

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

Session Three

5/9/12

Introduction to the Conference Calls

- This is Session Three (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 – O&C Forester, Washington DC

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
- 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

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 Two

- In the discussion of Section 4 there was reference to contract termination form and checklist.

These are Oregon forms. Contact Oregon if you want copies.

Follow-up to Session Two

- In Section 8 there was reference to Special Provisions L 25 and L33.

These are special provisions approved in Oregon for sale of additional timber.

List of Sections for today

- 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
- Section 16 – Construction, Use, and Maintenance of Roads and Facilities
- Section 17 – Limitations of Road Use
- Section 18 – Acceptance of Road Construction
- Section 19 – Cost Adjustment for Physical Change
- Section 20 – Design Change

Here is a list of the sections to be covered today

Section 10 – Violations, Suspensions, and Cancellations

This section is divided into five (5) subsections which relate to the action or remedies available to the Government in the event of any violations of the contract by the Purchaser. I will cover each of these subsections separately and in order.

Vince Randall

Section 10(a) – Violations, Suspensions, and Cancellations

Sec. 10. *Violations, Suspension, and Cancellation*

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

Vince Randall

Section 10(a) – Violations, Suspensions, and Cancellations

- Permits Contracting Officer to suspend contract for any violation of the contract by the Purchaser.
 - Suspension must be by written notice and must detail violation(s) which have occurred (*use form 5480-002*).
 - Suspension notice must be delivered to the Purchaser, preferably in person.
- Operations necessary to remedy violations are permissible.
- If Purchaser fails to take steps to remedy violation within 30 days of receipt of suspension notice, the Contracting Officer may take steps to cancel the Purchaser's rights under the contract and take action to recover damages suffered by the Government as a result of the violation(s).

Vince Randall

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Form 4462 (April 1978)	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT	Contract Number _____ _____
SUSPENSION NOTICE		INSTRUCTIONS District office prepares this form. Original must be signed by Contracting Officer.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

[Purchaser Name]
 [Address]
 [Address]

Dear Purchaser:

A recent inspection of your operations under the above timber sale contract located in [insert legal description] reveals the following contract violation(s): [insert violation(s)].

Section 10. (a) of the timber sale contract provides that:

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

Notice is hereby given that all further operations under this contract are hereby suspended except such operations as may be necessary to remedy the above-described violation(s). If you should cut or remove any timber sold under this contract during the period of suspension, such cutting or removal shall be considered a willful trespass and render you liable for damages under applicable law.

Upon correction of the above-described violation(s), please notify the district office for further suspension. You may not proceed with your cutting or logging operations until you receive written authorization from the Contracting Officer.

Sincerely,

[Contracting Officer]

Section 10(a) – Violations, Suspensions, and Cancellations

- Exception occurs in the event of non-payment if the payment is guaranteed by a Payment Bond. In such cases:
 - Written suspension should be issued promptly when payments due have not been received, and demand should be made on the Surety for the payment.
 - Surety has 60 days after the 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 has been received.

Vince Randall

Section 10(a) – Violations, Suspensions, and Cancellations

- Contract should not be suspended without prior consultation with the Purchaser regarding the nature of the violation(s). Section 10(a) 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 the contract and recovery of damages by the Government is a specialized legal matter.
 - Requires legal counsel.
 - Is to be taken only after review and assistance by the State Director.
- Contract cancellation has significance when timber remains to be cut and/or removed.

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. 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, to proceed even though cutting operations are suspended on another cutting area. Suspensions may be issued in part.

- Contract Cancellation is a cancellation of the rights of the Purchaser although the contract obligations of the Purchaser remain, even if the contract is cancelled.



Section 10(b) – Violations, Suspensions, and Cancellations

Sec. 10. Violations, Suspension, and Cancellation (con't)

- (b) **If Purchaser cuts or removes any timber sold under this contract during any period of suspension, such cutting or removal shall be considered a willful trespass** and render Purchaser liable for damages under applicable law. For purposes of determining damages under this section, the value of the trespass timber shall be based upon the fair market value of the particular timber cut or removed at the time of trespass. Any payment made for purchase price of timber cut or removed in trespass shall be **deducted to the extent of single damages or the value of timber under this contract**, whichever is lesser, from amount due because of trespass.

Vince Randall

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

If the Purchaser cuts and removes timber/wood 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 timber/wood products.

Section 10(c) – Violations, Suspensions, and Cancellations

Sec. 10. Violations, Suspension, and Cancellation (con't)

(c) If Purchaser's operations are suspended because of Purchaser's failure to make an installment payment when due, the Contracting Officer may require Purchaser to *pay the entire remaining balance* of the **total** purchase price or any portion thereof as a condition of terminating the suspension.

Vince Randall

Section 10 (c) - 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 timber/wood products skidded, yarded, or removed under a payment bond, then suspension and demand on the surety should happen.

Section 10(d) – Violations, Suspensions, and Cancellations

Sec. 10. Violations, Suspension, and Cancellation (con't)

(d) In the event timber is entirely removed or the time for cutting and removal has passed, **the suspension notice otherwise required in this section need not be issued prior to the notice of cancellation.**

- Where would this come into play?

Final road maintenance, slash disposal or burning, clean-up trash, ect.

Vince Randall

Section 10(d) establishes the Purchaser should be notified of the violation of the contract and demand made on the surety bond.

Section 10(e) – Violations, Suspensions, and Cancellations

Sec. 10. Violations, Suspension, and Cancellation (con't)

- (e) If Purchaser, **Purchaser's contractors**, subcontractors, or the employees of any of them, cuts, injures, or removes any Government timber reserved under this contract, they **shall fully cooperate**, upon request of the Authorized Officer, in the investigation of such acts. **If in the opinion of the Contracting Officer, full cooperation is not received** or will not be forthcoming, **said official** may suspend that portion of Purchaser's operations necessary to preserve evidence pending investigation or permit safe investigation of such acts.

Vince Randall

Under Section 10(e) 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

Sec. 11. Credit Against Purchase Price

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

Werner Kruger

Section 11 of the contract states to what extent a purchaser is entitled to credit against the total purchase price for timber/wood 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 timber/wood products as established by the Contracting Officer by reappraisal or resale, or the total value based upon contract unit prices, whichever is less.

Section 11 – Credit Against Purchase Price

- Expired or cancelled sales, with significant volume remaining, should be reviewed prior to reoffering:
 - Establish the market value of the remaining timber;
 - Determine if significant changes in the contract terms are needed
 - Significant changes in contract terms would require the damages be based upon appraisal rather than resale price.
 - Appraisal may take into consideration the resale price as one of the factors indicating market value.
- Administrative costs of resale are charged to the Purchaser.
 - Keep good records in case Purchaser challenges us.

Werner Kruger

Expired or canceled sales upon which a significant volume of sale timber/wood products remains should be completely reviewed prior to re-offering the same tract for sale to establish market value of the remaining timber/wood products.

Determine if significant changes in the contract terms are needed to protect the best interest of the United States. 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 cruise and reappraisal, other field costs, costs of advertising, clerical time, etc.

Section 11 – Credit Against Purchase Price

Illustration

Purchase Price = \$100,000 - \$10,000 1st Installment paid

No timber harvested and sale expires – Purchaser owes BLM \$100,000

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\$ 65,000 – amount BLM resells contract for

-\$ 1,000 – resale cost

+\$10,000 – 1st installment

\$ 74,000 – Net Credit

Original Purchaser owes

\$100,000 – 74,000 = \$26,000

Werner Kruger

As an illustration of this procedure, assume a purchaser was awarded a timber/wood 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 timber/wood products. The Purchaser then owes the Government \$100,000 less any credit for the payments. Upon resale by the Government, the timber/wood 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 timber/wood 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.

Section 11 – Credit Against Purchase Price

- Government is entitled to retain all monies paid until the amount of damages has been determined.
 - Government is then entitled to retain only that amount which makes it whole.
 - When total market value of remaining timber exceeds the amount due on the contract, the defaulting Purchaser receives credit only for the amount due.
 - The Purchaser is not permitted to profit as a consequence of his contract default.
- Purchaser cannot bid on resale of uncompleted contract.

Werner Kruger

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 timber/wood products and payments on the purchase price which are in excess of its damages. When the total market value of remaining timber/wood 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 timber/wood 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 timber/wood 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

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

Purchaser **agrees to hold the Government harmless** from any claim for damage or loss of property, personal injury, or death and **to be liable for any damage suffered, cost or expense incurred** by the Government which claim, damage, cost, or expense arise out of any operations under this contract and **result from any breach of contract or wrongful or negligent act or omission** of Purchaser, **Purchaser's contractors**, subcontractors, or employees of any of them. Purchaser shall pay Government for such damages after written demand **therefore** by the Contracting Officer.

Mike Bechdolt

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.

Job Site Damages




Two Scenarios:

Question 1: A newly constructed road begins to develop a large sink hole once hauling commences and after being approved by the BLM. Upon close inspection, the BLM notices that stumps and slash were buried under the road bed in lieu of being hauled away. Is the Purchaser responsible for repairs at no cost to the government?

Question 2: A high-lead cable yarding tower tips over on a BLM timber sale during a difficult north bend operation. Both the Purchaser and the Government knew about this blind lead area at the prework. The Purchaser choose not to fall the timber in the blind lead area concurrent with the rest of the timber until the logging plan could be finalized for this area. The operations commenced. The contract administrator arrived one day to find out that the rest of the timber in the difficult area had been cut and they were now yarding it using a north bend system. A few days later, a turn gets hung up on a snag, two guylines snap on the tower, the tower snaps in two, and thousands of dollars of damages occur. Is the Government liable for damages?

Section 13 – Timber Trespass

Sec. 13. Timber Trespass

If in connection with operations hereunder Purchaser, **Purchaser's contractors**, subcontractors, or the employees of any of them, **cuts, injures, or removes any Government timber, other than timber sold under this contract**, Purchaser shall be liable for damages under applicable law. **Purchaser shall pay Government for such damages after written demand therefore by the Contracting Officer.** 

Refer to:

BLM Manual Supplement Handbook 9231-1 (Timber Trespass)

Vince Randall

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 timber or wood products trespass which occurs on the contract area, but may be applied to enforce payment for timber or wood 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.

It is not practical to list all reserved other vegetative resources by species in Section 41, therefore, all other vegetative resources are generically reserved except those included in Exhibit B. This would “set up” the Purchaser to injure reserved other vegetative resources in the course of normal harvest operations. **Hence, the last sentence of Section 13 establishes that such incidental injury is not considered to be a trespass?**

Section 14 – Protection of Roads, Utilities and Improvements

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

Existing telephone lines, transmission lines, fences, ditches, roads, trails, and other improvements shall be protected as far as practicable in all phases of **Purchaser's operations**. All such roads and ditches shall be kept free of logs, slash, **and debris resulting from Purchaser's operations**. **Damage to roads, utilities, and improvements shall be promptly paid for or repaired** to a condition which, in the opinion of the Authorized Officer, is at least as good as the condition just prior to such damage.

Werner Kruger

Section 14 requires protection by the Purchaser of roads, utilities, fences, 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 are 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 42, and the location shown on Exhibit A.



Section 15 – Fire Prevention and Slash Disposal

Sec. 15. Fire Prevention and Slash Disposal

Purchaser shall take such measures for **prevention and suppression of fire on the contract area and other adjacent Government lands used or traversed by Purchaser** in connection with operations as are required by **applicable laws and regulations**. However, when in the opinion of the Authorized Officer, weather and other conditions affecting fire incidence and control make special precautions necessary to protect the contract area and said Government lands, Purchaser shall take such additional or other fire prevention and control measures as may be required by the Authorized Officer. **Disposal of slash shall be done in accordance with a plan approved by the Authorized Officer** or as provided in **Sec. 42**.



Mike Bechdolt

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 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 42 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 42, or when special slash disposal methods are to be used, they must be set forth under Section 42. There may be applicable State law and requirements for fire prevention. These requirements can be repeated in the contract for the convenience of both parties.

So....A purchaser's equipment starts a fire. Who is liable for the suppression costs?

http://oregon.gov/ODF/FIRE/fire.shtml#Fire_Prevention_Unit

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OREGON Department of Forestry Fire in the Forest

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Fire in the Forest



Fire Program	Significant Fire Potential
Fire Prevention Unit	Fire Weather
Grant Opportunities	ODF Pocket Cards
Fire Stats, Info & Updates	Smoke Management Information
Forest Restrictions & Closures	Federal Excess Property
Firefighting Resources	

Fire Program

- [Furlough Days and ODF](#)
- [Background and Purpose](#)
- [Staff Listing and Phone Numbers](#)
- [Functional Flow Chart](#)
- [Organizational Chart](#)
- [Program Review](#)

- **Oregon Dept Of Forestry Fire Prevention Laws:** <http://www.leg.state.or.us/ors/477.html>
- 477.120 Liability of owner or operator. (1) Except as provided in subsections (2) and (3) of this section, the owner or operator of forestland is not subject to the obligations or penalties of ORS 164.335 and 477.740 or 477.064, 477.066 and 477.068 if:
 - (a) Forest patrol assessments are regularly paid for the forestland;
 - (b) Such forestland is protected pursuant to membership in a forest protective association in accordance with ORS 477.210, which association has undertaken the control and suppression of fires on such land as provided in the contract; or
 - (c) Such forestland is protected pursuant to cooperative agreement or contract under ORS 477.406.
- (2) The provisions of subsection (1) of this section do not apply to such owner or operator if the owner or operator:
 - (a) Is willful, malicious or negligent in the origin or subsequent spread of a fire on such forestland;
 - (b) Has caused or permitted an operation to exist on such forestland and a fire originates thereon as a result of the operation;
 - (c) Has failed to give notice to the forester pursuant to ORS 527.670 (6), has failed to obtain a permit for the use of fire in any form or power-driven machinery pursuant to ORS 477.625 or has failed within the time prescribed in any order or notice issued by the forester to reduce, abate, or offset any hazard determined to exist pursuant to ORS 477.062 or 477.580 and a fire originates on or spreads to the area on which such hazard exists and for which no release has been granted pursuant to ORS 477.580 (3) or (4); or
 - (d) Has caused or allowed any burning, including burning regulated by ORS 477.013 or 477.515, whether or not a permit has been obtained and a fire results from or is caused by such burning.
- (3) Unless subsection (2)(a) or (c) of this section applies, the owner or operator shall not be obligated to pay that portion of the actual costs provided in ORS 477.068 which are the ordinary costs of the regular personnel and equipment of the forest protection district wherein the forestland is located.
- (4) If subsection (2)(b) or (d) of this section applies and subsection (2)(a) and (c) of this section do not apply, the owner or operator shall not be liable to the forester for fire suppression costs in excess of \$300,000.
- (5) The provisions of subsections (3) and (4) of this section do not apply to the owner or operator if the owner or operator fails to make every reasonable effort.
- (6) For the purpose of subsection (2)(b) of this section, if a fire originates while an operation is in progress, there is a presumption, under ORS 40.120, that the fire originated as a result of the operation. [Formerly 477.056; 1971 c.743 §385; 1973 c.46 §2; 1983 c.22 §4; 1989 c.615 §1; 1997 c.274 §48; 2007 c.847 §2]

Operator Fires Due Happen



Section 16(a) – Construction, Use and Maintenance of Roads and Facilities

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

(a) Subject to the written approval of and regulation by the Contracting Officer, Purchaser may: (1) construct and use any new roads and facilities not otherwise provided for in this contract, and (2) use any existing roads and facilities not otherwise provided for in this contract.

Vince Randall

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 timber/wood 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 42.

Section 16(b) – Construction, Use and Maintenance of Roads and Facilities

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

(b) Except as provided in Sec. 12, Purchaser shall perform or **pay for repair and maintenance of any road or facility used under the terms of this contract** in accordance with the requirements of Sec. 42; *Provided, however,* that Purchaser shall **not be responsible for maintenance or repair of wear or damage caused by third parties,** or maintenance or repair which exceeds the standards of required maintenance shown in Sec. 42; and *Provided, further,* that Purchaser's responsibility under this provision **shall not commence prior to the date on which Purchaser first begins operations and shall cease upon completion and written acceptance** of all contract requirements other than slash disposal, except for maintenance and repair of damages resulting from Purchaser's slash disposal activities.

Vince Randall

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 42. 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 42. **Large slide**

After the contract is approved, situations may arise where the Bureau 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. **Repairs to BST roads.**