

**Forest Service Manual
National Headquarters - Washington Office
Washington, DC**

**Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration**

Amendment: 2400-2021-4

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Approved by: Tina Johna Terrell, Associate Deputy Chief, NFS

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Explanation of changes: Following is an explanation of the changes throughout the directive by section. **2450:** Revises, reorganizes, updates, and re-codes throughout chapter.

2450.1: Updates authorities not included in FSM 2401.

2450.2: Adds list of contract forms addressed in chapter.

2450.3: Adds, updates, and clarifies policies pertaining to timber sale contract administration.

2450.4: Responsibilities of line officers moved to FSM 2404.

2450.41: Recaptioned Timber Sale Contract Administration Team

2450.5: Adds definitions.

2450.51: Adds new code captioned: Stewardship and Timber Sale Contract Terminology. Clarifies differences between timber sale contracts and stewardship contracts.

2451: Updates and clarifies Purchaser's organization and responsibilities under the contract.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

2451.12: Adds new code captioned: Safety. Clarifies responsibilities of Forest Service and Purchaser for safety.

2452: Updates and clarifies fundamentals of contract administration. Updates minimum requirements and certification requirements for contract administration personnel.

2452.3: Clarifies use of external documents when determining intent of contract.

2452.4: Clarifies reasons for certifying contract administration personnel.

2452.41: Updates minimum requirements for Contracting Officers.

2452.42: Updates minimum requirements for Forest Service Representatives.

2452.43: Updates minimum requirements for Sale Administrators.

2452.44: Updates minimum requirements for Harvest Inspectors.

2452.45: Recaptioned: Minimum Requirements for Level 1 Forest Products Resource Specialist. Adds minimum requirements for this new position. Information previously at FSM 2452.45 moved to FSM 2452.47.

2452.46: Recaptioned: Minimum Requirements for Engineering Representatives and Construction Inspectors. Refers readers to FSH 7109.17, chapter 10 for these positions. Information previously at FSM 2452.46 moved to new code FSM 2452.48.

2452.47: Recaptioned: Issuing Permits. Adds direction pertaining to authority to issue permits and information previously at FSM 2452.45. Information previously at FSM 2452.47 moved to new code FSM 2452.49.

2452.48: New code captioned: Additional Considerations. Contains information previously in FSM 2452.46.

2452.49: New code captioned: Certification Programs. Contains information previously in FSM 2452.47.

2453: Restructures, adds, updates, and clarifies direction throughout the code pertaining to changes in status of timber sale contracts.

2454: Restructures, adds, updates, and clarifies direction throughout the code pertaining to contract claims and lawsuits.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

2455: Restructures, adds, updates, and clarifies direction throughout the code pertaining to timber export restrictions.

2455.4: Procedures pertaining to debarment for export violations moved to FSH 2409.18a, chapter 20.

2456: Updates and clarifies direction throughout the code pertaining to payments and use of surety bonds with timber sale contracts and permits.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration
Amendment: 2400-2021-4
Effective date: October 29, 2021
Table of Contents

2450.1 - Authority.....	7
2450.2 - Objective.....	7
2450.3 - Policy	8
2450.4 - Responsibility	10
2450.41 - Timber Sale Contract Administration Team	10
2450.5 - Definitions.....	10
2450.51 - Stewardship and Timber Sale Contract Terminology	11
2451 - Purchaser’s Organization Under the Contract	12
2451.1 - Purchaser	12
2451.11 - Purchaser’s Representative and Field Supervisor	13
2451.12 - Safety	13
2452 - Contract Administration Fundamentals	13
2452.1 - The Contract.....	13
2452.2 - Documentation	13
2452.3 - Contract Interpretation	14
2452.4 - Minimum Requirements and Certification of Contract Administration Personnel	15
2452.41 - Minimum Requirements for Contracting Officers.....	15
2452.42 - Minimum Requirements for Forest Service Representatives	17
2452.43 - Minimum Requirements for Sale Administrators	18
2452.44 - Minimum Requirements for Harvest Inspectors.....	18
2452.45 - Minimum Requirements for Level 1 Forest Products Resource Specialist	19
2452.46 - Minimum Requirements for Engineering Representatives and Construction	
Inspectors	19
2452.47 - Issuing Permits.....	19
2452.48 - Additional Considerations	20
2452.49 - Certification Programs	20
2452.5 - Breach and Suspension.....	21
2453 - Changes in Status of Timber Sale Contracts	21
2453.01 - Authority	21
2453.03 - Policy Changes and Effects on Existing Contracts	22
2453.04 - Responsibility	22
2453.1 - Changes Permitted to Contract Term	23
2453.11 - Contract Term Adjustment (Force Majeure)	24
2453.11a - Contract Term Adjustment (Non-Force Majeure)	25
2453.12 - Waiver of Time Limit.....	25
2453.13 - Contract Term Adjustment or Extension to Prevent Environmental Damage ..	26
2453.14 - Contract Term Adjustment or Early Extension after Catastrophic Damage	26
2453.15 - Urgent Removal Extension	27
2453.16 - Contract Term Extension Under Diligent Performance Authority	27
2453.17 - Extension under Substantial Overriding Public Interest Authority	28
2453.18 - Market-Related Contract Term Addition.....	29

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration
Amendment: 2400-2021-4
Effective date: October 29, 2021

2453.19 - Conditional Extension	29
2453.2 - Contract Agreements.....	29
2453.3 - Contract Modifications	29
2453.4 - Acquisition by Third Party.....	30
2453.5 - Acceptance of a Name Change.....	30
2453.6 - Assignment	30
2453.7 - Actions When a Contract Defaults	31
2453.8 - Cancellation or Termination of Contracts.....	31
2453.81 - Cancellation to Prevent Environmental Damage	32
2453.82 - Cancellation for Breach	32
2453.83 - Cancellation by Agreement	33
2453.84 - Cancellation Because of Catastrophic Damage.....	33
2453.85 - Cancellation within Disaster Areas	33
2454 - Contract Claims and Lawsuits	34
2454.1 - Contract Disputes	34
2454.2 - Payment of Purchaser Claims.....	34
2454.3 – Judgment Fund	35
2454.4 - Collection of Government Claims.....	35
2454.5 - Fraudulent Claims.....	35
2454.6 - Lawsuits	35
2454.7 - Settlement Agreements.....	35
2455 - Timber Export Restrictions	36
2455.01 - Authority	36
2455.05 - Definitions	36
2455.1 - Determination of Surplus Species	36
2455.2 - Administration of Export Restrictions	37
2455.21 - Branding and Painting Requirements	37
2455.21a - Log Yard Agreements.....	37
2455.21b - Preserving Identification	37
2455.21c - Waiver of Marking Requirements	38
2455.21d - Review and Termination of Waivers	38
2455.22 - Log Export Surveillance	38
2455.23 - Reports and Records	39
2455.3 - Violations.....	39
2455.4 - Debarment for Export Violations	39
2456 - Payments and Use of Surety Bonds With Timber Sale Contracts and Permits	39
2456.01 - Authority	39
2456.02 - Policy.....	39
2456.1 - Performance Bonds in Timber Sales	39
2456.11 - Periodic Examination	39
2456.12 - Consent of Surety When Sales Are Extended	39
2456.13 - Notices to Sureties	40
2456.14 - Making Demand on Performance Bond	40

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

2456.15 - Releasing Performance Bond.....	40
2456.16 - Deferring Payments for Timber under the Security of the Performance Bond.	40
2456.17 - Reducing the Penal Sum of the Performance Bond	41
2456.18 - Liability of Sureties.....	42
2456.2 - Payment Bonds in Timber Sales	42
2456.3 - Deposits for Cooperative Work.....	42
2456.4 - Refunds.....	43
2456.5 - Transfer of Deposits	44

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration
Amendment: 2400-2021-4
Effective date: October 29, 2021

2450.1 - Authority

In addition to laws and authorities found in Forest Service Manual (FSM) 2401, the following laws and regulations pertain to timber sale administration:

1. Authority of Contracting Officers to Settle Disputes. The Contract Disputes Act (CDA) (41 U.S.C. 7101, *et seq.*) describes the authority of a Contracting Officer (CO) to represent the Government and to exercise judgement in contractual matters for which Contracting Officers have authority. The U.S. Department of Justice's (DOJ) authority to represent federal agencies and to settle disputes in civil litigation before federal courts supersedes the authority of the Contracting Officer (*see* the Act of June 22, 1870, 16 Stat. 162, codified at 28 U.S.C. 516-519). Refer to Forest Service Handbook (FSH) 2409.15, chapter 70 for direction on when a Contracting Officer should seek advice when responding to a dispute or claim.
2. Legal Review and Execution of Settlement Agreements. U.S. Department of Agriculture Departmental Regulation DR 1521-001, January 4, 2018, establishes requirements for obtaining legal sufficiency review and concurrence for monetary settlement agreements above certain thresholds.
3. Limitations on Authority to Obligate Money. The Anti-Deficiency Act (31 U.S.C. 1341) prohibits agencies from obligating funds in excess of appropriations.
4. Authority to Collect Debts. The Debt Collection Improvement Act (31 U.S.C. 3701, *et seq.*) and its implementing regulations in Title 31, Code of Federal Regulations (CFR) Parts 900-904, require certain procedures to be followed in collecting debts and compromising debts due to the United States.
5. Authority to Administer Timber Sales. Title 36, Code of Federal Regulations, Part 223 establishes rules governing the administration of timber sale and stewardship contracts.
6. Authority to Regulate Timber Export and Substitution. Title 36, Code of Federal Regulations, Part 223, Subparts D and F establish rules concerning timber export and substitution. The 1997 Export Act permanently rendered the regulations issued on September 8, 1995 that governed indirect substitution and other matters, ineffective. The regulations in Subparts D and F that were in effect prior to September 8, 1995, including those prohibiting export of federal timber and those prohibiting direct substitution, are the rules currently in effect.

2450.2 - Objective

To attain full compliance with contract terms in the following timber sale contract forms:

1. FS-2400-2 Contract For Sale of Decked Timber.
2. FS-2400-3S Timber Sale Contract (Applicable to sales to be scaled after felling).

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

3. FS-2400-3T Timber Sale Contract (Applicable to sales to be measured before felling).
4. FS-2400-3P Forest Products Contract (Applicable to the sale of nonconvertible products).
5. FS-2400-4 Forest Products Contract and Cash Receipt.
6. FS-2400-6 Timber Sale Contract (Applicable to sales to be scaled after felling).
7. FS-2400-6T Timber Sale Contract (Applicable to sales to be measured before felling).
8. FS-2400-13 Integrated Resource Timber Contract (For measurement of products after harvest).
9. FS-2400-13T Integrated Resource Timber Contract (For measurement of products before harvest).

Different versions of these contracts exist and can be identified by the date in parentheses on the form. When referring to both forms of a contract they may be displayed as FS-2400-6/6T or FS-2400-13/13T. Care must be exercised when administering a contract to ensure the proper form and version is used as there can be significant differences between forms and versions in some contract provisions.

2450.3 - Policy

Effective execution of contracts requires diligent administration. Each party is responsible for ensuring it performs the contract as agreed to in the contract terms and to take appropriate remedial action if less than the required performance is received. General policies for administering contracts include:

1. An implied duty of good faith and fair dealing, which is a legal theory included in every contract. The implied duty of good faith and fair dealing requires, among other things:
 - a. The Government's and Purchaser's duty not to hinder or interfere with the other party's performance; and
 - b. The Government's and Purchaser's duty to cooperate in a timely manner.
2. Members of the Forest Service contract administration team must request no more and accept no less from the Purchaser than the contract requires. In contract law, the implied covenant of good faith and fair dealing is a general presumption that the parties to the contract will deal with each other honestly, fairly, and in good faith, so as to not interfere with the right of the contracting party or parties to receive the benefits of the contract.
3. All members of the Forest Service contract administration team (FSM 2450.46) must meet minimum requirements (FSM 2452.4) and must have a delegation of authority in writing, to the named individual; not to a position (FSM 2404.21). All contractual decisions made within the delegated authority are binding on the Forest Service.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

Notwithstanding the foregoing, the Contracting Officer may, as appropriate, change a decision of a contract administration team member upon the request of the Purchaser or upon a determination that the original decision would cause significant environmental impacts. For example, a temporary road is approved in a location precluded from disturbance in the National Environmental Policy Act (NEPA) decision. Such decisions by the Contracting Officer must be in writing and in accordance with applicable contract provisions and law.

4. A Contracting Officer's Representative (COR), administering the timber harvesting and removal specifications in a stewardship end result contract determined to be a service contract (36 CFR 223.301(b)(1), must meet the minimum requirements for a timber sale administrator. Conversely a timber sale administrator administering service activities under an integrated resource service contract must meet the standards as prescribed by USDA Procurement Policy for the authority delegated to them by the Contracting Officer.
5. Members of the Forest Service contract administration team must fully document, in writing with copies to Purchaser, all designations of responsibilities and authorities, compliance inspections, contract modifications, design changes, and other agreements within the scope of the contract (FSM 2452.2).
6. Members of the Forest Service contract administration team must manage contracts consistent with multiple-use policies and decisions documented in Forest and project plans. In doing this, members of the Forest Service contract administration team may use manuals and handbooks, environmental documentation, appraisals, and other materials as guides, and may seek help or advice from Forest Service resource specialists. If a point of conflict arises between the contract and related documents, the Contracting Officer should attempt to resolve such conflicts in a manner that is consistent with the contract. Contracting Officers should seek Office of the General Counsel (OGC) advice as necessary.
7. Only the Contracting Officer or their superior in the delegated authority line may make modifications to a contract, with compensating adjustments to current contract rates, on behalf of Forest Service (36 CFR 223.112). Attempt to resolve disputes through the mechanisms in the contract including agreements, design changes, modifications, and cancellations.
8. Modifications shall only apply to unexecuted portions of the contract and shall not be injurious to the United States (36 CFR 223.112).
9. To avoid violating fiscal standards for segregation of duties, Contracting Officers shall not be delegated Forest Officer authority or have Collection Officer authority.
10. When preparing a draft decision, Contracting Officers may consult with line officers, OGC and others having information pertinent to the decision. The Contracting Officer may revise a draft decision following internal review that reveals additional information

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

pertinent to the decision. Final decisions made within a Contracting Officer's delegated authority are not subject to review unless appealed by a Contractor (41 U.S.C. 7101, *et seq.*).

2450.4 - Responsibility

Organizational structure for contract administration duties and responsibilities may vary to accommodate differences in staffing, contract forms, workloads, programs, and operating needs. Specific responsibilities for individuals administering day-to-day operations of timber sales are in FSH 2409.15, section 04.

FSM 2404 sets out specific responsibilities concerning Government-wide non-procurement debarment and suspension actions, including debarment for export violations.

Responsibilities of line officer and principal staff positions for administration of timber sale and integrated resource timber contracts are addressed in FSM 2404.

2450.41 - Timber Sale Contract Administration Team

The timber sale contract administration team consists of the Contracting Officer and any of the following, as needed:

1. Forest Service Representative.
2. Sale Administrator.
3. Harvest Inspector.
4. Engineering Representative.
5. Construction Inspector.
6. Forest Products Resource Specialist.

While being an integral part of the contract administration team for all timber sales, the Forest Products Resource Specialist does not have delegated authority to act as a representative of the Contracting Officer.

Responsibilities of the Contracting Officer and each team member are described in FSH 2409.15, section 04.

2450.5 - Definitions

For the purposes of this chapter the following definitions apply:

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

Agreement. A mutual understanding of an action authorized by the contract such as the location of a temporary road or designating additional trees to cut. In the context of contract administration all agreements are mutual, must be documented in writing, signed by both parties to the contract, and must not alter or change the terms or conditions of the contract.

Breach. Failure to comply with the terms of the contract by either the Forest Service or the Purchaser.

Cancellation. The elimination of all remaining contractual requirements for reasons stated in the contract. The terms “cancellation” and “termination” are synonymous and may be used interchangeably.

Code of Federal Regulations (CFR). The general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government. The CFR is divided into 50 titles that represent broad areas subject to Federal regulation. Title 36, Part 223 (36 CFR 223) addresses the Sale and Disposal of National Forest System Timber, Special Forest Products, and Forest Botanical Products.

Material Provision. Any provision of the contract that requires specific action on the part of either party, such as payment, performance or notification.

Modification. A change in the terms or conditions of a contract without altering the overall intention. Modifications may be mutual or unilateral when allowed under specific provisions of the contract.

Office of the General Counsel (OGC). An independent legal agency within the U.S. Department of Agriculture (USDA) that provides legal advice and services to the Secretary of Agriculture and to all other officials and agencies of the Department with respect to all USDA programs and activities. All legal services are centralized within OGC and the General Counsel reports directly to the Secretary.

Purchaser. Title of the individual or business awarded a timber sale contract or entity having the current rights to the contract under the terms of an approved third-party agreement. As used in FSM and FSH directives the term Purchaser also means stewardship Contractor.

Termination. See cancellation. The terms “cancellation” and “termination” are synonymous and may be used interchangeably.

2450.51 - Stewardship and Timber Sale Contract Terminology

Integrated resource timber contract (IRTC) forms FS-2400-13 and FS-2400-13T are used for stewardship end result projects where the value of products sold is greater than the cost of services performed (FSH 2409.19, sec. 62.11).

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

There are differences in terminology between timber sales used for the sale of products, and integrated resource projects that combine the sale of products with the procurement of services. For ease in reading this chapter, and unless noted otherwise, when the following timber sale terms are used they apply to the equivalent IRTC terms:

<u>Timber Sale Term</u>	<u>Integrated Resource Project Term</u>
Timber Sale	Integrated Resource Project or Stewardship Project
Timber Sale Contract	Integrated Resource Timber Contract (IRTC)
FS-2400-6/6T Contract	FS-2400-13/13T Contract
Purchaser	Contractor
Sale Area	Contract Area
Sale Area Map	Contract Area Map

The numbering system for contract provisions differs between FS-2400-6/6T contracts and the September 2004 version of FS-2400-13/13T contracts. For ease in reading this chapter, and unless noted otherwise, references to a timber sale contract provision apply to the corresponding provision with the same descriptive title in September 2004 IRTC's. FS-2400-13/13T contracts with an issue date of (10/19) use the same division structure and provision numbers as the FS-2400-6/6T contracts.

2451 - Purchaser's Organization Under the Contract

2451.1 - Purchaser

Contracts require the Purchaser to provide the necessary expertise and supervision to ensure the Purchaser's employees and agents carry out the contract terms, including conformity with provisions, plans, specifications, and safety requirements. Except for contract forms FS-2400-2 and FS-2400-4, and unless otherwise agreed, the Purchaser is required to designate, in writing, a Purchaser's representative who is authorized to receive notices regarding performance under the contract and take related action.

The FS-2400-2 and FS-2400-4 contracts do not contain language for the Purchaser to delegate responsibilities to others. For those contracts, the Forest Service communicates directly with the Purchaser.

2451.11 - Purchaser's Representative and Field Supervisor

All contract forms except FS-2400-2 and FS-2400-4 require the Purchaser's representative to designate a field supervisor to work with the Forest Service in the operation of the timber sale. The Purchaser's representative must notify the Forest Service in writing of the designations and outline the authority and responsibilities of each of the Purchaser's employees assigned contract duties (FSH 2409.15, ch. 60).

2451.12 - Safety

Purchaser has all responsibility for compliance with safety requirements for Purchaser's employees. Purchaser's operations shall also facilitate Forest Service's safe and practical inspection of Purchaser's operations. When a conflict is identified between requirements of the contract and State or Federal safety requirements, the contract shall be modified, and the Purchaser may request an adjustment in rates to compensate the changed condition. Contract requirements must be evaluated for operational safety by the Contracting Officer prior to awarding any contract.

The Secretary of Labor has sole statutory authority to investigate and enforce the terms of Occupational Safety and Health Administration (OSHA) and its implementing regulations. If the Forest Service observes violations of contract terms related to the safety of a Purchaser's operations, it can initiate action under the contract to require operations be brought into compliance with the contract. However, Forest Service sale administration personnel are not trained OSHA inspectors and shall not directly enforce OSHA logging regulations by conducting OSHA safety compliance inspections or issuing citations for non-compliance with OSHA regulations. Forest Service review of sale activities through routine sale inspections will monitor Purchaser's operations to ensure safety of Forest Service employees and public Forest visitors are notified of operations by appropriate signage (FSH 2409.15, ch. 60).

2452 - Contract Administration Fundamentals

2452.1 - The Contract

The contract is a bilateral agreement entered into by the Forest Service and a Purchaser that reflects the offer and acceptance of bargained for benefits to be received and obligations required of both parties, the breach of which results in a remedy.

2452.2 - Documentation

Thorough documentation is an essential component of contract administration and in protecting the Government's interests in event of a contract dispute or claim. Original copies of all documents must be filed in the official contract file and retained as directed in FSH 6209.11, section 40, under file code 2450 (commercial) or 2460 (other than commercial). Scan paper documents for retention in electronic format (E-Records). Verify that scanned copies are clear,

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

legible and include both sides of two-sided documents before filing electronic copies. Examples of items that must be fully documented in writing and provided to Purchaser include:

1. Delegations of Authority.
2. Notices regarding performance and actions to be taken by the Purchaser.
3. Notices regarding breach and time limits for a breach remedy.
4. Notices of suspension not related to breach such as a suspension due to litigation.
5. Acceptances or rejections of work.
6. Granting or denying in whole or in part Purchaser's request for contract term adjustment (FSM 2453.11).
7. Agreements permitted under the terms of the contract.
8. Routine inspections.
9. Phone conversations with the Purchaser and/or Purchaser's representative regarding performance, interpretation of contract provisions, agreements, and so forth.
10. Monthly statements of account.

All agreements permitted under terms of the contract must be signed by persons with delegated authority to approve the agreement for the Purchaser and Forest Service (FSH 2409.15, sec. 04).

Any changes to terms of the contract not specifically authorized by written agreement must be by contract modification using either form FS-2400-0009 Agreement to Modify Timber Sale or Integrated Resource Timber Contract, or FS-2400-0010 Agreement to Extend and Modify Timber Sale or Integrated Resource Timber Contract, and be executed by the Contracting Officer.

Refer to FSH 2409.15, section 14.1 for content of contract files.

2452.3 - Contract Interpretation

Interpret the contract with the plain meaning of the language and by reading the contract as a whole. Members of the Forest Service contract administration team may use manuals and handbooks, environmental documentation, appraisals, and other materials as guides to intent, but if a point of conflict arises between the contract and related documents, the language of the contract governs and must be used as the basis for all actions required under the contract unless or until the contract is modified. The parties may discuss whether a mutual modification can be agreed upon that reflects the parties' original intent.

2452.4 - Minimum Requirements and Certification of Contract Administration Personnel

To ensure consistency in interpretation and administration and to protect the interests of the Government and individual members of the contract administration team, only qualified people shall administer timber sale contracts. Individuals not meeting minimum requirements for Contracting Officer (FSM 2452.41), Forest Service Representative (FSM 2452.42), or Sale Administrator (FSM 2452.43) when appointed to the position, shall have a training plan developed and monitored to assure minimum requirements are met within two years of assuming the position. Trainees should be assigned a mentor to assist in the training process and provide technical help until the incumbent meets the minimum requirements for the position. Consider limiting the authority delegated to individuals until they meet the minimum requirements for the position they are assigned to.

2452.41 - Minimum Requirements for Contracting Officers

Each Region shall maintain a list of qualified contracting officers.

1. Contracting officers shall meet or exceed the following national minimum standards for administering contract forms FS-2400-6/6T and FS-2400-13/13T.
 - a. Three years of satisfactory performance as a:
 - (1) Certified Sale Administrator,
 - (2) Qualified Forest Service Representative,
 - (3) Qualified Contracting Officer for FS-2400-3 contracts; or
 - (4) Pass the written inter-Regional timber sale administration exam with a grade of at least 85 percent and complete the formal training requirements for a Sale Administrator and Forest Service Representative. Test scores are indicative of a level of knowledge required for the position for someone without experience at a lower level.
 - b. Forty-eight hours of formal Contracting Officer training including at a minimum:
 - (1) Timber theft prevention.
 - (2) Suspension and debarment procedures.
 - (3) Antitrust and bid monitoring.
 - (4) Bid protests.
 - (5) Contract disputes and claims.
 - (6) Breach.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

- (7) Major contract modifications, such as contract cancellations, environmental modifications and modifications for catastrophe.
 - c. Twenty-four hours of formal training in basic contract law.
 - d. Twenty-four hours of formal training in advanced contract law.
 - e. Twenty-four hours of formal training in stewardship contract administration including best value source selection prior to receiving authority to administer IRTC's.
 - f. To maintain certification, complete 24 hours of formal continuing education training every 3-years. This requirement can be met by attending Advanced Contract Law, Skills Enhancement for Contracting Officers, or other training approved by the Regional Forester.
2. Contracting Officers shall meet or exceed the following national minimum standards for administering contract forms FS-2400-3S/3T/3P.
- a. Previous experience as a:
 - (1) Certified Sale Administrator; or
 - (2) Qualified Forest Service Representative; or
 - (3) Qualified Contracting Officer for 2400-4 contracts; or
 - (4) Pass the written inter-Regional timber sale administration exam with a grade of at least 85 percent and complete the formal "classroom" training requirements for a Sale Administrator and Forest Service Representative.
 - b. Forty-eight hours of formal Contracting Officer training including at a minimum:
 - (1) Timber theft prevention.
 - (2) Suspension and debarment procedures.
 - (3) Antitrust and bid monitoring.
 - (4) Bid protests.
 - (5) Contract disputes and claims.
 - (6) Breach.
 - (7) Major contract modifications, such as contract cancellations; environmental modifications and modifications for catastrophe.
 - c. Twenty-four hours of formal training in basic contact law.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

- d. To maintain certification, complete 24 hours of formal continuing education training every 3-years. This requirement can be met by attending Sale Contract Law, Skills Enhancement for Contracting Officers or other training approved by the Region.
3. Contracting officers shall meet or exceed the following national minimum standards for administering contract forms FS-2400-4 and FS-2400-2.
 - a. Twenty-four hours of formal Contracting Officer training.
 - b. Previous experience as a certified Sale Administrator or pass the written inter-Regional timber sale administration exam with a grade of at least 85 percent.
 - c. Twenty-four hours of formal training in basic contract law.
 - d. To maintain certification Contracting Officers shall complete 24 hours of formal continuing education training every 3-years. This requirement can be met by attending Contracting Officer Part 2, Advanced Contract Law or other training approved by the Region.

Regional Foresters may supplement this section with additional requirements and may require a higher passing grade for the inter-Regional timber sale administration exam.

2452.42 - Minimum Requirements for Forest Service Representatives

Each Region shall maintain a list of qualified Forest Service Representatives who must meet or exceed the following national minimum standards for administering contract forms FS-2400-6/6T, FS-2400-13/13T, FS-2400-3S/3T/3P, and FS-2400-4.

1. Twenty-four hours of formal Contracting Officer training including at a minimum:
 - a. Agreements.
 - b. Suspensions and Breach.
 - c. Contract disputes and claims.
2. Twenty-four hours of formal Timber Sale Financial Management training.
3. Three years of satisfactory performance as a certified Sale Administrator; or pass the written Inter-Regional Timber Sale Administration Exam with a grade of at least 80 percent and complete the formal “classroom” training requirements for a Sale Administrator.
4. To maintain qualification Forest Service Representatives must complete 24 hours of formal continuing education training every 3-years. This requirement can be met by attending Contracting Officer Part 2, Advanced Contract Law or other training approved by the Region.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

Regional Foresters may supplement this section with additional requirements and may require a higher passing grade for the inter-Regional timber sale administration exam.

2452.43 - Minimum Requirements for Sale Administrators

Each Region shall maintain a list of certified Sale Administrators who must meet or exceed the following national minimum standards for administering contract forms FS-2400-6/6T, FS-2400-13/13T, FS-2400-3S/3T/3P, and FS-2400-4.

The Regional certification program, as a minimum, must require:

1. Twenty-four hours of formal basic sale administration training including timber theft prevention training.
2. One year of satisfactory performance in timber sale administration as a Harvest Inspector or in timber sale preparation.
3. Twenty-four hours of formal timber sale financial management training.
4. Forty-eight hours total formal and/or on-the-job training. May be obtained in combination with professional or academic training on logging systems, resource protection, logging safety, and Forest land management plan components relating to sale administration.
5. Pass the written Inter-Regional Timber Sale Administration Examination with a grade of at least 75 percent. Regional Foresters may require a higher passing grade.
6. Pass an oral field examination following the process and rating system developed by the National Inter-Regional Timber Sale Administration Cadre.

Individuals administering timber harvesting and removal activities under an Integrated Resource Service contract must meet the standards as prescribed by USDA Procurement Policy for the authority delegated to them by the Contracting Officer.

Regional Foresters may supplement this section with additional requirements.

2452.44 - Minimum Requirements for Harvest Inspectors

Harvest Inspectors shall meet or exceed national minimum standards for inspecting contract forms FS-2400-6/6T, FS-2400-13/13T, FS-2400-3S/3T/3P, and FS-2400-4:

Minimum national standards to be met within 1-year of appointment to the position include:

1. Twenty days accompanying and observing a certified Sale Administrator conducting inspections of ongoing timber sales.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

2. Twenty-four hours of formal basic sale administration training including timber theft prevention training.
3. In addition to item 1 above, complete 24 hours total formal and/or on-the-job training. May be obtained in combination with professional or academic training on logging systems, resource protection, logging safety, and Forest land management plan components relating to sale administration.

Regional Foresters may supplement this section with additional requirements.

2452.45 - Minimum Requirements for Level 1 Forest Products Resource Specialist

Level 1 is the fully qualified level for the Forest Products Resource Specialist (FPRS) position. Each Region shall maintain a list of certified FPRS's who must meet or exceed the national minimum standards within 1 year of appointment to the position. Satisfactory completion of national task book training requirements for Level 1, including:

1. Thirty-two hours of Forest or Region level timber information manager training.
2. Twenty-four hours of formal timber sale financial management training.
3. Twenty-four hours of formal basic sale administration training.

Regional Foresters may supplement this section with additional requirements.

Level 2 Forest Product Resource Specialists have successfully completed Level 1 requirements and have at least 2-years of experience.

2452.46 - Minimum Requirements for Engineering Representatives and Construction Inspectors

Timber sale Engineering Representatives and timber sale Construction Inspectors must meet the minimum requirements in FSH 7109.17, chapter 10. Regional Foresters may supplement this section with additional requirements.

2452.47 - Issuing Permits

Timber sale administration team members, except Level 1 Forest Product Resource Specialists, shall not act as qualified collection officers and shall not be required to or be responsible for receiving payments or issuing forest product permits.

Any person authorized to issue permits must be a qualified collection officer and meet or exceed national minimum standards for issuing Form FS-2400-1, Forest Products Removal Permit and Cash Receipt, and Form FS-2400-8, Forest Products Free Use Permit.

2452.48 - Additional Considerations

Line officers and Contracting Officers should also consider the following criteria before deciding whom to delegate timber sale contracting responsibility:

1. Knowledge of the Forest Service mission and objectives.
2. Breadth of timber management experience and knowledge including, but not limited to, the fiscal aspects of the timber sale contract and timber sale appraisal.
3. Previous experience as a Sale Administrator, Forest Service Representative, or Contracting Officer or experience assisting others in one or more of these positions.
4. Management skills, including, but not limited to, written and oral communications, interpersonal relations, problem-solving ability, and decision-making ability.
5. Time available to serve satisfactorily in the designated role considering the size, complexity, and geographic locations of contracts to be administered and other critical duties such as firefighting.

2452.49 - Certification Programs

Each Region must establish training and certification programs for sale administration to ensure qualified personnel are available to administer timber sale contracts. Certification programs must lead to development of a cadre of qualified employees. For consistency across all Regions, sale administration personnel must meet the minimum requirements specified in this chapter. Regional Foresters may supplement those requirements to meet needs within their Region. Forest Service Representatives and Sale Administrators must be certified through Regional programs. Harvest Inspectors may be certified through Forest or Regional programs. Contracting Officers are certified after meeting the minimum requirements based on Regional Forester or Forest Supervisor designations.

Whenever members of the contract administration team do not meet minimum standards, line officers must take steps to remedy the situation. This may include providing required training, details to other units where required experience can be obtained or bringing in qualified detailers from other units to provide assistance and training.

The National Inter-Regional Timber Sale Administration Cadre (NITSAC) comprised of the sale administration specialist from each Region and the Washington Office Forest Management Staff provides oversight, coordination and scheduling of training courses required for certification. A list of the training courses including core curriculum for each is maintained on the Washington Office Forest Management Website along with an annual calendar listing proposed dates and locations of the courses sponsored by NITSAC. Individual Regions may sponsor additional training opportunities. Each Region is responsible for maintaining lists of currently certified sale administration personnel and coordinating training needs for the Region.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration
Amendment: 2400-2021-4
Effective date: October 29, 2021

2452.5 - Breach and Suspension

1. Breach. Breach exists when one party fails to carry out, in whole or in part, the terms, promises, or conditions of the contract, either by commission or omission. The Forest Service may take appropriate action if a breach occurs by the Purchaser. The Purchaser may file a claim if it alleges the Forest Service committed a breach. The Forest Service Representative must use experience, knowledge of the contract, and judgement in conducting an objective analysis of a situation to determine if a breach of contract exists and to determine whether to suspend some or all a Purchaser's operations associated with a breach.
2. Breach Procedures. Follow the terms in the contract and FSH 2409.15, chapter 60 when breach by the Purchaser occurs.
3. Law Enforcement. Cutting undesignated timber is a breach of contract that must be reported to Forest Service Law Enforcement (FSH 2409.12b, sec. 12). Law enforcement personnel must investigate the occurrence of apparent willful or negligent cutting or damage to undesignated timber to determine if violations of applicable laws and regulations have occurred (FSH 5309.11, sec. 23.3). Law enforcement and sale administration personnel must consult with each other concerning willful or negligent cutting or damage of undesignated timber. When law enforcement determines an investigation is warranted, the Contracting Officer in coordination with law enforcement must decide whether the Purchaser's operations should be suspended during the investigation.
4. Termination for Breach. Follow the procedures in FSM 2453.82 when considering termination for breach.

2453 - Changes in Status of Timber Sale Contracts

Additional information addressing changes in status of timber sale contracts is in FSH 2409.15, chapter 30.

2453.01 - Authority

1. Sections 223.112 and 223.113 of Title 36 of the Code of Federal Regulations. Sets forth the rules for modification of timber sale contracts (FSM 2453.3). Contract modifications must apply only to uncompleted portions of the contract and must not be injurious to the United States.
2. Section 223.114 of Title 36 of the Code of Federal Regulations. Provides authority for the Contracting Officer to recognize and approve a Purchaser's transfer of its rights or claims under timber sale contracts, including through assignment, to a third party when certain conditions are met (FSM 2453.4 and FSM 2453.6).

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

3. Section 223.115 of Title 36 of the Code of Federal Regulations. Provides authority to extend timber sale contracts upon a determination by the approving officer that the Purchaser has diligently performed in accordance with contract provisions and an approved plan of operation or that the substantial overriding public interest justifies an extension.
4. Section 223.116 of Title 36 of the Code of Federal Regulations. Provides authority for cancellation of timber sale contracts before the specified termination date. The timber sale contract contains implementing provisions for this authority. The Secretary may cancel contracts for reasons other than those authorized by 36 CFR 223.116 (FSM 2453.8).

2453.03 - Policy Changes and Effects on Existing Contracts

Changes in policy or direction normally do not apply retroactively to existing contracts. Occasionally contracts may need to be modified for reasons not specifically addressed within the contract. Contracting Officers shall consult with Regional Forest Management staff and OGC prior to initiating a contract modification necessitated by a change in Forest Service policy or direction. Contract modification must be made in accordance with applicable law, regulation, and policy, including, but not limited to:

1. Contracts may be modified only when the modification will apply to unexecuted portions of the contract and will not be injurious to the United States. (36 CFR 223.112).
2. Contracts may be modified to prevent environmental damage or to make them consistent with amendments or revisions of land management plans adopted after contract award. Compensation to Purchaser, if any, shall be made in accordance with provisions set forth in the contract. (36 CFR 223.113).
3. Contract modifications must preserve the original sale premises (such as bid considerations) except where authorized under the contract for such things as an alternate route (B/BT5.26) environmental modification (B/BT8.33) or modification for catastrophe (B/BT8.32). For example, a FS-2400-6T contract may be modified following catastrophic damage but may not be modified to contract form FS-2400-6, as this would change the original sale premise of how volume will be measured for payment purposes.
4. Refer to FSH 2409.15, chapter 30, Changes in Status of Contracts, for instructions on modifying contracts.

2453.04 - Responsibility

It is the responsibility of the Contracting Officer to:

1. Administer contracts as executed and may not orally modify them. When unforeseen conditions arise after the contract has been executed, the Contracting Officer may negotiate mutually agreeable modifications and execute a written contract modification.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

2. Approve contract modifications that do not change the premise of the original notice of sale.
3. Seek the advice of the Regional OGC attorney concerning a major contract modification, particularly those involving environmental or resource damage or modifications that go beyond the conditions of the original notice of sale prior to approval.
4. Submit contract modifications for sales that exceed the Regional Forester's authorization or unusual cases to the Chief for review.
5. Assign a timber sale contract in trust by written consent when such action is not prejudicial to the interests of the United States.
6. Refer an application for an assignment to the Regional OGC attorney for review before approval.
7. With the concurrence of the Regional Forester, may cancel contracts (FSM 2453.8):
 - a. For breach.
 - b. Due to catastrophic damage.
 - c. Upon application of the Purchaser within disaster areas.
 - d. Upon mutual agreement with the Purchaser.

The authority of the Chief or the Chief's designee to cancel contracts is addressed in FSM 2404.11.

2453.1 - Changes Permitted to Contract Term

The original period of a timber sale contract must not exceed 10-years in duration, unless there is a finding by the Chief, that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result (36 CFR 223.31).

Timber sale contracts may exceed 10-years in duration as the result of force majeure contract term adjustments (FSM 2453.11).

The Consolidated Appropriations Act of 2018 amended section 604 of the Healthy Forests Restoration Act of 2003 to authorize awarding stewardship contracts for terms not to exceed 20-years in areas where the majority of Federal lands are in fire regime groups I, II or III. Contracts awarded under this authority may be extended if the original contract period was less than 20-years but shall not be permitted to exceed 20-years in duration except as the result of force majeure contract term adjustments.

The following pertains to IRTC's not subject to the conditions in the preceding paragraph. Pursuant to 36 CFR 223.301(b)(2) IRTC's shall not exceed 10-years in duration. Section 223.304 of Title 36 of the Code of Federal Regulations makes 36 CFR 223.31 inapplicable.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

Consequently, IRTC's cannot be made or extended for a period exceeding 10-years based on section 223.31. But an IRTC may exceed 10-years in duration as the result of force majeure contract term adjustments (FSM 2453.11).

Consistent with the preceding paragraphs, contract termination dates may be changed in accordance with specific contract provisions. Different contract forms differ in justification, procedure, terminology, and implementation. Refer to FSH 2409.15, chapter 30 for procedures for adjusting or extending the period of a contract.

When any single or cumulative contract term adjustment(s) will result in more than 1-year of additional contract time, the Contracting Officer must obtain consent of surety before approving the adjustment (FSM 2456.12).

2453.11 - Contract Term Adjustment (Force Majeure)

Force majeure means "superior force" and in the context of the timber sale contract it refers to factors beyond the Purchaser's control such as acts of God; acts of the public enemy; and acts of the Government, labor disputes, fires, insurrections, or floods.

A Purchaser's decision to interrupt or delay operations due to poor market conditions does not form the basis for a force majeure contract term adjustment.

Timber sale contracts must describe the circumstances for a contract term adjustment. The following contract forms contain provisions authorizing contract term adjustment: FS-2400-2, FS-2400-3S/3T/3P, FS-2400-6/6T and FS-2400-13/13T. Follow the specifications in individual contracts and the procedures outlined in FSH 2409.15, chapter 30 for processing force majeure contract term adjustments for the following situations:

1. Delay or interruption of sale area operations.
2. Delay or interruption at the request of the Forest Service.
3. Delay for fire emergencies.
4. Delay in award of contract.
5. Delay in use of timber processing facilities.

The general rule (36 CFR 223.31) for contracts not exceeding 10-years in duration does not apply to force majeure contract term adjustments.

Contract form FS-2400-4 does not include a standard provision for contract term adjustment but does require Purchaser to interrupt or delay operations upon written request of the Contracting Officer to prevent serious environmental degradation or resource damage. This implies an authority to adjust the contract term commensurate with the length of an interruption or delay ordered by the Contracting Officer to prevent serious environmental degradation or resource

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

damage. Such an adjustment of contract term is not considered an extension and could result in the total contract length exceeding 1-year. However, depending on the predicted length of the delay it may be in the government's best interest to terminate the contract under the General Condition authorizing termination rather than keeping the contract open until the issue causing the delay is resolved.

2453.11a - Contract Term Adjustment (Non-Force Majeure)

Purchasers may be eligible for an adjustment of contract term for interruptions or delays that are within their control including:

1. Procedures for sales in urgent need of harvesting (FSH 2409.18, secs. 32.13 and 53.20a).
2. Market-related contract term addition (36 CFR 223.52).

In those situations the general rule (36 CFR 223.31) for contracts to not exceed 10-years in duration applies.

Follow the specifications in individual contracts and procedures outlined in FSH 2409.15, chapter 30 for processing non-force majeure contract term adjustments.

2453.12 - Waiver of Time Limit

Pursuant to the terms of all contracts, purchasers are required to discharge all contractual obligations not later than the termination date. For sales over 1-year in length, close monitoring of the Purchaser's annual operating schedules over the term of the contract and actual operations during the last year of the contract will help assure this happens. Occasionally weather and ground conditions may prevent completing some post-logging requirements prior to the contract termination date. This should be the exception and not the result of the Purchaser planning to only complete logging by the termination date and performance of compliance work after the termination date.

Considering the foregoing, Contracting Officers shall use form FS-2400-0011, Waiver of Time Limit, when allowing additional time past the termination date for the completion of slash disposal, erosion control, fire protection, presentation for scaling or similar requirements. A waiver of time limit is considered a contract term adjustment for the purpose of Purchaser completing performance of obligations covered by such permission. Contracting officers shall not use a waiver of time limit to allow more time for removing included timber from the sale area.

The general rule (36 CFR 223.31) for contracts to not exceed 10-years in duration applies when granting a waiver of time limit.

2453.13 - Contract Term Adjustment or Extension to Prevent Environmental Damage

When an interruption or delay of Purchaser's operations is necessary because the Contracting Officer cannot execute a modification of the contract needed to prevent environmental or resource damage before the start of an ensuing operating period, the contract term may be adjusted (FSH 2409.15, sec. 31) or extended (FSH 2409.15, sec. 32.3) prior to the termination date.

The following contract forms contain standard provisions permitting Contracting Officers to modify the contract in whole or in part for reasons stated in the provision including to ensure consistency with land management plans or other documents prepared pursuant to the National Environmental Policy Act of 1969:

1. FS-2400-3S/3T Timber Sale Contract
2. FS-2400-3P Forest Products Contract
3. FS-2400-6/6T Timber Sale Contract
4. FS-2400-13/13T Integrated Resource Timber Contract

Follow the specifications in individual contracts and the procedures outlined in FSH 2409.15, chapter 30 for processing a contract term adjustment and/or contract modification extending the contract term to prevent environmental or resource damage.

2453.14 - Contract Term Adjustment or Early Extension after Catastrophic Damage

The following contract forms contain standard provisions permitting Contracting Officers to modify the contract following catastrophic damage:

1. FS-2400-3S/3T Timber Sale Contract
2. FS-2400-3P Forest Products Contract
3. FS-2400-6/6T Timber Sale Contract
4. FS-2400-13/13T Integrated Resource Timber Contract

An adjustment or early extension of the contract term, prior to the termination date, may be necessary when Purchaser's operations are interrupted or delayed in order to prepare environmental documentation and process a contract modification after catastrophic damage has occurred.

Contract forms FS-2400-2 and FS-2400-4 do not include provisions for catastrophic damage. In event of significant damage to included timber in these contract forms, consider contract termination as an alternative to any adjustments to contract term or contract modification.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

Follow the specifications in individual contracts and the procedures outlined in FSH 2409.15, section 33.5 for processing an adjustment or early extension of the contract term after catastrophic damage.

2453.15 - Urgent Removal Extension

There may be substantial, overriding public interest in extending certain National Forest System timber sale contracts for undamaged (green) timber not requiring expeditious removal in order to facilitate the rapid harvest of catastrophically damaged timber requiring expeditious removal on private or other non-National Forest System lands (36 CFR 223.53).

The Regional Forester must determine that adequate cause for urgent removal extensions exist. Following such determination, the Contracting Officer must verify that the conditions specified in 36 CFR 223.53 for granting a request for an urgent removal extension exist. Follow the procedures outlined in FSH 2409.15, chapter 30 for processing a contract modification for an urgent removal extension.

2453.16 - Contract Term Extension Under Diligent Performance Authority

Timber sale contracts for harvesting National Forest timber clearly establish the Purchaser's obligation to complete all contractual obligations within the time limits specified in the contract. To minimize potential defaults and the added work associated with them, Contracting Officers should routinely monitor the status of all sales and provide early written notice to any Purchaser that appears to be falling behind the schedule needed to complete a sale by the termination date. Occasionally, even after a Purchaser has demonstrated diligent performance, it may be appropriate to deny a contract term extension. This authority is limited based on the terms of the contract and by policy.

1. The following contract forms do not include a provision for extending the term for diligent performance and may not be extended beyond the contract period specified in FSH 2409.18, section 52:

FS-2400-2 Contract For Sale of Decked Timber

FS-2400-3S/3T Timber Sale Contract

FS-2400-3P Forest Products Contract

Sales on contract form FS-2400-4 may be granted an extension at the discretion of the Contracting Officer if the Purchaser has operated in a diligent manner but the total length of the contract including an extension shall not exceed 1-year (FSH 2409.18, sec. 52, exhibit 01).

2. The following contract forms include provisions for contract term extension under diligent performance authority (36 CFR 223.115):

FS-2400-6/6T Timber Sale Contract

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

FS-2400-13/13T Integrated Resource Timber Contract

The following criteria are applicable to all contract term extensions regardless of contract form:

- a. The general rule (36 CFR 223.31) for contracts not exceeding 10-years in duration apply.
- b. Except in unusual circumstances, Contracting Officers may grant only one contract extension for a duration not to exceed 1-year. Contracting Officers must fully document the rationale for any additional extensions of time and submit them through the Regional Forester to the Washington Office, Director, Forest Management for review and approval.
- c. The Contracting Officer is not obligated to grant a contract extension.
 - (1) Do not grant an extension when it would adversely impact resource management or protection problems or would cause environmental damage that contract modification cannot prevent or correct.
 - (2) Do not grant extensions for sales with substantial volumes (25 percent or more of remaining volume) of material subject to rapid deterioration, for sales made to assist in the control of insect epidemics, or for other contracts where an extension would not be in the Government's interest.
 - (3) Regional Foresters may establish additional criteria, if necessary, to identify which sales may or may not qualify for extension.

Follow the specifications in individual contracts and procedures outlined in FSH 2409.15, section 32 for processing a contract term extension under diligent performance authority (36 CFR 223.115).

2453.17 - Extension under Substantial Overriding Public Interest Authority

The Chief or Chief's superior may authorize extensions of timber sale contracts after determining such action to be justified by a substantial, overriding public interest (36 CFR 223.115). The determination of whether a substantial overriding public interest exists that justifies an extension requires analysis of the facts, merits and conditions presented. Such extensions are considered extraordinary and the decision to extend on this basis must be well-documented and supported by information demonstrating that the decision to extend is rationally related to the facts presented. Instructions for processing substantial overriding public interest extensions will be provided by the Washington Office, Director, Forest Management upon such a determination.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration
Amendment: 2400-2021-4
Effective date: October 29, 2021

2453.18 - Market-Related Contract Term Addition

The following contract forms authorize additional contract time when there has been a drastic reduction in wood product prices (36 CFR 223.52):

FS-2400-6/6T Timber Sale Contract

FS-2400-13/13T Integrated Resource Timber Contract

Contracting Officers will be notified by the Washington Office, Director, Forest Management through the Regional offices when conditions for a market-related contract term addition trigger.

Follow procedures outlined in FSH 2409.15, section 31.2 and any additional instructions provided by the Washington Office, Director, Forest Management for processing a market-related contract term addition.

In no event shall a revised contract term exceed 10-years as a result of market-related contract term addition (36 CFR 223.52). Furthermore, a market-related contract term addition shall not be granted to a contract whose term is already at or beyond 10-years.

2453.19 - Conditional Extension

Contracting Officers may grant conditional extensions to delay expiration of timber sale contracts until a specified time or event occurs, such as allowing adequate time to consider a contract modification. No timber removal may occur during a conditional extension, but other activities such as brush disposal, erosion control and road maintenance may continue. The Chief may also authorize conditional extensions of timber sale contracts if it is in the public's interest that the timber sales do not expire before a specified time or event.

Refer to FSH 2409.15, chapter 30 for procedures for processing conditional extensions.

2453.2 - Contract Agreements

Interpretation or application of contract provisions that do not alter or change the terms or conditions of the contract may be agreed upon in writing. Examples of provisions include making minor adjustments in the timber individually marked for cutting and the approval of the location and size of landings. All agreements must be mutual and must be documented in writing.

Additional information pertaining to agreements is in FSH 2409.15, Ch. 30.

2453.3 - Contract Modifications

The terms and conditions of a timber sale are fully set forth in the contract. However, certain events can change conditions over time resulting in the need to modify a contract to protect the interests of both parties. Except where specifically authorized otherwise, contracts can only be

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

modified by mutual agreement and with compensation or other adjustments. Modifications apply to the unexecuted portions of the contract and must not be injurious to the United States (36 CFR 223.112).

The authority to modify a contract is held by the Contracting Officer approving the contract, by the Contracting Officer's successor, or by a superior with delegated Contracting Officer authority.

Procedures for modifying contracts vary depending on the basis for the modification and the contract form and version. Refer to FSH 2409.15, chapter 30 when modifying contracts for the following reasons:

1. Rate Redeterminations.
2. Changed Conditions.
3. Design Change for Specified Roads.
4. Catastrophe.
5. To prevent environmental degradation or resource damage.
6. Change Sale Area Boundaries. Except where specifically authorized by the contract, or 36 CFR 223.85(c), modifications must not change sale area boundaries.
7. Other.

2453.4 - Acquisition by Third Party

Regulatory authority for the acquisition of a timber sale contract by a third party is at 36 CFR 223.114. Procedures for processing a request for a third-party agreement are in FSH 2409.15, section 35.

2453.5 - Acceptance of a Name Change

Contracting Officers may modify contracts to change the firm name when a Purchaser legally changes its' name. Follow the procedures in FSH 2409.15, chapter 30 when processing a request to change the name under which a contract was executed.

2453.6 - Assignment

Assignment is a procedure whereby a Purchaser (Assignor) assigns all of its interests and rights, including to any balance on deposit with the United States to the credit of Assignee as collateral for an indebtedness (for example loan, letter of credit, and so forth). Assignments are authorized under 36 CFR 223.114(b) and are only permitted for contracts on forms FS-2400-6/6T and FS-2400-13/13T.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration
Amendment: 2400-2021-4
Effective date: October 29, 2021

An assignment does not:

1. Constitute a transfer of the contract or a release for the Purchaser or surety from any obligations to the United States.
2. Give the assignee any authority to engage in logging or other operations under the contract, except as an agent of the Purchaser (the assignor).
3. Authorize the assignee to transfer the contract to a third party under a foreclosure or trustee's sale.

Refer to FSH 2409.15, section 36 for instructions on processing a request for an assignment.

2453.7 - Actions When a Contract Defaults

Default occurs when the Purchaser fails to complete all contractual work by the termination date, or earlier, if the contract was terminated for breach or abandonment. When a contract defaults or is terminated for breach or abandonment the Contracting Officer must promptly act to protect the interests of the United States and to determine if the United States has been damaged.

Procedures for determining damages are specified in contract provisions. Since procedures can differ by contract form and contract version, Contracting Officers must follow the specific contract that defaulted, was terminated for breach, or abandoned.

Refer to FSH 2409.15, ch.30 for instructions on processing defaults.

Damage appraisals must be made in accordance with standard appraisal practices and instructions in effect at the time of sale expiration (FSM 2423). Damages associated with failure to cut and remove included timber and other contractual obligations are to be determined by the procedures in FSH 2409.18, chapter 40. Damaged or destroyed young growth values should be determined by the appraisal instructions in FSH 6509.11h, sec. 21.12c.

2453.8 - Cancellation or Termination of Contracts

The terms “cancellation” and “termination” as used in this section are synonymous and may be used interchangeably. The term “cancellation” means the elimination of all contractual requirements remaining at the time of cancellation. The term “partial cancellation” means the elimination of some but not all contractual requirements from a contract. For example, elimination of one or more, but not all, payment units or subdivisions from a contract would be considered a partial cancellation.

Contracts may be cancelled or partially cancelled for a variety of reasons addressed in specific contracts pursuant to the following sections of Title 36 Part 223 of the Code of Federal Regulations:

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

1. Cancellation for environmental protection or inconsistency with plans (36 CFR 223.40).
2. Administration of contracts in designated disaster areas (36 CFR 223.111).
3. Cancellation (36 CFR 223.116).

In most situations, cancellation only occurs after attempts to modify the contract (FSH 2409.15, sec. 33.2) fail. Contracting Officers shall follow the procedures in the contract provision(s) for the specific contract being cancelled and the appropriate CFR. When considering contract cancellation cases, both the Contracting Officer and responsible line officer (FSM 2404) shall thoroughly analyze the advantages and disadvantages to the United States. This analysis may require on-the-ground examination to determine the condition of the sale area and the status of compliance with the terms of the contract. The Contracting Officer shall determine any outstanding damages and contract obligations. Agreement on settling any outstanding claims and on completing contractual requirements is prerequisite to an agreement to cancel the contract.

2453.81 - Cancellation to Prevent Environmental Damage

When timber sale contract operations may cause serious degradation of the environment or resource damage, and when the Forest Service and Purchaser cannot mutually agree to the terms of an environmental modification (FSH 2409.15, sec. 33.6), the contract may be cancelled or partially cancelled by the Forest Service pursuant to 36 CFR 223.40 and/or 36 CFR 223.116(a)(5). Cancellation is by the Chief or Chief's designee (FSM 2404.11). Contract forms FS-2400-6/6T and FS-2400-13/13T include provisions for the Purchaser terminating the contract when the Contracting Officer orders a delay or interruption to prevent environmental degradation or resource damage.

Follow the procedures in FSH 2409.15, chapter 30 and the specific contract when cancellation is necessary to prevent serious degradation of the environment or resource damage.

2453.82 - Cancellation for Breach

The Contracting Officer, with the concurrence of the Regional Forester, may cancel a timber sale contract for breach (FSM 2404.15g). The Contracting Officer should pursue cancellation action for breach only after the time for remedy allowed in the contract has expired.

Follow the procedures in FSH 2409.15, chapter 30 and the specific contract when seeking to cancel a contract for breach.

The Contracting Officer, with the concurrence of the Regional Forester, may also cancel contracts for violation of export requirements or cancel contracts procured through violation of antitrust statutes. Antitrust violations can result in both civil and criminal penalties. Close coordination with OGC is necessary for cases involving potential violations of export requirements or antitrust statutes. The Contracting Officer must consider cancellation for

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

violation of antitrust statutes for contracts adjudicated by a court as collusively procured sales or when there is a settlement entered into and the parties agree to cancellation damages. The Purchaser must not receive any compensation when a contract is canceled for breach.

The Contracting Officer must refer purchasers that have contracts canceled for breach to the non-procurement Suspending or Debarring Official for possible administrative action (FSM 2433 or FSM 2455.4).

2453.83 - Cancellation by Agreement

Contracts may be cancelled or partially cancelled by mutual agreement upon application, or with consent of the Purchaser, when such action is of advantage to the United States or not prejudicial to its interests (36 CFR 223.116(a)(2)). This authority is most commonly used to address environmental problems arising after a sale has been awarded. An example is the need to delete a portion of a sale following a change in the listing of a Threatened & Endangered species, or discovery of a previously unidentified archeological site.

Contractual procedures other than cancellation should be fully exhausted prior to using this authority. The authority to cancel contracts pursuant to 36 CFR 223.116(a)(2) has been delegated to the Regional Foresters (FSM 2404.24).

Follow the procedures in FSH 2409.15, chapter 30 when considering contract cancellation by agreement.

2453.84 - Cancellation Because of Catastrophic Damage

The Contracting Officer, with concurrence of the Regional Forester, may cancel timber sales, upon application of the Purchaser or by notice of the Contracting Officer, when catastrophic damage to the timber in the sale area or impaired access to the sale area decreases the value of the timber remaining to be cut by an amount specified in B/BT8.221. In terminating the contract, both parties agree to bear the burden of their losses independently. The rationale for this is that since neither party had control over the catastrophic event neither party is liable for the losses suffered by the other. The procedures for terminating a contract for catastrophe vary depending on the contract form and version.

Follow the procedures in FSH 2409.15, chapter 30 when cancelling a contract due to catastrophic damage.

2453.85 - Cancellation within Disaster Areas

Upon application of the Purchaser, the Contracting Officer, with concurrence of the Regional Forester, may cancel timber sale contracts within disaster areas declared by the President when the Chief determines damage to specified roads where construction work has not been accepted by the Forest Service is so great that restoration, reconstruction, or construction is not practical (36 CFR 223.111).

2454 - Contract Claims and Lawsuits

The Contract Disputes Act of 1978, as amended, establishes a comprehensive statutory scheme for resolving disputes relating to Government contracts, such as procurement or sale of property contracts. FSH 2409.15, chapter 70, provides detailed information for Contracting Officers regarding contract disputes and lawsuits.

After assigning an identification number to a claim at the Region, an electronic copy of the claim shall be transmitted to the sale administration specialist on the Washington Office Forest Management Staff where it will be entered into a data base tracking all claims nationally. Electronic copies of the associated Contracting Officer's Decision and any appeals thereof shall also be forwarded to the sale administration specialist on the Washington Office Forest Management Staff. This data will facilitate identifying trends in contract claims.

2454.1 - Contract Disputes

An objective of contract administration is for the Purchaser and the Forest Service to jointly achieve contract interpretation and performance without resorting to claims. Line officers should understand the following tenants of contract disputes:

1. A claim is a written demand by one of the contracting parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief arising under or related to the contract.
2. When a conflict arises between the contract and direction in the Forest Service Manual or Handbook, Forest land management plans, environmental assessments or environmental impact statements, timber sale reports, and other material, the language of the contract governs and is the basis for a decision on any dispute or claim. The parties may discuss whether a mutual modification can be agreed upon that reflects the parties' original intent. While the associated materials may help in understanding intent, they do not supplant the contract.
3. The Contracting Officer has the authority to act on behalf of the Agency and issue final Contracting Officer decisions pursuant to delegated contractual authority. Notwithstanding this authority, it is incumbent upon Contracting Officers to seek information and counsel from other agency officials, OGC and DOJ when needed to make an informed decision on complex disputes or claims that may have implications beyond a single contract.

2454.2 - Payment of Purchaser Claims

Funds must be available to avoid violating the Anti-Deficiency Act. It may be necessary for the involved Forest and Region to reprogram funds to cover these costs.

Follow procedures on payment of claims contained in FSH 2409.15, section 72.6.

2454.3 – Judgment Fund

Sections 7108(a) and 7108(b) of the Contract Disputes Act, 41 U.S.C. 7101, *et seq.*, provide settlements negotiated by the Justice Department, awards made by Federal boards of contract appeals, and judgments made by Federal courts shall be paid promptly and may be paid from a Department of Treasury permanent indefinite appropriation, commonly referred to as the “Judgment Fund” (31 U.S.C. 1304). Procedures on payment of claims through the Judgment Fund are in FSH 2409.15, section 72.61. Agencies are required to reimburse the Judgment Fund for any payments from the fund.

The Washington Office Forest Management Staff maintains a timber sale contract claims spreadsheet to track the status of all timber sale contract claims. One of the primary functions of the spreadsheet is to track payments from, and Forest Service reimbursements to, the Judgment Fund (FSH 2409.15, sec. 72.61). Data for the spreadsheet is collected from the Regions annually as a part of the Year-End Integrated Reporting Schedule.

2454.4 - Collection of Government Claims

Procedures for collection of Government claims are addressed in FSH 2409.15, section 72.63.

2454.5 - Fraudulent Claims

Contracting Officers do not have authority to settle fraudulent claims. Procedures for addressing suspected fraudulent claims are addressed in FSH 2409.15, section 72.64.

2454.6 - Lawsuits

The General Counsel is the principal legal advisor to the Secretary of Agriculture and other officials of the USDA for all activities of the Department and assists in the resolution of all legal disputes. In civil actions, including contract disputes resulting in litigation, the Office of the General Counsel assists the Justice Department (FSM 1572). Therefore, when a contracting party files a suit, the Contracting Officer must contact the Regional Attorney through the Region’s Forest Management staff for advice on how the Government will proceed.

Since lawsuit timeframes often are limited, information gathering for the litigation report (FSM 1548.11) should be started as soon as it becomes apparent that a lawsuit is likely.

Refer to FSH 2409.15, section 73 for procedures when a lawsuit is filed.

2454.7 - Settlement Agreements

Only DOJ can enter into and approve settlement agreements for disputes litigated in the U.S. Court of Federal Claims. In cases before the Civilian Board of Contract Appeals (CBCA), OGC may represent the Forest Service in settlement discussions and the Contracting Officer is authorized to sign a settlement agreement, after approvals are received in accordance with Departmental Regulation (DR) 1521-001. The Department Regulation specifies the level of

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

official that may approve monetary settlements rises as the amount of money involved increases. For the Forest Service, the settlement approval authority is established in the Chief's file code 1570 letter to the Regional Foresters dated April 12, 2018 as follows:

1. The Deputy Chief (or higher-level official) for amounts less than \$100,000.
2. The Chief (or higher-level official) for amounts between \$100,000 to \$499,999.
3. The Under Secretary for Natural Resources and Environment (of the Secretary, in the absence of an Under Secretary) for amounts of \$500,000 and above.

Prior to entering into a settlement agreement or Alternative Disputes Resolution (ADR) process the Contracting Officer, through the Region, must obtain the necessary approval. The purpose of this requirement is to assure applicable USDA and agency policies and regulations are followed, including coordination with OGC, and if applicable, DOJ.

DR 1521-001 requires OGC to provide legal sufficiency reviews of settlement agreements and must give or refuse concurrence in accordance with the regulation dependent on the amount involved. Final approval of settlement terms resides with the Washington Office Director of Forest Management, other designee above the Director level, or the Under-Secretary dependent on the amount at issue (DR 1521-001). Early and sustained coordination with the Washington Office as settlement terms are developed will facilitate final approval.

Follow the procedures in FSH 2409.15, section 74 when entering into an Alternative Disputes Resolution process.

2455 - Timber Export Restrictions

2455.01 - Authority

The Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620, *et seq.*) establishes prohibitions on exporting unprocessed timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States acquired from timber sale contracts awarded on or after August 20, 1990 (36 CFR 223.185).

2455.05 - Definitions

Refer to 36 CFR 223.186 for definitions pertaining to timber export restrictions.

2455.1 - Determination of Surplus Species

The Secretary of Agriculture is responsible for administration of hearings and determinations of surplus species, grades, or quantity of unprocessed timber for exemption from domestic processing requirements. Regional Foresters must monitor for indications a species or grade of timber is surplus to the needs of domestic users and processors, or that a previous determination

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

of surplus volume should be reviewed. Regional Foresters must transmit recommendations for changes to the Chief.

Species currently declared to be surplus to domestic needs are:

1. Port Orford cedar; and
2. Alaska yellow-cedar.

2455.2 - Administration of Export Restrictions

Applicable export and substitution provisions are included in contracts with advance notice in the prospectus (FSH 2409.18, chapter 50).

2455.21 - Branding and Painting Requirements

See FSH 2409.15, section 25.3 for requirements on branding and painting.

2455.21a - Log Yard Agreements

Processing facilities receiving logs with waivers of all, or a portion of, log branding or painting requirements must have a log yard agreement that requires branding and painting in full compliance with the originating timber sale contract for logs that will subsequently be transferred to different locations, unless waived by the Forest Supervisor.

2455.21b - Preserving Identification

All identifying marks including paint and brands placed on an unprocessed log to identify the National Forest System origin of that log and/or to identify the log as requiring domestic processing must be retained on the log until the log is domestically processed. If identifying marks are lost, removed, or become unreadable, they must be replaced. If the log is cut into two or more segments, each segment must be identified in the same manner as the original log.

A generic log hammer brand, known as a “catch brand” used to identify ownership, may be used to replace lost, removed, unreadable, or otherwise missing brands where such use is authorized by the Regional Forester and approved by the Contracting Officer. Use of a catch brand on a log or log segment signifies National Forest System origin.

The requirement to preserve identification of log pieces does not apply to logs cut into two or more segments as a part of the mill in-feed immediately before processing. Log segments that are returned to or placed in storage must be branded and marked with highway-yellow paint on both ends.

2455.21c - Waiver of Marking Requirements

Contracting Officers may waive all, or a portion of, the branding and painting requirements on an individual timber sale basis for specified species, grades, and/or sizes of unprocessed timber. Contracting Officers shall document the basis for granting a waiver in the contract files. Forest Supervisors may waive all, or a portion of, the branding and painting requirements for specified species, grades, and/or sizes of unprocessed timber as part of a log yard agreement. The Contracting Officer or Forest Supervisor must determine and document that the risk of unprocessed timber being exported or used in substitution is low. In deciding whether to grant a waiver, consider:

1. The risk of unprocessed timber of that species, grade, and size being exported or used in substitution.
2. The location of the unprocessed timber and the effect of the location on its being exported or used in substitution.
3. The history of the person involved with respect to compliance with log branding and painting requirements.
4. Any other factor that is relevant to determining the likelihood of the unprocessed timber being exported or used in substitution, including, but not limited to:
 - a. Whether the timber sale Purchaser otherwise complies with the regulations relating to branding and painting of logs and transfers of logs between persons; and
 - b. Whether similar logs from any origin are known by the Forest Service to have been exported by any person from the person's area of operations within the previous 24 months.

2455.21d - Review and Termination of Waivers

Waivers must be reviewed annually. Waivers remain effective until terminated by the officer issuing the waiver (Contracting Officer or Forest Supervisor). All waivers must include a clear statement authorizing the Forest Service to terminate the waiver at any time for noncompliance with the waiver terms or when criteria for granting the waiver are no longer valid.

2455.22 - Log Export Surveillance

The Regional Forester shall assign specific Forest Supervisors and appoint an inter-Regional coordinator for log export yard surveillance. Preplanned surveillance must be used for enforcement of log export regulations and must be a preventive measure for possible violations.

Regional Foresters must establish procedures, controls, training guidance, reporting requirements, areas of responsibility, and staffing requirements for the surveillance program in their Regions (FSH 2409.15, sec. 29).

2455.23 - Reports and Records

Require purchasers to report activities related to the export of unprocessed timber in accordance with contract provisions.

2455.3 - Violations

The Forest Service may cancel the contract, debar the involved party or parties from bidding on National Forest System timber, or initiate other actions, as provided by law or regulation, for a Purchaser's violation of export or substitution requirements.

2455.4 - Debarment for Export Violations

Information concerning the existence of a cause for debarment from any source must be promptly reported, investigated, and referred to the Debarring Official for consideration.

Procedures for identifying causes, and for investigating and processing debarment cases involving export violations are in FSH 2409.18a, chapter 20.

2456 - Payments and Use of Surety Bonds With Timber Sale Contracts and Permits

2456.01 - Authority

Timber sale contracts require payment in advance of timber cutting, unless the contract specifically authorizes the Purchaser to furnish a payment guarantee satisfactory to the Contracting Officer (36 CFR 223.34).

2456.02 - Policy

The Contracting Officer must not grant a deferment or delay in making deposits for stumpage and other required deposits, except as provided in the contract.

2456.1 - Performance Bonds in Timber Sales

Determining the need for and initial penal sum of a performance bond is established prior to advertisement using the procedures in FSH 2409.18, section 52.5.

2456.11 - Periodic Examination

Contracting Officers shall periodically examine all bonds in accordance with the timeframes specified in FSH 6509.11k, section 81.4.

2456.12 - Consent of Surety When Sales Are Extended

Standard bond form SF-25 provides a waiver of notice to the surety for contract extensions or modifications. Notwithstanding this waiver, timber sale contracts require Contracting Officers to

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

obtain written consent of surety prior to making an adjustment to or extension of the contract termination date that will result in adding more than 1-year of cumulative time to the contract term.

When a performance bond is secured with an irrevocable letter of credit, Contracting Officers must check the termination date on the letter of credit prior to adjusting or extending the term of a contract. The expiration date on the letter of credit must allow sufficient time to close out the sale after cutting is completed prior to extending or adjusting the termination date of the contract (FSH 2409.15, sec. 69.12.)

2456.13 - Notices to Sureties

The Contracting Officer should notify the Surety in advance of any anticipated default. The notification provides documentation the Surety has been informed and strengthens subsequent Forest Service claims for payment of interest if default occurs and Surety fails to make payment when first demanded. In event of default, promptly notify the Surety with a copy of the default letter by certified mail.

2456.14 - Making Demand on Performance Bond

Procedures for making demand on a performance bond resulting from Purchaser's failure to complete contractual obligations differ based on the form of security used to secure the bond. Contracting Officers shall follow the procedures in FSH 6509.11k, chapter 80 when making demand on a performance bond.

2456.15 - Releasing Performance Bond

A new bond may be accepted as a replacement for a previous bond. In such event the Contracting Officer must advise the Purchaser and Surety, in writing, that the previous bond is no longer necessary, and that accrual of liability terminates on the effective date of the new bond.

The procedures for releasing a performance bond when the bond is no longer necessary differ based on the form of security used to secure the bond. Contracting officers shall follow the procedures in FSH 6509.11k, chapter 80 when releasing a performance bond.

2456.16 - Deferring Payments for Timber under the Security of the Performance Bond

The Regional Forester, Alaska Region (R10) may establish procedures for use of a performance bond as security for timber cut, but not removed from the sale area, in areas where purchasers commonly cut large volumes of timber in advance of yarding. Deferring payment in this manner must be limited to timber not subject to rapid quality downgrading or physical deterioration. Purchasers may request use of the performance bond for this purpose when provided for in a prospectus.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

Contracting Officers must increase the penal sum of the performance bond as necessary to cover the estimated values of timber to be felled, but not removed. The increase in the penal sum should be large enough to eliminate the need for cash payments in advance of cutting.

When the performance bond is used as provided above, the Contracting Officer must permit the Purchaser to defer payment until just prior to removal of timber from the sale. If the volume of down timber exceeds the penal sum, the excess value must be covered by cash deposit or by payment bond.

Contracting Officers must not accept individual surety bonds in lieu of performance bonds when the bond will be used as security for timber cut but not removed from the sale area.

2456.17 - Reducing the Penal Sum of the Performance Bond

Performance bonds may be terminated prior to contract closure when timber removal has been completed, other work required by the contract has been accepted as satisfactorily completed, and the Purchaser agrees to maintain a deposit balance to cover fully any unreconciled log scale or stumpage rate adjustments that might become necessary because of a correction to a preliminary index.

Upon Purchaser's written request, performance bonds may be reduced when the penal sum of the performance bond exceeds the current contract value. The bond may be reduced to the sum of remaining contract value, the cost of uncompleted work required, and the amount of unpaid bills due on the timber sale.

Upon Purchaser's written request, performance bonds may be temporarily reduced when Contracting Officer orders Purchaser to interrupt or delay scheduled operations that would be occurring but for the order.

Contracts on the following forms include provisions for reducing the amount of the performance bond under situations described within the contract:

1. FS-2400-3S/3T Timber Sale Contract.
2. FS-2400-3P Forest Products Contract.
3. FS-2400-6/6T Timber Sale Contract.
4. FS-2400-13/13T Integrated Resource Timber Contract.

There are no provisions for reducing the amount of a performance bond on contract forms FS-2400-2 and FS-2400-4.

A performance bond in R10 that has been increased to an amount above the amount stipulated in the advertisement or prospectus to cover felled timber may be reduced to the dollar amount originally specified, if that amount is not disadvantageous to the Government (FSM 2456.16).

2456.18 - Liability of Sureties

See FSH 6509.11k, chapter 80 for direction.

2456.2 - Payment Bonds in Timber Sales

Some timber sale contracts permit a Purchaser to defer advance deposits for stumpage and required deposits under security of a payment bond until products are removed from the sale area, a statement of account is prepared, and a bill for collection is received. The following contract forms provide for the use of payment guarantee:

1. FS-2400-3S/3T Timber Sale Contract.
2. FS-2400-3P Forest Products Contract.
3. FS-2400-6/6T Timber Sale Contract.
4. FS-2400-13/13T Integrated Resource Timber Contract.

Use form FS-6500-0012 Payment Bond for timber sales and stewardship contracts or FS-6500-12a Blanket Payment Bond (timber sales) when payment is guaranteed by bond or deposited securities pursuant to contract provision B/BT4.3.
Refer to FSH 2409.18, chapter 50 and FSH 6509.11k for procedures for use of payment bonds.

Advanced payment for stumpage and required deposits must be cash for contract forms FS-2400-2 and FS-2400-4.

2456.3 - Deposits for Cooperative Work

Deposits for cooperative work may be made under provisions of the contract (16 U.S.C. 572). Except to prevent environmental or resource damage, cooperative work may not be performed by Forest Service in advance of a deposit from the Purchaser for cooperative work. Refer to FSH 2409.15, section 44.218 for instructions on processing a cooperative work agreement on form FS-2400-0016 Request for Cooperative Work.

The following contract forms contain provisions for the Forest Service to agree to perform all or portions of the work the Purchaser is obligated to perform under the contract:

1. FS-2400-3S/3T Timber Sale Contract.
2. FS-2400-3P Forest Products Contract.
3. FS-2400-6/6T Timber Sale Contract.
4. FS-2400-13/13T Integrated Resource Timber Contract.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration

Amendment: 2400-2021-4

Effective date: October 29, 2021

Contracting Officers shall not agree to perform cooperative work on the following contract forms:

5. FS-2400-2 Contract For Sale of Decked Timber.
6. FS-2400-4 Forest Products Contract and Cash Receipt.

2456.4 - Refunds

Title 36, section 223.34 of the Code of Federal Regulations authorizes a refund of deposits in excess of amounts due the United States. All money not due the Government on any transaction must be refunded to the original Purchaser or to successors in interest unless the funds are being held for administrative offset or for damages resulting from breach or non-completion of a contract. An amount sufficient to cover such damages must be retained out of deposits that would otherwise be refunded.

Refunds of deposits under timber sale contracts in excess of amounts due the Government may be made at any time. Follow procedures at Albuquerque Service Center (ASC) for processing refunds. There are two normal types of refunds: interim refunds are those that may be made during the life of a contract, and terminal refunds are those made at the time of sale closure.

1. Interim Refunds. When payment is made in advance of cutting, a contract may go into a seasonal shutdown period, retaining a sizeable advance balance. The Purchaser may request interim refund of excess deposits at a time of seasonal shutdown in accordance with the contract terms. The following contract forms contain provisions for refunding excess cash:

- a. FS-2400-3S/3T Timber Sale Contract.
- b. FS-2400-3P Forest Products Contract.
- c. FS-2400-6/6T Timber Sale Contract.
- d. FS-2400-13/13T Integrated Resource Timber Contract.

The following contract forms are used for “lump-sum” sales and do not permit refunding cash during a shutdown period:

- e. FS-2400-2 Contract For Sale of Decked Timber.
 - f. FS-2400-4 Forest Products Contract and Cash Receipt.
2. Terminal Refunds. Terminal refunds of excess deposits are made under condition that all contractual responsibilities and obligations have been met. Refunds of deposits needed to cover uncompleted work must not be made. The Contracting Officer must take final action on processing terminal refunds.

Forest Service Manual 2400 – Timber Management
Chapter 2450 - Timber Sale Contract Administration
Amendment: 2400-2021-4
Effective date: October 29, 2021

2456.5 - Transfer of Deposits

A Purchaser may request transfer of excess deposits to apply to other contracts that the Purchaser has with the Forest Service, or to the credit of a third-party in connection with the operation of a sale by such third-party, under the same conditions as described for refunds (FSM 2456.4). Follow the procedures at ASC for processing transfers.

Contracting Officers must not transfer deposits to the unrelated transactions of other users. Regional Foresters must issue instructions governing transfer procedures. See FSM 6531 for detailed procedures.