

**Standard Provisions
Lump Sum Timber Sale
Contract
Form 5450-3**

Session Two
4/11/12

Introduction to the Conference Calls

- This is Session Two (2nd Wednesday of each month)
- We have 3 presenters that will be presenting the sections. They are:
 - Vince Randall – Grants Pass Field Office, Medford District in Oregon
 - Werner Krueger – Swiftwater Field Office, Roseburg District in Oregon
 - Mike Bechdolt – Klamath Falls Field Office, Lakeview District also in Oregon.

Welcome to Session 2 of the Standard Provisions of the BLM Timber Sale Contract. These conference calls will be held on the (2nd Wednesday) of each month until each of the provisions are discussed.

We have 3 presenters that will be presenting the sections. They are:

Vince Randall – Grants Pass Field Office, Medford District in Oregon

Werner Kruger – Swiftwater Field Office, Roseburg District in Oregon

Mike Bechdolt – Klamath Falls Field Office, Lakeview District also in Oregon.

Ground Rules

- Active Listening – get involved
- Approximately an hour – with break
- If in loud environment - consider mute button

For this format to work, you really need to get involved. Share your opinions and experiences

We'll try to keep this session to about an hour and we'll take a short 5 minute break half way through this session

Its very important!!!! If your office environment gets a bit noisy for some reason, consider using the mute button on your phone until things clear, however, don't check out of the discussions because you involvement is important.

What else are we forgetting?

Ok, then, lets get on with things...

Other Info

- Slides have the new contract language
- Changes are in **RED** text
- Feel free to disagree or bring up scenarios
- If a question cannot be answered it will be researched and discussed in the next call

Follow-up to Session One

Minimum Payment Bond Amount

- This has been researched and there is a discrepancy between Regs and Contract
- Decided that Contract is correct
- Minimum Payment Bond amount is an amount equal to the Second Installment and one or more installments.

Follow-up to Session One

Interest Charged on Bills

- Billing Date 1st
- Due Date 16th
- If bill is not paid interest begins accruing on the 1st
- 1st CBS demand letter goes out on the 31st includes accrued interest.
- If bill paid before 31st the interest is waived.

List of Sections for today

- Section 4 – Time for Cutting and Removal
- Section 5 – Definitions
- Section 6 – Inspection of Timber and Disclaimer of Warranty
- Section 7 – Passage of Title and Risk
- Section 8 – Sales of Additional Timber
- Section 9 – Extension of Time and Reappraisal
- Section 10 – Violations, Suspensions, and Cancellations
- Section 11 – Credit Against Purchase Price
- Section 12 – Hold Harmless and Responsibility for Damages to the Government
- Section 13 – Timber Trespass
- Section 14 – Protection of Roads, Utilities and Improvements
- Section 15 – Fire Prevention and Slash Disposal

If things go according to plans, we will try to cover the following sections today, beginning where we left off last month with Section 4...

******i don't think we'll read these, but just pause to allow participants to digest this slide – maybe 10 seconds ******

Section 4 – Time for Cutting and Removal

Sec. 4. *Time for Cutting and Removal*

Except as otherwise provided in this contract, Purchaser may begin cutting and removing timber sold under this contract on the date this contract is signed by the Contracting Officer. Purchaser's right to cut and remove such timber shall expire **Thirty six (36)** months after such date; *Provided, however,* extensions of time may be granted as provided in Sec. 9.

Vince Randall Green edits are mine

Section 4 – Time for Cutting and Removal

- Cutting of the timber may commence on the day the contract is signed by the Contracting Officer (Approval Date),
 - provided payment requirements have been satisfied, and
 - unless some provision of the contract restricts operation dates or requires some other action by the Purchaser (i.e., need for a logging plan, fire prevention and control plan, etc.).
- Time for cutting and removal is measured from the date the contract is signed by the Contracting Officer (Approval Date).
- There is no grace period after the expiration of time for cutting and removal within which the Purchaser can remove felled timber.
- Time for cutting and removal for a particular sale shall be specified at the time of advertising.

Vince Randall

The time for cutting and removal of timber/wood products 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, “thirty-six (36) months.”

The contract allows the timber/wood products to be cut and removed during the period specified. There is no grace period after the expiration of the time for cutting and removal within which the Purchaser can remove felled timber/wood products. The maximum permissible time for cutting and removal is 36 months (CFR). Shorter contract terms may be appropriate for minimizing speculative bidding **and avoidance of defaults**, and 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 seasonal restrictions).

Contracts should be written to provide a reasonable period of time in which to complete the contract. Cable thinning about 1.5 acres/day, tractor 2 acres/day.

Ask: How do we determine what is a reasonable time?

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. Contracts written for 36 months to cut and remove will provide the Purchaser with at least three seasonal opportunities to operate.

The time for cutting and removal for a particular sale shall be specified at the time of advertising. Under Section 9 of the contract, the time for cutting and removal may be extended under certain conditions.

EXPIRATION

- Unless an extension is granted, all logs and trees sold under the terms of the timber sale contract become the property of the Government on the day after the expiration date of the contract.



If the total purchase price remains unpaid by the contract expiration date, send a bill for the remaining balance with the standard 15 day payment period.

Before the bill is sent you have to go through settlement of an uncompleted contract under Section 11. You might want to talk to your S.O. folks (Steve Niles or Dave Roche) and your CO to clarify this.

Expiration only applies to rights to the timber.
The Purchaser is still responsible to meet the terms and conditions of
the contract.



Fuels treatments, final road maintenance, ect.

Letters to Send to Purchaser When a Sale is Nearing the Expiration Date

- **90 Day Notice** – Courtesy letter alerting the Purchaser of upcoming expiration date
- **30 Day Notice** – If it appears likely that timber cannot be removed prior to the expiration of time for cutting and removal, send a letter to the Purchaser to remind the Purchaser of the remaining contract obligations. Send a letter to the Surety also.
- New TSIS will tell you 95 days and 35 days ahead of expiration date

Termination Paperwork

- A contract can be terminated when all contract work has been completed and all collections have been made (ie. You don't have to wait for the contract to expire before you can terminate).
- Prior to starting the termination paperwork, read the contract thoroughly to make sure all contractual obligations have been met. Verify through inspection reports.
- Touch base with the other inspectors on the sale (engineers, fire, etc.) that their portion of the work has been completed satisfactorily, and make sure it is documented.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Salem District Office
1717 Fabry Road S.E.
Salem, Oregon 97306
<http://www.blm.gov/sdm>



5401(085)
OR080-TS2-301
Gotaway Timber Sale

Melcher Logging Co.
P.O. Box 600
Sweet Home, OR. 97386

Gentlemen:

Please refer to your Timber Sale Contract OR080-TS2-301, Gotaway. We have initiated contract termination proceedings on this sale. To complete termination, it will be necessary for you to complete and return to this office the original of the enclosed forms which are listed below:

Log Scale and Disposition of Timber Removed Report (Form 5460-15). This is required by Sec. 30 of the Contract for the sale of timber.

Certificate as to Nonsubstitution and the Domestic Processing of Timber (Form 5460-16). A copy is required from each company to which your company sold unprocessed logs from this sale area. This form is required by Sec. 41.jj. of the Contract for the sale of timber.

Timber Sale Contract Relinquishment (Form 5480-3). This will allow us to terminate your contract and release your performance bond prior to the scheduled expiration of your removal rights.

If you have any questions regarding this matter, please contact Dan Schreindorfer at 503-315-5994.

Sincerely,

Dan Schreindorfer
Timber Sale Contract Administrator

3 Enclosures
1 - 5460-15 (2)
2 - 5460-16 (2)
3 - 5480-3 (2)

- **Send Notification Letter to Purchaser (Form OR-080-5484-1)**
- **Note the attachments**

United States Department of the Interior
 Bureau of Land Management
 Salem District Office

TIMBER SALE TERMINATION CHECKLIST

Purchaser _____ Contract No. _____
 Sale Name _____

	Date Completed or N/A	Initial
Initiate Termination Letter O-08-5484-1		
Timber Sale Field File Summary O-08-5462-1		
Final Contract Inspection Report O-08-5460-4		
Certificate Terminating Contract Rights 5480-4		
Contract Termination Inspection Report 5480-5		
Timber Sale Contract Relinquishment 5480-3		
Log Scale and Disposition of Timber Removed Report 5460-15		
Cruise - Scale Comparison (OPTIONAL - Area Use Only) 5450-5		
Certificate as to the Nonsubstitution and the Domestic Processing of Timber 5460-16		
Road Use Fees Paid Report (OPTIONAL) 5450-8		
Notice of Compliance (2 forms - OR-080- 5484 and OR-080-5484-3)		
Refunds Due: Letter Of Credit, Contract Overpay, Cash Bond, Nego. Securities, etc.		
Route Exhibit A to Silviculture for Exhibit A Files		
Notify County Surveyor of Change in Survey Corner Monumentation (Form letter)		
Notify District Cadastral Surveyor of Bearing Tree Treatment Performed (Route Copy of County Surveyor Letter to Cadastral)		
Notify Resource Area Engineers of Termination		

OR-080-5484-5
 (December 22, 2003)

- Sample of a Termination Checklist

Scenario

- A Purchaser fails to complete removal of all timber on a contract before the contract expires. What contract sections come into play and **what do you do?**
- Sec 2 – Total Purchase Price
- Sec. 3 (a) – Total purchase price shall be paid no later than the expiration date.
- Sec. 3 (f) – Credit against the purchase price will be determined pursuant to Sec 11.
- Sec. 11 – Credit against Purchase Price.
- **Cruise & scale remaining timber to get value remaining. Find out what work still needs to be done (fuels, roads, ect.) Talk to your Field Manager (CO) and S.O. representatives**

Sec 2 – Total Purchase Price

Sec. 3 (a) – Total purchase price shall be paid no later than the expiration date.

Sec. 3 (f) –, credit against the purchase price will be determined pursuant to Sec 11.

Sec. 11 – Credit against Purchase Price.

Cruise & scale remaining timber to get value remaining. Talk to your Field Manager (CO) and S.O. representatives

Section 5 – Definitions

This section contains five (5) definitions for terms included within the contract. I will cover each of these definitions separately and in order.

Werner Kruger

Section 5(a) – Definitions

(a) *Contracting Officer* - the Bureau of Land Management official who would have authority to execute this contract and delegate authority to take action in connection with this contract.

- Is also referred to as the CO.
- Has been delegated the authority by the State Director through the Delegation of Authority Manual (1230).
- Is normally the Field Manager.

Werner Kruger

Section 5(a) on the -3 and -25 contracts define “Contracting Officer” as the BLM official who would have authority to execute and delegate authority to take action in connection with this contract.

Normally this is the Field Manager of the Resource Area. Very large sales will have the State Director be the CO. I think it is greater than 10mmbf, Vince

Section 5(b) – Definitions

(b) *Authorized Officer* - any employee of the Bureau of Land Management who has been delegated, **by the Contracting Officer**, the authority to take action in connection with this contract

- Is also referred to as the AO.
- Is normally the Timber Sale Contract Administrator, but can have more than one AO on the sale: an engineer (for any work done on the roads), a burn boss (for completion of the site preparation requirements), etc..
- Has been delegated the authority by the Field Manager through the district's Delegation of Authority Manual (1230).

Werner Kruger

Section 5(b) define "Authorized Officer" (AO) as any employee of the BLM to whom authority has been delegated to take action in connection with this contract. ~~This same definition appears in 43 CFR 5400.0-5 of the timber/wood products sale regulations.~~

Is normally the Timber Sale Contract Administrator, but can have more than one AO on the sale: an engineer (for any work done on the roads), a burn boss (for completion of the site preparation requirements), etc..

Each AO has to be delegated the authority by the Field Manager ~~through the district's Delegation of Authority Manual (1230).~~

Section 5(c) – Definitions

(c) *Timber* - standing trees, downed trees or logs, or portions thereof, which are capable of being measured in board feet.

- Defines timber in terms of products capable of being measured in board feet such as:
 - Saw Logs;
 - Peeler logs;

Werner Kruger

Section 5(c) on the -3/-25 contracts define “Timber” as all standing trees, downed trees or logs or portions thereof, which are capable of being measured in board feet.

Defines timber in terms of products capable of being measured in board feet such as:

- Saw Logs;
- Peeler logs;
- Fence posts;
- Corral poles

Section 5(d) – Definitions

Wood Products Contract

- (d) *Wood Products* – includes *timber* and other woody material not normally measured in board feet.
- Timber and
 - Fuelwood;
 - biomass;
 - Clean chips;
 - Dirty chips;
 - Hogfuel

Werner Kruger

Section 5(d) on the -25 contract defines “Wood Products” as “timber and other woody material not normally measured in board feet. Christmas trees, cones, ferns, huckleberry bushes, manzanita boughs, cactus, etc., are not measurable in board feet and therefore are not “timber or wood products”

This includes timber and

- fuelwood;
- biomass;
- clean chips;
- dirty chips;
- Hog fuel

Section 5(d) – Definitions

(d) *Loading Point* - any landing or other area in which logs are capable of being loaded for transportation out of the contract area; *Provided, however,* that right-of-way timber which has been cut shall not be considered to be at a loading point until such time as the logs from any source are actually transported from that portion of the right-of-way.

- Defines the “loading point” for the purpose of determining when payment is due in accordance with Section 3 of the contract.

Werner Kruger

Section 5(d) on the -3 and 5 (e) on the -25 contracts defines the term “loading point” for the purpose of determining when payment is due in accordance with Section 3(e) and 3(f).

Loading point - any landing or other area in which logs are capable of being loaded for transportation out of the contract area; *Provided, however,* that right-of-way timber which has been cut shall not be considered to be at a loading point until such time as the logs from any source are actually transported from that portion of the right-of-way.

Section 5(e) – Definitions

- (e) *Operating Season* - the time of year in which operations of the type allowed or required are normally conducted and not specifically restricted under this contract.

Werner Kruger

Section 5(e) on the -3 and 5 (f) on the -25 contracts define the term “Operating Season” as the time of the year in which operations of a particular type are allowed or required are normally conducted and not specifically restricted. This defines the time of year when a purchaser would be allowed to remove the products purchased under the contract. In order to operate outside of the operating season, a purchaser would be required to request and receive a waiver permitting such operations from the Contracting Officer.

PROVIDE EXAMPLES IN OPERATING SEASON AND OUT OF OPERATING SEASON

Section 6 – Inspection of Timber and Disclaimer of Warranty

Sec. 6. *Inspection of Timber and Disclaimer of Warranty*

(a) Purchaser warrants that this contract is accepted and executed on the basis of its examination and inspection of the timber sold under this contract and its opinion of the value thereof.

(b) Government expressly disclaims any warranty of fitness of the timber for any purpose; all timber sold hereunder is accepted *As Is* without any warranty of merchantability by Government. Any warranty as to the quantity or quality of the timber sold hereunder is expressly disclaimed by Government. Refund to or recovery by Purchaser for failure of title to any timber sold hereunder shall not exceed the value of such timber computed at unit prices per species or for all species included as set forth in *Exhibit B*.

Mike Bechdolt

Section 6 – Inspection of Timber and Disclaimer of Warranty

- Purpose of this section (both 6(a) and 6(b)) is to preclude the Purchaser from staking a claim against the Government in the event the quantity, quality, or fitness of the timber are not up to his expectations.
 - This also includes the values included in the appraisal at the time of sale.
- Section 6(b) limits the Purchaser to recovery of single stumpage value of the timber for failure of title to any timber sold under the contract.

Mike Bechdolt

The timber/wood products sale advertisement includes a listing of estimated sale volumes and, frequently, a breakdown of expected log grade recovery. 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 timber/wood 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 is the cruise estimate, there is no authority to adjust the total purchase price unless there is failure of title.**

The final sentence of Section 6(b) limits the Purchaser to recovery of the single stumpage value of timber/wood products for failure of title to any timber/wood products sold under the contract. The value is based on unit prices set forth in Exhibit B. Failure of title, a legal "term of art," as used in this contract occurs when the Government cannot produce title to timber/wood products which has been designated for taking and included in the sale by error. 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 timber/wood products failed because the Government did not own the timber/wood products which it purported to sell.

Section 7 – Passage of Title and Risk of Loss

Sec. 7. Passage of Title and Risk of Loss

Title to timber sold under this contract shall remain in Government and shall not pass to Purchaser until such timber has been paid for and removed from the contract area. Unless cut timber is sold under this contract, risk of loss shall be borne by Purchaser after the timber is cut; *Provided, however*, that if loss results from a fire which was not caused by Purchaser, **Purchaser's contractors**, subcontractors, or the employees of any of them, the risk of loss shall be borne by the **party holding title**. **If cut timber is sold under this contract, risk of loss shall be borne by the party holding title.** Risk of loss to Government shall not exceed the value of such timber computed at the unit prices per species or for all species included as set forth in *Exhibit B*. Nothing herein shall be construed to relieve either party from liability for any breach of contract or any wrongful or negligent act. As used in this section, the term *cut timber* refers only to timber which has been felled, bucked, **piled at a loading point**, or otherwise severed by direct human activity prior to the date this contract was entered into.

Vince Randall

“Unless cut timber is sold under this contract” - Fireline log decks (Green is my highlight).

Section 7 – Passage of Title and Risk of Loss

- Title passes from the Government to the Purchaser when the timber has been paid for and removed from the contract area.
 - Title is retained until payment is made for security reasons.
- The requirements that the logs must also be removed from the contract area serves to make it clear that title to any logs or other merchantable timber 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.

Vince Randall

In the case of either cut or uncut timber or wood products sold and paid for under terms of the contract, **title for a load of logs passes to the Purchaser at the time that the logging truck leaves the contract area.** Note that Sec. 39(d) provides that a payment bond shall be considered as payment under Sec. 7 for the purpose of passing title and risk of loss. **In sales with a payment bond title is retained until the payment is received 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 timber/wood products left on the contract area upon the expiration of the cutting rights is retained by the United States 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 timber/wood products sale contract.

Section 7 – Passage of Title and Risk of Loss

- Contract attempts to place the risk of loss on the party which has the greatest physical control of the timber at the time of loss.
 - The risk of loss for uncut standing or down timber is with the Government.
 - The Purchaser is not responsible for the loss from fire caused by lightening, the actions of a hunter or fisherman, or an escaped fire burning into the contract area, etc.
- 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. Risk of loss for cut timber sold under the contract is borne by the party holding title and includes situations involving the use of payment bonds and passing title as stated in Section 3.

Vince Randall

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 timber/wood products is with the Government. On the other hand, the Purchaser bears the burden of loss for timber/wood products in this category when they cut such timber/wood products even though title to the timber/wood products remains with the Government; except, however, the Purchaser is relieved from risk of loss from fire in timber/wood 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 hunter or fisherman, 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 non-negligent.

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 7 – Passage of Title and Risk of Loss

- Purchase Price Adjustments and Passage of Title:
 - Downward adjustment to account for the volume of non-BLM trees included in a timber sale.
 - Downward adjustment for BLM trees included in a sale but trespassed by a third party.
- Purchase Price Adjustments and Risk of Loss:
 - Downward adjustment for sound wood consumed by fire. No adjustment for operational fires.
 - Downward adjustment for sound wood damaged by windfall.
 - Downward adjustment for timber swept away from the unit by a flood.
 - No adjustment for rot associated with mortality.
 - Downward adjustment for portions of trees removed by trespassers.

Vince Randall

Scenario

- You receive a letter from a Purchaser stating that fell & bucked timber has been stolen by firewood cutters. The Purchaser asks for a reduction in value modification for the stolen timber. How do you respond?

Sec. 7. is the risk of loss in bone by Purchaser after timber is cut? Why or why not?
Borne by the Purchaser, if standing timber cut by the Purchaser. Cut timber sold is a little gray.

Mr. Wilson big cookie transported around nation. Issue?

Section 8 – Sales of Additional Timber

Sec. 8. Sales of Additional Timber

If the Authorized Officer and Purchaser agree that additional timber should be removed and the **Contracting Officer** determines that the sale will not be detrimental to the interests of Government and is within the provisions of **43 CFR 5402.0-6**, the **Contracting Officer**, or Authorized Officer if designated, shall grant **written permission** to the Purchaser to cut and remove such timber. If permission is granted, Purchaser **shall pay for such timber at a price** determined by the Authorized Officer in accordance with **BLM**-prescribed procedures. The value of such timber shall be added to total purchase price in Sec. 2.

Payment for such timber shall be made in accordance with Sec. 3(b) or 3(f), except that, if all contract payments required by Sec. 3(b) or 3(f) have been made, payment for such timber shall be made in advance as a condition of granting such permission.

Werner Kruger

Section 8 of the contract relates to the sale of additional timber/wood products to the contract.

ASK: What might lead us to want to add additional timber? What scenarios might warrant this??

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, or impracticable in the case of a volume of 250 thousand board feet (MBF) or more.

Additional sales are negotiated sales and therefore come within the provision of 43 CFR 5402.0-6. There is no volume or value limit to additional sales provided the Contracting Officer determines that it is impracticable to offer the timber for sale competitively (see 43 CFR 5402.0-6(c)(2)). "Impracticable" does not mean inconvenient, illogical, or impractical; "impracticable" means incapable of being performed or accomplished by the means employed or at command. 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 negotiated sale is 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 timber/wood products should be removed. The Contracting Officer cannot unilaterally require the Purchaser to purchase additional timber/wood products.

The Purchaser may not cut and remove additional timber/wood products until such time that the timber/wood products has 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 timber/wood products is established by the Authorized Officer in accordance with BLM prescribed procedures and the Purchaser so notified.

The value of the additional timber/wood products is added to the total purchase price of the contract and payment for such timber/wood products are 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 timber/wood 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 timber/wood 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 timber/wood products must be made prior to granting permission to cut and remove the additional timber/wood products.

Section 9 – Extension of Time and Reappraisal

Sec. 9. Extension of Time and Reappraisal

If Purchaser shows that **delay in cutting and removal was due to causes beyond their control and without their fault or negligence**, the Contracting Officer may grant an extension of time, not to exceed one (1) year, upon written request of Purchaser. **Any such extension shall provide the Purchaser with an equal amount of operating time as would have been available without the delay. Such written request shall be filed with the Contracting Officer prior to the expiration of the time for cutting and removal** expressed in Sec. 4. If an extension of time is granted, except as provided by 43 CFR 5473.4, timber remaining on contract area shall be reappraised by the Authorized Officer using BLM-prescribed procedures, and the total purchase price **and Exhibit B** adjusted accordingly; *Provided, however*, no adjustment shall be made by reason of timber being enhanced in value by Purchaser, nor shall the reappraised total purchase price be less than the total purchase price in effect during the original time for cutting and removal or the last extension. The Contracting Officer may require that the reappraised total purchase price shall be paid in advance as a condition of granting an extension. Market fluctuations shall not be cause for consideration of contract extensions.

Mike Bechdolt

Section 9 of the contract sets forth the requirements for an extension of the time for cutting and removal of timber/wood products sold. Occasionally, the Purchaser may anticipate they will be unable to complete cutting and removal of timber/wood 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. Purchaser must show that delay in cutting and removal of timber/wood 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 “[w]ritten requests for extension must be received prior to the expiration of the time for cutting and removal.”

Section 9 – Extension of Time and Reappraisal

- The Purchaser must show:
 - That the delay in cutting and removal of timber is due to causes beyond his control and is not at fault or negligent in the delay; OR
 - That they performed as the average prudent operator would be expected to perform in a like time period prior to any of the following delaying events:
 - Additional contract requirements requested by the Government;
 - Consultation with the USF&WS under the ESA;
 - Reviews for cultural resources issues;
 - Court injunctions obtained by parties outside the contract; or
 - Closure operations by State fire protection agencies due to fire danger.
 - Market fluctuations and poor performance by the Purchaser are not considered valid reasons for an extension.

Mike Bechdolt

It is incumbent upon the Purchaser to establish that the delay for cutting and removal of timber/wood 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.

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; and/or
- (5) Closure of operations, by state fire protection agencies, due to fire danger.

“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 subject timber/wood products sale, or the time of the year specified in the timber/wood 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 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. The State Director may also waive reappraisal for such extension.

Section 9 – Extension of Time and Reappraisal

- When the Contracting Officer determines that an extension is justifiable, they may:
 - Issue an extension for not more than one year with reappraisal (when the delay in cutting and removal of timber is due to causes beyond his control and is not at fault or negligent in the delay).
 - Issue an extension for not more than 30 days of operating time without reappraisal (when the delay in cutting and removal of timber is due to causes beyond his control and is not at fault or negligent in the delay). This can be done only once without reappraisal.

Mike Bechdolt

When the Contracting Officer determines that an extension is justifiable, for any reason other than stated in (1) through (5) above, they must then reappraise the timber/wood products remaining in the contract area. Section 7 states that title to the timber/wood products remains with the Government until it has been paid for and removed from the contract area. Thus, all timber/wood products remaining on the contract area, whether standing or cut, must be reappraised; timber/wood products cut by the Purchaser are reappraised as standing timber/wood 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.

In spite of the requirement for reappraisal in 43 CFR 5473.4-1(a), per 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. No additional extensions may be granted without reappraisal.

Section 9 – Extension of Time and Reappraisal

- When the Contracting Officer determines that an extension is justifiable, and a reappraisal is necessary, they must reappraise the timber remaining in the contract area.
- All timber remaining on the contract area, whether standing or cut, must be reappraised – timber cut by the Purchaser is reappraised as standing timber.
- Reappraisal must be made and completed as of the last day of the contract, or as soon thereafter as is reasonably possible.
- 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.

When the [Contracting Officer](#) determines that an extension is justifiable, and a reappraisal is necessary, they must reappraise the timber remaining in the contract area.

All timber remaining on the contract area, whether standing or cut, must be reappraised – timber cut by the Purchaser is reappraised as standing timber.

Reappraisal must be made and completed as of the last day of the contract, or as soon thereafter as is reasonably possible.

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.

Section 9 – Extension of Time and Reappraisal

- The Contracting Officer may require the reappraised total purchase price to be paid in advance as a condition of granting the extension.
 - Normally the contract extension will permit a continuation of the payments in accordance with the provisions of the contract.
- The sale, if reappraised, shall be reappraised using the Fair Market Value approach.
- The following formula is to be used when reappraising:
 - $R = V^C + V^r$; where
 - R = Reappraised total purchase price
 - V^C = Value of timber cut and removed at contract unit prices
 - V^r = Value of the timber remaining on the contract area.

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.

The sale, if reappraised, shall be reappraised using the Fair Market Value approach.

The following formula is to be used when reappraising:

$$R = V^C + V^r ; \text{ where}$$

R = Reappraised total purchase price

V^C = Value of timber cut and removed at contract unit prices

V^r = Value of the timber remaining on the contract area.