(f), payment bond. Upon payment of the second installment, the purchaser may cut an amount of forest products equal to that of a single installment. At that point the third installment payment is due. The installment payments continue in like manner until the total purchase price has been paid.

Installment payments according to Sec. 3(b) are due and payable without notice prior to cutting or removing forest products whenever the value of the forest products cut equals the sum of all payments not including the first installment, or half of the first installment when half of the first installment has been released as provided in section 3(b)(1). As a practical matter, however, the authorized officer must perform frequent inspections of the contract to assure that installment payments are timely.

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In the case of contracts with a term of 19 months or longer, no less than 20 percent of the total purchase price shall be paid by the first anniversary date. In the case of contracts with a term 27 months or longer, no less than 40 percent of the total purchase price, must be paid by the second anniversary date of the contract. In the case of contracts with a term of 39 months or longer, no less than 60 percent of the total purchaser price, must be paid by the third anniversary date of the contract. The value of completed road construction, based on BLM's appraisal allowance, will be applied as credit toward these payment requirements. The first installment is not considered payment until it is applied as payment, and as such is not considered "paid" for purposes of determining how much has been paid towards satisfying the aforementioned 20 and 40 percentages of the total purchase price.

Section 3(c) provides for reduction of the first installment to five percent of the installment amount listed in subsection (b) should the contracting officer request the purchaser to interrupt or delay operations for a period expected to last more than 30 days during the operating season. Such interruption or delay must be beyond the purchaser's control. The purchaser must request such a reduction in writing. When the purchaser has been notified that operations may resume, they must restore the first installment to the full value specified in subsection (b) within 15 days. Non-payment would be considered a breach of contract. No forest products may be cut or removed from the contract area until the first installment is restored.

Section 3(d) provides for adjustments in anniversary payment due dates if the contracting officer interrupts or delays contract operations for a period expected to last at least 30 days, and the interruption or delay is beyond the purchaser's control. Any adjustment made shall provide the purchaser with an equal amount of operating time prior to the beginning of the delay as would have been available without the delay. The purchaser shall request such adjustment in writing before the due date for an anniversary payment.

Section 3(e) makes effective the provisions of 43 CFR 5451.2 and 43 CFR 5461.2(b) which permit the cutting of forest products in advance of payment of the second and subsequent installments under an increased performance bond that is also referred to as the "cut-but-not-remove" bonding procedure. Section 3(e) and section 39(b) are closely related and should be studied together.

This "cut-but-not-remove" procedure established by section 3(e) is effective and beneficial in contracts where the purchaser wishes to cut a quantity of forest products well in advance of yarding. Use of this procedure permits the purchaser to conserve operating capital because they do not have to make installment payments to permit cutting of the forest products; instead, payments are made in advance of skidding or yarding to a loading point (refer to section 5) or removal. The purchaser may elect to use this procedure at any time.

When the purchaser elects to cut forest products against the bond, the purchaser informs the contracting officer of the approximate amount (value) of forest products they wish to cut in advance of payment. The purchaser must then arrange with the bonding company to increase the performance bond by that amount, in installment increments (refer to 43 CFR 5451.2, and use form 5460-3, Increase or Decrease Rider – Performance Bond). For example, assume a contract with a total purchase price of \$100,000, installment payments of \$10,000, and a basic

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performance bond requirement of \$20,000. If the purchaser in this example wishes to cut forest products in advance of payment up to an amount of \$40,000, it will be necessary to increase the basic performance bond by \$40,000. Thus, the total value of the performance bond required in this situation is \$60,000. The increased bond is the Government's protection for cutting in advance of payment. Upon submission of a bond in this amount and written approval of the increased bond by the contracting officer, the purchaser may cut forest products in advance of payment up to an amount of \$40,000. The purchaser may not, however, skid or yard to a loading point, or remove any of the forest products cut pursuant to this procedure, until payment has been made.

Payment for the felled forest products commences when the purchaser decides to skid or yard, or remove, to a loading point, or remove the forest products cut under the "cut-but-not-remove" procedure. Upon payment of the second installment, the purchaser may skid or yard to a loading point or remove forest products in an amount equal in value to the second installment.

The purchaser in this example must cease cutting forest products when the value of the forest products cut in advance of payment equals \$40,000, i.e., the amount of the increase in the performance bond. In order to continue cutting in advance of payment, the purchaser must begin making installment payments or increase the bond to a greater amount. Upon payment of an installment, the purchaser may skid or yard to a loading point or remove forest products in an amount equal to the amount paid. Payment also has the effect of advancing or reinstating the bond permitting the purchaser to cut an additional \$10,000 of forest products.

The purchaser may revert back to the payment in advance of cutting procedure (section 3(b) of the contract) at any time during the life of the contract.

Section 3(f) provides for cutting and/or removal of forest products in advance of payment of the second or subsequent installments, up to, but not exceeding, the penal sum of a payment bond, provided in accordance with section 39(d). A payment bond, is, in effect, guaranteed cash payment for forest products cut and can therefore be thought of as cash paid in advance of cutting. A payment bond does not, however, suffice as value paid in relation to the required anniversary payments. The amount of the payment bond is decided by the purchaser. Note that the payment bond is a guarantee to pay for forest products which have been cut in advance of payment, together with related road maintenance fees, etc., up to the penal amount of the bond and that payment for the forest products cut under the payment bond is accomplished by a system of monthly billings for the forest products as it is skidded or yarded to a loading point or removed from the contract area. Billings under this section are based upon contract inspections and unit values shown on Exhibit B. Billings should include required road maintenance fees and any optional contributions.

Payment is due within 15 days of the date of billing. The maximum time lapse between the date of skidding or yarding to a loading point or removal of forest products and the date of payment for forest products could be a month plus 15 days. Under special circumstances, the purchaser and the contracting officer may agree on a billing period shorter than one month.

In the event the purchaser uses an increased cut-but-not-remove performance bond in tandem with a payment bond, the value of forest products cut under the increased performance bond must be deducted from the total value of the forest products cut in advance of payment in order to determine the value of forest products cut under the payment bond.

Section 3(g) provides for calculation of forest products values in accordance with Exhibit B for the purpose of determining when payments are due or are subject to any special bonding provisions.

Forest products values are established by Exhibit B usually on a value-per-acre basis. This precludes arguments concerning such things as value cut because of distribution of high value species in the cutting areas or “high grade” selective logging performed by the purchaser. Exhibit B sets forth, prior to sale advertising, the computations which will be applied to the contract unit prices to determine the value per acre of subject to cutting, skidding or yarding, or removal.

Section 3(h) provides that if the time for cutting and removal specified in section 4 expires or the contract is cancelled, credit against the purchase price will be determined pursuant to section 11, which provides the process to determine the value of any forest products designated for removal and still remaining on the contract area (refer to discussion later for section 11). This process involves reappraisal and/or reoffer of any remaining forest products, which can take some time. Section 11 then states the Government will then bill the purchaser for the amount due, payable within 15 days of the demand for damages. The word “then” in the preceding sentence and in section 11 does not mean “immediately” upon the expiration date. First, damages must be computed.

Section 3(h) would seem to implicitly sanction non-payment of the total purchase price by the expiration date by virtue of prescribing a process to determine credit value of remaining forest products per section 11, and then bill the purchaser for the amount due. While the section 11 process will delay payment of the total purchase price during the establishment of any credit value, this does not change the fact that the purchaser is in default of the contract by virtue of not paying the total purchase price as of the expiration, and waiting for any credit against the total purchase price for any forest products they elected to not harvest.

Section 3(i) specifies that payments are paid at a depository as designated by the contracting officer. Payments may be made in the form of cash, money order, bank draft, check, or electronic transfer made payable to the Department of the Interior-BLM.

Section 3(j) provides for accrual of interest on overdue payments or other charges, beginning 30 calendar days after the billing date shown on the billing form. In addition, collection of administrative handling charges, administrative penalties and penalty interest is provided if payment is not received within ninety (90) days from the date the payment was due.

Section 4. Time for Cutting and Removal.

Section 4 of the contract specifies when the purchaser’s right to cut and remove forest products ceases.

Cutting of forest products may commence on the day the contract is signed by the contracting officer, provided payment requirements have been satisfied, and unless some provision of the contract restricts the operation dates of the contract or requires some other action by the purchaser before cutting can proceed. For example, the contract may require the purchaser to submit a logging plan or a fire prevention and control plan prior to cutting or cutting may be restricted to a certain period of the year.

The time for cutting and removal of forest products sold under the contract is measured from the date the contract is signed by the contracting officer. This is commonly known as the approval date. Time for cutting and removal is always expressed in months. It is not correct to specify a date in the space provided. The number of months of the contract is expressed in both words and figures, i.e., “thirty-six (36) months.”

There is no grace period after the expiration of the time for cutting and removal within which the purchaser can remove forest products. The maximum permissible time for cutting and removal is forty-eight (48) months (refer to 43 CFR 5463.1). Shorter contract terms may be appropriate to facilitate timely harvest to meet forest management objectives. This must, however, be balanced with the size and/or complexity of each sale (particularly considering any seasonal restrictions).

A reasonable period of time for cutting and removal should be evaluated and determined on the basis of factors such as: actual time during which the contract will be operable in relation to size of sale, complexity of sale, amount of required road construction; special salvage problems; and critical BLM developmental timetables. Consideration must also be given to industry’s need to plan and schedule timber harvest programs at least one year in advance. Sales with abbreviated time for cutting and removal are potentially disruptive of such planning efforts.

The time for cutting and removal for a particular sale shall be specified at the time of advertising. The time for cutting and removal may be extended under certain conditions as provided by Section 9 of the contract and described under 43 CFR 5473.4.

Section 5. Definitions.

This section defines six terms. The BLM uses Manual 1203 to delegate to the state directors and district managers authorities related to wood product sale contracts. The state director has the authority to redelegate these roles unless specifically restricted in Manual 1203.

Section 6. Inspection of Wood Products and Disclaimer of Warranty.

The forest products sale advertisement includes a listing of estimated volumes by species and sometimes product. The purpose of the purchaser’s warranty of examination and inspection, section 6(a), and the “disclaimer of warranty,” section 6(b) is to preclude the purchaser from making a claim against the Government in the event quantity, quality, or fitness of the forest products are not up to their expectations. Section 6 reinforces the “lump-sum” concept of the contract as set forth in section 2. Even in the event of an egregious error by the Government in the cruise estimate, there is no authority to adjust the total purchase price unless there is failure

of title. Section 6 makes it clear that the purchaser is responsible to make their own assessment of the quantity and quality.

Failure of title, a legal “term of art,” as used in this contract occurs when the Government cannot produce title to forest products which has been designated for taking and included in the sale by error or the products were damaged or destroyed before the title passed from the Government to the purchaser. For example, if trees on private property are erroneously marked by BLM employees for cutting, or contained within the cutting boundary, and such trees are included in the sale, the Government is obliged to make an adjustment in the purchase price upon submission of a claim by the purchaser. In this sense, title to certain forest products failed because the Government did not own the forest products which it purported to sell.

Section 7. Passage of Title and Risk of Loss.

It is important to set out in the contract the precise time when title to forest products sold passes from one party to the other. Title passes from the Government to the purchaser when the forest product has been paid for and removed from the contract area. In the case of either cut or uncut forest products sold and paid for under terms of the contract, title for a load of logs passes to the purchaser at the precise time that the logging truck leaves the contract area. Note that section 39(d) provides that a payment bond shall be considered as payment under section 7 for the purpose of passing title and risk of loss. Title is retained until payment is made for security purposes. This permits the Government to claim damages for or seize any logs removed from the contract area without proper payment.

The requirement that the logs must also be removed from the contract area serves to make it clear that title to any logs or other merchantable forest products left on the contract area upon the expiration of the cutting rights is retained by the Government even though the purchase price has been paid in full. The retention of title is important since such material may later be burned, re-logged, or sold as part of a separate forest products sale contract.

Under section 7, the issues of title and risk of loss have been separated so that the party holding the bare legal title may not be the one who must stand the risk of loss. Rather, the contract attempts to place the risk of loss on the party which has the greatest physical control of the forest products at the time of the loss. Responsibility for risk of loss for forest products sold under the contract differs depending on whether the sale is of uncut wind thrown trees and/or standing forest products, or “cut forest products,” and upon the status of cutting activity.

Sales are usually composed of timber which is either standing or down but has not been severed from the stump. The risk of loss for uncut standing or down forest products is with the Government. On the other hand, the purchaser bears the burden of loss for forest products in this category when they cut such forest products even though title to the forest products remains with the Government; except, however, the purchaser is relieved from risk of loss from fire in forest products which they have cut if the fire is not caused by the purchaser, their contractors, subcontractors, or other such employees. They are therefore not responsible for loss from fire caused by lightning, by a person recreating, or an escaped fire burning onto the contract area, etc.

There is no relief from risk of loss because of fire resulting from the purchaser's actions or caused by the purchaser's operations, whether negligent or nonnegligent.

A sale of "cut timber" is a sale of logs or of trees which have been severed from the stump prior to the sale date, e.g., the sale of timber felled in trespass, yet not removed. Risk of loss for cut timber sold under the contract is borne by the party holding title and includes situations involving use of payment bonds and passing title as stated in section 39(d). If a deck of logs sold to the purchaser is destroyed by fire before removal from the contract area, the Government must bear the loss and adjust the total purchase price accordingly.

Section 8. Sales of Additional Wood Products.

Section 8 of the contract relates to the sale of additional forest products to the contract. Additional sales are made for varying reasons. For instance, it may be necessary to widen a timbered right-of-way to facilitate the purchaser's road construction, or to salvage reserved timber on the contract area which is windthrown during the life of the contract and harvest by the purchaser is the only practical salvage opportunity. Note that certain restrictions apply to additional forest products of a volume of 250 thousand board feet (MBF) or more.

Additional forest products fall under the provision of 43 CFR 5402.0-6. There is no volume or value limit to additional forest products if the contracting officer determines that it is impracticable to offer the timber for sale competitively (refer to 43 CFR 5402.0-6(c)(2)). The test of impracticability is a relatively high bar; it means there is an impediment that is preventing the contracting officer from seeking competition. Note that when 43 CFR 5402.0-6(c)(2) is not applicable, the authorized officer must determine the additional forest products are in the public interest, and the volume of such a sale is limited to less than 250 MBF.

The purchaser must agree with the contracting officer that the additional forest products should be removed. The contracting officer cannot unilaterally require the purchaser to purchase additional forest products.

The purchaser may not cut and remove additional forest products until such time that the forest products have been properly designated by the authorized officer and written permission has been granted (usually in the form of an executed contract modification). The price for the additional forest products is established by the authorized officer in accordance with BLM prescribed procedures and the purchaser so notified.

The value of the additional forest products is added to the total purchase price of the contract and payment for such forest products is handled in one of two methods, depending on the circumstances. Briefly, the circumstances are as follows:

- a. If contract payment has not been made in full, the value of the additional forest products may be added to the total purchase price of the contract and payments must continue until the total purchase price, including the value of the additional forest products, has been paid in full.

- b. If all payments have been made, i.e., the total purchase price paid in full, payment for the additional forest products must be made prior to granting permission to cut and remove the additional forest products.

Section 9. Extension of Time and Reappraisal.

Section 9 of the contract sets forth the requirements for an extension of the time for cutting and removal of forest products sold. Occasionally, the purchaser may anticipate they will be unable to complete cutting and removal of forest products from the contract area within the time limit specified in section 4. In that event, the purchaser may request an extension of time. Basic authority regarding extension of contract is set forth in 43 CFR Subpart 5473.

The purchaser must comply with two basic requirements in submitting an application for extension, as follows:

- a. A written request for extension must be filed with the contracting officer prior to the expiration of the time for cutting and removal expressed in the contract.
- b. The purchaser must show that delay in cutting and removal of forest products is due to causes beyond their control and they are not at fault or negligent in the delay.

Failure of the purchaser to make a timely filing of an application for extension may deprive them of their rights to an otherwise valid application for extension. The regulations set forth in 43 CFR 5473.1 are unyielding in interpretation when they say that “written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.”

It is incumbent upon the purchaser to establish that the delay for cutting and removal of forest products was due to causes beyond their control. It is the responsibility of the contracting officer to weigh carefully the reasons offered and arrive at a decision to either grant or deny the request. Acts of God, such as fire, wind, and flood, which prevent the purchaser from completing the contract will, under normal circumstances, constitute a justifiable reason for granting an extension. Labor strikes, which oftentimes are beyond the control of an operator, may constitute a valid reason. In the case of the timber markets, both the regulations and section 9 of the contract specifically state that “market fluctuations are not cause for consideration of contract extensions.” Poor performance by the purchaser is not a valid reason for extension; however, waiting to operate until the last operating season of a three-year contract is not necessarily poor performance. The rejection or approval of an application for extension must be based upon a careful evaluation of the circumstances of each and every case.

In spite of the requirement for reappraisal in 43 CFR 5473.4-1(a), 43 CFR 5473.4(b) provides that the contracting officer may grant an extension of time, not to exceed 30 days operating time, without reappraisal.

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An extension of time long enough to provide an amount of operating time equal the operating time lost may be granted, without reappraisal, when the delay was caused by an action of the Government, such as the following:

- (1) Additional contract requirements incorporated in contract modifications requested by the Government;
- (2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;
- (3) Reviews for cultural resource values;
- (4) Court injunctions obtained by parties outside the contract;
- (5) Closure of operations by BLM or state fire protection agencies due to fire danger; or
- (6) Closure of operations due to unusual weather, where the BLM restricted operations during periods with specific environmental conditions, including but not limited to restrictions for low soil moisture, sustained dry periods, frozen soils, or operations requiring snow cover of specific depth.
- (7) County, State, or Federal government issuance of an emergency declaration or public order affecting a purchaser's ability to conduct operations in a contract area, along a designated haul route or proximate processing facilities.

“Operating time” means a period of time during the operating season, and “operating season” means the time of the year in which operations of the type required to complete the contract are normally conducted in the location of the forest products sale, or the time of the year specified in the forest products sale contract when such operations are permitted.

Upon written request of the purchaser, the state director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal and non-Federal lands timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed that necessary to meet the salvage objectives, or a maximum of 36 months. The state director may also waive reappraisal for such extension.

When the contracting officer determines that an extension is justifiable, for any reason other than stated in (1) through (7) above, they must then reappraise the forest products remaining in the contract area. Section 7 states that title to the forest products remains with the Government until it has been paid for and removed from the contract area. Thus, all forest products remaining on the contract area, whether standing or cut, must be reappraised; forest products cut by the purchaser are reappraised as standing forest products. The appraisal must not attempt to capture any investment of the purchaser in falling, bucking, yarding, etc., which may enhance its value. The reappraisal must be made and completed as of the last day of the contract or as soon thereafter as is reasonably possible. Circumstances of weather, etc., may dictate some deviation

from this instruction. Appraisal procedures must conform to prescribed procedures of the Bureau.

The regulations set forth in 43 CFR 5473.4-1(b) requires that “The reappraised total purchase price shall not be less than the total purchase price established by the contract or last extension.” If the reappraisal indicates a value less than the total purchase price expressed in the contract the purchaser is obliged to pay the greater amount. A reappraisal in connection with an extension application may never reduce the total purchase price of the contract.

The contracting officer may require the reappraised total purchase price to be paid in advance as a condition of granting an extension. Such may be the case if the values remaining to be paid are small or in the event the contracting officer has experienced payment difficulties with the purchaser. Normally, however, the contract extension will permit a continuation of the payments in accordance with the provisions of the contract.

Section 10. Violations, Suspension, and Cancellation.

Section 10 sets forth the action or remedies available to the Government in the event of a violation of any of the provisions of the contract by the purchaser. The section is divided into five subsections.

Section 10(a) permits the contracting officer to suspend the contract for any violation of the contract by the purchaser. The suspension must be by written notice and must detail the violations which have occurred. Operations on the contract necessary to remedy the violations are permissible. In the event the purchaser fails to remedy the violation within 30 days of receipt of the suspension notice, the contracting officer may take steps to cancel the purchaser’s rights under the contract and take such action as is necessary to recover damages suffered by the Government because of the violation. An exception to this time schedule occurs in the event of nonpayment, when due, of payment guaranteed by a payment bond. In such cases, written suspension should be issued promptly when payments due have not been received. At the same time, demand should be made upon the surety for payment. Under the provisions of the payment bond and section 10(a), the surety has 60 days after demand upon it to take whatever steps it finds necessary in order to accomplish the required payment. Cancellation action can be taken after the 60-day period if no payment is received.

The decision by the contracting officer to suspend a contract is a serious decision. An unjustifiable suspension can result in a claim and resulting payments to the purchaser. Generally speaking, a contract should not be suspended until it is clearly apparent that such action is necessary to stop a contract violation. The contract should not be suspended without prior consultation with the purchaser regarding the nature of the violation. Suspending an operation can have a serious effect on items such as the purchaser’s operating costs, the stability of their work force, or the continuity of essential log flow to a milling facility. Contract suspension is a powerful means to enforce the terms of a contract. The contracting officer must exercise judgment in the use of this provision and never use it indiscriminately nor arbitrarily.

It may not be necessary to suspend all operations in order to rectify the particular violation of the contract. As well, it may be beneficial to the Government to have certain operations, such as post harvest road maintenance or slash disposal proceed even though cutting operations are suspended on another cutting area. Suspensions may be issued in part.

Section 10(a) also provides for cancellation of the contract in the event of failure of the purchaser to comply with the terms and conditions of the contract. Cancellation of a contract and recovery of damages by the Government is a specialized legal matter which requires legal counsel and such action is taken only following review and assistance by the state director. Contract cancellation has significance only when forest products remain to be cut and/or removed.

Section 10(a) also states clearly that a contract cancellation is a cancellation of the rights of the purchaser. The contract obligations of the purchaser remain when a contract is canceled.

Section 10(b) adds force to section 10(a). Section 10(b) makes it clear that the purchaser must stop forest products cutting and removal operations when given written notice of suspension of operations.

If the purchaser cuts and removes forest products during the period of suspension, such cutting and removal is considered a willful trespass. This is important because Federal regulations prescribe triple damages for willful trespass. The possibility of payment of triple damages is a strong deterrent to continuation of cutting and removal operations by the purchaser during a period of suspension.

Section 10(b) also establishes a procedure for credit against the total trespass damages due the Government when there has been prior payment for the trespass forest products.

One of the most frequent contract violations is a failure to make installment payments when due before cutting or before removal under an increased bond. Most violations of this sort are short-lived and are remedied by prompt submission by the purchaser of another installment payment. Under such circumstances, suspension of the contract is a rarity. However, there can be instances when the purchaser habitually will not make timely payments. When aggravated cases such as this occur, the contracting officer has the discretion under section 10(c) of the contract to suspend the contract and to require the purchaser to pay the entire remaining balance or any portion thereof of the contract as a condition lifting the suspension. If timely payment is not received in 15 days following billing for forest products skidded, yarded, or removed under a payment bond, then suspension and demand on the surety should be prompt.

Section 10(d) establishes the procedure whereby a suspension notice will not be issued in the event the forest products are entirely removed or the time for cutting and removal has passed and the forest products payments have not been made. In this instance, the purchaser should be notified of the violation of the contract and demand made on the surety bond.

Section 10(e) requires the purchaser to cooperate in the investigation of the cutting, injury, or removal of forest products reserved from cutting under the terms and conditions of the contract. If the purchaser fails to cooperate in the investigation, the contracting officer may suspend any

portion or all of the operation as necessary to prevent the destruction of evidence of trespass by the logging operations.

Section 11. Credit Against Purchase Price.

Section 11 of the contract states to what extent a purchaser is entitled to credit against the total purchase price for forest products left on the contract area after the cutting and removal rights have expired or the rights of the purchaser have been canceled. The amount of the credit is limited to the total market value of the forest products as established by the contracting officer by reappraisal or resale, or the total value based upon contract unit prices, whichever is less.

Expired or canceled contracts upon which a significant volume of sold forest products remains should be completely reviewed prior to re-offering the same tract for sale to establish market value of the remaining forest products. Determine if significant changes in the contract terms are needed to protect the best interest of the Government. Any significant change in the contract terms would require that damages be based upon an appraisal rather than resale price. The appraisal may, however, take into consideration the resale price as one of the factors indicating market value.

The administrative costs of resale are charged to the purchaser. Administrative costs include costs of volume estimation and reappraisal, other field costs, costs of advertising, clerical time, etc.

As an illustration of this procedure, assume a purchaser was awarded a forest products sale contract for a total purchase price of \$100,000 and paid the sale deposit of \$10,000. The purchaser allowed their cutting and removal rights to expire without cutting any forest products. The purchaser then owes the Government \$100,000 less any credit for the payments. Upon resale by the Government, the forest products sold for \$65,000, and the costs of resale were \$1,000. The purchaser would be granted a credit of \$65,000 for the value of the remaining forest products less the resale costs of \$1,000, plus \$10,000 for the sale deposit, resulting in a net credit of \$74,000. Thus, rather than being assessed the full \$100,000 contract price, the purchaser would owe only \$26,000, representing the difference between \$100,000 and \$74,000. Demand is made upon the purchaser and surety for the amount of these damages.

The Government is entitled to retain all monies paid on a defaulted contract until such time as the amount of damages has been determined. The Government is then entitled to retain only that amount which makes it whole; it is not entitled to retain both the remaining forest products and payments on the purchase price which are in excess of its damages. When the total market value of remaining forest products exceeds the amount due on the contract, the defaulting purchaser receives credit only for the amount due. The purchaser is not permitted a profit as a consequence of the contract default.

As an illustration, assume the same circumstances as shown in the preceding paragraph except that the remaining forest products sold for \$110,000 rather than \$65,000. The purchaser would be granted a credit of \$100,000 for the value of the remaining forest products less the resale costs of \$1,000, plus \$10,000 for the sale deposit, resulting in a net credit of \$109,000. Since this is

more than the total contract purchase price, the purchaser would be given a refund of \$9,000, thus making the Government whole.

Section 12. Hold Harmless and Responsibility for Damages to the Government.

Section 12 establishes that the purchaser will hold the Government harmless from any claim for damage, loss, injury or death. Further, the purchaser is liable for damage suffered, cost or expense incurred by the Government by reason of breach of contract or wrongful or negligent acts. The provision also requires the purchaser to pay to the Government, on written demand, for such damage, cost or expense. Frequently, the purchaser repairs the damage rather than making a payment for the damage incurred.

For example, the purchaser may be negligent or derelict in the performance of their road maintenance responsibilities required by the contract and such negligence leads to a failure in the road. The purchaser is responsible for such damage. The purchaser must repair the road or must pay the Government for the damages and/or its costs to do the repair work. Another case might involve road construction which appears to meet contract requirements until a road failure reveals that related construction practices were, in actuality, wrongful or negligent. Under such circumstances, the purchaser will be liable for the damages and repair costs even though the contracting officer may have accepted the construction in accordance with section 18.

Significantly, the action leading to the damage must be by a breach of contract or wrongful or negligent act of the purchaser, their contractors or subcontractors, or the employees of any of these.

Section 13. Trespass.

Section 13 makes the purchaser, their contractors, subcontractors, or employees of any of them, responsible for trespass damages if they cut, injure, or remove any forest products other than that which has been sold under the terms of the contract. The provision states that damage for forest products trespass will be assessed in accordance with applicable law. The measure of damages is prescribed in 43 CFR 9239.1-3. Damages are to be paid by the purchaser upon written demand by the contracting officer.

This provision is not limited in application to forest products trespass which occurs on the contract area but may be applied to enforce payment for forest products trespass damages which occur off the contract area and in connection with operations under the contract. In the event a purchaser fails to pay demand for punitive damages, the case should be reviewed by the Regional Solicitor before making demand on the surety for the performance bond.

Section 14. Protection of Roads, Utilities, and Improvements.

Section 14 requires protection by the purchaser of roads, utilities and improvements on the contract area during the course of any operations, and includes the protection of transmission lines, roads, trails, ditches, etc. Protection of roads, utilities and improvements is not limited to Government owned roads, utilities and improvements, but includes private ownership as well.

The provision states that damage to roads, utilities and improvements shall be promptly paid for or repaired by the purchaser. Normally, damage to privately owned utilities is repaired by their owners and damages assessed the purchaser. Damage to Government owned improvements is generally repaired by the purchaser to the satisfaction of the authorized officer.

This provision is broad enough to cover most improvements. However, if an improvement requires special protection, it should be covered by special instructions under section 44, and the location shown on Exhibit A.

Section 15. Fire Prevention and Slash Disposal.

Section 15 is the basic provision of the contract relating to fire prevention and fire suppression on the contract area and other adjacent Government lands or Government lands used or traversed by the purchaser in connection with operations under the contract. It places a direct responsibility upon the purchaser to abide by applicable laws and regulations relating to fire prevention and suppression. In the absence of Federal laws or regulations specific to fire, the purchaser must abide by the laws of the State within which the lands to be protected are located. In addition, the authorized officer may require the purchaser to provide additional fire prevention or control measures through a Section 44 stipulation at any time during the life of the contract when conditions for fire are hazardous and special precautions are necessary.

Section 15 requires disposal of logging slash in accordance with a plan approved by the authorized officer. The authorized officer must plan for and direct slash disposal in a manner which is consistent with the forest management objectives of the BLM as well as established air quality rules and regulations.

Since section 15 covers fire prevention and suppression and slash disposal broadly, it is usually necessary to add special provisions under section 44 to accomplish specific requirements. For example, when State laws or rules do not meet minimum BLM requirements for fire equipment, the necessary equipment must be required under section 44, or when special slash disposal methods are to be used, they must be set forth under section 44. There may be applicable State law and requirements for fire prevention. There requirements can be repeated in the contract for the convenience of both parties.

Section 16. Construction, Use, and Maintenance of Roads and Facilities.

Section 16 relates to the construction or use of roads and facilities not otherwise covered by the contract. The provision permits the purchaser, subject to written approval by the contracting officer, to use roads in existence, the use of which is not otherwise authorized by the contract. The purchaser may also construct roads, subject to the written approval of the contracting officer, which are necessary to their logging operation. Section 16(a) should be used to control the amount, location, and standards of purchaser-proposed roads. This provision gives the purchaser an opportunity to request use of alternate road systems for transportation of forest products sold and is often used for approval of temporary spur road construction when needed. Primary road use and construction requirements must be covered in section 44.

Section 16(b) establishes the purchaser's responsibility for maintenance or repair of the roads they use under the terms of the contract. Standards for required purchaser maintenance must be stated in section 44. The purchaser's maintenance responsibility begins at commencement of operations and ends at completion of operations, except for slash disposal. The purchaser is not relieved of their slash disposal activity, or for maintenance and repair responsibility, during shut down periods occurring between operating periods. The purchaser's maintenance and repair responsibility spans the time of total operations on the contract (not limited by the date of expiration of cutting and removal rights). They should not be relieved of such responsibility for road segments or for roads in completed portions of the total contract area. The purchaser is not, however, responsible for repair of wear or damage when caused by third-party users or when the required maintenance exceeds the standards established under section 44.

After the contract is approved, situations may arise where the BLM is responsible for performance of certain road maintenance or repairs rather than the purchaser. When appropriated funds are not available, the contracting officer may accomplish this work through the purchaser by modification of the contract and reduction of the total purchase price. If the contract has been paid in full, a refund may be made in accordance with Manual Section 1374. If the maintenance or repair costs are excessive, as compared to the value of the road to the Government for administrative and/or public access, the contracting officer should consider the feasibility of cancellation of the contract.

Section 17. Limitations of Road Use.

Section 17 imposes limitations on the purchaser's right to use existing roads described in section 44 or new roads to be constructed pursuant to the terms of section 44.

Section 17(a) limits the purchaser's use of existing roads or roads constructed under the terms of the contract to the removal of forest products sold and the hauling of mineral materials under the contract. The purchaser may not haul private timber over these roads in connection with operations under the contract. The purchaser does have a right to use such roads for the removal of private timber when a right-of-way has been granted pursuant to 43 CFR Part 2800.

Section 17(b) allows the authorized officer the discretion to require the purchaser to discontinue use of roads described in the contract when such continued use will cause excessive damage to the roads. For instance, hauling heavy loads of logs over a road subjected to alternate freezing and thawing in the early spring can cause very serious damage to the road. Under such circumstances the authorized officer may wish to terminate use of the road until the conditions for use improve. Other types of weather conditions may require similar action. The contract requires that the contracting officer issue a written notice to the purchaser when use of a road is to be discontinued. It is recommended that the authorized officer discuss the matter thoroughly with the purchaser before taking action.

Section 18. Acceptance of Road Construction.

Section 18(a) provides that the purchaser will be granted written acceptance of road construction required by the contract upon its completion to the satisfaction of the contracting officer.

Acceptance can be granted on logical segments of a road versus the entire road. When written acceptance is given the purchaser, it serves to release them from further duty or liability for the construction or reconstruction of the road. For example, if upon completion of a road by the purchaser and acceptance of the construction by the contracting officer, a flood, or landslide, or other natural phenomenon destroys the road, the purchaser is not required to rebuild the road or restore it to usable condition at their expense. Rather, the Government stands the loss.

There is an exception to the release from liability for construction and this is tied directly to section 12 of the contract. If the failure of the road is due to a breach of contract or the wrongful or negligent acts of the purchaser, their contractors, subcontractors, or the employees of any of them, the release from liability is of no effect and the purchaser is required to pay for or repair the damage.

Section 18(a) should be applied as follows: When the purchaser has completed road construction pursuant to the terms of the contract, they so advise the authorized officer in writing. Upon receipt of the written notification, the authorized officer must promptly inspect the road. If road construction meets the contract requirements and is satisfactory to the contracting officer, they provide the purchaser with a written notice of acceptance. If road construction is unsatisfactory, the authorized officer must point out the deficiencies to the purchaser. When deficiencies have been corrected, the purchaser must again notify the authorized officer in writing and request an inspection.

Section 18(b) requires that the purchaser remain responsible for the maintenance of accepted roads in accordance with the provision of Sections 16 and 44 of the contract. Maintenance of roads constructed under the terms of the contract must be spelled out in section 44.

Section 19. Cost Adjustment for Physical Changes.

Section 19 prescribes dollar levels for BLM sharing in the cost to repair major physical damages, due to a single event, which occur on a road being constructed, but prior to its acceptance by BLM. The purchaser, therefore, does not have the full responsibility for repair of road damages occurring before acceptance of the road construction. The Disaster Relief Act of 1974 (Public Law 93-288) and 43 CFR 1815.1-1 provides for relief in the event of damage due to a major disaster, as determined by the President. Section 19 brings the concept of the Disaster Relief Act into the contract by providing Government sharing in the cost of repair of major physical changes due to a single event such as a local flood, intense rainstorm, a mass soil movement, or a large fire. An event can be local in nature and cost sharing can follow without a “major disaster” determination by the President.

The Government has three options for meeting its share cost of the additional work: reduction of the purchase price through contract modification, or payment of the cost to the purchaser, or performing its share of the work.

There must be advance approval by the contracting officer for the additional work or the purchaser will not be eligible for cost adjustment.

In the event the Government's share would be so great as to not be economically justifiable, the contract should be reviewed with the state director. 43 CFR 1815.1-1(b) provides that where the damages are so great that restoration, reconstruction, or construction is not practical under this cost-sharing arrangement, the contracting officer may cancel the contract notwithstanding any provisions thereof.

Under normal circumstances, the preferred method is adjustment of the total purchase price via a contract modification. If the contract has been paid in full, a refund may be made in accordance with Manual Section 1374.

Section 20. Design Change.

This section establishes a procedure for accomplishing necessary design changes in contract construction or improvement requirements for roads, road structures (culverts, etc.), or bridges. A design change costing \$2,000 or more is considered to be a change of substantial nature and the cost (including the first \$2,000) will be borne entirely by the Government. Agreement must be reached between the purchaser and the contracting officer concerning the changed conditions, the remedy, and related costs prior to effecting the change or the contracting officer must determine that the change is necessary and direct the purchaser to make the change. This provision could be utilized to remedy gross design errors but can be even more important as a procedure for remedy of unanticipated environmental complications.

A design change can result in an increase or decrease in the purchase price, and cause more or less work than originally planned in the contract. If the contract has been paid in full, a refund may be made in accordance with Manual Section 1374.

Section 21. Rights and Obligations After Time for Removal of Personal Property or Cancellation of the Rights of the Purchaser.

Section 21 of the contract establishes the purchaser's responsibility for completing work required by the contract even though their right to cut and remove forest products as specified in section 4 and their right to remove personal property as specified in section 40 have expired. Also, all provisions of the contract for the benefit and protection of the Government and third parties remain in effect until the contract is terminated by the Government.

For example, slash disposal may carry over for several years for any number of reasons. If during the slash burning the fire should escape and destroy power poles of a privately owned transmission line in the contract area, the provisions of section 14 would still apply.

The purchaser cannot escape performance for the benefit or protection of the Government and third parties by permitting their rights to expire. A contract should not be terminated by the contracting officer until all obligations of the purchaser to either the Government or third parties have been performed.

Section 22. Protection of Survey Monuments, Witness Corners, Reference Monuments, and Bearing Trees.

The purchaser must protect all survey monuments, corners, and bearing trees during their operations on the contract area. If damaged or destroyed, the purchaser must hire an appropriate surveyor to reestablish, restore, or replace the corners, bearing trees, etc., using official Survey of Public Lands procedures. During sale preparation, BLM must identify the various survey corners, bearing trees, etc., located on the contract area and should note such information on Exhibit A. Any special protective measures needed should be included in section 44.

Section 23. Protection of Cultural Resources.

The purchaser must cease operation if they become aware of the presence of any cultural resources and notify the authorized officer of such. Protection of said cultural resources may necessitate a modification of cutting area boundaries, and/or the volume and value in Exhibit B. A change in harvest method may provide the necessary protection. The contracting officer must notify the purchaser in writing what protection measures may be necessary and when operations can resume. Any cultural resource known to be on the contract area during sale preparation should be identified on Exhibit A. Any special protective measures needed should be included in section 44.

Section 24. Purchaser's Representative.

Section 24 states that the purchaser is required to designate a representative who will be on the contract area when operations are in progress and shall authorize them to receive instructions from the authorized officer.

It is the exception rather than the rule when the purchaser is personally active on the contract area other than on an occasional basis. Usually, business interests divide their time, and visits to the contract area are sporadic, or they subcontract the logging and construction to some other entity. To properly administer a forest products sale contract, the authorized officer must have available a representative of the purchaser on the contract area to talk about the contract and receive instructions. The authorized officer must not be faced with the situation of searching for the purchaser. The authorized officer must be able to talk to a person on the ground with some assurance that instructions will be followed or reported to the purchaser.

At the outset of the contract, the contracting officer should request the purchaser to identify the individual who will act in the capacity of the purchaser's representative. This must be designated in writing.

Section 25. Simultaneous Use of Contract Area by Others.

Section 25 of the contract permits the simultaneous use of the contract area by others if the authorized officer determines that such use will not seriously interfere with the operations of the purchaser. This means that the authorized officer can issue a permit, lease, or contract to another party for some purpose covering all or part of a forest products sale contract area. For example, the contract area may include lands suitable for grazing. If grazing of the contract area will not

seriously interfere with the purchaser's logging operations, the authorized officer may include the lands within the contract area in a grazing lease.

Simultaneous use of the same area for competing uses is not encouraged. Forest products sales contracts are of relatively short duration. Therefore, it may be best to delay issuance of any lease, permit, or contract for competing uses until the forest products sale contract is terminated.

Section 26. Watershed Protection: Water Quality, Erosion Control, and Soil Damage.

Section 26(a) specifically requires the purchaser to comply with applicable State and Federal laws and regulations pertaining to water quality. If the purchaser identifies a contract provision that conflicts with State Law, and they bring it to BLM's attention, the BLM must modify the contract to bring into compliance. Special contract provisions for timing of road and bridge construction, culvert installation, and logging are essential in critical situations involving water quality standards. Close coordination with proper State or Federal officials will be necessary during planning for operations which will cause temporary water quality degradation.

Section 26(b) requires the purchaser to take every reasonable precaution not to pollute. The determination of what is or is not reasonable is a judgment factor and must be decided on a case-by-case basis. This section also enables the Government to enforce correction of pollution conditions off the contract area resulting from the purchaser's operations. When such damage occurs on other than BLM-administered lands, the administering agency or landowner must be contacted prior to taking corrective action.

Section 26(c) requires the purchaser to take every reasonable measure to minimize erosion and soil damage and discontinue any operations, upon receipt of written notice from the contracting officer that due to weather or soil moisture conditions, such operations will cause excessive damage to the soil. It specifically states that construction of water bars on yarding roads and spur roads is a reasonable precaution.

Section 26 is the basic contract provision relating to stream clearance and water bar construction. Use special provisions in section 44 to deal with unusual problems which are anticipated.

Section 27: Refuse Control and Disposition of Waste Materials.

Section 27 provides for control of the disposal method and approval of the disposal site for refuse, etc. The authorized officer cannot prescribe disposal sites on lands controlled by others. Special emphasis is placed on the prevention of pollution of a watercourse or waterway during the disposal process. Disposal should be timely and refuse should not be allowed to accumulate.

Section 28: Storage and Handling of Hazardous Materials.

Section 28 requires action for protection of the environment. Toxic or volatile materials which are stored must be suitably contained and located so as to avoid contamination of water in the event of spillage. If a suitable storage location is not available, the stored material must be

located within suitable containment dikes. Storage requirements under this provision will not be interpreted to apply to trucks or logging equipment because of their fuel tanks.

There may be State requirements for hazardous material spill prevention and/or abatement including equipment the purchaser is required to have at the work site or in transit (the hauling of logs). It is important to be aware of these requirements and inform the State if there are apparent violations. There may be issues of Government (as the landowner) liability issues if clean-up operations do not proceed expeditiously and/or effectively. It may be prudent to repeat any appropriate state requirements in section 44.

Section 29: Safety and Health.

Section 29 requires the purchaser to conduct their operations in accordance with applicable laws, codes, and regulations regarding safety, health, and sanitation. For example, the purchaser must comply with existing safety requirements for the control, storage, and handling of blasting materials and industrial chemicals. The purchaser will also be required to comply with State safety codes during operations.

Section 29(b) allows for the contracting officer to unilaterally modify the contract in the event that a safety requirement changes during the contract period.

Section 29(c) requires the purchaser to provide for traffic control and safety in and along roads and trails that have the potential to be impacted by operations.

Section 29(d) permits the purchaser and those operating for the purchaser to fell any trees that pose imminent danger or safety concerns to it employees, the public, or Government employees. This provision is for hazards that cannot be mitigated in another reasonable way and that have a potential to cause an accident. This section further states that the contracting officer will verify the necessity of cutting the reserved trees under this provision to prevent abuse such as the cutting of trees where reasonable alternative hazard mitigation measures could have been chosen.

Logging operations present certain hazards, both from the size and type of equipment being used and the nature of the product being removed. Safety relates to the well-being of all people who have occasion to be on the contract area: the purchaser, their employees, the public, and Government employees.

Section 30: Equal Opportunity.

The contracting officer and designated representatives should be generally familiar with Executive Order No. 11246, dated September 24, 1965, as amended. Finally, the authorized officer must be alert to instances of noncompliance by the purchaser with the provisions of Executive Order No. 11246 as they apply to forest products sale contracts.

Section 31: Records and Reports.

This section is the authority for the contracting officer to request certain reports from the purchaser such as the Log Scale and Disposition of Timber Removed Report (5460-15).

Section 32: Unsatisfactory Bond.

Section 32 of the contract permits the contracting officer to require the purchaser to furnish a new performance or payment bond whenever any prior bond furnished to them becomes unsatisfactory.

Unsatisfactory bonds are usually associated with the termination of a “Certificate of Authority as Acceptable Surety on Federal Bonds” issued by the U.S. Department of the Treasury to acceptable surety companies.

Section 33: Assignments.

An assignment is the transfer of rights and responsibilities from one person or firm to another. A contract executed on form 5450-003 may be assigned from the purchaser to another party. Section 33 of the contract sets forth the requirements which govern an assignment. Basic authority for assignment of forest products sale contracts is found in 43 CFR Subpart 5474.

Section 33(a) specifies that an assignment may not be made without the written approval of the contracting officer. This requirement permits the contracting officer to screen the assignee to determine their qualifications. The contracting officer should not approve assignment to an assignee who will not qualify as an original purchaser. Qualification of bidders and purchasers are set forth in Handbook H-5450-1, Award of Contract. Section 33(a) also stipulates that an assignment shall contain all the terms and conditions agreed upon by the parties involved. Use of BLM’s standard assignment form ensures identification of all appropriate terms and conditions.

Section 33(b) sets forth certain criteria for consideration of the contracting officer in evaluating an assignee. The assignee must be authorized to transact business in the State in which the forest products are located. This has practical application in the case of a corporation. The contracting officer may require the assignee to submit such information as is necessary in order to judge their ability to perform the contract. This may require filing by the assignee of a financial statement, partnership agreements, corporate documents, etc., as the case may be. The assignee is also required to furnish a performance bond, as required by section 39, or a commitment from the previous surety to be bound by the assignment, in order for the assignment to be approved by the contracting officer.

A general condition of the assignment as stated in 43 CFR Subpart 5474.1(b) is that the assignor is released from any further liability under the contract. The assignee is entitled to all the rights and subject to all the obligations under the contract.

Section 34: Contingent Fees.

Section 34 of the contract contains language required by law to be in a Government contract.

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If the contracting officer learns of a misrepresentation, violation, or breach under this provision, the state director and regional solicitor should be so advised.

Section 35: Successors in Interest.

Section 35 ensures that all obligations of the contract shall be binding upon successors in interest, and that the benefits will extend to such successors.

Section 36: Exercise of Rights or Duties of the Authorized Officer.

Section 36 of the contract permits the contracting officer to designate a representative or representatives (authorized officers) to exercise the Government's rights or duties under the contract.

Section 5 defined the contracting officer as the BLM official who would have authority to execute this contract or delegate authority to act in connection with this contract. This official is, almost without exception, the district manager or field manager in matters involving forest products sales.

As a practical matter it would be difficult, if not impossible, for a district or area manager to personally carry out the details attendant to proper administration of a forest products sale contract. The district manager or field manager must be able to designate representatives to oversee the contract. The designated representative of the contracting officer should be identified in writing to the purchaser, typically in the letter conveying the approved contract to the purchaser and later if there are any changes.

As a matter of policy, the exercise of the rights or duties by the designated representative is limited to supervisory functions and routine administrative matters. The contracting officer cannot delegate their signing authority, as such, and they must sign all major actions under the contract. Examples of major actions are contract modifications, suspension notices, demands for damages, approval of assignments, temporary waivers of seasonal restrictions, and contract extensions.

Section 37: Officials Not To Benefit.

Section 37 is included in the contract as a matter of law. In effect, it prohibits any member of, or delegate to, Congress, or Resident Commissioner, or officer, agent, or employee of the Department of the Interior from profiting from the contract in any way. The contracting officer does not have a primary administrative function in its enforcement. Violation of the provision will in all probability be brought to the attention of the contracting officer by an investigative agency of the Government.

Section 38: Disputes.

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The purchaser has the right to file a claim, as stated in section 38 of the contract, relating to any dispute which may arise under the contract. Such claims are subject to the Contract Disputes Act of 1978.

The contracting officer is responsible for administering contract disputes. Contracting officers should refer to Handbook H-5460-1, Timber Sale Contract Administration, for processing claims and rendering claim decisions under the Act. Instructions for responding to receipt of administrative appeal filed under 43 CFR Part 4 and preparing appeal file are found under H-5460-1.

Section 39: Bond.

Section 39 of the contract is divided into four subsections as follows:

- (a) States the amount of the performance bond required by the contract.
- (b) Provides for increasing the performance bond to ensure payment in the event of cutting, but not skidding or yarding to a loading point or removal, before payment.
- (c) Provides for reduction in the performance bond as contractual items are completed, forfeiture of the performance bond for failure to perform, and cancellation of the bond upon satisfactory performance of the contract.
- (d) Provides for a payment bond to guarantee payment after cutting and/or removal of forest products.

It is important to note that the purchaser can elect to use any or all of the bonding opportunities provided by sections 39(b) and 39(d) of a contract.

Acceptable performance bonds are:

- Bond of a corporate surety.
- Personal surety bond.
- Cash bond (cash, cashier's or certified checks are acceptable; personal checks are not acceptable).
- Negotiable Securities of the United States.
- Any guaranteed remittance approved by the contracting officer.

The types of bonds acceptable as payment bonds are:

- Bond of a corporate surety.
- Negotiable Securities of the United States.
- Any guaranteed remittance approved by the contracting officer.

(NOTE: All of the bonds mentioned must be executed on an approved form.)

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Space is provided in section 39(a) for entry of the amount of the performance bond required for a contract. The minimum performance bond requirements, as set forth in 43 CFR 5451.1, are as follows:

- a. A performance bond of not less than 20 percent of the total purchase price, but not more than \$500,000 is required for all contracts of \$10,000 or more. A performance bond can exceed \$500,000 when increased to permit cutting in advance of payment.
- b. A performance bond of not less than \$500 is required for all installment contracts less than \$10,000.
- c. For cash sales under \$10,000, the requirement of a performance bond is discretionary with the contracting officer.

The amount of the performance bond is expressed in both words and figures in section 39(a). The general practice when computing the amount of the bond under a. above is to increase the computed figure to the next highest \$100. For example, a bond computed to be \$8,710.50 would be raised to \$8,800.

It should be noted that the amount of the required performance bond as set forth in the performance bond regulations is a minimum requirement. The contracting officer may require a performance bond in a greater amount if such action is necessary to fully protect the interests of the Government.

Section 39(b) states the requirements of a performance bond increase if the purchaser elects to cut forest products, but not skid or yard to a loading point or remove from the contract area, before payment of the first or subsequent installments. The bond must be increased in amounts equal to one or more installments and must be approved in writing by the contracting officer prior to cutting any forest products under the adjusted bond. The five types of bonds acceptable as a performance bond are also proper for this increase bond. When a corporate surety is used, the increase bond rider must be with the same surety. BLM forms for bond increase riders should be used for this purpose.

When the purchaser increases their performance bond as previously described, they do so in amounts equal to one or more installments as set forth in section 3(b). This is a requirement established in 43 CFR 5451.2. For example, a purchaser having \$10,000 minimum installments and wishing to cut about \$36,000 worth of forest products in advance of payment would be required to increase their performance bond by at least \$40,000. No forest products may be skidded or yarded to a loading point or removed from the contract area prior to payment of any installment which, but for provisions of subsection 3(e), would otherwise be due under the provisions of subsection 3(b).

There is no limit to the amount of performance bond increase which the purchaser may elect under section 39(b). The purchaser can elect to cut 100 percent of the forest products sold before skidding or yarding to a loading point or removal from the contract area by increasing the performance bond in installment increments sufficient to equal or exceed the total purchase

price. Refer to discussion under section 3 concerning deferred payment for cutting prior to skidding or yarding to a loading point or removal of forest products from the contract area.

Section 39(c) is concerned with several administrative matters involving the performance bond. This subsection provides for the bond to be reduced to 10 percent of the total purchase price when 60 percent of the total purchase price is paid or road construction required under the contract is completed, the value of which when combined with contract payments equals 60 percent of the total purchase price. In no case will the amount of the bond be lowered below the appraised cost of uncompleted post-harvest requirements of the contract. This subsection also permits the contracting officer to reduce the bond required by section 39(a) when contract requirements are completed to the satisfaction of the contracting officer. The reduction, if any, is not automatic and must be requested by the purchaser. Further, no reduction below 10 percent of the total purchase price or the cost of uncompleted postharvest requirements is permitted until the total purchase price has been paid. Section 39(c) has a space provided where the amounts of the minimum bond as required by regulation until the 60 percent completion point is reached and minimum bond required until the total purchase price is paid are entered. Here again, the amount of the bond entered in the space provided is expressed in both words and figures. The amount of the bond expressed in section 39(a) and section 39(c) will be the same when only a minimum bond is required of the purchaser.

Section 39(c) also provides that the contracting officer will determine damages in default situations and that the performance bond will be forfeited to such amount. Also, section 39(c) stipulates that in the event the amount of the performance bond is inadequate to pay the damages determined by the contracting officer, the purchaser will pay the excess amount.

Finally, section 39(c) provides that upon satisfactory performance of the contract, the bond shall be cancelled and any cash or negotiable securities deposited in lieu of a performance bond shall be returned to the purchaser.

Section 39(d) provides for use of a payment bond to guarantee payment for forest products which the purchaser elects to either cut (payment not assured by cut-but-not-remove increased performance bond), cut and remove, or remove (forest products already cut). Payment bonds must be in an amount equal to one or more installments and approved in writing by the contracting officer before cutting or removal of any forest products covered by the payment bond. Section 39(d) does not stipulate minimum or maximum payment bond amounts as long as the bond is in the amount of one or more installments. Remember that the purchaser can use both the cut-but-not-remove increased performance bond and a payment bond on the same contract. For payment bonds to be most useful to the purchaser in maintaining a continuous operation, the total amount of the bond should be sufficient to cover their planned monthly rate of cutting in relation to their anticipated rate of removal and the time lapse for submission of payments. Otherwise, if cutting exceeds the value of the payment bond, the operation must be suspended pending receipt of proper installment payment in accordance with section 3(b).

If forest products cutting and skidding or yarding to a loading point or removal of forest products from the contract area is to be accomplished as a continuous and nearly simultaneous operation, the amount of the payment bond should be at least twice the value of the forest products to be cut

in one month. When operations on a contract cease for an extended period, the amount of a payment bond can be reduced to the value of forest products actually cut.

The blanket payment bond form provides the purchaser with the opportunity to place more than one of their contracts under the payment bond at one time in one district. Contracts may be added, by amendment, to the list on the bond form upon written application from the purchaser to the contracting officer and subsequent approval by the contracting officer together with written notification by them to the surety of such addition. The contracting officer must remove contracts from the list after written request from the purchaser and when security for payment under the bond is no longer needed for that particular contract.

When more than one contract is covered by a blanket payment bond, the minimum penal amount of the bond must cover the total of the minimum installments required by individual contracts. Similarly, the sum of the value of cutting prior to payment on all contracts covered under one bond cannot exceed the minimum penal amount of the bond. For contract administration purposes, a contract should not be added to a blanket payment bond until the purchaser's rate of cutting and removal can be predicted with reasonable accuracy. This can best be done just before operations begin or when the purchaser's logging plan is submitted for review and approval. Contracts may be added to the bond at any time during the life of the contract.

Payments secured under the payment bond also include related road maintenance fees.

The blanket payment bond form also contains specific provisions, in terms of timing, for cancellation of the bond, except for the liabilities which precede the effective date of the cancellation.

Section 40: Time for Removal of Personal Property.

Section 40 specifies the time limits within which the purchaser must remove their personal property from the contract area. This time commences with the expiration of the time for cutting and removal of forest products as expressed in section 4 of the contract and continues for a specified period of time. The period, expressed in months, is entered in the blank provided in the section. By policy, the minimum time allowed for removal of personal property is 1 month and the maximum period is 12 months. As is the case with the amount of time permitted for cutting and removal of forest products sold under the contract, the contracting officer sets the limits for removal of personal property based upon the circumstances of the particular contract. Section 40 provides that the contracting officer may grant up to 3 additional months for removal of personal property when deemed appropriate to do so.

Personal property is defined in section 40 as "equipment, improvements, or other personal property." Logs are not personal property within the meaning of this contract and may not be removed during this period. Road surfacing, culverts, bridges, etc., which the purchaser places on the contract area and which becomes a permanent part of the property are not considered personal property. Logging equipment, portable sawmills, and sanitary facilities are examples of personal property.

Section 40 provides that equipment, improvements, or other personal property remaining on the contract area at the expiration of the period for removal or extension thereof, becomes the property of the Government. Since disabled logging equipment, steel cable, etc., might be abandoned by the purchaser on the contract area, it is desirable to provide at least three months for removal of personal property, thereby ensuring adequate time to enforce purchaser removal of such refuse in accordance with section 27, or compensation to the Government for the cost of such disposal in accordance with section 12.

Abandoned or unclaimed property found on the contract area must be processed and disposed of in accordance with BLM policy and State Statutes and Regulations. State or local authorities should be contacted first before any actions are taken.

Section 41: Log Export and Substitution.

Section 41 describes the applicability and restrictions related to the export of unprocessed federal timber. The purchaser is responsible for understanding the definition of unprocessed timber under section 41(a). Section 41(b) describes specific manufactured products that are not considered unprocessed and thus no longer affected by the export laws. Sections 41(d) requires the purchaser to require any third party that intends to acquire timber under this contract to complete and return an Export Determination (5450-017) form. Section 41(e) requires the purchaser to return the completed forms which document the chain of custody of products under the contract to verify compliance with the law. Section 41(f) provides for remedy for any noncompliance with this section.

Section 42: Species Protection, Stays, and Injunctions.

Section 42 is designed to allow the BLM to suspend and or cancel the contract in the event of a number of circumstances that could suspend and nullify the BLM decision the sale is under. Examples include court injunctions, discovery of threatened or endangered species, and stays from the Interior Board of Land Appeals.

Section 42(b) allows the purchaser to withdraw performance and payment bond coverage beyond what is needed to cover pending payments and uncomplete contract requirements. In addition, delays under section 42 greater than 30 days allow for the first installment to be reduced by 50 percent provided that if the suspension is lifted the installment must be restored within 15 days.

Section 42(e) allows for the purchaser to be refunded or have transferred to another contract the value of completed road construction for a contract suspended under this section.

Section 42(f) specifies that the lifting of a suspension and a commensurate extension without reappraisal constitutes a full remedy of any damages due to lost time. If the source of the delay was not revealed until after the bids were received and a significant market change occurred during a prolonged delay, the authorized officer may consider mutual cancelation.

Section 42(g) provides for early termination for ESA issues, appeal stays, or injunctions. If early termination occurs, Section 42(h) provides for the reductions of the total contract price for any

wood products that must remain on the contract area as well as compensation for actual costs the purchaser will incur due to the early termination.

Section 43: Wood Products Reserved from Cutting.

Section 1 of the contract specifies that the Government sells to the purchaser and the purchaser buys from the Government all forest products on the contract area except those forest products reserved by the Government under section 43. Forest products to be reserved from cutting and retained as the property of the Government must be adequately and properly described in the space provided in section 43. The importance of this provision can be well understood when it is realized that the purchaser may cut and remove any and all forest products on the contract area that are not otherwise reserved by the Government. On the other hand, forest products that have been sold and are intended to be cut should not be inadvertently reserved in section 43.

It is not always practical to list all reserved other vegetative resources by species in section 43. Therefore, all other vegetative resources are generically reserved except those included in Exhibit B.

Forest products reservation stipulations to cover varying field conditions have been developed and are available from HQ-220, and additional stipulations may be developed in coordination with the State Forestry Lead. Foresters must accurately translate field conditions (markings or reservations) using appropriate contract language and map symbols.

Section 44: Special Provisions.

Special provisions of the contract which are needed for a particular purpose are set forth in section 44. Special provisions should be included to lend clarity and detail when the standard provisions (sections 1 through 43) will not properly cover the situation. Special provisions which contradict the standard provisions should not be included in the contract.

Form 5450-003 has been developed over a period of years, utilizing the best experience and knowledge of Bureau personnel. The contract form has been developed so that each contract made and entered into does not require legal review prior to execution. In the choice of special provisions, it is important not to upset the balance of the contract and thereby impact the utility of the form.

New special provisions proposed by a district should at a minimum be coordinated with the state office forestry lead.

Execution of the Contract.

The successful bidder must sign and return the contract within 30 days after receiving it, together with the bonds and payment as required, unless an extension of time is allowed.

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Commitment to the terms and conditions of the contract is complete (fully executed contract) upon submission of the required bond and payment by the purchaser and signature by the purchaser and the contracting officer.

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Appendix 2**Explanation of Form 5450-004, Contract for the Sale of Timber and Other Wood Products –
Scale Sale****Table of Contents**

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For Form 5450-004, the Preamble and sections 1, 4-7, 12-18, 20-33, 35-38, and 40-44 are the same as in the Contract for the Sale of Timber and Other Wood Products – Lump Sum (Form 5450-003).

H-5420-1 Appendix 1 should be used to assist in interpretation of the standard provisions for the scale sale contract form.

Sections 2, 3, 8-11, 19, 34, and 39 are similar and only the differences are discussed in this Appendix. Hence, for these sections, Appendix 1 must also be used for interpretation of the scale sale contracts.

Section 2. Total Purchase Price.

Section 2 of the contract requires payment to be made subject to the schedule, measurement standards, requirements, and definitions of forest products in Exhibit B and establishes purchaser liability for payment of the total *actual* purchase price in accordance with Section 3(h) even when all of such forest products may not actually be cut and removed prior to the expiration of the time for cutting and removal. The total *estimated* purchase price is based on the by species pre-sale cruise estimates of volume, and per species and unit of volume appraised prices, and is stated as such in Exhibit B and the sale notice. The total *actual* purchase price is established by the measurement of volume actually removed from the sale area, and scaled or measured, and any volume determined to be remaining volume (refer to Section 3(g)) at the per species and unit of volume bid prices. This contrasts to a contract on a “lump sum” basis where the total payment is independent of any measure of the quantity of forest products actually removed.

Section 3. Payment.

Section 3 of the contract is divided into 10 subsections, all of which must be used in concert with the manner of payment set forth in Section 2 of the contract.

Section 3(a) of Form 5450-003 does not appear in Form 5450-004. This is because in 5450-004, section 2 says payment is made in accordance with Exhibit B, and in a scale sale where cutting and removal occur right up to the expiration date, payment will not be made until after the expiration date, hence no requirement that the total actual purchase price be paid in full prior to the expiration date.

Section 3(a) of Form 5450-004 differs from section 3(b) of Form 5450-003 by establishing the value of “measured or removed” forest products as the determinant for the payment of the second and subsequent installment. “Measured” refers to forest products that have been removed and scaled (or otherwise measured) to determine the actual volume. Section 3(a) also differs in that the estimated purchase price in Exhibit B is used to establish the 20, 40, and 60 percent payments that must be made on the anniversaries of the contract.

Section 3(e) of Form 5450-004 differs from section 3(f) of Form 5450-003 by establishing forest products “measured and removed” as the determinant of the value for which the purchaser is billed.

Sections 3(b), 3(c), 3(d), and 3(i) of Form 5450-004 match sections 3(c), 3(d), 3(e), and 3(j) of Form 5450-003, respectively.

Section 3(g) of Form 5450-004 does not appear in any respect in Form 5450-003. Section 3(g) establishes what is considered to be *remaining volume* of timber on the contract area as of the expiration date, which takes two forms. First, there may be merchantable and other timber sold under the contract (meeting the merchantable timber specifications in Exhibit B) that is felled or wasted in high stumps, tops, chunks, long butts, or broken by careless falling, bucking or logging, or allowed to deteriorate due to abnormal delay in scaling caused by the purchaser. The volume of this timber and other wood products is estimated. Second, there may be timber or other wood products sold that is left standing by the purchaser; the volume of this timber is estimated. The sum of these two forms of volume constitutes the *remaining volume* on the contract area for which a value is determined in accordance with the unit prices bid and shown on Exhibit B. Note that the value determined here as provided in Exhibit B is for calculating the total actual purchase price which does not include any credits from Section 11. Section 11 describes the method for calculating the credit value of remaining timber against the purchase price, which is used as subsequently described in section 3(h) to calculate the final amount due from the purchaser.

Section 3(h) of Form 5450-004 differs from Section 3(h) of Form 5450-003 by establishing a different method of calculating the final amount due from the purchaser. This is a multistep process that begins by calculating the total actual purchase price. As explained in section 2, the total *actual* purchase price is established by the measurement of volume actually removed from the sale area, and scaled or measured, and any volume determined to be remaining volume (refer to section 3(g)) at the per species and unit of volume bid prices, accounting for any adjustments under sections 6, 7, 8, 9, 19, 20, or 44. The next step is to subtract from the total actual purchase price the total amount paid by the purchaser, and the credit value of remaining volume described in 3(g). The credit value of this remaining timber is computed according to section 11. Note that wasted wood products described in 3(g) often have no market value when determining credit against the purchase price in section 11.

Section 3(j) of Form 5450-004 differs from section 3(i) of Form 5450-003 by specifying forest products may not be cut or removed until the required payments have been made, which is provided in section 3(a) of Form 5450-003.

Section 8. Sales of Additional Wood Products.

Section 8 of Form 5450-004 differs from section 8 of Form 5450-003 in that if advance payment is required as a condition of granting such permission, the advance payment may be adjusted after the additional forest products have been scaled and removed.

Section 9. Extension of Time and Reappraisal.

Section 9 of Form 5450-004 differs from section 9 of Form 5450-003 by relying on reappraised market prices by species to adjust Exhibit B and grant an extension of time. This establishes a

new *estimated* total purchase price, which will be adjusted to the actual total purchase price after the reappraised forest products have been scaled and removed. Further, these reappraised unit prices by species may not be less than the prices in effect during the original time for cutting and removal, or the last extension.

Section 10. Violations, Suspension, and Cancellation.

Section 10(c) of Form 5450-004 differs from section 10(c) of Form 5450-003 by stating the contracting officer may require purchaser to pay the entire remaining balance of the *estimated* total purchase price or any portion thereof as a condition of terminating the suspension. As the remaining volume of the forest products making this demand is measured and removed, value adjustments will occur in accordance with section 3 (computation of the *actual* total purchase price).

Section 11. Credit Against Purchase Price.

Section 11 of Form 5450-004 differs from Section 11 of Form 5450-003 in two ways. First, notification from the purchaser that logging has been completed has been added as a “trigger” for the contracting officer to determine any credit value of wood products remaining on the contract area, which would adjust the final amount due and owing by the purchaser in accordance with section 3(h). Second, the cost of estimating remaining volume under section 3(g) is added as a cost adjustment to any credit value of remaining forest products. As a reminder, the wasted wood products described in 3(g) may have no market value in their current condition, so there might be no credit against the total actual purchase price for the wasted wood. The Exhibit B value used in 3(g) is only used to compute the total actual purchase price.

Section 19. Cost Adjustment for Physical Changes.

Section 19 of Form 5450-004 differs from section 19 of Form 5450-003 in three ways. First, the estimated volumes in Exhibit B are used for the three levels of estimated cost that, if exceeded, make the Government responsible for the cost amount exceeding one of the three thresholds of value. Second, the Government may elect to meet its share of the cost by reducing the total *actual* purchase price. Third, the payment for physical changes shall be made by crediting against the total *actual* purchase price and may be accomplished by applying the credit to future installment owed by the purchaser.

Section 34: Contingent Fees.

Section 34 of Form 5450-004 differs from section 34 of Form 5450-003 in that contract *installments* or consideration (versus contract *price* or consideration) are established as the baseline over which the purchaser may have to pay the full amount of any commissions, percentage, brokerage, or contingent fee improperly paid by purchaser.

Section 39: Bond.

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Section 39(c) of Form 5450-004 differs from section 39(c) of Form 5450-003 in that payment of the entire total *actual* purchase price must be made as a condition of reducing the performance bond below 10 percent of the total *estimated* purchase price.

Appendix 3**Explanation of Form 5450-1, Contract for the Sale of Vegetative Resources****Table of Contents**

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Preamble.

Refer to the [Appendix 1](#) discussion of the Preamble.

Section 1. Vegetative Resources Sold.

Refer to Appendix 1, Section 1.

Section 2. Total Purchase Price.

Section 2(a) of the contract establishes the total purchase price which the purchaser agrees to pay the Government for the vegetative resources sold pursuant to the terms and conditions of the contract. For advertised sales, the total purchase price is the amount bid by the purchaser. It is expressed in the contract in both words and figures in the spaces provided. For advertised sales, the total purchase price must agree with the high bidder's total bid price as shown on Form 5440-009, Deposit and Bid for Timber/Vegetative Resources. Form 5450-1 is a lump-sum type sale and no adjustment is made in the total purchase price if the quantity of vegetative resource actually cut, removed, or designated for taking is more or less than the quantity shown.

Within the space provided, the kind and quantity of vegetative resource being sold is identified. The proper measurement unit must be specified, for example; bunches of fern fronds, bushels of cones, numbers of cacti, tons of woody biomass, etc.

Section 2(b) specifies that unless the total purchase price is paid on or before the contract is signed by the contracting officer, payments shall be made in installments and specifies when the installment payments shall be made. The first installment shall be made on or before the date the contract is signed by the contracting officer and the second installment shall be paid prior to severance or removal of any vegetative resources sold under the contract. Each subsequent installment shall be due and payable without notice when the value of vegetative resources severed or removed equals the sum of all payments not including the first installment.

Section 2(b) also describes acceptable forms of payment.

Section 3. Bond.

Minimum performance bond requirements and acceptable forms of performance bonds are described in Handbook 5450-1 (Rel. 5-149), Award of Contract. For cash sales less than \$10,000, bond requirements, if any, are at the discretion of the authorized officer. A bond should be required if damage to resources, roads, utilities, other improvements or the land may occur during the purchaser's operations. The authorized officer may require a bond in an amount greater than the minimum when necessary to protect the interests of the Government.

When computing the amount of a minimum bond (20 percent of total purchase price for all contract equal to or greater than \$10,000 in value) round upward to the nearest \$100.

Section 4. Time for Severance and Removal.

Refer to Appendix 1, section 4. Although the contract term can be up to 48 months, the time should normally be 12 months or less if quantities sold are small and work involved is not complex.

Section 5. Standard and Special Provisions.

Section 5 references and ties in the standard provisions (section 6 through section 16) set forth on the reverse side of the contract and the special provisions set forth under section 17 on the second page and on any additional pages attached to the contract. Also refer to Appendix 1, section 44, Special Provisions.

Section 6. Definitions Used in this Contract.

This section defines three terms used in the contract, authorized officer, contracting officer, and vegetative resources. With particular reference to delegation of authority to take action as authorized officer under the contract, refer to Appendix 1, section 5.

Section 7. Passage of Title and Risk of Loss.

This section sets forth the precise time that title to the vegetative resources sold pass from the Government to the purchaser. Title passes when the resource is paid for and removed from the contract area. The section also establishes that risk of loss shall be borne by the party holding title, with the exception that neither the Government nor purchaser is relieved from liability for any breach of contract or wrongful or negligent act. For example, the purchaser would be considered responsible for damages to resources sold but not severed or removed because of a fire resulting from a negligent act by the purchaser.

Section 8. Violations, Suspension, and Cancellation.

This section sets forth the action or remedies available to the Government in the event of violation of any of the provisions of the contract by the purchase. When circumstances warrant the action, the contracting officer may suspend all or any of the operations on the contract, except those operations that are necessary to remedy the violation. The suspension notice must be in writing and must detail the violations which have occurred.

In the event the purchaser fails to remedy the violation within 30 days after receipt of the suspension notice, the contracting officer may take steps to cancel the purchaser's rights under the contract and to recover all damages suffered by the Government because of the violation. The performance bond, as provided in section 3, shall be forfeited to the amount of the damages due the Government because of the violation.

Section 9. Fire Prevention and Slash Disposal.

Refer to Appendix 1, section 15. With regard to slash disposal planning, slash is generally considered to be forest debris or refuse resulting from the cutting, killing, pruning, severing, or removal of brush, trees, or other forest growth. When needed, add special provisions to section 17 to accomplish specific requirements concerning fire equipment, slash or debris treatment, or disposal.

Section 10. Trespass.

Refer to Appendix 1, section 13. The authorized officer must be knowledgeable of applicable law, which provides for damage recovery for the trespass. 43 CFR 9239.0-8 prescribes how damages are determined, which is usually as prescribed by the laws of the State in which the trespass occurred.

Section 11. Responsibility for Damage Suffered, Cost, or Expense Incurred by Government.

Refer to Appendix 1, section 12 for further information on purchaser liability for damage suffered, cost or expense incurred by the Government by reason of breach of contract or wrongful or negligent acts.

Section 12. Disclaimer of Warranty.

In this section, the Government disclaims any warranty as to fitness of the vegetative resource sold for any particular purpose, its merchantability, and its quality or quantity. This section, together with section 2, establishes Form 5450-1 as being a lump-sum type contract.

Section 13. Simultaneous Use of Contract Area by Others.

Refer to Appendix 1, section 25.

Section 14. Equal Opportunity.

Refer to Appendix 1, section 30.

Section 15. Officials Not to Benefit.

Refer to Appendix 1, section 37.

Section 16. Disputes.

Refer to Appendix 1, section 38.

Section 17. Special Provisions.

Refer to Appendix 1, section 44. In contrast to the BLM lump sum timber sale contract (Form 5450-003), all vegetative resources in the contract area are reserved to the Government except

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the quantity listed in section 2. Ordinarily, it is not necessary to list or identify the reserved vegetative resources under section 17. However, it may be necessary or appropriate to identify the manner in which the vegetative resource which may be cut, extracted, or removed is identifiable.

Execution of Contract

Refer to Appendix 1, Execution of the Contract.

Appendix 4

BLM/U.S. Forest Service Interagency Memorandum, August 4, 2003

(Note that the \$2,499 limit referenced in the Memorandum is now \$9,999 and that mineral materials are no longer sold on the 5450-5)



USDA Forest Service
Washington Office
201 14th Street, SW
Washington, DC 20024
<http://www.fs.fed.us>



USDI Bureau of Land Management
Washington Office
1849 C Street, NW
Washington, DC 20240
<http://www.blm.gov>

Reply Refer To: 2400 (FS)/5400 (BLM)(WO-270) P

Date: August 4, 2003

EMS TRANSMISSION

FS-Memorandum

BLM-Instruction Memorandum No. IM-2003-

To: Forest Service Regional Foresters and
Bureau of Land Management State Directors

Subject: Multi Agency Permit

In the spirit of customer service and the approach of landscape management the Forest Service and the Bureau of Land Management have formed a partnership to develop a single permit form for use by either Agency to sell special forest products. The intent is to improve customer service, while improving administrative efficiency. The new permit, Form FS-2400-1/BLM 5450-24 (attached) will be used for the sale of firewood, greenery, mushrooms, and other special forest products. Statements in "General Conditions" cannot be edited. Additional conditions can be added in "Other Conditions" only. The Bureau of Land Management Form 5450-5 will continue to be used for sales of small amounts of saw timber (up to \$2,499) and mineral material (up to \$999).

This is a permit and may not to be used as a contract for Forest Service sales. For sales from lands administered by the Bureau of Land Management, this form is called a permit and is considered synonymous with a contract. Specific instructions for permit use within each Agency are attached. Some general conditions for the permits use include:

- Permit use – When there are special protection needs for aquatic resources, heritage resources, threatened and endangered species habitat, or significant resource protection measures, do not use this permit. Other resource considerations, such as soil and water conservation, cultural resource protection, and fish and wildlife concerns should be considered in developing the permit areas and in administration of the permit.

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- Dollar values – For the Bureau of Land Management the maximum is \$2,499. For the Forest Service the maximum permit value is \$300, excluding associated charges.
- Accountability – Theft prevention and law enforcement involvement must be considered. Good documentation for the public, such as maps and load tags, will help alleviate trespass.
- Vendor sales – This permit may be used by vendors for either multi agency or non-multi agency sales.
- Debarment – Debarment does not apply when the permit is sold by the Forest Service or a Forest Service vendor, since Forest Service debarment regulations do not apply to permits. The Bureau of Land Management can add to “Other Conditions” a statement on debarment for permit violations. This statement would be used only for Bureau of Land Management permit sales and not added for multi-agency sales.
- Reporting – This permit will be reported using the Forest Service Timber Information Manager (TIM) process and the Bureau of Land Management’s Collection Billing System (CBS) and Timber Sale Information System (TSIS) processes. For target accomplishment each Agency will take credit for the volume that they sold.

This permit may be used to sell products from both the National Forest System and lands administered by the BLM under Service First with the following conditions:

- All permittees must be US citizens for any timber products sold that can be converted to board or cubic feet, (i.e., firewood, post and poles, etc.). Any non convertibles products sold, (i.e., boughs, Christmas trees, greenery, etc.), can be sold to non US citizens. The value must not exceed \$300, the minimum age for permittee must be 21, and permit violators will not be debarred.
- An interagency agreement must be completed between the forest supervisor and district manager (refer to attached example, reviewed by the special forest products team and regional contracting officer).
- Harvesting should take place either from areas that have been reviewed, or from areas where concerns for other resource considerations, such as soil and water conservation, cultural resource protection, and fish and wildlife concerns, are non-existent.
- Multi agency permit fiscal accounting – There should be a clear understanding of how the cash will be distributed to each agency. Receipts that each agency receives must be distributed in proportion to the estimated harvest on each agency’s lands. Document the basis for receipt distribution. Each agency would retain collected receipts and no transfer of funds between Agencies would be necessary.

It is the intent that when we share common boundaries and conditions for special forest products that we increase government efficiency and promote good land stewardship. This form is part of that effort. Please consult your special forest products program manager with any questions. We also welcome any ideas or comments to help improve this process.

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*/s/ Kathleen B. Clarke**July 24, 2003*

Date: _____

Kathleen B. Clarke
Director, Bureau of Land Management

*/s/ Dale N. Bosworth**August 4, 2003*

Date: _____

Dale N. Bosworth
Chief, Forest Service

Appendix 5
BLM/U.S. Forest Service Memorandum of Understanding

BLM #: MOU-BLM-OR952-0609
FS#: 06-MU-11062754-478

MEMORANDUM OF UNDERSTANDING
between
USDI BUREAU OF LAND MANAGEMENT, OREGON STATE
OFFICE
and
USDA FOREST SERVICE, PACIFIC NORTHWEST REGION
for the
SALE OF PERMITS

This Memorandum of Understanding (MOU) is entered into by and between the USDI Bureau of Land Management Oregon / Washington State Office, hereinafter referred to as Bureau, and the USDA Forest Service, Pacific Northwest Region, hereinafter referred to as Forest Service under the authority of Public Law 106-291, Service First Act, as amended, and Public Law 109-54, Title IV, Sec 428 that extends the authorization for the Service First program through 2008.

In the spirit of customer service and the approach of landscape management the Forest Service and the Bureau have formed a partnership to sell special forest products by either Agency. The intent is to improve customer service, while improving administrative efficiency. This MOU will be used for the sale of firewood, greenery, mushrooms, and other special forest products using the identical permit form FS-2400-1/BLM 5450-24. This MOU should be used for individual offices, co-locations, or vendor sales.

Special forest products harvesting from the public lands is in high demand, and it is desirable for economic and public benefit to increase customer service by making permits available to the public at convenient locations for Bureau and Forest Service administered lands.

The Agencies agree to permit and administer this use of the Agencies' lands according to the following:

1. Covered Lands: This permitting project shall cover BLM and Forest Service administered lands within the states of Oregon and Washington. Each field/district office or ranger district special forest products manager that wishes to form a partnership to sell special forest products shall determine designated special forest products harvest areas for the applicable forest products, and shall determine which offices shall sell permits for the areas.
2. Permit Form: Designated harvest areas on BLM and Forest Service lands shall be permitted using Forest Service form FS-2400-1/BLM Form 5450-24, Forest Products Removal Permit and Cash Receipt.

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3. **Permit Map:** Permit maps for each designated harvest area shall be provided by the Special Forest Products Manager responsible for the permit area. The map shall show the Forest Service or BLM lands covered under the permit. The map shall be stapled to the permittee's copy as well as the Government copy of the permit.
4. **Permit Special Provisions:** A set of special provisions, permit requirements, collection restrictions, and pricing shall be prepared by the Special Forest Products Manager responsible for the designated permit area. The special provisions sheet(s) shall be stapled to the permittee's permit copy, as well as the Government copy. The price structure shall be set such that it is consistent with each Agency's pricing regulations.
5. **Permit Sales:** Permit sales location(s) and sales format shall be jointly agreed upon by the Agencies. Staffing for permit sales will be done as agreed upon by the agencies.
6. **Local Level MOU:** This region-wide MOU establishes the framework for permit sales by both agencies. A local level agreement is required to establish specific arrangements between a field/district office, and Forest Office. The local level Agreement should include, but is not limited to, the following; specific area covered by the agreement, types of permits sold, any special provisions, fiscal accounting, vendor sales and field administration. The local agreement shall include a statement that incorporates this region-wide MOU by reference.

7. **Fiscal Accounting:**

A. **If no funds will be transferred between agencies.** If both offices have agreed that the amount of permit fees brought in are fairly equal, and there will not be any funds transferred between agencies, the local level agreement needs to specify that determination, including how the determination was made, and what fees are being collected by each agency. An MOU will fulfill this requirement.

B. **If funds will be transferred between agencies.** In the event there will be fund transfers between agencies, fiscal accounting information specific to both offices should be included in the local level Interagency Agreement. Please provide any local specific funding code information in the Interagency Agreement, as well as the following at a minimum:

- | 1. ALC # for both agencies. | 5. Treasury Symbols for each agency. | 7. Schedule of transfers. | | | | | | |
|---------------------------------------|---|--|-----------------------|------------|-----------|------------|-----------|-----------------------|
| 2. DUNS # for both agencies. | | 8. IPAC Transfer contacts for each agency. | | | | | | |
| 3. Accounting Data for both agencies. | <table border="0"> <thead> <tr> <th><u>BLM</u></th> <th><u>Forest Service</u></th> </tr> </thead> <tbody> <tr> <td>14-11-0008</td> <td>929332484</td> </tr> <tr> <td>12-40-1100</td> <td>798067393</td> </tr> </tbody> </table> | <u>BLM</u> | <u>Forest Service</u> | 14-11-0008 | 929332484 | 12-40-1100 | 798067393 | 9. Receipt job codes. |
| <u>BLM</u> | <u>Forest Service</u> | | | | | | | |
| 14-11-0008 | 929332484 | | | | | | | |
| 12-40-1100 | 798067393 | | | | | | | |
| 4. SGL's for both agencies. | 6. Tax ID # for both agencies. | 10. BETC code (applicable starting 8/1/2006) | | | | | | |
| | 141100080; 12401100 | | | | | | | |

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8. **Vendor Sales:** Receipts received from vendors shall be distributed based on a field/district office, Forest Office level designated percentage allocation. Considerations at arriving at pre-approved percentage for allocations should be; historical use, access, product amount by agency, and convenience of office locations for equal choice of customers to purchase permits.
9. **Maximum Value:** Value shall not exceed \$300.00 per individual sale.
10. **Minimum Value:** The minimum value per individual sale shall be \$20.00.
11. **Age Requirements:** Minimum age requirement is 18 years old.
12. **Citizenship Sales:** A purchaser of convertible timber products such as firewood, and post and pole must be a U.S. Citizen. For sale of non-convertible products, U.S. citizenship is not required.
13. **Debarment:** Debarment is not allowed for permit sales under the Forest Service procedures.
14. **Sale Requirements:** Do not advertise sale(s). All sales to be cash sales only. No scaled sales. No performance bonds shall be collected.
15. **Field Administration/Enforcement:** Each Agency shall be responsible for field administration of this program on its respective lands. Both Agencies recognize that field enforcement/administration is critical to the success of a permitting program and shall pursue this as vigorously as its staffing and resources permit. Interagency coordination/assistance will be pursued as needed. Written reports documenting field visits shall be made and attached to the Government's copy of the permit.
16. **Program Costs:** Each Agency shall bear its own program and overhead costs.
17. **Modification of this MOU:** Modifications within the scope of this instrument shall be made by mutual consent of the Agencies, by the issuance of a written modification, signed and dated by both Agencies, prior to any changes being performed. The Bureau or Forest Service is not obligated to fund any changes not properly approved in advance.
18. **Access to Records:** Give either Agency or Comptroller General, through any authorized representative, access to and the right to examine all books, papers, or documents related to this instrument.
19. **Termination:** Either Agency, by notice in writing delivered to the other party, may terminate the instrument in whole, or in part, at any time before the date of expiration.
20. **Restriction for Delegates:** Pursuant to Section 22, Title 41, United States Code, no member of, or Delegate to, Congress shall be admitted to any share or part of this instrument, or any benefits that may arise there from.

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21. Obligations: Nothing herein shall be considered as obligating the Forest Service or the Bureau to expend or as involving the United States in any contract or other obligations for the future payment of money. As an MOU, this is a non-funding document. Any funding obligations that may result from this MOU, must be processed through a separate obligating document.

22. Expiration Date: This instrument is executed as of the last date shown below and expires on September 30, 2011, at which time it will be subject to review, renewal, or expiration.

23. Agency Contacts: For information on this MOU, or questions related to the sale of special forest products by either Agency, please contact:

Frank Duran
Regional Measurement Specialist
Forest Service Contact
333 SW First Avenue
Portland, OR 97208-3623
Voice: 503-808-2970
fduran@fs.fed.us

Jeffrey Gordon
District Forester, Salem District
Bureau Contact
1717 Fabry Road, SE
Salem, OR 97306
Voice: 503-375-5611
Jeffrey_gordon@blm.gov

24. NON-FUND OBLIGATING DOCUMENT. This agreement is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the Agencies to this agreement will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Agencies and shall be independently authorized by appropriate statutory authority. This agreement does not provide such authority. Specifically, this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

25. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

26. AUTHORIZED REPRESENTATIVES. By signature below, the Agencies certify that the individuals listed in this document as representatives are authorized to act in their respective areas for matters related to this agreement.

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IN WITNESS WHEREOF, the Agencies have executed this Agreement as of the last date written below.

BUREAU OF LAND MANAGEMENT

UNITED STATES FOREST SERVICE

By: Elaine M. Brong
ELAINE M. BRONG
Title: State Director

Date: 11/03/06

By: Linda Goodman
LINDA GOODMAN
Title: Regional Forester

Date: 11/21/06