

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

**Forest Service Handbook 2409.15 – Timber Sale Administration Handbook**

**Chapter 60 - Operations and Other Provisions**

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**Table of Contents**

<b>62 - Fire Precaution, Fire Control and Other Conditions Contract Provisions (Form FS-2400-6 and FS-2400-6T, 1970 and 1975 Editions) .....</b>	<b>4</b>
<b>62.1 - Fire Precautions and Control.....</b>	<b>4</b>
<b>62.11 - Plans (B/BT7.1) .....</b>	<b>4</b>
<b>62.12 - Precautions (B/BT7.2) .....</b>	<b>5</b>
<b>62.12a - Inspection Standards.....</b>	<b>5</b>
<b>62.12b - Serviceability Standards .....</b>	<b>6</b>
<b>62.12c - Cable Logging System Requirements.....</b>	<b>7</b>
<b>62.12d - Mobile Equipment Requirements.....</b>	<b>7</b>
<b>62.12e - Helicopter Logging System Requirements .....</b>	<b>8</b>
<b>62.12f - Spark Arresters .....</b>	<b>8</b>
<b>62.12g - Tank Trucks and Trailers.....</b>	<b>9</b>
<b>62.12h - Fire Foreman and Fire Patrolman .....</b>	<b>10</b>
<b>62.12i - Seasonal Permits.....</b>	<b>11</b>
<b>62.12j - Blasting.....</b>	<b>11</b>
<b>62.12k - Time of Snag Felling .....</b>	<b>12</b>
<b>62.12l - Oil Filters and Glass Jugs .....</b>	<b>12</b>
<b>62.12m - Smoking.....</b>	<b>12</b>
<b>62.13 - Emergency Precautions (B/BT7.22).....</b>	<b>12</b>
<b>62.14 - Fire Control (B/BT7.3).....</b>	<b>12</b>
<b>62.14a - Reporting Fires.....</b>	<b>12</b>
<b>62.15 - Fire Suppression Costs (B/BT7.4) .....</b>	<b>13</b>
<b>62.15a - Operations Fire Provisions (B/BT7.41) .....</b>	<b>13</b>
<b>62.15b - Negligently Caused Fire (B/BT7.42) .....</b>	<b>13</b>
<b>62.15c - Other Fires on Sale Area (B/BT7.43).....</b>	<b>14</b>
<b>62.16 - State Law (B/BT7.5).....</b>	<b>14</b>
<b>62.17 - Performance by Contractor (B/BT7.6).....</b>	<b>14</b>
<b>62.2 - Other Conditions .....</b>	<b>14</b>
<b>62.21 - Title and Liability (B/BT8.1) .....</b>	<b>14</b>
<b>62.22 - Period of Contract (B/BT8.2).....</b>	<b>15</b>
<b>62.22a - Termination for Catastrophe (B/BT8.22) and (B/BT2.133).....</b>	<b>15</b>
<b>62.22b - Reasons for Premature Termination.....</b>	<b>15</b>
<b>62.23 - Performance by Other Than Purchaser (B/BT8.4).....</b>	<b>16</b>
<b>62.24 - Sale of Other Materials (B/BT8.5).....</b>	<b>16</b>
<b>62.25 - Provisions Required by Statute (B/BT8.6). .....</b>	<b>17</b>
<b>63 - Performance and Settlement .....</b>	<b>17</b>
<b>63.1 - Performance Bond (B/BT9.1) .....</b>	<b>17</b>
<b>63.2 - Disputes (B/BT9.2).....</b>	<b>17</b>
<b>63.3 - Breach (B/BT9.3) .....</b>	<b>18</b>
<b>63.31 - Suspensions .....</b>	<b>19</b>
<b>63.32 - Remedy for Breach.....</b>	<b>20</b>

Forest Service Handbook 2409.15 – Timber Sale Administration Handbook

Chapter 60 - Operations and Other Provisions

Amendment: 2409.15-1992-6

Effective date: August 03, 1992

63.33 - Standards for Breach Letters .....	21
63.34 - Breach, Form FS 2400-5 Contract .....	21
63.4 - Failure to Cut (B/BT9.4) .....	22
63.5 - Settlement (B/BT9.5) .....	22

**62 - Fire Precaution, Fire Control and Other Conditions Contract Provisions (Form FS-2400-6 and FS-2400-6T, 1970 and 1975 Editions)**

In order to understand this material read the provisions referred to in parentheses in the topic heading. Be sure to use the actual contract being administered or an identical form and edition.

**62.1 - Fire Precautions and Control**

The risk of a fire starting on an operating sale increases as a result of the presence of the various people involved in the operation of such equipment as power saws, tractors, trucks, yarders, and road construction equipment. Recognizing such dangerous combinations of hazards and risks, it is essential that all members of the sale administration team anticipate the need for, and be prepared for, positive and swift action in the event of a fire suppression emergency.

1. Presuppression. Thoroughly review all fire precautions and control provisions in each timber sale contract you are administering. Operation fires and negligently caused fires do occur and it is necessary to formulate a planned course of action in advance. Normally, route copies of this plan to officials that have fire prevention and suppression responsibility for the area in which the timber sale is located. The purpose is to alert these people when activity is expected and when appropriate supplemental assistance available. The officials might include dispatchers, fire management officers, fire wardens and officials of state or other agencies. Establish a clear understanding with the the individual responsible for fire control as to expected action in the event of a fire.

2. Compliance. Most purchasers want to know the specific interpretation of requirements of timber sale contract for fire precautions because of their liabilities under the contract. Unless waived in writing by the Contracting Officer, ensure that purchasers comply with all timber sale contract fire requirements when conducting operations on the sale area during the fire precautionary period. However, this does not mean that an oral suspension is always appropriate if the fire precaution schedule stated in provision C/CT7.22 is adequately low. Ensure that purchasers understand that their employees should always take aggressive action to correct deficiencies.

3. Administration. The sole responsibility for inspections, documentation, and action rests with the member of the administration team delegated the authority (section 60.4). Cooperation and assistance from fire organizations is encouraged but they do not assume responsibility for administration of any provisions in this section of the contract.

**62.11 - Plans (B/BT7.1)**

Ensure that the purchaser provides a fire plan that addresses prevention and control of fires on the sale area during the fire precautionary period before initiating operations on the sale area.

The timber sale contract provides that a single plan may be prepared for more than one sale. This does not preclude the purchaser and Forest Service from jointly developing a plan where mutually agreeable and beneficial.

In addition to including a detailed list of personnel and equipment available to the purchaser, an acceptable plan should state how to contact the Purchaser's Representative in a fire emergency during periods of operation and on evenings and weekends.

Become familiar with the fire plan for the sale area and vicinity. As changes in key personnel occur on logging operations, ensure that the Purchaser's Representative makes appropriate changes and informs necessary people of needed revisions. Ensure that both the Forest Service and the purchaser's employees having responsibility under the contract keep current copies of the fire plan in their possession and understand their assigned tasks.

#### **62.12 - Precautions (B/BT7.2)**

Inspect required tools and equipment as often as necessary to ensure proper fire compliance of purchaser's operation. Conduct a presale inspection of the purchaser's logging and road construction equipment to check compliance with contract requirements. Because equipment is usually at the shop deficiencies are easy to correct. Check fire tools, spark arrestors and other equipment items. Pre-operations inspections will prevent possible delays.

Conduct routine inspections of all logging operations. The purchaser has an obligation to make inspections to ensure that required tools and equipment are in a serviceable condition and available for fire fighting activities at all times during the fire precautionary period. Immediately report all deficiencies to the Purchaser Representative. Document deficiencies on a timber sale administration agreement or notice and record who was informed of the deficiencies and when they were notified.

Specific fire precautionary measures are in C/CT provisions of the timber sale contract.

#### **62.12a - Inspection Standards**

The timber sale contract requires that certain fire prevention and suppression equipment be available on the sale area and that the purchaser must keep such equipment in a serviceable condition.

Conduct a complete fire inspection within the first week of operations during the fire precautionary period and at least once each month thereafter. Complete a logging operation fire prevention checklist, after each complete fire inspection. Notify the Purchaser Representative and Field Representative in advance of complete fire inspection so they have the opportunity to accompany and assist during the inspection.

Conduct spot-check inspections of fire equipment during the course of normal administrative activities.

The purchaser or the operator usually either owns or leases the fire equipment have a representative for the purchaser present during these inspections. This accomplishes several things: (1) The purchaser is represented when the Forest Service Officer is either on, under, inside or viewing the purchaser's equipment; (2) the purchaser is immediately aware of any deficiencies and may be able to correct them on the spot; and (3) it promotes a mutual understanding for serviceability standards through joint observations and the accompanying discussions during the inspection process. Plan the inspection in order to minimize its impact on Purchaser's equipment and personnel.

Encourage District fire management personnel to accompany the inspections. However, they should not perform independent fire inspections because they have no contractual authority. Fire management persons cannot assume responsibility for inspections unless they have been formally delegated the authority.

### **62.12b - Serviceability Standards**

This section discusses in detail the serviceability standards for the equipment in order to ensure the adequate performance of this vital equipment. The various types of fire prevention and suppression equipment are dealt with individually as follows:

1. Handtool Requirements. The objective of this section is to set forth standard criteria for the serviceability and maintenance of fire suppression handtools required under the timber sale contract. A serviceable tool is a tool in adequate condition to safely perform the function for which designed. If in doubt about standards or desired functions, seek advice from the fire management staff.

2. Serviceability Standards. The purchaser is responsible for maintaining fire tools in a serviceable condition.

a. Ensure that all tool heads tight on the handle. Either epoxy heads or metal wedges are acceptable.

b. Ensure that the purchaser has sharpened all cutting edges on these tools according to agreed upon specifications. This applies to all fire tools, whether they are in vehicles, in the fire tool box, or carried by individuals (fellers, and so forth). Exercise reasonable judgement when evaluating the serviceability of individual tools. Remember that a new tool, off the shelf, may not meet standard specifications.

c. Ensure that the purchaser has not taped, excessively oiled, or painted tool handles and handles are free of such defects as cracks, splinters, breaks, twist or warp, and splinters.

d. Ensure backpack pumps are free of leaks in the hose, fittings, and tank.

e. Ensure a chainsaws, if required, are at least of the size specified by State law. Also, ensure that the fire tool box includes tools necessary for falling.

f. Ensure that fire extinguishers are of the type specified by the timber sale contract. For engines on equipment such as yarders, loaders, and fuel trucks, a fire extinguisher of at least 4-B, C or larger is mandatory. Power saw extinguishers must be approved for use by the state public resources code. To be serviceable, fire extinguishers equipped with a gauge must show fully charged; those equipped with a CO<sub>2</sub>-charged cartridge must have a factory-installed seal; and aerosol extinguishers of the required size must be at least three quarters full based on the Inspector's judgement. Ensure that labels are in place and readable to determine if the extinguisher is an approved model. On mobile equipment, ensure that the Purchaser has securely affixed or carefully stored fire extinguishers to prevent damage that could cause the extinguisher to malfunction.

g. Ensure that the purchaser keeps fire tool boxes at each operating landing. Ensure that the boxes are a sealed container of adequate construction and design to protect them from use for activities other than fire suppression. The fire tool box must have adequate hinges and a hasp or other device so that it is possible to attach a seal to the box to prevent anyone from opening it except in the case of fire. Record the seal number on the inspection document. If the fire tool box is locked, it should be unlocked before beginning operations or all personnel in the area should know the location of the key or combination. Document the key's location or the combination.

#### **62.12c - Cable Logging System Requirements**

1. Ensure that the purchaser equips running blocks with one shovel and one full backpack pump within 10 feet of the running block.

Require the purchaser to clear all fuels from areas around any running block for a minimum of 5 feet radial slope distance, with the block as the center of the cleared area. Tailblocks hung in trees, 10 or more feet above the ground, do not require clearing if the block does not touch the ground when the lines are completely slack.

Be aware that there are differences among tailholds, tail blocks, and corner blocks. A stationary tailhold does not require the above specifications.

2. Ensure that running cables do not rub on snags, down logs, or on any woody material. Be aware that friction between steel cables and rock or other substances could produce sparks and is not acceptable.

#### **62.12d - Mobile Equipment Requirements**

Mobile equipment includes loaders, logging and rock trucks, tractors, and so forth.

Ensure that the necessary tools and spark arresters are present and that the operator has cleared fuels for at least 10 feet radial slope distance around welding equipment, stationary yarders and loaders, and other equipment capable of producing heat high enough to cause combustion; or as listed by State Law.

#### **62.12e - Helicopter Logging System Requirements**

Ensure that the purchaser has equipped the fire tool box required on the active landing for attachment to the helicopter tong line so that it is possible to sling load it to needed locations. This box attachment may be by any combination of hooks, ropes, or cables provided the rigging does not interfere with access to the fire tools. Regardless of the attachment system used, inspect the serviceability of the system as part of the periodic fire inspections. An actual hook-up and demonstration should be part of a peroperations check.

#### **62.12f - Spark Arresters**

1. Ensure that the purchaser has equipped each operating tractor and any other internal combustion engine with an approved spark arrester (Forest Service Spark Arrester Guide) in good operating condition. Motor vehicles equipped with an approved muffler or tractors and equipment with exhaust-operated turbo chargers are exempt from this requirement.
2. To determine the proper size of spark arresters, you need to determine the following information:
  - a. Type of engine--gasoline or diesel.
  - b. 2- or 4-stroke cycle.
  - c. Engine displacement in cubic inches.
  - d. Maximum or governed RPM.
  - e. Supercharged or turbocharged.
  - f. Exact outside diameter of the engine exhaust pipe connection.
  - g. Either vertical, horizontal, or inverted mount.
3. Consult the current Forest Service Spark Arrester Guide to determine if an arrester is acceptable. Most arresters have a number; make sure that number is listed in the Spark Arrester Guide as approved. Not all arresters are approved, not all approved arresters have "Forest Service Approved" stamped on them, and some arresters are stamped approved are not approved.
  - a. Check to determine if the steel band properly covers the arrester clean-out hole. Determine if the purchaser is having the arrester serviced at proper intervals. If a spark arrester trap is full of carbon, the arrester cannot satisfactorily intercept exhaust particles and has not



been properly serviced. Insert a stick into the top of the arrester. If the required internal baffles are intact, the stick can penetrate only about half way down into the arrester. If the arrester is defective, there are no baffles and the stick can penetrate freely past where the baffle plate should be attached to the arrester. Do this carefully to avoid damaging the baffles. Do not drop the stick into arrester.

b. An improperly mounted spark arrester cannot function as an approved arrester. An arrester tilted more than 45 degrees from its designed operating position may not adequately arrest sparks. Therefore, ensure that arresters on mobile equipment are mounted not more than 45 degrees from the designed position. To find the proper position for a given arrester, use the Forest Service Spark Arrester Guide. On turbcharged engines, check the exhaust stack to ensure that there is no carbon build-up. Check that there is no exhaust bypass.

On equipment using a separate starting engine, check for a spark arrester. This is often overlooked.

#### **62.12g - Tank Trucks and Trailers**

1. Be aware that the tank truck or trailer is normally on or in the proximity of the sale area during any operations conducted during the fire precautionary period.

2. Check the timber sale contract for minimum tank capacity and pump requirements.

3. Check to see that the tank truck or trailer has a live reel equipped with hose and couplings that meet the requirements listed in applicable C provisions.

4. Ensure that the hose and couplings between the pump and the reel are of equal or higher specifications than the hose on the live reel. Screw-type (radiator hose) clamps are not acceptable, as they tend to rust, break, or work loose from vibration.

5. Ensure that nozzles meet the specifications stated in the C provision. Do not accept nozzles or any other fire equipment as substitutes on the basis that it is acceptable to District fire management personnel, or others, until you have written agreement between the purchaser and Contracting Officer in accordance with B/BT7.21 - Substitute Precautions.

6. Ensure that appropriate accessories are kept with the pumper to maintain serviceability during periods of operating it. Extra fuel, sparkplugs, lubricants, servicing tools, starter rope, accessory box, hose fittings, spanners, and gaskets appropriate to the particular pumper is recommended.

7. Inspect the Unit for the following:

a. In the event a pumper unit must travel on a Federal or State highway or on county roads to get from one part of the Sale Area to another, check to ensure that the unit is highway legal for travel on public roads (lights, muffler, registration, and so forth.)

b. Ensure that self-propelled pumper units have serviceable parts that make it suitable for fighting fires. Such parts include headlights, adequate muffler, sufficient fuel, serviceable tires (no cord showing), adequate brakes, and so forth.

c. Ensure that general condition of the pumper unit itself is such that it can adequately travel to any location required under the Timber Sale Contract (for example, check strength of the tongue and chassis, dual tires mounted if unit is so designed, and so forth.)

d. Ensure that ample power is readily available to promptly and safely move the unit over roads serving the sale area.

e. Ensure that the condition of any trailer is such that one person can promptly and safely attach a towing vehicle to it for transporting. The trailer should be positioned so that it is readily accessible and the towing vehicle shall have a hitch compatible with the trailer.

f. Ensure that units equipped with a positive displacement (gear) pump have pressure relief valve and a bypass hose leading back to the tank to prevent water loss.

#### **62.12h - Fire Foreman and Fire Patrolman**

When required by the timber sale contract, ensure that the purchaser designates a qualified fire foreman and fire patrolman to be available on the sale area during portions of and after normal working hours. Ensure that the fire foreman is authorized to act on behalf of the purchaser in fire prevention and suppression matters and that the purchaser understands that one of the primary duties of the fire foreman would be to inspect equipment and tools to ensure adequate maintenance and compliance with timber sale contract requirements.

It is recommended that a copy of the agreed fire patrolman duties be incorporated as a portion of the fire plan. For a patrolman to be as effective as possible, the recommended duties should provide that the patrolman:

1. Keep informed of the latest fire danger rating for the area.
2. Check on location of fire tanker and test pumps. See that tanks are full; check hose and fire tools.
3. See that fire tool cache is in proper location. Check on water in backpack pumps and test pump serviceability.
4. Check current falling area; contact fallers, check saws, shovel, axe, extinguisher. Check smoking habits (workers must sit in cleared area to smoke). Check snag falling areas carefully. If fires are started by saws, check carefully for mechanical defect or carelessness by faller. Pass fire danger information to fallers. Recheck area felled the previous day.

5. Check skidding area; check smoking habits of choker setters, check spark arresters on tractors, check shovel and axe on tractors, and check smoking habits of operators.
6. Walk skid trails to check for fires started by sparks from cat grousers. Carry a shovel while making check of falling and skidding areas.
7. Check fuel dumps, welding areas, and warming fires at landings or service areas. See that necessary backpack pumps are on hand when welding. Check the clearing around landing, service area, and fuel dump.
8. Check logging trucks and road equipment for shovel and axe. Check on mufflers or spark arresters on all equipment. Check landing chainsaws.
9. Police sale area and remove flammable litter and debris.
10. Check powder and cap storage; post warning signs. Check to see if blaster is using electric caps and has posted lookouts, warning signs, and "No Radio Transmission Area" signs.
11. See that operating area roads are open and passable as designated on Sale Area Map.
12. At the end of the day, when the crew has left the woods, check the day's falling area, check skid trails, skidding area, and corner blocks. Check all spark arresters on shut-down equipment to see if carbon traps have been cleaned out and that spark arrester is in good condition. Check landing and vicinity. Check the road construction area and make a final check of all blasting done during the day.
13. Ensure that communications network is functional and that all personnel know who to contact in the event of fire. Possession of a list with names and phone numbers is encouraged.

#### **62.12i - Seasonal Permits**

The purchaser must obtain written permits from the Forest Service for warming fires, burning, blasting. Encourage the purchaser to submit permit requests well in advance of anticipated need to avoid potential delays. In addition, note that permit restrictions become part of the timber sale contract. Permits are subject to emergency precautions specified in the timber sale contract. Purchasers can obtain permits for the transportation, formulations, storage, and use of explosives from local law enforcement offices.

#### **62.12j - Blasting**

Require the Purchaser to use electric caps only, to post watchman for safety purposes, and to provide adequate fire tools in the immediate area for 1 hour after the blasting ends.

### **62.12k - Time of Snag Felling**

The Purchaser must fell snags concurrently with live timber in order to facilitate utilization and protection from fires, except in cases where felled dead trees would interfere with log removal or where felling would pose a safety hazard. Also consider the possibility of increased damage to the residual stand caused by felling dead trees prior to yarding.

### **62.12l - Oil Filters and Glass Jugs**

Prohibit workers from using glass jugs or bottles, even when covered with burlap or other material, on sale area. Require workers to remove oily rags and oil filters from National Forest land or to bury them.

### **62.12m - Smoking**

Do not permit workers to smoke except while sitting in a cleared area. Tractor operators, loader operators, knot bumpers, chokers setters, and others are not to smoke except under this condition. Deal with smoking violations within the framework of the timber sale contract.

### **62.13 - Emergency Precautions (B/BT7.22)**

Under this provision, the Forest Service may suspend operations and employ equipment and personnel, provided that the purchaser does not need them for fire duty elsewhere. The Forest Service must use the purchaser's equipment for stand-by on the sale area.

The purchaser's personnel may be used for either stand-by or patrol. If the purchaser requests, have the equipment operated only by people approved by the purchaser. The purchaser's personnel are subject to Forest Service direction and control and must receive payment from the Forest Service.

### **62.14 - Fire Control (B/BT7.3)**

The purchaser must act to prevent and suppress fires resulting from the purchaser's operations and to suppress any fire on the sale area. Contract provision A17/AT14 states the distance from which the purchaser must be ready to transport personnel and equipment to the scene of any fire on the sale area to take immediate, independent, initial fire suppression action. The mileage should, therefore, be adequate to include woods crews, although they may operate at different locations on other sales or on private land within the general area of the sale.

#### **62.14a - Reporting Fires**

The purchaser must initiate control action and notify the Forest Service of any fire occurrence as soon as possible thereafter. Require the purchaser to correct the conditions that caused the fire to prevent future fire starts.

## **62.15 - Fire Suppression Costs (B/BT7.4)**

There are basically three classifications of fire as recognized by the timber sale contract: other fires on the sale area; operations fires; and negligent fires.

Remember that only the direct costs that were actually necessary to suppress the fire are eligible for reimbursement. The Forest Service shall reimburse the purchaser only for manpower or equipment furnished on fires classed as other fires on Sale Area (B/BT7.43). Likewise, the Forest Service shall bill the purchaser for costs directly associated with actual suppression of fires classed as operations fire (B/BT7.41), subject to a maximum dollar amount stated in provision A18/AT15. The Forest Service shall also bill the purchaser for the total cost of suppression damages caused by fires classed as negligent fires (B/BT7.42).

The Forest Service shall not bill the purchaser for indirect costs such as overhead, routine maintenance or equipment replacement, or air tankers, helicopters, ground tankers, and so forth that are dispatched but not used or deemed necessary for actual suppression.

### **62.15a - Operations Fire Provisions (B/BT7.41)**

This subsection defines an operations fire as a fire caused by the purchaser's operations through non-negligent action, and it obligates both the purchaser and the Forest Service to share in the cost of suppressing the fire.

If evidence shows that a fire was caused by the purchaser's operations the fire is then classed as an operations fire. The purchaser must pay the cost of each fire to the extent stated in provision A18/AT15. The contract further provides that the Forest Service shall credit the cost of the purchaser's actions, supplies, and equipment on this type of fire to the purchaser's cost and if actual cost exceeds the obligation, the Forest Service shall reimburse the purchaser for the excess.

The contract does not require the purchaser to have liability insurance to meet this obligation.

Newer contracts state that if the purchaser fails to take action under provision the Forest Service shall consider the fire as a negligent fire.

### **62.15b - Negligently Caused Fire (B/BT7.42)**

If available evidence indicates that the fire was due to negligence or fault of the purchaser's operations, this subsection, as does applicable law, provides that the purchaser must bear the cost of suppressing such fires. For fires resulting from negligence, either the purchaser must voluntarily assume responsibility or the liability must be settled in court. Therefore, it is necessary to prepare careful and complete documentation of available names and statements of witnesses, as well as other evidence of the fire's cause. Fault is included in the contract wording to cover the deliberate setting of a fire (arson), which is not covered by the term "negligence." New contracts differ in that they use the defined term "Negligent Fire." This fire is not

necessarily due to the purchaser's operations but may be a result of the purchaser's failure to comply with the fire precautions or fire control provision. If the purchaser's failure to comply with provision B/BT7.2 or provision B/BT7.3 results in the starting of a fire or permits a fire to spread, the purchaser must bear damages and the cost of suppression. As in the previous contracts, which included provision for fires caused by negligence, it is necessary to prepare a careful and complete documentation of the fire.

#### **62.15c - Other Fires on Sale Area (B/BT7.43)**

This obligates the Forest Service to reimburse the purchaser for equipment and manpower furnished pursuant to provision B/BT7.3 or, at the request of the Forest Service, at fire-fighting rates common in the area or at rates agreed to in advance for any fire on the sale other than an operations fire or a fire caused by negligence. The means that the cost of suppressing caused by lightning, by persons other than the purchaser's employees, and so forth are an obligation of the Forest Service and not of the purchaser.

#### **62.16 - State Law (B/BT7.5)**

The timber sale contract does not relieve the purchaser of any liability to the United States for fire suppression costs recoverable in an action based on state law. Except when an operations fire occurs. When this occurs the purchaser is immediately liable for the dollar amount specified in section A18/AT15.

#### **62.17 - Performance by Contractor (B/BT7.6)**

This section applies to all of provision B/BT7.0. It establishes that purchasers' obligations do not change due to the fact that they may be using employees, agents, contractors, or subcontractors or their employees or agents.

#### **62.2 - Other Conditions**

##### **62.21 - Title and Liability (B/BT8.1)**

1. Title Passage (B/BT8.11). The Forest Service owns the timber until it has been paid for, scaled, and removed from the sale area. Timber remaining after the termination date, may not be removed subsequent to that date, regardless of whether or not money is on deposit or the logs are scaled.

2. Liability for Loss (B/BT8.12). The party holding title must bear losses from destruction of damage in timber value except where loss occurs after removal from the sale area, but before Scaling is done. If the loss is incurred during scaling operations the purchaser pays. The Forest Service does not have to supply replacement timber, nor does the purchaser have to accept it.

## **62.22 - Period of Contract (B/BT8.2)**

The contract closes no later than the termination date, unless it is adjusted or extended under provisions B/BT8.2, B/BT8.21, or B/BT8.23. (See chapter 30). No Forest officer has the authority to extend the contract unless all requirements have been met (FSM 2453.12).

Written permission may be granted to delay contractual requirements such as scaling, erosion control, snag felling, or slash disposal (provision B/BT8.2). Furnish copies to the performance bond surety. This does not permit log haul.

### **62.22a - Termination for Catastrophe (B/BT8.22) and (B/BT2.133)**

The catastrophe-affected volumes are additive when more than one catastrophe occurs within 12 months. Changes caused by forest pest epidemics are not subject to this provision if the sale was for salvage or pest control.

The first consideration is to modify the contract under provision B/BT8.33. (See section 33.3).

The Forest Service must consider the impacts of modification verses logging the sale as originally planned. If the modification is determined to be the most advantageous to the Government and agreement is unsuccessful the timber sale contract may be terminated either by the Purchaser or by the Forest Service. The Forest Service is responsible for determination of whether termination action can be considered either by the Purchaser or the Forest Service. The purchaser has the first option for cancellation. If the purchaser does not exercise this option, the Forest Service then has the right to cancel.

If a catastrophe is the result of a Forest Service action, the purchaser can file a claim against the Government for the resulting losses.

### **62.22b - Reasons for Premature Termination**

1. Purchaser may request termination for the following reasons:

a. Catastrophic Damage (fire, bugs, wind, and so forth.)

(1) Loss in value.

(2) Loss of access.

b. Helicopter damage (C8.223) (In helicopter sales.)

2. The Forest Service may termination for the following reasons:

a. Breach of contract, with Chief's approval (provisions B/BT9.3 and C/CT9.3, section 37.2, and 36 CFR 223.116).

b. Catastrophic damage, if the Government and the purchaser cannot agree to one or a combination of the three conditions in provision B/BT8.222.

c. Export violations (provision C/CT8.641. and C/CT8.642#).

d. Environmental damage (C/CT8.2).

e. Violation of environmental regulations issued by a Federal or State agency or by a political subdivision (provision C/CT6.0).

f. Discrimination in employment (provision B/BT8.63).

Inform the Forest Service representative of conditions that would justify contract termination.

3. Unilateral Termination. The Forest Service may terminate a contract for unacceptable environmental damage if the purchaser does not agree to a contract modification. Contract provision C/CT8.2, termination, October 1977, permits the Chief to do this. Provision C/CT9.5 limits the Government's liability to the purchaser to:

a. Value of unused purchaser credit.

b. Expenditures for logging any products not removed from the sale area.

c. Out-of-pocket expenses involved in acquiring and holding the contract.

d. Difference between current contract rates for uncut timber and rates paid for comparable timber on the same National Forest during the preceding 6 months.

If the contract does not include provisions C/CT8.2 and C/CT9.5, there is no limit to the amount the purchaser can claim from the Government. Therefore, always be sure to include these two provisions.

#### **62.23 - Performance by Other Than Purchaser (B/BT8.4)**

The purchaser may not be relieved of his responsibilities, but the sale may be operated by a third party, upon approval of Forest Service.

#### **62.24 - Sale of Other Materials (B/BT8.5)**

It is permissible to sell products on the sale area which are not subject to the terms of the contract CT8. Discuss this matter with the purchaser to insure proper coordination and avoid interruption of scheduled operations.



## **62.25 - Provisions Required by Statute (B/BT8.6).**

1. Covenant Against Contingent Fees. Contract provision B/BT8.61 is required by the General Services Administration. If action is necessary, refer the case to the Regional Forester, who should seek advice of the General Counsel.

2. Officials Not to Benefit (B/BT8.62). This subsection is required by 42 U.S.C. 22.

## **63 - Performance and Settlement**

In order to understand this material read the provisions referred to in parentheses in the topic heading. Be sure to use the actual contract being administered or an identical form and edition.

### **63.1 - Performance Bond (B/BT9.1)**

Direction under FSM 2456.1 covers performance bond procedures. Enter the amount of the performance bond in A/AT21 of the contract. Word the section so that, in lieu of a performance bond, the purchaser may deposit into a Federal depository and maintain therein, cash in the amount stated in provision A/AT21 or negotiable securities of the United States having market value at time of deposit of not less than the dollar amount stated in provision A/AT21.

This provision requires that any adjustment or extension beyond 1 year of the time for contract completion, may be granted only with the consent of surety or upon delivery of a new bond. The provision also describes what action to take should the sureties on a bond become unsatisfactory to the Forest Service.

Provision B/BT9.11 provides for a reduction in the amount of the performance bond after the purchaser has completed the removal of included timber, except for the timber the purchaser is required or authorized to leave. Once the purchaser has removed the timber from the sale area and upon purchaser's request, the Forest Service must report to the purchaser the amount of the bond required thereafter. The bond amount reported must be sufficient to cover the estimated cost of remaining contractual obligations, such as erosion control, slash disposal, or final road maintenance. Performance bond coverage is not necessary for remaining unscaled timber, because the purchaser has covered the payment for such timber by advance cash deposits or payment guarantee.

The Forest Service also has an obligation to notify the surety as soon as the sale closes or the settlement of claims incident to the sale is no longer necessary. Action by the Forest Service under provision B/BT9.1 must be taken by the Forest Service contracting official.

### **63.2 - Disputes (B/BT9.2)**

The intention of the timber sale contract is that the purchaser and Forest Service jointly work out solutions that are acceptable to both parties when disputes arise over interpretation and performance under the contract. If it proves impossible to reach agreement regarding contract

meaning (a question of fact), the decision of the Forest Service shall prevail, subject to appeal under regulations of the Secretary of Agriculture, in accordance with the Contract Disputes Act of 1978.

### **63.3 - Breach (B/BT9.3)**

Taking breach action under the timber sale contract is a serious matter that you should considered only when you have thoroughly evaluated the facts of the case. Many problems associated with breach are caused by (1) lack of knowledge and understanding of the breach provision and, (2) fear to either use or not use the provision. Analyze each case on its' merits and then proceed with judgement.

The timber sale contract makes no allowance for degrees of violation of the contract; therefore, any noncompliance of the provisions constitutes a breach of the contract. There is no doubt that the authors of the contract intended a difference in application of the provisions. For example, there is a difference between a faller who does not have adequate fire tools early in the fire precautionary period during wet weather and a faller who fails do have such tools during extremely dry conditions. Judgment and knowledge are vital ingredients in determining if breach exists. Breach may or may not result in suspension; however, there can be no suspension without breach.

Focus on the term "material provision" in B/BT9.3. Any non-compliance must be a material provision before breach action may be taken. A breach of this nature occurs when the purchaser's action or inaction results or is likely to result in unnecessary damage to the resources. Resources include natural, monetary, and in some cases, human resources. The intent is to distinguish between significant items and those of lesser importance.

1. When you observe a breach, contact the purchaser's representative and/or field representative to determine the facts and to ascertain whether circumstances of which were not aware might have necessitated the problem.

2. If the breach does exist, explain your reasoning and seek an understanding with the purchaser's representative. Inform the Forest Service representative of the situation.

3. The Forest Service representative should then reach agreement with the purchaser's representative on what action is necessary to remedy the breach. The Forest Service representative and the purchaser's representative should review the problem firsthand before determining the remedy.

When initiating breach action, the Forest Service representative shall provide the purchaser's representative with written notice allowing reasonable time to correct the problem. The Forest Service representative may also provide notice to suspend part or all of the operations. Suspension should depend on the nature of the breach and the circumstances involved.

Exhibit 01 is a flow chart which illustrates in a simple form, the process of breach.

**63.3 - EXHIBIT 01 IS A SEPARATE DOCUMENT.**

### **63.31 - Suspensions**

1. Oral Suspension. Oral suspension is warranted only when there is an immediate threat to life or National Forest resources. Only those individuals who have the delegated authority to orally suspend operations may do so. Some situations that may warrant suspension follow:

- a. Unauthorized landing, skid trail, or temporary road construction that can cause irreparable damage.
- b. Unnecessary damage to residual trees due to poor skidding, yarding, or falling.
- c. Failure to meet key precautionary or control provisions during periods of high fire danger.
- d. Incomplete erosion control work immediately before the end of the normal operating season.

Whenever Forest Service invokes an oral suspension upon the purchaser, document it promptly. If the purchaser immediately remedied the breach condition to the satisfaction of the timber sale contract requirements, it may be sufficient to document the incident provided that you inform all parties of the particulars of the suspension.

2. Suspension upon receipt of written notice. Some noncompliance items that do not qualify for an oral suspension, do warrant suspension upon purchaser's receipt of a written notice of breach and suspension. This suspension is warranted in cases where necessary to protect the Government's interest. Suspension may also be warranted in some cases of repeated noncompliance of timber sale contract provisions. Do not use suspension as a punitive measure.

Be aware that it is the purchasers' representatives responsibility to actually enact the suspension through their own organizations. A suspension ordered by, even after the purchaser's has received the notice of suspension, would be simply be an oral suspension, which you may only order in cases constituting an immediate threat to human life or a threat of immediate and irreparable damage to National Forest resources.

3. Suspension Upon Failure to Remedy Breach in Time Allotted. If the purchaser breaches any of the material provisions of the contract, the Forest Service representative shall give the purchaser's representative notice of the breach, allowing reasonable time for the purchaser's representative to take corrective action. The Forest Service representative may also give notice to suspend all or part of the purchaser's operation. Whether or not the breach should involve suspension depends on the circumstances and on the nature of the breach. Suspension is not intended as a penalty, but as a means of stopping the breach.

Normally, the suspension involves only those activities operating under that portion of the contract the purchaser has breached. Examples follow:

- a. Failure to water road -- suspend hauling.
- b. Failure to pay bill for collection on time -- suspend felling and usually hauling.
- c. Unauthorized tractor skidding -- suspend operation of the tractor doing the skidding.
- d. Failure to have required equipment with fallers -- suspend offending fallers.

### **63.32 - Remedy for Breach**

Remedies for breach are problem solving tools and not punitive measures. Remedies should identify what the action is necessary to correct the problem in the time frame specified in the breach letter. Action specified should be similar to the action the Forest Service would take if the Forest Service were doing the work. If applicable, remedies should also include requirements to prevent recurrence of the problem.

Except in cases qualifying for oral suspension, any conditions or actions taken in relation to the breach become effective when the purchaser's representative (or his superior with contract signing authority) receives the Forest Service's written notice, that is, breach letter. When specifying a time frame for remedy of a breach, consider the following:

1. Breaches requiring on-the-ground action by purchaser must allow "30 practicable operating days during Normal Operating Season" except under emergency conditions. Interpret practicable operating days to mean the number of days per week the purchaser normally operates, with a minimum of 5 days.
2. Under "emergency conditions" alternate time periods may be specified for remedy of a breach. So specify when damage to National Forest resources is occurring or is likely to occur if you were to allow the full "30 practicable operating days during Normal Operating Season."
3. If the breach does not require on-the-ground action by purchaser, allow 30 calendar days.

The Forest Service has an obligation to inspect purchaser's operations to see if the purchaser has complied with the time period for remedy of breaches, to determine if suspension may be lifted, and to notify purchaser within 24 hours after the Forest Service has established that the purchaser has remedied the breach. This notification should include a statement that the purchaser has completed all remedies and is no longer in breach.

Determining what type of action is necessary to adequately remedy a breach situation is frequently a difficult task and a very important one. The objective of any remedy action should be to achieve basically the same end result originally intended by the timber sale contract. Sometimes the corrective action necessary to achieve the intended result will cause unacceptable environmental damage or be economically prohibitive. If such actions are forced on the purchaser it may be viewed by the Contract Appeals Board or the courts as arbitrary punitive actions. Use common sense and good judgement in determination of an appropriate remedy.

### **63.33 - Standards for Breach Letters**

Notice of breach with suspension may be given orally (followed immediately by written notice) in cases of an immediate threat to human life or a threat of immediate and irreparable damage to National Forest resources. An oral suspension notice may be given to the purchaser's work supervisor or, if absent, to those performing the operation.

In all instances of breach action, notify the Purchaser in writing. The letter should contain the following items: statement notifying the purchaser that the purchaser is in breach of the timber sale contract; the provision(s) of the contract breached; what action the purchaser must take to remedy the breach (remedies should include more than just a repetition of requirements stated in the contract); requests or requirement for purchaser to submit a plan to prevent recurrence of the breach; time frames for the remedy as determined or as required by the contract; requirements that the purchaser, as part of a remedy notify, when other remedies are complete; and signature by the Forest Service representative or a designated "acting". An acting District Ranger may or may not have signing authority.

The Forest Service representative must ensure that the purchaser's representative receives the notice. Send the original letter by mail (Certified-RRR), or if necessary, personally deliver it to the purchaser's representative with copies to surety and to the Forest Service contracting officer. If you hand-deliver the notice, obtain the signature of the purchaser's representative acknowledging receipt and the date of receipt. If personal delivery is not possible, advise the purchaser's representative by telephone that you are sending the notice. Make the telephone call as soon as possible after the decision confirming the breach of the timber sale contract. Immediately upon oral suspension, confirming the normally within 3 hours, notify the Forest Service contraction officer of the situation and related circumstances.

Because no contractual action may be initiated until the purchaser's representative receives a breach letter, breach letters should generally be in the mail (Certified-RRR) within 24 hours after the decision on confirming the breach of contract. This should also apply to the written notice that follows an oral suspension.

### **63.34 - Breach, Form FS 2400-5 Contract**

The breach provision for the 2400-5 timber sale contract (B8.25) is substantially different in several respects. A summary of those differences follows:

1. There is no provision for oral suspension in the 2400-5 timber sale contract. Make all suspensions by written notice. If an emergency requires an immediate suspension without written notice, this may be done outside the contract under pertinent Federal, State, or local laws or ordinances and only after you have exhausted all remedies under the contract have been exhausted.

2. Time frames for remedy of breach are as follows:

- a. Allow 30 days within normal operating season for remedies that require on-the-ground work. Note that there is no reference to operating days, and so forth.
- b. For remedies that do not require on-the-ground work, allow 30 days.

There is no provision for specifying a different time period under emergency conditions.

#### **63.4 - Failure to Cut (B/BT9.4)**

This provision describes when and how the Forest Service is to appraise remaining included timber in the event of termination for breach under provision B/BT9.3 or failure to cut remaining included timber, unless terminated for catastrophe under provision B/BT8.22.

The newer timber sale contracts revise this provision so that it is consistent with the intent of other changes. If trees left in the area cutover by the purchaser are so scattered that there can be no resale of such trees, purchaser shall pay the Forest Service for cutting, removing, or otherwise eliminating such trees. Such costs are to be in addition to other damages described. This revision places greater emphasis on removal of designated trees.

#### **63.5 - Settlement (B/BT9.5)**

This provision authorizes the use of funds on deposit under the same contract to discharge unfulfilled obligations or to perform or deny the obligation to perform the contract work. In cases where it is necessary to use the purchaser's funds on deposit to complete work on sale requirements or to settle damage claims, refer the matter will be referred to the Regional Forester for review by the field representative of the General Counsel.