



EXECUTIVE CORRESPONDENCE

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20245

Master

IN REPLY REFER TO:

53 BIAM Supp. 3, Release 2

March 28, 1985

MEMORANDUM

To: Holders of 53 BIAM Supplement 3
From: Deputy Assistant Secretary - Indian Affairs
Subject: 53 BIAM Supplement 3, Contract Sales of Timber

This release updates 53 BIAM, Supplement 3, by adding Illustration 19, Budget and Use Plan, for Administrative Deductions, and Illustration 20, Irrevocable Letters of Credit.


Deputy Assistant Secretary -
Indian Affairs

Filing Instructions:

- (a) Remove superseded material:
53 BIAM Supp. 3, Release 1 (dated 6/22/81) (1 sheet)
Table of Contents (22 sheets)
53 BIAM Supp. 3, 1.1 - 6.7 (33 sheets)
Illustrations, 1 - 18
- (b) Insert new material transmitted:
53 BIAM Supp. 3, Release 2 (dated 3/28/85) (1 sheet)
Table of Contents (22 sheets)
53 BIAM Supp. 3, 1.1 - 6.7 (47 sheets)
Illustrations, 1 - 20
- (c) Pen-and-ink changes:
None

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CONTRACT SALES OF TIMBER
General

1. GENERAL

1.1 Policy and Scope. It is the policy of the Bureau to sell Indian trust timber through competitive bidding procedures and under contracts to serve the best interests of the Indian owners. Contract sales of timber involve obtaining proper authorities; sale preparation, including field reconnaissance; preparing suitable contracts; and then administering each sale after the buyer, seller, and approving officer have executed the contract and its appurtenant documents.

1.2 Objectives. The objectives of harvesting Indian trust timber are:

A. To harvest the timber in such a manner that reserve stands and the land are left in optimum condition for future growth of timber (25 CFR 163.3).

B. To use the timber in the best interests of the Indian owners.

C. To apply forest development measures as may be set forth in the timber contract.

D. To accurately determine and record the volume and value of the timber cut by ownership, to collect contract payments due, and to credit stumpage proceeds to owners' accounts.

E. To meet the reasonable and practical requirements of the purchaser under the timber contract, and to encourage efficient and skilled operations.

F. To keep sufficient records to document that the requirements of the timber contract and the regulations have been complied with, and to otherwise record factual information relating to the purchaser's performance under the contract.

G. To generate employment and business opportunities for Indians.

H. To correlate timber sale actions with other phases of forest and resource management.

I. To encourage Indian participation in the conduct of timber sales.

J. To provide cost efficient and businesslike administration within the best interests of the Indians and the United States.

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General

1.3 Authority. By statute. Refer to 53 BIAM 3.1, 3.2 and 3.3. By consent of timber owners. Refer to 25 CFR 163. Refer to Timber Contract Parts A and B.

A. Tribal Timber:

(1) A valid Tribal Resolution giving consent for the sale of tribal timber is required. Such resolution shall provide authority for tribal execution of necessary timber sale documents.

(2) When consent to sell tribal timber has been delegated to a business or other committee, a copy of the delegation of authority shall be furnished to the Approving Officer.

(3) The resolution or delegation of authority is furnished for inclusion as a timber sale contract supporting document.

B. Allotted Timber:

(1) The use of a power of attorney is preferable for obtaining consents pursuant to 25 CFR 163.7(a). When the timber sale involves only a few allottees or heirs, their signatures to the contract may be used. If the proposed sale is to be made under a master contract for both allotted and unallotted timber, it is preferable to obtain allottee consent for inclusion with the sale proposal. However, consent of allottees may be obtained after acceptance of bids, providing the timber is predominantly unallotted, the allotment is not critical to the operation proposed for logging the timber, and the consent obtained prior to advertisement enables a reasonably accurate determination of the volume of timber to be developed under the contract. The master contract will stipulate that separate contracts must be subsequently entered into for allotments within the logging unit with allottees who desire to sell their timber.

(2) The execution of a power of attorney is required. See form BIA-5315 Power of Attorney for Sale of Allotment Timber (Illustration 1). The name of the allottee or heirs signing should be entered on the form in preparation for placement of the signature above the name. The fractions of interest should be shown next to the typed name. The signature of each allottee or heir must be witnessed by two individuals. If such signatures are not legible, the name should be printed or typed in such a position as to be associated with the proper signature. The addresses of the witnesses should also be included.

The Superintendent, or other officer who is authorized to consent for the allottee or any heirs, must sign the power of attorney on their behalf to eliminate any presumption when signing the contract that he or she is acting on behalf of all the heirs who have not signed a power of attorney.

CONTRACT SALES OF TIMBER

General

(3) When consent of only a majority interest has been obtained, the timber contract file must contain evidence of the effort to obtain consent of all allotment owners. When an allottee or any heirs cannot be located, the Superintendent, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale of timber for the particular interests. For an allotment containing both restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest consent has been obtained.

C. Unrestricted Interests in Timber in which there are Trust or Restricted Interests.

(1) Consent of all unrestricted interest is required and shall be evidenced by signature on the authorized form of power of attorney. In situations of natural catastrophe, as cited in Section 1.3D below, or when there otherwise is urgent need to sell the Indian trust or restricted interests, and consent of the unrestricted interests cannot be obtained, the proposal to sell the timber shall be furnished to the Area Director for decision and instruction.

(2) In certain instances, not involving emergency or catastrophic situations, it may be necessary for the Area Director to make a decision regarding the sale of timber, including unrestricted interests for which consent cannot be obtained. The decision on behalf of the trust or restricted interest owners will be pursued by the Area Director to:

- (a) proceed with the sale of timber from such allotment, or
- (b) not proceed with the sale of timber from such allotment, or
- (c) initiate action to partition the land.

D. Sales of Timber without Indian Consent. Pursuant to 25 CFR 163.7(b), sales of timber may be made from any Indian land held in trust or other patent containing restrictions on alienation without the consent of the Indian owners when such action is necessary to prevent loss of values resulting from fires, insects, disease, windthrow, or other natural catastrophies. The officer who approves the timber sale contract must support that approval with adequate evidence that an emergency exists and why Indian consent cannot be obtained. The emergency must be actual. Normal mortality will not qualify as an emergency.

CONTRACT SALES OF TIMBER
Approving Officer

2. APPROVING OFFICER

2.1 General. Refer to 53 BIAM 3.3 and 10 BIAM 3.1 and 3.3D.

2.2 Advertised Sales. Pursuant to 25 CFR 163.8, advance authority to advertise timber for sale and approval of the advertisement will be obtained from the officer who will approve the contract. Upon such authorization, the Advertising Orders, SF 1143-44 (Illustration 2), may be issued by the Superintendent. Pursuant to 25 CFR 163.11, the Approving Officer will consider bids received in response to the advertisement. Receiving and accepting bids will be in accordance with instructions contained in 2.5 herein.

2.3 Sales Without Advertisement.

A. Pursuant to 25 CFR 163.9, contract sales may be made without advertisement. Written documentation allowing the sale without advertisement and the documentation of the transaction shall be prepared and recorded to a quality equivalent to that of an advertised sale of timber.

B. Pursuant to 25 CFR 163.9, permit sales may be made without advertisement. Refer to 53 BIAM 4.

2.4 Tribal Forest Products Enterprises. Tribal forest products enterprises shall have a written plan of operation approved by the Area Director. Pursuant to 25 CFR 163.6, such enterprises may utilize tribal or allotted timber as provided in approved operating plans. Payment for allotted timber utilized by tribal forest products enterprises must be in accordance with the provisions of 25 CFR 163.15.

2.5 Receiving and Accepting Bids. Superintendents will ordinarily receive bids. However, only the Approving Officer can actually accept a bid. The receiving officer, if not authorized to accept the bid, shall submit complete information on all bids received to the Approving Officer promptly after close of bidding. Refer to 25 CFR 163.11.

A. Form of Bid Proposals. Advertisements for the sale of timber will state that sealed bids in duplicate will be received "on forms provided therefor." The forms shall be Form BIA-5318, "Proposal for the Purchase of Timber" (Illustration 3). Form BIA-5318 is an offer to purchase timber and, if the offer is accepted, a written contract must be executed, or the deposit will be retained as liquidated damages for the use and benefit of the interested Indians. The bidder is required to furnish a bond to complete requirements of the contract. Form BIA-5318 will be used to receive bids for all sales of timber. In case of oral auction sales, no oral bid will be considered, unless the bidder has, in compliance with the advertisement, submitted a sealed proposal on Form BIA-5318. Prospective bidders should be

CONTRACT SALES OF TIMBERApproving Officer

cautioned to comply with printed instructions thereon, particularly as to signing.

B. Disposition of Bid Deposits. Disposition of deposits received with bids will be in accordance with provisions of 25 CFR 163.10(c) and 163.10(d). See Illustration 20 for detailed guidelines for use of irrevocable letters of credit.

C. Acceptance of Bids. The receiving officer shall prepare an abstract of bids on Form BIA-4321 Abstract of Bids (Illustration 4). This abstract, together with the bids, the receiving officer's recommendations, and other pertinent data and information, will be submitted promptly to the Area Director when the Superintendent is not the Approving Officer.

(1) When bids are to be received at oral auction, the Approving Officer shall provide the Superintendent with instructions for receiving and recording oral bids.

(2) When the sale is confined to Indians, or Indians are provided the opportunity of meeting high bids, such arrangement must be set forth in the advertisement. Prior to the opening of bids, if the Indian preference opportunity is exercised, it must be declared in writing by the Indian bidders, and such declaration must be submitted to the Approving Officer with the abstract of bids and other data for consideration.

D. Determination of Successful Bidder. The Approving Officer will determine the successful bidder or will determine that all bids are to be rejected and will promptly notify the Superintendent of this determination. The Superintendent shall thereupon notify all bidders of the decision made and return the unsuccessful bidders' deposits, which may have been retained in accordance with provisions of 25 CFR 163.10(c).

E. Failure to Execute Contract. Should the successful bidder, after receiving notice of bid acceptance, fail to execute the contract within the stipulated period, the deposit being held by the Superintendent will be forfeited. The amount thus forfeited (after deductions are made to cover administrative expenses pursuant to 25 CFR 163.18) shall be credited to the interested Indians.

CONTRACT SALES OF TIMBER
Sale Preparation

3. SALE PREPARATION

3.1 General. Refer to 25 CFR 163.7 (c).

3.2 Cruise of the Proposed Sale of Timber.

A. Proposed timber sales will conform to the general harvest schedule set forth in the forest management plan. Deviations from the forest management plan progression will be presented in writing to the Area Director for decision prior to making the presale cruise.

B. A timber cruise will locate and estimate the quantity of merchantable timber on a given area according to species, size, quality, and other characteristics necessary to provide specific data to be set forth in the Forest Officer's Report.

C. Acceptable methods of cruising will be used in accordance with procedures established by the Area Director. Accuracy standards will be in accordance with criteria established in 53 BIAM Supplement 2, Part 2.3B(2)(e)(1).

3.3 Forest Officer's Report. A complete report setting forth all pertinent information of the proposed sale of timber will be prepared by the ranking Forest Officer at the Field Office having jurisdiction. The report will be presented through the line to the official who will be the timber contract Approving Officer. If a Field Office is without a Forest Officer, the Area Director will assume the responsibility for preparation of the report. Reports will be prepared and assembled in general form and content as follows and in accordance with specific instructions issued by the Area Director.

A. Narrative and Factual Information. This section is a professional and technical statement providing a forest management analysis of the proposed sale of timber, silvicultural prescriptions to be applied and design of the harvest operations.

B. Appraisal. The appraised value will normally be the selling value of the timber products less the costs of production, and it will include an allowance for profit and risk. The appraisal and elements thereof will be based on current conditions in similar timber stands and manufacturing facilities in the local area or region and the specific facts and conditions of each timber sale. Alternative appraisal methods such as transaction evidence or other techniques may be used as authorized by the Area Director.

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C. Logging Unit Map. A logging unit map will be prepared to a quality consistent with the inclusion of the map as a part of the timber contract. Map characters and legend will adhere to standards established as criteria for forest mapping.

D. Form of Advertisement. The advertisement will provide basic information and instruction on submission of bids. For information on the detail of the timber contract, the potential bidder should be referred to the prospectus (see 3.3E) and to the approved form of contract as contained in the Forest Officer's Report. The advertisement should cover the following:

(1) Type of bid to be received at a stated place at a stated day and local time. Sealed bids on approved forms or a combination of sealed bid and oral auction may be used. Submission of sealed bids will be a prerequisite to the taking of oral bids. The merit of the assigned bidding method will be determined on the basis of each proposed timber sale. For instructions on the receiving and handling of bids, refer to Section 2.5 of this supplement.

(2) A statement that the volumes are estimates and are not guaranteed.

(3) Minimum stumpage prices acceptable and the basis of scale.

(4) Stumpage price of material to be paid by flat rate, if any.

(5) Amount of deposit with bid and disposition of deposits.

(6) Amount of performance bond required with the contract.

(7) Advance payments required by the contract, if a substantial amount.

(8) Other requirements or special features in the bidding (e.g., right to waive technical defects and to reject bids, authority to make oral bids, Indian preference).

(9) State source of full information concerning the sale of the timber and submission of bids.

(10) State date of advertisement and the name and title of the officer authorizing the advertisement.

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Sale Preparation

E. Prospectus. The objective of the prospectus will be to attract interest in the timber offering; to direct attention to new, changed or unusual procedures; and to furnish information in addition to that contained in the advertisement. Information contained in the prospectus will assist prospective bidders in deciding whether further investigation of the timber sale offering is warranted.

3.4 Environmental Assessments and Cultural Requirements. An environmental assessment and other studies as necessary will be prepared to comply with requirements of the National Environmental Policy Act (NEPA), as amended, the Historic Preservation Acts, the Endangered Species Act, and other applicable statutes setting forth requirements for protection and enhancement of environmental quality (Refer to 30 BIAM).

To comply with requirements for protection of the environment set forth in NEPA, as amended, an environmental assessment will be prepared. The assessment examines the proposal of the sale of timber and associated activities, along with considered alternatives, as to cause and effect on existing forest conditions and the conditions expected to prevail upon completion of the action. The environmental assessment will be prepared in compliance with the regulations issued by the Council on Environmental Quality (CEQ) and both Departmental and Bureau procedures and guidelines.

A. Archeological Investigation. As part of the environmental assessment and as required by the timber sale situation, an archeological investigation will be conducted and a report submitted to and clearance received from the State Historic Preservation officer prior to commencement of any soil disturbing logging operations.

B. Endangered Species. The impact of the proposed harvest activity on endangered fauna and flora will be addressed in the environmental assessment to the extent required by the existence of endangered species on the sale area or such species otherwise being affected by logging operations. Should impact be present, a report of the specific impact, including mitigating measure to insure protection of endangered species, will be submitted to the U.S. Fish and Wildlife Service for review and clearance prior to proceeding with the sale.

C. Other Reports and Clearances. Other environmental review and consultation requirements may be applicable to a specific timber sale proposal. The applicability of such other requirements shall be determined by the Approving Officer. As necessary, appropriate reports will be prepared and submitted. Clearances will be secured to comply with such other requirements.

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Contracts

4. CONTRACTS

4.1 General. Refer to 25 CFR 163.12-17. Form BIA-5324, Timber Contract for the Sale of Estimated Volumes (Illustration 5) is used for sales of timber in which the actual volumes used as a basis for payment are determined by a scale or other measurement of the products after cutting. Form BIA-5327, Timber Contract for the Sale of Predetermined Volumes (Illustration 6) is used for sales in which the volumes have been determined prior to the sale.

The proposed Timber Contract, Part A, is set forth in its entirety as a part of the Forest Officer's Report for review and approval as to form and content by the contract Approving Officer. See Section 4.4. The provisions of Part A should carefully consider the content contained in Form BIA-5323 Timber Sale Contract Standard Provisions Part B (Illustration 7), and duplication or diminishment of the general powers contained in Part B should be avoided.

Provisions which amend or replace Standard Provisions should clearly state that intent. The forms are designed to be completed by insertions. Crossouts are not an acceptable method of changing the form except where standard options so require. Substantive departures from fundamental requirements of the contract forms must be supported in the narrative of the Forest Officer's Report. Such departures require the Deputy Assistant Secretary - Indian Affairs (Operations) approval.

Upon notice to proceed with advertisement, the contract content is fixed and can be amended or changed only with the consent of the officer who authorized the advertisement. After advertisement has started, significant amendment or change requires issuance of an amended advertisement or a withdrawal of the advertisement.

4.2 Construction and Completion of Contract Part A, Form BIA-5324 (Estimated Volumes).

A. Heading. Check one box only. The contract may be a Master Contract when it covers tribal and allotted timber or covers a group of allotments. When the tribal or allotment box is checked, the contract is entirely tribal or a single allotment.

Insert the contract number. A sequential contract number obtained from the register at the local or Area Office shall be used. Insert the logging unit and reservation names where indicated on the form.

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B. Parties to the Contract.

(1) Seller. When executed as a Master Contract covering both tribal and allotment timber or a Tribal Contract, the name of the Indian tribe, followed by "as represented by the duly authorized tribal representatives," is inserted as the seller. In cases of exceptions, where tribal organic documents state otherwise, instructions from the Area Director should be obtained.

When executed as a Master Contract covering a group of allotments, the statement "the owners of trust allotments listed herein on Page 1a," is inserted as the Seller. The attached Page 1a, is headed by the statement "Seller is the owners of the following trust allotments, provided a separate contract is entered into on the approved form." The allotments are then listed by allotment number and the name of the original allottee. At the bottom of the page, note Page 1a of Form BIA-5324 or Form BIA-5327, as appropriate.

When executed as a single Allotment Contract, the name of the original allottee, if living, is shown as the seller. In the case of heirship allotments, the statement "heir(s) of (the original allottee name)" is inserted as the seller.

(2) Purchaser. Insert name of the purchaser and the city and state in which the principal office or place of business is located.

C. Bureau or Indian Affairs Representative. Insert the title and location of each representative. The Approving Officer entry is set by delegation of authority. See 10 BIAM 3.1. The Superintendent is the Superintendent or other officer delegated the authority to carry out the responsibilities of the Superintendent under the contract.

D. Timber Sold. Delete second paragraph when the form is not executed as a Master Contract.

E. Contract Dates. The contract year is designated by insertion of a year period giving the starting and ending dates. The dates for the purchaser to cut and pay for all designated timber and the contract expiration date are inserted in the spaces provided. Sufficient time beyond the date of completion for cutting and paying should be provided for completion of other contract obligations.

F. Unit Description. The location of the logging unit is described as all or portions of specified sections, townships, ranges, and reference meridians. A logging unit map delineating the sale area and showing other pertinent information shall be attached as "Exhibit A" to the contract.

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The total acreage within the unit boundaries including alienated lands is shown under the column "Area Within Unit Boundary." The "Area to be Logged" column lists only the acreage of accessible Indian trust lands on which timber will be designated for cutting.

G. Estimated Volumes. The designated timber entries must agree with the advertisement. Both the species and product are specified in the first column by phrases such as "Ponderosa pine sawlogs," "Aspen pulpwood," or other appropriate designations. It is appropriate to include "and other species" with one of the designated species to cover the possible occurrence of species not observed or listed but intended for cutting.

When species and products are included for which an estimated volume has not been determined, they are entered below the totaled estimated volume.

The unit column will show "M bd. ft." for sawlogs, "Cord" for pulpwood, and other appropriate designations for the products listed. The unit used is the one on which stumpage rate is based.

The estimated volume column shows those volumes from the Forest Officer's Report and from the advertisement. When product volumes have not been estimated, the word "undetermined" is entered in the column.

H. Payment for Timber. The general requirements for timber payments are contained in Section B 4.0 of the Timber Sale Contract Standard Provisions. Pursuant to 25 CFR 163.15, the minimum advance deposit shall be at least ten percent of the value of the contract minimum annual cut, based on appraised stumpage rates. Alternative methods for establishing the amount of the minimum advance deposit may be approved providing such deposit is not less than the minimum requirement.

The minimum balance in the advance deposit account is ordinarily one-fourth to one-third of the minimum deposit itself. It is expressed as a dollar figure.

Advance payments for allotted timber are required for contracts exceeding two years pursuant to Section B 4.2 of the Timber Sale Contract Standard Provisions. Pursuant to 25 CFR 163.16, any departure from the practice will require approval by the Deputy Assistant Secretary - Indian Affairs (Operations).

I. Stumpage Rates.

(1) Designated Timber. The Species, Products and Unit entries should correspond to those in Section A7(a). The entries in the Bid Rate Per Unit column are the rates accepted by the Approving Officer as a result of advertisement or negotiation for the sale of the timber.

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When alternative pages 3, 3a, and 3b are used, "quarterly" or "monthly" is entered in the space provided to correspond with the period established in A9.(d). The Minimum Rate Per Unit established for each species and product in the Forest Officer's Report is inserted in the column provided.

These are values below which rates shall not be reduced by periodic determination of stumpage rates. In general, minimum rates will not be less than 50 percent of the appraised rates, as determined by the Approving Officer. No minimum rates are entered for species and products that are not subject to periodic determination. Species and products that are not subject to periodic determination of stumpage rates are entered on the blank lines provided. If there are no species and products in this category, the word "None" is inserted.

(2) Additional Timber. Entries are for species and products not included under designated timber and removable under reasons stated in A7(b) only. Grouping of the species and products may be made when the stumpage values are approximately equal. The term "and other species" may be used in conjunction with a designated species. If there are no species and products in this category, the word "None" is inserted.

(3) Liquidated Damages for High Stumps. The rates used should reflect the current levels of stumpage rates. The Area Director may establish standard rates for use throughout the Area.

(4) Periodic Determination of Stumpage Rates. Provisions for the periodic adjustment of bid stumpage rates must be included in all contracts that provide for cutting periods longer than one year, unless exceptions are approved by the Area Director.

The period established for periodic determination of stumpage rates and the date of beginning of the first such period are entered in the blank spaces provided. In the following columns each species of designated timber shown in A7(a) and A9(a) is listed with the corresponding index to be used in the periodic determination of stumpage rates. The Corresponding Base Index Prices to be entered are those of the period used in the stumpage appraisal.

The percent of the difference between the Base Index prices and appropriate index prices to be applied as adjustment is established by the Area Director.

J. Performance Bond. Enter the amount pursuant to 25 CFR 163.14. Larger bonding requirements than those specified in 25 CFR 163.14 may be required at the discretion of the Approving Officer.

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K. Merchantability. Species and products entries must correspond to those in Section A7(a). The specifications are intended to reflect the lower limits of utilization that can be attained.

L. Designating Timber for Cutting. The statement should be a clear expression of the types of trees to be cut and the method by which they are designed for harvest. The Area Director may provide guidelines for designating timber for cutting.

M. Cutting Schedule. This defines the minimum and maximum annual volumes to be cut. Unestimated volumes as shown in A7(a) need not be included as part of the scheduled cut.

N. Scaling. Detail any scaling provision to be applied in lieu of or supplementing Part B of the Standard Provisions. If none, enter "refer to Standard Provisions."

O. Slash and Cull Tree Disposal. Refer to Part B Standard Provisions or specify any supplemental or modifying requirements to the appropriate position of the Standard Provisions.

P. Road Construction and Maintenance. Detail any provision to be applied in lieu of or supplementing Part B of the Standard Provisions. If none, enter "refer to Standard Provisions."

Q. Special Provisions. The entries in this section as well as those of A14, A15, and A16, must be carefully controlled to avoid duplication and conflict with other statements of the contract or with the Standard Provisions. Care must be taken that the general powers of the contract are not diminished by needless overspecification.

R. Effective Date. Self-explanatory.

S. Signatures. The checklist page shows signature, arrangement and distribution of timber contract and supporting documents.

Each party to the document shall manually affix a signature where required to the original and not less than one copy. If special circumstances warrant, additional copies shall be similarly executed. The Approving Officer shall similarly manually affix his or her signature to the documents. Other required copies of the contract documents may be facsimiles or conformed copies.

The contract documents shall be completed in an original and four (4) copies. One shall be designated and labeled the original. The original and the copies shall be of good quality and legible. Supporting documents (marked V on the checklist) shall be prepared to similar standards. Refer to Section 4.6.

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When the purchaser is a corporation, the name of the firm is shown on the first line, followed by the signature and title of the officer authorized to enter into the contract for the corporation. The certification must also be completed and signed by the appropriate officer of the corporation, certifying to the authority of the corporate officer to enter into the contract. Certified copies of articles of incorporation and of bylaws accompanied by resolution by the board of directors to enter into the timber contract and authorizing certain officers to sign necessary papers must be obtained or be on file in the Bureau's records.

When already on file, the file reference should be inserted on an additional page following the signature page of the timber contract Part A utilizing the certification below:

A certified copy of the Articles of Incorporation and Bylaws of the _____ Corporation is on file at the _____ Agency or _____ Area Office. Said document may be found with Contract No. _____ in File No. _____ of the Branch of _____.

Date: _____

Certifying Officer

Such a certification will eliminate the necessity of requiring an additional copy of such articles of incorporation and bylaws being furnished by the corporation.

If the approving officer has personal knowledge that a corporation is both financially responsible and authorized to conduct business in the state in which the timber sale is located, he or she is authorized, at his or her discretion, to waive all requirements for articles of incorporation and bylaws, state certification of corporate status, and state certification of good standing, provided the authorized corporate official certifies to the following:

I, _____ of _____ Incorporated (or Corporation), certify that said corporation is duly qualified to conduct business within the State of _____ in which this contract is to be performed.

Signature

When the purchaser is an individual or a partnership, the name of the firm is shown on the first line followed by the signature of the individual or partners. The signatures are witnessed by two individuals in the spaces

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provided and their addresses added. The date of the purchaser's signing is entered as provided.

4.3 Construction and Completion of Subsidiary Allotment Timber Contract, Form BIA-5326. See Illustration 8. This form will be used for the sale of estimated volumes of timber on allotments within a unit covered by a Master Contract executed on Form BIA-5324 and checked in the master box in the upper right hand corner of page 1.

- A. Authority. See Section 1.3.
- B. Parties to the Contract. See Section 4.2B.
- C. Bureau of Indian Affairs Representatives. See Section 4.2C.

D. Timber Sold. This section includes the basic sale agreement. The stumpage rates in effect under the Master Contract should be used in this section. For other entries and a discussion of additional timber, see 4.2D.

E. Allotment Description. The description of the allotment should be shown by legal subdivisions. The name of the original allottee and the act or treaty which authorized the allotting of the land, as well as the statute reference, should be inserted. Acreage figures to be inserted are self-explanatory. See Section 4.2F.

F. Terms and Conditions. Self-explanatory.

G. Special Provisions. See Section 4.2Q.

H. Effective Date. This date should be exactly the same as Section A18 of the Master Contract.

I. Last Page. For instructions on the date of execution and the purchaser's signature, see Section 4.2S.

4.4 Construction and Completion of Contract Part A, Form BIA-5327 (Predetermined Volumes). This form will be used for sales in which the volumes have been determined prior to the sale by tree measurement, log scale, or other method. The form may be used for the sale of either tribal or allotment timber, for combinations of tribal and allotment timber, or for the sale of timber from two or more allotments which are to be handled as a unit. Mark either the tribal box, the allotment box, or both, as appropriate in the upper right corner of page 1, Form BIA-5327.

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Predetermined volume sales differ from sales of estimated volumes in that the actual contracted volume and value of timber is known for each ownership when the contract is executed. In predetermined volume sales, consent must be obtained from each allottee prior to advertisement, and no allotments may be included in the sale at a later date as is done in estimated volume sales.

Unless there are peculiar circumstances which make the procedure undesirable in particular sales timber on both tribal and allotted lands or timber on two or more allotments may be sold under one contract executed on Form BIA-5327 without the use of subsidiary allotment contracts. In sales of both tribal and allotment timber, the tribe and the various allottees act jointly as the seller, and, in sale of timber from two or more allotments, the allottees act jointly as the seller.

A. Authority. See Section 1.3.

B. Parties to the Contract. When the form is executed as a contract covering only tribal timber, the name of the Indian tribe should be inserted in the first blank as the seller, followed by : "as represented by the duly authorized tribal representatives."

In sales of timber from a single allotment, the name of the original allottee, if living, should be shown as the seller. In the case of heirship allotments, the phrase "the heir (or heirs) of John Jones" should be used. When the owner or owners have executed a power of attorney on Form BIA-5315, the contract should read: ". . . hereinafter called the seller, as represented by the Superintendent of the _____ Indian agency." If the allottee elects to sign the contract rather than execute a power of attorney, the underlined words above and the blank should be deleted.

When the contract covers both tribal and allotment timber, the seller should be identified as: "the (name of tribe), and represented by the duly authorized tribal representatives, and the owners of (identify each allotment by name and number), as represented by the Superintendent of the _____ Indian agency, hereinafter called the Seller."

When the contract covers timber on two or more allotments, this section should read: "the owners of (identify each allotment by name and number), hereinafter called the Seller, . . ." When the owners have executed powers of attorney prior to advertisement of the sale, as should ordinarily be the case in predetermined volume sales, the phrase "as represented by the Superintendent of the _____ Indian agency" should be added.

C. Bureau of Indian Affairs Representatives. See Section 4.2C.

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D. Timber Sold. The contract includes all timber on the sale area defined in contract Sections 4(a) and (b).

(1) Designated Timber. This section includes all of the timber comprising the volumes determined prior to the sale. The method by which the volumes were determined should be inserted, such as "tree measurement," "actual count" or "log scale." The data entered in the table include only the timber designated and measured prior to the sale. Unless timber of a particular species is being sold on the basis of more than one product, only the species of timber needs to be shown. The purchaser is obligated to pay the total purchase prices shown in this section, regardless of actual volume of timber that has been designated for cutting prior to the sale.

In contracts covering combinations of tribal and allotment timber or timber from two or more allotments, a summary should be prepared showing the volume and value by species for each separate ownership. The summary may be shown in the table in contract Section 4(a) or in the Special Provisions section, depending on the space required. If the summary is shown in Section 13, a note should be typed below the table, such as: "See Section 13 for volumes and values by ownerships." When the installment payment method is specified in contract Section 7(b), the volume and value of designated timber should be shown by species and by ownership for each cutting block, either in Section 4(a) or in Section 13.

(2) Additional Timber. For timber included in the sale in addition to that for which volumes were determined prior to the sale, see 4.2I(2).

E. Contract Dates. See Section 4.2E.

F. Unit Description. See Section 4.2E. In sales of predetermined volumes in which the trees to be cut have not been individually marked (clearcut sales or the sale of all trees of specified species and size) and a single payment of the full purchase price of the designated timber is required before the contract is approved, the contract may provide that the purchaser be responsible for finding legal subdivision boundaries between Indian lands covered by the contract and adjacent non-Indian lands. In such cases, the Bureau is not obligated to protect the owners of non-Indian lands from possible trespass. The location of ownership lines between the allotments or between allotments and tribal lands should ordinarily continue to be the responsibility of the Bureau.

The following provision may be included in Section 13 of Form BIA-5327 when the conditions described above are met:

"Responsibility for Finding Legal Subdivision Boundaries.
Responsibility for finding legal subdivision boundaries between the

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Indian trust or restricted lands covered by this contract and adjoining lands in non-Indian ownership rests with the Purchaser, and no blazing or posting of trees on or near the contract area, except for official lines established by the Government cadastral engineers, shall constitute a representation by the Government of the location of any such legal subdivision boundaries."

G. Payment for Timber. The general requirements for timber payments are contained in Section 4 of the Standard Provisions. Form BIA-5327 provides for alternative methods for payment of the total purchase price shown in Timber Sale Contract Part B 4.1.

(1) Single Payment. This subsection provides for the payment of the full purchase price prior to the approval of the contract. The single payment method should be used unless there are compelling reasons for allowing the purchaser to make installment payments. If a single payment is considered to be so great a financial burden that competition may be significantly reduced, consideration should be given to reducing the size of the sale where this action is practicable. If installment payments are used, the "single payment" subsection must be deleted.

(2) Installment Payments. When this payment method is used, timber will be released for cutting in blocks of known volume and value. No block will be released until payment for that block has been received. The Contract requires the purchaser to make payments in such amounts and at such times as called for by the Superintendent. Ordinarily, each installment payment will cover the exact value of the timber in the block to be released.

The regular advance payments must be collected on any allotment timber not paid for in full under an installment payment within 30 days of the contract approval, unless the Approving Officer authorizes an exception to the advance payment requirements in accordance with 53 BIAM 5.4A and B. The amount of the advance payments will be credited against subsequent installment payments on blocks that include the allotments.

Payments under this section are not advance deposits, and no refunds or reduction in the size of the payments may be made under any conditions. If the installment payment provision is used, the single payment provision of the contract must be deleted.

(3) Payment for Additional Timber. Insert the appraised stumpage rates for timber which may be cut pursuant to contract Section 4(b). The product should be specified if the volume is to be determined by log scale or other measurement of products after cutting. If the

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volume of additional timber is to be determined by tree measurement, only the species need be specified.

H. Performance Bond. See Section 4.2J.

I. Designating Timber for Cutting. See Section 4.2L.

J. Scaling.

(1) Designated Timber. Insert a brief description of the method used to determine the volume of designated timber prior to the sale. When cut logs are sold, as in a trespass sale, this section may state that volumes were determined in accordance with Timber Sale Contract Parts B 7.0 and 7.1. In tree measurement sales, the portion of trees measured (100 percent or sample), the volume tables used, and any other information that will clearly set forth the basis of the sale agreement should be included. Area instructions may cover particular types of situations as necessary.

(2) Additional Timber. Reference to appropriate sections of Timber Sale Contract Part B7 can be used to describe volume determination of additional timber if it is to be log scaled. For tree measurement, specify the volume table to be used and other pertinent facts. Depending on the conditions in the sale, alternative methods of determining the volume of additional timber (such as tree measurement of log scale at the discretion of the Officer in Charge) may be described.

K. Slash and Cull Tree Disposal. See Section 4.20.

L. Road Construction and Maintenance. See Section 4.2P.

M. Inapplicable Standard Provisions. Completion of the contract package for predetermined volume (lump sum) sales shall include appropriate notations regarding which of the standard provisions of the Timber Sale Contract Part B are (are not) applicable to the sale currently in the process of development.

N. Special Provisions. See Section 4.2Q.

O. Effective Date. This section is self-explanatory.

P. Last Page. See Section 4.2S.

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4.5 Performance Bond. See Standard Form 25 (Illustration 9). Refer to 25 CFR 163.14. Bonds may be in the form of corporate surety, cash, negotiable United States Bonds or an irrevocable letter-of-credit. The performance bond shall be executed by the purchaser in the same manner and number of copies as the timber contract, and it becomes a part of the timber contract by attachment and reference in the bonding document. The officer who approved the contract should obtain legal advice of the Solicitor before using the cash or negotiable bonds in the satisfaction of damages.

A. Corporate Surety Bonds. The bonding company shall be one approved by the U.S. Treasury Department. Standard Form 25, Performance Bond, shall be used and accompanied by the surety company's regular form giving evidence that the attorney-in-fact who signed for the surety was authorized to do so on the date he or she signed the bond. Refer to instructions on the reverse of the form and the additional instructions provided herein.

B. Deposit of Cash. The cash deposited as performance bond must be supported by a bond agreement and power of attorney naming the officer who will approve the contract as attorney-in-fact. The deposit is held in the accounts of the Branch of Finance. Refer to the form of agreement and power of attorney provided herein.

C. Deposit of U.S. Bonds. United States securities deposited as performance bond must be supported by a bond agreement and power of attorney naming the officer who will approve the contract as attorney-in-fact. Securities so posted will be deposited and held by the Treasury of the United States. The deposit is facilitated by the Branch of Finance, which, upon request, will make the necessary arrangements with the Federal Reserve Bank. The term "U.S. Bond" encompasses Treasury Bonds, Notes, and Bills.

D. Irrevocable Letters-of-Credit. Irrevocable letters of credit may be used to secure performance bonds. Illustration 20 contains detailed guidelines for using such letters of credit.

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4.6 Checklist

Contract, Supporting Documents Signature, Order of Arrangement, Distribution	Designated Filing office (GAO File)	Purchaser	Seller	Area or Agency (not Approving Office)	Approving Office	Surety or Bond	Total No. of Copies					
								Manually Affixed Signatures		Facsimilies or Conformed Copies		
								Original	1st	2nd	3rd	4th
1. Contract - Part A	X	X	X	X	X	X	6					
2. Contract - Part B Standard Provisions	X	X	X	X	X	X	6					
3. Advertisement	X	X	X	X	X	X	6					
4. Logging Unit Map	X	X	X	X	X	X	6					
5. Performance Bond	X	X	X	X	X	X	6					
6. Surety Certificate or Bond Power-of-Attorney (as applicable)	V	V	V	V	V	V	6					
7. Tribal Resolution	V		V	V	V		4					
8. Allottee Power of Attorney	V		V	V	V		4					
9. Corporation Articles of Incorporation and Bylaws; Partnership Articles of Partnership			V	V	V		3					
10. Proposal to Purchase and Authorization for Indians			V	V	V		3					
11. Abstract of Bids Received			V	V	V		3					
12. Forest Officer's Report			V	V	V		3					
13. Environmental Assessment			V	V	V		3					
14. Archeological, Endangered Species, Water Quality Clearances, etc. <u>1/</u>			V	V	V		3					

X Contract
V Supporting Documents
1/ As required.

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5. SALE ADMINISTRATION

5.1 General. Instruction for timber sale administration is contained in 25 CFR 163, 53 IAM 1 and Timber Contract Parts A and B. These should be used and referred to directly and the instructions herein (53 BIAM Supp. 3) used concurrently. Sale administrators shall maintain familiarity with the contract provisions and recognize both the strength and the responsibility entailed in their application.

5.2 Sale Supervision.

A. Responsibilities of the Officer in Charge assigned to a Forester or Forest Technician shall be in writing for each logging unit.

B. The Forester or Forest Technician designated in charge of a logging unit will report the state of the timber sale and the purchaser performance to the Officer in Charge by established methods.

C. The Officer in Charge or his or her designated representative, will regularly review and inspect logging units to ensure (1) adherence to forestry practices and procedures applicable to timber sales, and (2) compliance with contract terms. Timber sale records, including a Supervisory Check List (Illustration 12 Form No. BIA-5347) or its equivalent, will be regularly completed for each logging unit and be available for examination at the request of the Area Forester.

D. The Area Forester or a designated representative, will review and inspect logging units, in cooperation with the Officer in Charge, as deemed necessary to obtain adherence to basic policy and forestry practices, and to assist and advise in the resolution of contractual, administrative, and technical problems. The Area Forester will develop policy, procedures, and forest practice guidelines in cooperation with the Officer in Charge.

5.3 Designation of Timber to be Cut. The Forest Officer's Report outlines management objectives of the contract. Authority for designating timber to be cut is found in Timber Contract Part A4.

A. Order of Cutting. The order of cutting is established by the Superintendent. No timber shall be cut under any timber contract until marked or otherwise designated by an authorized forest officer.

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B. Marking Unit Boundaries.

(1) Exterior boundaries will be clearly marked on the ground in advance of timber marking or cutting operations by blazing, painting, staking, or other approved procedures.

(2) Interior boundaries, such as boundaries of allotments, will be marked clearly on the ground by blazing, painting, staking, or other approved procedures, in advance of timber marking or cutting operations. If provided for in the contract, the purchaser may be required to do the work of locating and marking allotment boundaries, but, when so done, the officer in charge shall check sufficiently to verify purchaser performance.

C. Marking Rules. Marking rules based on the silvicultural prescriptions being applied shall be developed in advance to guide cruising, marking, inspection, and training. Marking rules shall be stipulated in the Forest Officer's Report. The rules are developed locally for timber sales to meet defined silvicultural objectives.

D. Control of Marking Quality. The Officer in Charge will check timber marking to insure compliance with the marking rules.

E. Marking Method. Individual trees and clearcuts shall be clearly marked in accordance with procedures stipulated in the timber contract.

5.4 Payment for Timber. Payments for timber are referenced in 25 CFR 163.10, 163.15, 163.16. Other methods of payment may be authorized for Indian operations under 25 CFR 163.6.

A. Deposit with Bid. The deposit accompanying the bid of the successful bidder who executes the timber contract will be credited as all or part of the first advance deposit required in payment of timber cut upon contract approval, except when provision is made for the deposit to be held in lieu of bond. Failure of the successful bidder to execute or perform under the contract will result in forfeiture of the deposit with the bid.

B. Payment for Timber. Advance deposits and advance payments shall be requested by use of Form DI-1040, Bill for Collection (Illustration 13), unless another form of request has been authorized by the Approving Officer. The due date shall reflect the need to maintain the minimum advance deposit required by the timber contract. Contract Part B 4.2, Advance Payment for Allotment Timber, applies, unless specifically modified by the contract, Part A.

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C. Waste Scale. The material scaled is paid for at the rates in effect at the date of scaling. Waste material scaled after the expiration of the cut and pay period is paid for at the rates in effect at the expiration date (Timber Contract, Part B 7.4).

5.5 Logging Operations.

A. Logging Plan. The purpose of the logging plan is to maintain a clear understanding by the purchaser of the performance required and to reduce contention in the day-to-day relations of purchaser/forest officer. The general order of cutting, logging practices, and road development shall be considered before purchaser operations begin and/or advance agreements are developed in a written logging plan, as required by the Superintendent. Written instruction concerned with the practices and progression of specific timber sale activities may be required and will become parts of the logging plan.

B. Notices to the Purchaser. Notices or instructions to the purchaser should ordinarily be in writing, dated, and directed to the purchaser or his or her authorized representatives. When verbal notice or instruction is given or used preliminary to a written notice or instruction, record of the fact should be made.

C. Timber to be Taken. A purpose of timber contracts is removal of the timber designated to be cut for beneficial use. Where necessary to the success of silvicultural prescriptions being applied, removal to contract utilization standards may be mandatory. Payment by the purchaser for designated timber either not cut, or cut and not removed, does not preclude requiring removal to contract utilization standards. Scale of and payment for the waste material is a required function of timber sale administration; however, it is not a substitute for acceptable performance by the purchaser.

D. Damage to Reserve Stands. Despite use of care and skill in the logging operations, at least some damage to reserve stands is inevitable. Constant attention is required to minimize damage. The forest officer will notify the purchaser of any damage resulting from the operations and the required corrective action (Timber Contract Part B 2.6).

E. Slash and Cull Trees. Piling and burning of slash resulting from logging operations, and the felling of cull trees, are mandatory, unless some other method of treatment is specifically provided for in the timber contract. The Superintendent may relieve the purchaser of slash treatment and/or cull tree felling on specific areas of the logging unit. Relief under this authority shall always be given in writing. The document stating the relief should carefully designate the reserved areas and give the reasons for the relief. Logging plans should include guides and instructions for slash

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and cull tree treatment. Specific slash burning plans should be developed and used to the extent and intensity burning would require. Regional and local regulations and management plans concerned with slash fire smoke must be observed.

5.6 Scaling and Reporting.

A. Scaling Handbook. The scaling provision of the timber contract shall be supplemented with USDA Forest Service National Log Scaling Handbook FSH 2409.11 to provide standard instructions for volume determination. The National Log Scaling Handbook, including revisions thereto, is applicable, unless other standards are authorized by the Area Director and are provided for in timber contracts.

B. Records. The scaling record and the record of timber money shall be maintained either as set forth in Section 6 of this supplement, or as prescribed and approved by the Area Director.

C. Units of Measure. The units of measure are specified in the timber contract. Volume determination by log rule is limited to the Scribner Decimal C, International $\frac{1}{4}$ inch, and International Decimal $\frac{1}{4}$ inch log rules, and otherwise by cubic volume, piece count, lineal foot, or weight. Use of other log rules or other forms of measurement require authorization from the Secretary.

D. Order of Scaling. The time and place of scaling should be adapted to the operating methods of the purchaser, so far as is practicable. However, the purchaser should be required to present material for scaling at such time, place, and in such manner as to permit scaling at reasonable cost and under controls required by the Superintendent. When a logging unit includes more than one ownership, the purchaser shall be required to maintain ownership identity under terms of the contract.

E. Certification of Scalers. Timber Measure Certification procedures, as appropriate, may be required by the Area Forester as a means of gaining uniform and accurate volume determination and of recognizing levels of scaling proficiency of individuals.

F. Scaling Waste Material. The Officer in Charge will designate, by logging unit, the procedure to be used for scaling or measuring all waste material encountered. The entire logging unit will be examined, unless other methods are approved by the Area Director.

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G. Check Scale. Check scaling includes all procedures used for verifying accuracy of timber products measurement. Check scaling objectives should be to scale a minimum of five (5) percent of the total production volume scaled. Check scales should consist of a mixture of announced and unannounced scales as determined by the Officer in Charge. The check scale report should include a narrative description of the procedures used in the check scale to meet varied conditions. Reports on check scales will be prepared as instructed by the Area Forester. An annual summary of the check scaling activity will be prepared on an approved form and presented to the Area Director. Purchaser check scaling for the purpose of comparison of volume determination shall be arranged through the Officer in Charge.

5.7 Fire Prevention and Suppression.

A. Purchaser Responsibility. The general responsibility of the purchaser is stated in Part B of the timber contract. Special provision for specific conditions or actions are to be included in Part A of the timber contract.

B. Prevention and Presuppression. The purchaser will exercise standards of prevention, as required in writing by the Superintendent under terms of the timber contract. Standards may include, but are not limited to:

- (1) rules for personnel activity and conduct.
- (2) requirements for communications.
- (3) requirements for fire tools and equipment.
- (4) requirements for an organization for fire fighting.
- (5) procedures for suspension of operations in critical fire danger periods.
- (6) procedures for control and use of purchaser's manpower and equipment.
- (7) procedures for inspection and compliance with prevention and presuppression measures.

C. Suppression. The purchaser is obligated to suppress all fires occurring on the logging unit or caused by the operations of the purchaser. The purchaser will also provide workers and equipment for fire suppression outside the sale area, when required by the Superintendent. Employees and

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sub-contractors of the purchaser will work directly under forest officers as required. The purchaser ordinarily will not be called upon for fire suppression work on fires outside or not threatening the logging unit. Reasonable effort will be made to minimize interruption of the purchaser's operation.

D. Additional Assistance. The purchaser may be required to provide lookouts, patrolmen, smoke chasers, equipment, or other direct assistance to supplement the overall reservation fire control effort, in accordance with Parts A and B of the timber contract or by cooperative agreements with the Superintendent.

E. Fire Suppression Cost. Determination of responsibilities for fire suppression costs depends on careful identification of fire cause and origin. Liability for purchaser suppression cost will be established as soon as practicable (Timber Contract Part B 11.4).

F. Fire Category. Each fire must be categorized as a Purchaser-Neglect Fire, Purchaser-Operations Fire, or a Non-Purchaser Fire. Where the decision is obscure and may require investigation, the matter will be referred promptly to the Area Director. The purchaser shall be given written notice of fire category.

5.8 Road Construction and Maintenance.

A. Standards. Standards for construction and maintenance of forest roads and associated improvements constructed under the terms of timber contracts shall be developed under guidance of the Area Director.

B. Branch of Roads. Where road conversion to general purpose use may occur, the Branch of Roads should be consulted for planning and technical assistance.

5.9 General Administrative Actions.

A. Disputes and Appeals. Refer to Timber Contract Parts B 2.10 and B 2.11 and 25 CFR 2. Disputes may be settled by the processes provided in the timber contract. Careful adherence to those processes will increase the chance that the dispute may be settled without recourse to appeal. Not all disputes are appealable, and each level of authority handling a dispute should consider this in their action and recommendation to the higher level. When a matter proceeds to appeal, or any party to the timber contract has appeal rights, they must be given notice of the right to appeal and furnished appeal rules and basic advice on how to proceed with the appeal. The appropriate Solicitor should be advised of appeals as early as possible to obtain guidance and assistance.

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B. Damages. Damages for which the purchaser is to be held responsible by payment or by action on his or her part shall be documented, and written notice shall be provided to the purchaser. This record will include detail of the damage, the monetary value assigned, the method used in the calculation, and whatever action is required of the purchaser. The Area Forester should assist in the assignment of values and provide standard damage valuation and techniques to be used. Damages may include but are not limited to the following:

- (1) damage to reserve timber stands.
- (2) cutting of timber not designated for cutting.
- (3) damage to lands or streams.
- (4) damage to improvements.
- (5) failure to act expeditiously.
- (6) failure to repair damage or to maintain roads.
- (7) delay in the application of silvicultural treatment.
- (8) deterioration in the value of forest products.
- (9) delay in the receipt of planned income.
- (10) damage from Purchaser-Neglect and Purchaser-Operations Fires.

Damage titles of Timber Contract Part B are B 7.3, B 7.5, B 11.5, B 12.1, and B 12.2. The provisions of B 12.2 applying to land and improvements also apply to reserve trees not designated for cutting in the timber contract.

C. Suspension of Operations. Suspension is an authority given to the Superintendent (Timber Contract Part B 2.6). Action to suspend is normally resorted to after administrative processes, including warnings, have been unsuccessful. Immediate suspension should occur where circumstances warrant prompt mitigation of damages; for example, when the required advance payments or deposits have not been received.

Oral or written notice, given by a forest officer, due to circumstances present and/or emergency conditions, may be reduced to a written notice of suspension by the Superintendent. The suspension notice will set forth in writing the reasons for the suspension and the conditions the purchaser must meet before the suspended operations may be resumed. Authorization for the purchaser to resume suspended operations shall be in writing from the Super-

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intendent. It will accurately describe how the purchaser corrected the problem which caused the suspension.

The Superintendent may request assistance from the Area Forester in determining cause or need for suspension. The Area Director may direct the Superintendent to suspend a specific operation. Whenever suspension results by direction of the Area Director, resumption of operations must be authorized by the Area Director.

D. Relief from Cutting Requirements. The cutting schedule of the timber contract is based on the volume designated for cutting (Timber Contract Part A).

During the cutting period of the timber contract, requests may be initiated by the purchaser for relief from cutting requirements. Procedures from granting such relief have been provided in the timber contract (Timber Contract Part B 6.0). Relief from the minimum cutting requirements in the final year of the cutting period for all designated timber shall be handled as a modification of the contract. (See below.)

E. Modification of Contract. The conditions of sale, as set forth in the contract, may be modified only through a written agreement between the seller and the purchaser prior to the expiration of the contract (Timber Contract Part B 2.3). The modification document should contain the following basic elements:

- (1) A preamble giving the contract name and number, previous modification or assignments of contract if any, the name of the approving officer, the date approved, and the name of the purchaser.
- (2) The origin of the proposed modification.
- (3) The purpose of the modification.
- (4) The terms of the modification.
- (5) A statement of continuing effect of the contract.
- (6) The effective date of the modification.

Execution by the parties to the modification and the approval is identical to that of the timber contract and includes authorization of the seller(s) and separate acknowledgement of surety if appropriate.

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F. Extension of Time. An extension of time for the performance of the contract is a modification of contract and shall be treated as provided in the timber contract (Timber Contract Part B 2.3). An extension presents the opportunity to review and revise the terms of the contract if needed.

G. Assignment of Interest. An assignment is a transfer of all or portions of the interest and responsibility in a timber contract from one party to another (Timber Contract Part B 2.4). The Area Forester shall be consulted and shall provide technical assistance throughout the assignment process. Factors to be considered will include but are not limited to the following:

- (1) Protection of seller's interest.
- (2) Consultation with the appropriate solicitor.
- (3) Identification of assignor's interests and responsibilities.
- (4) Identification of assignee's interests and responsibilities.
- (5) Maintenance of surety.
- (6) Release of liability.
- (7) Effective date of transfer.

When provisions of the contract are changed at the time of transfer, a contract modification, which may be incorporated into the assignment, is required. Execution of an assignment is similar to that of a contract modification, incorporating signatures of the assignor and assignee.

H. Review of Stumpage Rates. Request for adjustment of stumpage rates provided by terms of the timber contract (Timber Contract Part A 9(e)) shall include specific written evidence in support of the request. Upon decision by the Approving Officer to review stumpage rates, a detailed report will be prepared which includes, but is not limited to, the following points:

- (1) The bid ratio(s) established at bid opening by purchaser are to be maintained.
- (2) Assurance that the highest return is obtained consistent with the conditions under which the timber was sold and changes to be considered.
- (3) The review method does not have the purpose of assuring the purchaser a specific profit.

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(4) Any variation from the appraisal method and factors used in the Forest Officer's Report must be substantiated in the review.

(5) Review is based on the total sale as though no sale activity transpired.

(6) The review will state the dollar amount of stumpage rate change(s).

The Approving Officer should implement indicated stumpage rate changes.

I. Revocation of the Timber Contract. Revocation of the timber contract follows decision by the Approving Officer that the purchaser has failed to complete or has breached the timber contract. When breach has occurred and need for revocation is clearly evident, initiation of the process should not be delayed. The process is initiated by written notice to the purchaser describing the breach or the failure to perform. It further stipulates that all rights of the purchaser under the contract are revoked and that the purchaser shall be liable for such damages as may be determined. The purchaser is also notified of the right to appeal and is provided with the appeal rules. The Area forester and appropriate solicitor shall be consulted for assistance in the preparation of the formal notice to the purchaser, preparation of a claim against the purchaser and the surety, and for subsequent action concerning the timber. Usually the timber should be advertised for sale to establish damages and/or to protect the interests of the Indians.

J. Consultations. Superintendents and forest officers shall maintain businesslike relations with the purchaser and the seller(s) in administering timber sales. Bureau officials should avoid giving the appearance of committing the Bureau on matters requiring review or approval of the Approving Officer.

K. Indian Labor. The Superintendent will keep the Indians fully informed of their employment preference and will encourage their participation. The Superintendent will provide for routine inquiry and recording of information about Indian employment to maintain compliance on the part of the purchaser. Specific reports may be made in support of positive actions taken to accrue employment and business opportunities to Indians. Guides are Public Law 88-352, Title VII, Section 703(i), Timber Contract Part B 13.6, and tribal actions.

L. Rights-of-Way. The timber contract provides the purchaser access across unallotted trust lands both within and outside the logging unit. This access is allowed as necessary for logging operations under the timber contract, subject to regulation by the Bureau. When the power of attorney

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for sale of allotment timber is obtained, similar access is granted for allotted lands within the logging unit and over other allotted lands outside the logging unit in which the allottee has an interest; provided, such right is limited to the operations of the logging unit for which the power of attorney is granted. In exercising the right-of-way outside the logging unit, the same care in the location, standards, and payment will be applied as for the lands within the logging unit.

Consent of the allottee must be obtained for roads and improvements on allotted lands not covered by the timber contract and the power of attorney. Revocable permits may be used when a short period of use only is required. Where the transportation facilities are desired for long-term or permanent use, rights-of-way are obtained under 25 CFR 169.3.

M. Financial Statements. The financial statements required of purchasers include a balance sheet, income statement, and detailed statement of operating costs (Timber Contract Part B 13.7, 13.8). The purchasers may use their own format if the necessary information is provided. Examples of desired format may be given to the purchaser. The statements should be submitted to the Superintendent within a specified period following the end of the purchaser's fiscal year. Bureau officials shall exercise judgment in preparing timber contracts to provide for modification or formal release of the requirement for financial statements when they would be of small value or reliability. In applying Timber Contract Part B 13.7, the Approving Officer may require:

(1) Certified financial statements from purchasers, when it is company policy to prepare certified statements or when it is a requirement imposed by the Securities and Exchange Commission.

(2) Certified financial statements from a company's operating division or subsidiary if it is company policy to certify financial statements by division or subsidiary.

(3) Financial statement submitted by a purchaser to include a statement from the purchaser or other management official attesting to the validity and accuracy of the data presented.

(4) Notwithstanding the above, the Bureau may, at its discretion, require certified financial statements from a purchaser, including its divisions or subsidiaries, when it is not the purchaser's normal policy to certify such statements and if there is reasonable doubt regarding the validity of the purchaser's financial system and/or data.

CONTRACT SALES OF TIMBER
Sale Administration

N. Closure of the Timber Contract. Upon determination that the timber sale is completed, a Statement of Completion of Timber Contract and Summary of Operations is prepared. Forms used shall include BIA-5319 Statement of Completion of Timber Contract (Certificate of Completion) (Illustration 18) and ADP printouts approved by the Area Director. When a master contract or more than one (1) ownership is involved, a Statement of Completion is prepared for each ownership and a Statement of Completion and Summary of Operations are prepared for a total of all ownerships. These reports are distributed as directed by the Approving Officer. Certification signatures shall be as provided on Form BIA-5319. After concurrence with the certificate of completion, the Approving Officer will give written instruction to the Superintendent to notify the purchaser(s) that they are relieved of any further liability under the timber contract arising after the date of the Approving Officer's letter. The Superintendent's notice to the purchaser shall include the following language (use words in parenthesis as appropriate):

"You are hereby notified that the Approving Officer of the _____ Logging Unit, Timber Contract No. _____, has relieved you (and your surety) of any further liability under the timber contract arising after _____. (A copy of this letter of notice is enclosed for you to forward to your Surety.) (A) (Two) copy(ies) of the Statement of completion of Timber Contract and Summary of Operations (is) (are) enclosed for your records (and that of your surety)."

The notice to the purchaser shall also include suitable language concerning disposition of any unobligated advance deposits, other deposits and bonds.

CONTRACT SALES OF TIMBER

Timber Sale Records

6. TIMBER SALE RECORDS

6.1 General. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.2 Scale Records. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.3 Reporting Records. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.4 Timber Sale Accounts. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.5 Closing Timber Sale Contracts and Accounts. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.6 Deductions for Forest Management Purposes.

A. Authority. Refer to section 1.3 of this supplement. Following is a list of pertinent instructional memoranda issued by the Offices of the Assistant Secretary and Commissioner of Indian Affairs since 1972. They represent the chronology of administrative decisions that have produced the procedural guidelines that follow.

(1) Memorandum dated June 15, 1972, from the Assistant Secretary, Public Land Management.

(2) Memorandum dated August 10, 1972, from the Commissioner of Indian Affairs.

(3) Memorandum dated May 22, 1975, from the Commissioner of Indian Affairs.

(4) Memorandum dated May 25, 1979, from the Assistant Secretary - Indian Affairs.

(5) Memorandum dated June 27, 1979, from the Acting Deputy Commissioner.

B. Basic Policy.

(1) As provided in 25 CFR 163.18, unless special instructions have been issued by the Assistant Secretary - Indian Affairs, deductions from timber sale proceeds shall be made as follows:

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Timber Sale Records

(a) Ten (10) percent of the gross amount received for timber sold under regular supervision, or

(b) Five (5) percent of the gross amount received for timber sold in such a manner that little administrative expense is incurred by the Bureau.

(2) The aforementioned deductions shall be made from the proceeds of timber sales from either allotted or tribal lands.

(3) Except as provided in section 6.6E below, amounts deducted pursuant to this policy shall be collected into the U.S. Treasury as miscellaneous receipts.

(4) Exceptions to the basic policy shall be made only with the approval of the Assistant Secretary - Indian Affairs.

C. Actions Subject to Deduction. Deductions to cover forest management expenses are made from the following types of payments.

(1) Gross proceeds from estimated volume timber sales.

(2) Gross proceeds from predetermined volume timber sales.

(3) Gross proceeds from paid permits.

(4) Total estimated value of forest products included in special allottee permits.

(5) Gross proceeds resulting from the cutting or destruction of trees not designated for cutting.

(6) Gross proceeds resulting from deficiencies in cutting requirements.

(7) Gross proceeds resulting from unauthorized movement of products.

(8) Deposits with bids when treated as liquidated damages.

(9) Unrestricted interests' share of the gross proceeds from the sale of forest products (these are "Service Fees").

(10) Gross proceeds from rights-of-way timber, either within or without the timber area.

CONTRACT SALES OF TIMBER
Timber Sale Records

(11) Proceeds in settlement of a timber trespass. Deductions are made on the basis of single stumpage value, regardless of whether the timber is disposed of as stumpage, logs, or other forms of products.

D. Actions Not Subject to Deductions. No deduction for forest management expenses is made from the following types of payments.

(1) Gross proceeds from damage to land or property other than forest products.

(2) Gross proceeds from failure of purchaser to dispose of slash or to perform other services required by contract.

(3) Estimated value of forest products included in free-use permits.

E. Special Instructions. These special instructions shall apply in all cases where a forest management deduction is taken.

(1) Forest Management Deductions From the Stumpage Proceeds of Reservation Trust Lands.

(a) When tribes participate in the management of the forestry program on their respective reservations, the following shall apply:

(i) Prior to the beginning of each fiscal year, a budget and use plan (Illustration 19) supportive of the forestry program on the respective reservation shall be prepared, approved by the Bureau of Indian Affairs, and concurred with by the tribe. The forest management deduction shall then be deposited into a special deposit holding account entitled "Forest Management Deductions - Reservation Trust Lands" to be available for the purposes defined in the budget and use plan. Refer to Section 6.6H(2)(c) for further accounting instructions.

(ii) Forest management deductions may be held in the special deposit holding account through the end of the fourth fiscal year following the year in which the deduction was made. During this period, the forest management deductions shall be applied to obligations made in accordance with the approved budget and use plan. Forest management deductions carried over from prior fiscal years shall be applied first. Any balance remaining at the end of its final fiscal year of availability shall then be collected into the U.S. Treasury as miscellaneous receipts.

(b) Forest management deductions made during any fiscal year shall not exceed the cost of the forestry program during the same fiscal

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year. "Cost of the forestry program" means obligations incurred against appropriated Federal funds, excluding fire pre-suppression and suppression funds.

(2) Forest Management Deductions From the Stumpage Proceeds of Public Domain and Homestead Allotment Timber Sales.

(a) Prior to the beginning of each fiscal year, the Bureau of Indian Affairs shall approve a budget and use plan supportive of the forestry program on public domain or homestead allotments under each agency Superintendent's jurisdiction. The forest management deduction shall then be deposited in a special deposit holding account entitled "Forest Management Deductions - Public Domain/Homestead Allotments" to be available for the purposes defined in the budget and use plan. Refer to Section 6.6H(2)(d) for further accounting instructions.

(b) Section 6.6E(1)(a)(ii) shall apply to public domain or homestead allotment timber sales.

(c) The total forest management deductions taken from the proceeds of public domain or homestead allotment timber sales at each Agency during a fiscal year, shall not exceed the cost of the forestry program on public domain or homestead allotments at that Agency during that fiscal year. "Cost of the forestry program" is defined at Section 6.6E(1)(b).

F. Justifiable Forestry Program Activities. Forest management deductions shall be available for use in the following four general areas: Timber Sale Administration, Protection from Fire, Forest Development, and Forest Management Inventories and Planning. Examples of justifiable uses within each of these general areas are included below.

- (1) Timber Sale Administration Functions.
 - (a) Presale cruises.
 - (b) Timber appraisals.
 - (c) Administration of ongoing sales.
 - (d) Forestry-related consulting services.
- (2) Protection from Fire.
 - (a) Preparation of Normal Fire Year Plan.
 - (b) Hazard reduction.

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(c) Contract protection.

(d) Maintenance of secondary roads where necessary to assure access for fire suppression (only when road funds are not available).

(3) Forest Development.

(a) Timber stand improvement.

(b) Reforestation.

(c) Fertilization.

(d) Measuring and evaluating the results of developmental work.

(4) Forest Management Inventories and Planning.

(a) Continuous forest inventories.

(i) Field collection of data.

(ii) Analysis of data.

(b) Forest land use planning such as selection of areas to be reserved for recreation use or other special use only (as opposed to timber production). Designation of areas where "modified" timber harvest is compatible with recreation and other uses; and determination of how cutting is to be "modified."

(c) Intensified inventories and analysis of "in-place" data. (This is detailed information concerning exact location of areas needing various types of forest development and/or opportunities for use. It includes the determination of priorities for accomplishing the needed development and use.)

(d) Determination of allowable cut alternatives. (Must be compatible with reservation-wide plan for economic development.)

(e) Forest management planning.

(f) Feasibility studies.

(i) Utilization of waste materials.

(ii) Sawmills or other primary utilization industries.

CONTRACT SALES OF TIMBER
Timber Sale Records

(5) Other. Projects, goods, services, or activities not readily identifiable under (1) - (4) above should be fully explained in the Budget and Use Plan.

G. Justifiable Expenses. Following are types of obligations and expenses which may be incurred.

- (1) Personnel services (salaries and fringe benefits).
- (2) Travel (employee travel, motor vehicles, etc.).
- (3) Contractual services.
- (4) Transportation of things.
- (5) Rents, communications and utilities.
- (6) Printing.
- (7) Supplies and materials.
- (8) Equipment (itemize major equipment purchases).
- (9) Other (itemize).

H. Accounting for Forest Management Deductions.

(1) Forest management deductions are considered earned as follows:

(a) Estimated Volume Sales. When forest products are scaled.

(b) Predetermined Volume Sales. When the contract is approved. Deductions will be made when the journal voucher is prepared for either the total sale payment or when installment payments are received.

(c) Paid Permit Sales.

(i) Estimated Volume Sales. When forest products are scaled.

(ii) Predetermined Volume Sales. When proceeds from the forest products are received, including those which may not have been included in the permit.

(d) Special Allottee Permits. When funds representing forest management deductions are received from the permittee.

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Timber Sale Records

(e) Trespass. When the approving officer accepts payment(s) of damages in settlement of a trespass case.

(2) Accounting for and distributing forest management deductions will be accomplished through the use of the special deposit holding accounts identified above. Each account will be established by work order number coded to delineate the year monies are earned and the year by which they must be used. Funds will be available from each account through the end of the fourth fiscal year following the one in which the fund was established.

(a) A separate special deposit holding account will be established for each reservation under an Agency's jurisdiction. One special deposit holding accounting will be established for all public domain or homestead allotments under an Agency's jurisdiction.

(b) Where advance payments are involved, the Superintendent shall establish a separate special deposit holding account entitled "Forest Management Deductions - Advance Payments" for the forest management deduction included in the advance payment. This shall be transferred to the appropriate special deposit holding account(s) at the time the deduction is earned.

(c) Forest management deductions earned from reservation trust lands shall be credited to tribal accounts to the extent of tribal obligations made from these accounts in accordance with approved budget and use plans. Amounts so credited shall be transferred from the special deposit holding account(s) as provided in Section 6.6H(3).

(d) Forest management deductions earned from public domain or homestead allotment lands shall be applied based upon obligations incurred consistent with the approved budget and use plan. Amounts so applied shall be transferred from the special deposit holding account as provided in Section 6.6H(3).

(3) The following shall apply regarding transfer of forest management deductions:

(a) Transfers of forest management deductions from special deposit holding accounts to tribal or other approved accounts shall be accomplished in accordance with Bureau procedures published in 42 BIAM.

(b) No transfers shall be made until the Bureau has received documentation supporting the amount of the transfer. Such documentation may consist of cost reports, invoices, payroll reports or other transactional evidence acceptable to the Bureau.

CONTRACT SALES OF TIMBER
Timber Sale Records

(c) At the close of each fiscal year, the Bureau shall prepare or request a summary of costs or obligations incurred against the approved Budget and Use Plan during the fiscal year just ended. This summary of costs shall be in the same format as the Budget and Use Plan.

(d) All reports, records, and supporting documents shall be available for audit for three years after the end of the fiscal year.

(4) At the close of each fiscal year, a comparison shall be made between forest management deductions taken from the proceeds of timber sales and the cost of the forestry program for the fiscal year. If the total forest management deductions exceed forestry program costs, the excess shall be returned to the landowners. Distribution of the excess should be apportioned to individual sales according to the percentage the deductions from individual sales bear to the total deductions withheld.

6.7 Miscellaneous. (To be issued later. Use Timber Sale Records Handbook - Supplement I to 53 IAM until superseded.)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

POWER OF ATTORNEY FOR SALE OF ALLOTMENT TIMBER

INDIAN RESERVATION

(State)

KNOW ALL MEN BY THESE PRESENTS, that _____ the undersigned, hereby request, authorize, and empower the Superintendent of the _____ Indian Agency to enter into contract for the sale of the timber upon the following-described lands: _____

(Description of land)

the same being the allotment of _____

_____ allottee No. _____, and authorize him to perform every act necessary and requisite to the consummation of such sale with the same validity as if _____ were personally present. Provided that no such contract shall be made hereunder at stumpage rates per thousand feet board measure of less than the following _____

(Name of reservation)

(I or we)

(Specify rates for different species)

and _____ do also hereby agree to grant any contractor holding any contract hereunder and in conformity herewith, reasonable right-of-way over the above-described lands, or any other lands in which _____ hold any interest, provided _____ shall receive reasonable compensation for any damage done or incurred through such right-of-way. The Commissioner of Indian Affairs or his representative shall definitely determine what shall be considered reasonable damages.

(I or we)

(I or we)

(I or we)

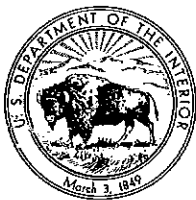
_____ furthermore agree that the proceeds arising from the sale of this timber may be disposed of in accordance with the regulations of the Department of the Interior, including those providing for the payment of the cost of administration.

(I or we)

Place _____ (State)

Date _____

Witnesses:



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20245

IN REPLY REFER TO:

JUN 22 1981

MEMORANDUM

53 BIAM Supp. 3 Release 1

To: Holders of 53 BIAM Supp.3
From: Acting Deputy Assistant Secretary - Indian Affairs (Operations)
Subject: 53 BIAM Supp. 3, Contract Sales of Timber

This release provides detailed instructions on Contract Sales of Timber in the form of a supplement to the basic portion of the new Forestry Program Manual.

Additional instructions in the form of Central Office supplements to the basic manual parts are currently being developed and will be issued at a future date.

Kenneth L. Pajo
Acting Deputy Assistant Secretary -
Indian Affairs (Operations)

Filing Instructions:

- (a) Remove superseded material:
- | | |
|--|-----------------------|
| 53 IAM 4, Table of Contents, ✓
Release 53-16 (dated 1-13-65). | (1 sheet) ✓ |
| 53 IAM 4 and Illustrations ✓
(entire part). | (approx. 49 sheets) ✓ |
| 53 IAM 6, Table of Contents
Release 53-5 (dated 6-22-59). | (2 sheets) |
| 53 IAM 6, Release 53-5
(dated 6-22-59). | (approx. 18 sheets) |

COMPLETE

4/5/82 *JP*

(b) Insert new material transmitted:
53 BIAM Supp. 3, Table of Contents, Release 1

(dated 6-22-81).

(1 sheet)

53 BIAM Supp. 3 1.1-6.7
and Illustrations 1-18.
Release 1 (dated 6-22-81).

(51 sheets)

(c) Pen-and-ink changes:

Delete from 53 IAM Supp. 1
Section 6.4, Deductions for
Administrative Purposes,
Release 53-18 (dated 4-21-66).

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Illustrations 1-18

CONTRACT SALES OF TIMBER
General

1. GENERAL

1.1 Policy and Scope. It is the policy of the Bureau to sell Indian trust timber through competitive bidding procedures and under contracts to serve the best interests of the Indian owners. Contract sales of timber involves obtaining proper authorities; sale preparation, including field reconnaissance; preparing suitable contracts; and then administering each sale after the buyer, seller, and approving officer have executed the contract and its appurtenant documents.

1.2 Objectives. The objectives of harvesting Indian trust timber are:

A. To harvest the timber in such a manner that reserve stands and the land are left in optimum condition for future growth of timber (25 CFR 141.3).

B. To utilize the timber in the best interests of the Indian owners.

C. To apply forest development measures as may be set forth in the timber contract.

D. To accurately determine and record the volume and value of the timber cut by ownership, to collect contract payments due, and to credit stumpage proceeds to owners' accounts.

E. To meet the reasonable and practical requirements of the purchaser under the timber contract and to encourage efficient and skilled operations.

F. To keep sufficient records to provide documentation that the requirements of the timber contract and the regulations have been complied with and to otherwise record factual information relating to the purchaser's performance under the contract.

G. To generate employment and business opportunities for Indians.

H. To correlate timber sale actions with other phases of forest and resource management.

I. To encourage Indian participation in the conduct of timber sales.

J. To provide cost efficient and businesslike administration within the best interests of the Indians and the United States.

CONTRACT SALES OF TIMBER
General

1.3 Authority. By statute. Refer to 53 BIAM, 3.1 and 3.3. By consent of timber owners. Refer to 25 CFR 141. Refer to Timber Contract Parts A and B.

A. Tribal Timber:

(1) A valid Tribal Resolution giving consent for the sale of tribal timber is required. Such resolution shall provide authority for tribal execution of necessary timber sale documents.

(2) When consent to sell tribal timber has been delegated to a business or other committee, a copy of the delegation of authority shall be furnished to the Approving Officer.

(3) The resolution or delegation of authority is furnished for inclusion as a timber sale contract supporting document.

B. Allotted Timber

(1) The use of a power of attorney is preferable for obtaining consents pursuant to 25 CFR 141.7(a). When the timber sale involves only a few allottees or heirs, their signatures to the contract may be used. If the proposed sale is to be made under a master contract for both allotted and unallotted timber, it is preferable to obtain allotted consent for inclusion with the sale proposal. However, consent of allottees may be obtained after acceptance of bids providing the timber is predominately unallotted, the allotment is not critical to the operation proposed for logging the timber, and the consent obtained prior to advertisement enables a reasonably accurate determination of the volume of timber to be developed under the contract. The master contract will stipulate that separate contracts must be subsequently entered into for allotments within the logging unit with allottees who desire to sell their timber.

(2) The execution of a power of attorney is required. See form 5-5315 Power of Attorney for Sale of Allotment Timber (Illustration 1). The name of the allottee or heirs signing should be entered on the form in preparation for placement of the signature above the name. The fractions of interest should be shown next to the typed name. The signature of each allottee or heir must be witnessed by two individuals. If such signatures are not legible, the name should be printed or typed in such a position as to be associated with the proper signature. The addresses of the witnesses should also be included.

The Superintendent or other officer who is authorized to consent for the allottee or any heirs must sign the power of attorney on their behalf to eliminate any presumption when signing the contract that he or she is acting on behalf of all the heirs who have not signed a power of attorney.

CONTRACT SALES OF TIMBER

General

(3) When consent of only a majority interest has been obtained, the timber contract file must contain evidence of the effort to obtain consent of all allotment owners. When an allottee or any heirs cannot be located, the Superintendent, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale of timber for the particular interests. For an allotment containing both restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest consent has been obtained.

C. Unrestricted Interests in Timber in which there are Trust or Restricted Interests.

(1) Consent of all unrestricted interest is required and shall be evidenced by signature on the authorized form of power of attorney. In situations of natural catastrophe as cited in 1.3D below or when there otherwise is urgent need to sell the Indian trust or restricted interests, and consent of the unrestricted interests cannot be obtained, the proposal to sell the timber shall be furnished to the Area Director for decision and instruction.

(2) In certain instances, not involving emergency or catastrophic situations, it may be necessary for the Area Director to make a decision regarding the sale of timber including unrestricted interests for which consent cannot be obtained. The decision on behalf of the trust or restricted interest owners will be pursued by the Area Director to:

- (a) proceed with the sale of timber from such allotment, or
- (b) not proceed with the sale of timber from such allotment, or
- (c) initiate action to partition the land.

D. Sales of Timber without Indian Consent. Pursuant to 25 CFR 141.7(b), sales of timber may be made from any Indian land held in trust or other patent containing restrictions or alienation without the consent of the Indian owners when such action is necessary to prevent loss of values resulting from fires, insects, disease, windthrow, or other natural catastrophies. The officer who approves the timber sale contract must support that approval with adequate evidence that an emergency exists and why Indian consent cannot be obtained. The emergency must be actual. Normal mortality will not qualify as an emergency.

CONTRACT SALES OF TIMBER
Approving Officer

2. APPROVING OFFICER

2.1 General. Refer to 53 BIAM 3.3 and 10 BIAM 3.1 and 3.3D.

2.2 Advertised Sales. Pursuant to 25 CFR 141.8, advance authority to advertise timber for sale and approval of the advertisement will be obtained from the officer who will approve the contract. Upon such authorization, the Advertising Orders, SF 1143-44 (Illustration 2), may be issued by the Superintendent. Pursuant to 25 CFR 141.11, the Approving Officer will consider bids received in response to the advertisement. Receiving and accepting bids will be in accordance with instructions contained in 2.5 herein.

2.3 Sales Without Advertisement.

A. Pursuant to 25 CFR 141.9, contract sales may be made without advertisement. Written documentation allowing the sale without advertisement and the documentation of the transaction shall be prepared and recorded to a quality equivalent to that of an advertised sale of timber.

B. Pursuant to 25 CFR 141.9, permit sales may be made without advertisement. Refer to 53 BIAM 4.

2.4 Tribal Forest Products Enterprises. Pursuant to 25 CFR 141.6 such enterprises may utilize tribal or allotted timber as provided in approved plans of operations. Such plans of operations will be approved by the Area Director. Payment for allotted timber utilized by tribal forest products enterprises must be in accordance with the provisions of 25 CFR 141.15.

2.5 Receiving and Accepting Bids. Superintendents will ordinarily receive bids. However, only the Approving Officer can actually accept a bid. The receiving officer, if not authorized to accept the bid, shall submit complete information on all bids received to the Approving Officer promptly after close of bidding. Refer to 25 CFR 141.11.

A. Form of Bid Proposals. Advertisements for the sale of timber will state that sealed bids in duplicate will be received "on forms provided therefore." The forms shall be Form 5-5318, "Proposal for the Purchase of Timber." See Illustration 3. Form 5-5318 is an offer to purchase timber and, if the offer is accepted, a written contract must be executed or the deposit will be retained as liquidated damages for the use and benefit of the interested Indians. The bidder is required to furnish a bond to complete requirements of the contract. Form 5-5318

CONTRACT SALES OF TIMBER
Approving Officer

will be used to receive bids for all sales of timber. In case of oral auction sales, no oral bid will be considered unless the bidder has, in compliance with the advertisement, submitted a sealed proposal on Form 5-5318. Prospective bidders should be cautioned to comply with printed instructions thereon, particularly as to signing.

B. Disposition of Bid Deposits. Disposition of deposits received with bids will be in accordance with provisions of 25 CFR 141.10(c) and 141.10(d).

C. Acceptance of Bids. The receiving officer shall prepare an abstract of bids on form 5-4321 (old form 5-087) Abstract of Bids (Illustration 4). This abstract, together with the bids, the receiving officers recommendations, and other pertinent data and information, will be submitted promptly to the Area Director when the Superintendent is not the Approving Officer.

(1) When bids are to be received at oral auction, the Approving Officer shall provide the Superintendent with instructions for receiving and recording oral bids.

(2) When the sale is confined to Indians or Indians are provided the opportunity of meeting high bids, such arrangement must be set forth in the advertisement. Prior to the opening of bids, if the Indian preference opportunity is exercised, it must be declared in writing by the Indian bidders, and such declaration must be submitted to the Approving Officer with the abstract of bids and other data for consideration.

D. Determination of Successful Bidder. The Approving Officer will determine the successful bidder or will determine that all bids are to be rejected and will promptly notify the Superintendent of this determination. The Superintendent shall thereupon notify all bidders of the decision made and return the unsuccessful bidders' deposits which may have been retained in accordance with provisions of 25 CFR 141.10(c).

E. Failure to Execute Contract. Should the successful bidder, after receiving notice of bid acceptance, fail to execute the contract within the stipulated period, the deposit being held by the Superintendent will be forfeited. The amount thus forfeited (after deductions are made to cover administrative expenses pursuant to 25 CFR 141.18) shall be credited to the interested Indians.

CONTRACT SALES OF TIMBER
Sale Preparation

3. SALE PREPARATION

3.1 General. Refer to 25 CFR 141.7(c).

3.2 Cruise of the Proposed Sale of Timber.

A. Proposed timber sales will conform to the general harvest schedule set forth in the forest management plan. Deviations from the forest management plan progression will be presented in writing to the Area Director for decision prior to making the presale cruise.

B. A timber cruise will locate and estimate the quantity of merchantable timber on a given area according to species, size, quality, and other characteristics necessary to provide specific data to be set forth in the Forest Officer's Report.

C. Acceptable methods of cruising will be used in accordance with procedures established by the Area Director. Accuracy standards will be in accordance with criteria established in 53 BIAM Supplement 2, Part 2.3B(2)(e)(1).

3.3 Forest Officer's Report. A complete report setting forth all pertinent information of the proposed sale of timber will be prepared by the ranking Forest Officer at the Field Office having jurisdiction. The report will be presented through the line to the official who will be the timber contract Approving Officer. If a Field Office is without a Forest Officer, the Area Director will assume the responsibility for preparation of the report. Reports will be prepared and assembled in general form and content as follows and in accordance with specific instructions issued by the Area Director.

A. Narrative and Factual Information. This section is a professional and technical statement providing a forest management analysis of the proposed sale of timber, silvicultural prescriptions to be applied and design of the harvest operations.

B. Appraisal. The appraised value will normally be the selling value of the timber products less the costs of production, and it will include an allowance for profit and risk. The appraisal and elements thereof will be based on current conditions in similar timber stands and manufacturing facilities in the local area or region and the specific facts and conditions of each timber sale. Alternative appraisal methods such as transaction evidence or other techniques may be used as authorized by the Area Director.

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Sale Preparation

C. Logging Unit Map. A logging unit map will be prepared to a quality consistent with the inclusion of the map as a part of the timber sale contract. Map characters and legend will adhere to standards established as criteria for forest mapping.

D. Form of Advertisement. The advertisement will provide basic information and instruction on submission of bids. For information on the detail of the timber contract, the potential bidder should be referred to the prospectus (see 3.3E) and to the approved form of contract as contained in the Forest Officer's Report. The advertisement should cover the following:

(1) Type of bid to be received at a stated place at a stated day and local time. Sealed bids on approved forms or a combination of sealed bid and oral auction may be used. Submission of sealed bids will be a prerequisite to the taking of oral bids. The merit of the assigned bidding method will be determined on the basis of each proposed timber sale. For instructions on the receiving and handling of bids, refer to 2.5 of this supplement.

(2) A statement that the volumes are estimates and are not guaranteed.

(3) Minimum stumpage prices acceptable and the basis of scale.

(4) Stumpage price of material to be paid by flat rate, if any.

(5) Amount of deposit with bid and disposition of deposits.

(6) Amount of performance bond required with the contract.

(7) Advance payments required by the contract, if a substantial amount.

(8) Other requirements or special features in the bidding; e.g., right to waive technical defects and to reject bids, authority to make oral bids, Indian preference.

(9) State source of full information concerning the sale of the timber and submission of bids.

(10) State date of advertisement and the name and title of the officer authorizing the advertisement.

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E. Prospectus. The objective of the prospectus will be to attract interest in the timber offering; to direct attention to new, changed or unusual procedures; and to furnish information in addition to that contained in the advertisement. Information contained in the prospectus will assist prospective bidders in deciding whether further investigation of the timber sale offering is warranted.

3.4 Environmental Assessments and Cultural Requirements. An environmental assessment and other studies as necessary will be prepared to comply with requirements of the National Environmental Policy Act (NEPA), as amended, the Historic Preservation Acts, the Endangered Species Act, and other applicable statutes setting forth requirements for protection and enhancement of environmental quality (Refer to 30 BIAM).

To comply with requirements for protection of the environment set forth in NEPA, as amended, an environmental assessment will be prepared. The assessment examines the proposal of the sale of timber and associated activities, along with considered alternatives, as to cause and effect on existing forest conditions and the conditions expected to prevail upon completion of the action. The environmental assessment will be prepared in compliance with the regulations issued by the Council on Environmental Quality (CEQ) and both Departmental and Bureau procedures and guidelines.

A. Archeological Investigation. As part of the environmental assessment and as required by the timber sale situation, an archeological investigation will be conducted and a report submitted to and clearance received from the State Historic Preservation Officer prior to commencement of any soil disturbing logging operations.

B. Endangered Species. The impact of the proposed harvest activity on endangered fauna and flora will be addressed in the environmental assessment to the extent required by the existence of endangered species on the sale area or such species otherwise being affected by logging operations. Should impact be present, a report of the specific impact, including mitigating measures to insure protection of endangered species, will be submitted to the U.S. Fish and Wildlife Service for review and clearance prior to proceeding with the sale.

C. Other Reports and Clearances. Other environmental review and consultation requirements may be applicable to a specific timber sale proposal. The applicability of such other requirements shall be determined by the Approving Officer. As necessary, appropriate reports will be prepared and submitted. Clearances will be secured to comply with such other requirements.

CONTRACT SALES OF TIMBER
Contracts

4. CONTRACTS

4.1 General. Refer to 25 CFR 141.12-17. Form 5-5324, Timber Contract for the Sale of Estimated Volumes (Illustration 5) is used for sales of timber in which the actual volumes used as a basis for payment are determined by a scale or other measurement of the products after cutting. Form 5-5327, Timber Contract for the Sale of Predetermined Volumes (Illustration 6) is used for sales in which the volumes have been determined prior to the sale.

The proposed Timber Contract, Part A, is set forth in its entirety as a part of the Forest Officer's Report for review and approval as to form and content by the contract Approving Officer. See Section 4.4. The provisions of Part A should carefully consider the content contained in form 5-5323 Timber Sale Contract Standard Provisions Part B (Illustration 7), and duplication or diminishment of the general powers contained in Part B should be avoided.

Provisions which amend or replace Standard Provisions should clearly state that intent. The forms are designed to be completed by insertions. Crossouts are not an acceptable method of changing the form except where standard options so require. Substantive departures from fundamental requirements of the contract forms must be supported in the narrative of the Forest Officer's Report. Such departures require the Commissioner's approval.

Upon notice to proceed with advertisement, the contract content is fixed and can be amended or changed only with the consent of the officer who authorized the advertisement. After advertisement has started, significant amendment or change requires issuance of an amended advertisement or a withdrawal of the advertisement.

4.2 Construction and Completion of Contract Part A, Form 5-5324 (Estimated Volumes).

A. Heading. Check one box only. The contract may be a Master Contract when it covers tribal and allotted timber or covers a group of allotments. When the tribal or allotment box is checked, the contract is entirely tribal or a single allotment.

Insert the contract number. A sequential contract number obtained from the register at the local or Area Office shall be used. Insert the logging unit and reservation names where indicated on the form.

CONTRACT SALES OF TIMBER
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B. Parties to the Contract.

(1) Seller. When executed as a Master Contract covering both tribal and allotment timber or a Tribal Contract, the name of the Indian tribe followed by "as represented by the duly authorized tribal representatives" is inserted as the seller. In cases of exceptions, where tribal organic documents state otherwise, instructions from the Area Director should be obtained.

When executed as a Master Contract covering a group of allotments, the statement "the owners of trust allotments listed herein on Page 1a," is inserted as the Seller. The attached Page 1a, is headed by the statement "Seller is the owners of the following trust allotments, provided a separate contract is entered into on the approved form." The allotments are then listed by allotment number and the name of the original allottee. At the bottom of the page, note Page 1a of form 5-5324 or form 5-5327, as appropriate.

When executed as a single Allotment Contract, the name of the original allottee, if living, is shown as the seller. In the case of heirship allotments the statement "heir(s) of (the original allottee name)" is inserted as the seller.

(2) Purchaser. Insert name of the purchaser and the city and state in which the principal office or place of business is located.

C. Bureau or Indian Affairs Representatives. Insert the title and location of each representative. The Approving Officer entry is set by delegation of authority. See 10 BIAM 3.1. The Superintendent is the Superintendent or other officer delegated the authority to carry out the responsibilities of the Superintendent under the contract.

D. Timber Sold. Delete second paragraph when the form is not executed as a Master Contract.

E. Contract Dates. The contract year is designated by insertion of a year period giving the starting and ending dates. The dates for the purchaser to cut and pay for all designated timber and the contract expiration date are inserted in the spaces provided. Sufficient time beyond the date of completion for cutting and paying should be provided for completion of other contract obligations.

F. Unit Description. The location of the logging unit is described as all or portions of specified sections, townships, ranges, and reference meridians. A logging unit map delineating the sale area and showing other pertinent information shall be attached as "Exhibit A" to the contract.

CONTRACT SALES OF TIMBER
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The total acreage within the unit boundaries including alienated lands is shown under the column "Area Within Unit Boundary." The "Area to be Logged" column lists only the acreage of accessible Indian trust lands on which timber will be designated for cutting.

G. Estimated Volumes. The designated timber entries must agree with the advertisement. Both the species and product are specified in the first column by phrases such as "Ponderosa pine sawlogs," "Aspen pulpwood," or other appropriate designations. It is appropriate to include "and other species" with one of the designated species to cover the possible occurrence of species not observed or listed but intended for cutting.

When species and products are included for which an estimated volume has not been determined, they are entered below the totaled estimated volume.

The unit column will show "M bd. ft." for sawlogs, "Cord" for pulpwood, and other appropriate designations for the products listed. The unit used is the one on which the stumpage rate is based.

The estimated volume column shows those volumes from the Forest Officer's Report and from the advertisement. When product volumes have not been estimated, the word "undetermined" is entered in the column.

H. Payment for Timber. The general requirements for timber payments are contained in Section B4.0 of the Timber Sale Contract Standard Provisions. Pursuant to 25 CFR 141.15, the minimum advance deposit shall be at least ten percent of the value of the contract minimum annual cut, based on appraised stumpage rates. Alternative methods for establishing the amount of the minimum advance deposit may be approved providing such deposit is not less than the minimum requirement.

The minimum balance in the advance deposit account is ordinarily one-fourth to one-third of the minimum deposit itself. It is expressed as a dollar figure.

Advance payments for allotted timber are required for contracts exceeding two years pursuant to Section B4.2 of the Timber Sale Contract Standard Provisions. Pursuant to 25 CFR 141.16, any departure from the practice will require approval by the Commissioner.

I. Stumpage Rates.

(1) Designated Timber. The Species, Products and Unit entries should correspond to those in Section A7.(a). The entries in the Bid Rate Per Unit column are the rates accepted by the Approving Officer as a result of advertisement or negotiation for the sale of the timber.

CONTRACT SALES OF TIMBER
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When alternative pages 3, 3a, and 3b are used, "quarterly" or "monthly" is entered in the space provided to correspond with the period established in A9.(d). The Minimum Rate Per Unit established for each species and product in the Forest Officer's Report is inserted in the column provided.

These are values below which rates shall not be reduced by periodic determination of stumpage rates. In general, minimum rates will not be less than 50 percent of the appraised rates, as determined by the Approving Officer. No minimum rates are entered for species and products that are not subject to periodic determination. Species and products that are not subject to periodic determination of stumpage rates are entered on the blank lines provided. If there are no species and products in this category, the word "None" is inserted.

(2) Additional Timber. Entries are for species and products not included under designated timber and removable under reasons stated in A7.(b) only. Grouping of the species and products may be made when the stumpage values are approximately equal. The term "and other species" may be used in conjunction with a designated species. If there are no species and products in this category, the word "None" is inserted.

(3) Liquidated Damages for High Stumps. The rates used should reflect the current levels of stumpage rates. The Area Director may establish standard rates for use throughout the Area.

(4) Periodic Determination of Stumpage Rates. Provisions for the periodic adjustment of bid stumpage rates must be included in all contracts that provide for cutting periods longer than one year, unless exceptions are approved by the Area Director.

The period established for periodic determination of stumpage rates and the date of beginning of the first such period are entered in the blank spaces provided. In the following columns each species of designated timber shown in A7.(a) and A9.(a) is listed with the corresponding index to be used in the periodic determination of stumpage rates. The Corresponding Base Index Prices to be entered are those of the period used in the stumpage appraisal.

The percent of the difference between the Base Index prices and appropriate index prices to be applied as adjustment is established by the Area Director.

J. Performance Bond. Enter the amount pursuant to 25 CFR 141.14. Larger bonding requirements than those specified in 25 CFR 141.14 may be required at the discretion of the Approving Officer.

CONTRACT SALES OF TIMBER
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When the purchaser is a corporation, the name of the firm is shown on the first line, followed by the signature and title of the officer authorized to enter into the contract for the corporation. The certification must also be completed and signed by the appropriate officer of the corporation, certifying to the authority of the corporate officer to enter into the contract. Certified copies of articles of incorporation and of bylaws accompanied by resolution by the board of directors to enter into the timber contract and authorizing certain officers to sign necessary papers must be obtained or be on file in the Bureau's records. When already on file, the file reference should be inserted on an additional page following the signature page of the timber contract Part A. utilizing the certification below:

A certified copy of the Articles of Incorporation and Bylaws of the _____ Corporation is on file at the _____ Agency or _____ Area Office. Said document may be found with Contract No. _____, in File No. _____ of the Branch of _____.

Date: _____

Certifying Officer

Such a certification will eliminate the necessity of requiring an additional copy of such articles of incorporation and bylaws being furnished by the corporation.

If the approving officer has personal knowledge that a corporation is both financially responsible and authorized to conduct business in the state in which the timber sale is located, he or she is authorized, at his or her discretion, to waive all requirements for articles of incorporation and bylaws, state certification of corporate status, and state certification of good standing, provided the authorized corporate official certifies to the following:

I, _____ of _____ Incorporated (or Corporation), certify that said corporation is duly qualified to conduct business within the State of _____ in which this contract is to be performed.

 (Signature)

When the purchaser is an individual or a partnership, the name of the firm is shown on the first line followed by the signature of the individual or partners. The signatures are witnessed by two individuals in the spaces provided and their addresses added. The date of the purchaser's signing is entered as provided.

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K. Merchantability. Species and products entries must correspond to those in Section A7(a). The specifications are intended to reflect the lower limits of utilization that can be attained.

L. Designating Timber for Cutting. The statement should be a clear expression of the types of trees to be cut and the method by which they are designated for harvest. The Area Director may provide guidelines for designating timber for cutting.

M. Cutting Schedule. This defines the minimum and maximum annual volumes to be cut. Unestimated volumes as shown in A7(a) need not be included as part of the scheduled cut.

N. Scaling. Detail any scaling provisions to be applied in lieu of or supplementing Part B of the Standard Provisions. If none, enter "refer to Standard Provisions."

O. Slash and Cull Tree Disposal. Refer to Part B Standard Provisions or specify any supplemental or modifying requirements to the appropriate portions of the Standard Provisions.

P. Road Construction and Maintenance. Detail as above.

Q. Special Provisions. The entries in this section as well as those of A14, A15, and A16, must be carefully controlled to avoid duplication and conflict with other statements of the contract or with the Standard Provisions. Care must be taken that the general powers of the contract are not diminished by needless overspecification.

R. Effective Date. Self-explanatory.

S. Signatures. The checklist page shows signature, arrangement and distribution of timber contract and supporting documents.

Each party to the document shall manually affix a signature where required to the original and not less than one copy. If special circumstances warrant, additional copies shall be similarly executed. The Approving Officer shall similarly manually affix his or her signature to the documents. Other required copies of the contract documents may be facsimilies or conformed copies.

The contract documents shall be completed in an original and four (4) copies. One shall be designated and labeled the original. The original and the copies shall be of good quality and be legible. Supporting documents (marked V on the checklist) shall be prepared to similar standards. Refer to 4.6.

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4.3 Construction and Completion of Subsidiary Allotment Timber Contract, Form 5-5326. See Illustration 8. This form will be used for the sale of estimated volumes of timber on allotments within a unit covered by a Master Contract executed on Form 5-5324 and checked in the master box in the upper right hand corner of page 1.

A. Authority. See 53 BIAM 3.1.3.

B. Parties to the Contract. See 53 BIAM 4.2B.

C. Bureau of Indian Affairs Representatives. See 53 BIAM 4.2D.

D. Timber Sold. This section includes the basic sale agreement. The stumpage rates in effect under the Master Contract should be used in this section. For other entries and a discussion of additional timber, see 53 BIAM 4.2H.

E. Allotment Description. The description of the allotment should be shown by legal subdivisions. The name of the original allottee and the act or treaty which authorized the allotting of the land, as well as the statute reference, should be inserted. Acreage figures to be inserted are self-explanatory. See 53 BIAM 4.2G.

F. Terms and Conditions. Self-explanatory.

G. Special Provisions. See 4.2R.

H. Effective Date. This date should be exactly the same as Section A18 of the Master Contract.

I. Last Page. For instructions on the date of execution and the purchaser's signature, see 53 BIAM 4.2T.

4.4 Construction and Completion of Contract Part A, Form 5-5327 (Predetermined Volumes).

This form will be used for sales in which the volumes have been determined prior to the sale by tree measurement, log scale, or other method. The form may be used for the sale of either tribal or allotment timber, for combinations of tribal and allotment timber, or for the sale of timber from two or more allotments which are to be handled as a unit. Mark either the tribal box, the allotment box, or both, as appropriate in the upper right corner of page 1, Form 5-5327.

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Predetermined volume sales differ from sales of estimated volumes in that the actual contracted volume and value of timber is known for each ownership when the contract is executed. In predetermined volume sales, consent must be obtained from each allottee prior to advertisement, and no allotments may be included in the sale at a later date as is done in estimated volume sales.

Unless there are peculiar circumstances which make the procedure undesirable in particular sales, timber on both tribal and allotted lands or timber on two or more allotments may be sold under one contract executed on Form 5-5327 without the use of subsidiary allotment contracts. In sales of both tribal and allotment timber, the tribe and the various allottees act jointly as the seller, and in sales of timber from two or more allotments, the allottees act jointly as the seller.

A. Authority. See 53 BIAM 3.1.3.

B. Parties to the Contract. When the form is executed as a contract covering only tribal timber, the name of the Indian tribe should be inserted in the first blank as the seller, followed by: "as represented by the duly authorized tribal representatives."

In sales of timber from a single allotment, the name of the original allottee, if living, should be shown as the seller. In the case of heirship allotments, the phrase "the heir (or heirs) of John Jones" should be used. When the owner or owners have executed a power of attorney on Form 5-5315, the contract should read: "... hereinafter called the seller, as represented by the Superintendent of the _____ Indian agency." If the allottee elects to sign the contract rather than execute a power of attorney, the underlined words above and the blank should be deleted.

When the contract covers both tribal and allotment timber, the seller should be identified as: "the (name of tribe), as represented by the duly authorized tribal representatives, and the owners of (identify each allotment by name and number), as represented by the Superintendent of the _____ Indian agency, hereinafter called the Seller."

When the contract covers timber on two or more allotments, this section should read: "the owners of (identify each allotment by name and number), hereinafter called the Seller," When the owners have executed powers of attorney prior to advertisement of the sale, as should ordinarily be the case in predetermined volume sales, the phrase "as represented by the Superintendent of the _____ Indian agency" should be added.

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C. Bureau of Indian Affairs Representatives. See 53 BIAM 4.2D.

D. Timber Sold. The contract includes all timber on the sale area defined in contract Sections 4(a) and (b).

(1) Designated Timber. This section includes all of the timber comprising the volumes determined prior to the sale. The method by which the volumes were determined should be inserted, such as "tree measurement," "actual count" or "log scale." The data entered in the table include only the timber designated and measured prior to the sale. Unless timber of a particular species is being sold on the basis of more than one product, only the species of timber needs to be shown. The purchaser is obligated to pay the total purchase price shown in this section, regardless of the actual volume of timber that has been designated for cutting prior to the sale.

In contracts covering combinations of tribal and allotment timber or timber from two or more allotments, a summary should be prepared showing the volume and value by species for each separate ownership. The summary may be shown in the table in contract Section 4(a) or in the Special Provisions section, depending on the space required. If the summary is shown in Section 13, a note should be typed below the table, such as: "See Section 13 for volumes and values by ownerships." When the installment payment method is specified in contract Section 7(b), the volume and value of designated timber should be shown by species and by ownership for each cutting block, either in Section 4(a) or in Section 13.

(2) Additional Timber. For timber included in the sale in addition to that for which volumes were determined prior to the sale, see 53 IAM 4.3.7B(7)(b).

E. Contract Dates. See 53 BIAM 4.2F.

F. Unit Description. See 53 BIAM 4.2G. In sales of predetermined volumes in which the trees to be cut have not been individually marked (clearcut sales or the sale of all trees of specified species and size) and a single payment of the full purchase price of the designated timber is required before the contract is approved, the contract may provide that the purchaser be responsible for finding legal subdivision boundaries between Indian lands covered by the contract and adjacent non-Indian lands. In such cases, the Bureau is not obligated to protect the owners of non-Indian lands from possible trespass. The location of ownership lines between allotments or between allotments and tribal lands should ordinarily continue to be the responsibility of the Bureau.

CONTRACT SALES OF TIMBER
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The following provision may be included in Section 13 of Form 5-5327 when the conditions described above are met:

"Responsibility for Finding Legal Subdivision Boundaries. Responsibility for finding legal subdivision boundaries between the Indian trust or restricted lands covered by this contract and adjoining lands in non-Indian ownership rests with the Purchaser and no blazing or posting of trees on or near the contract area, except for official lines established by the Government cadastral engineers, shall constitute a representation by the Government of the location of any such legal subdivision boundaries."

G. Payment for Timber. The general requirements for timber payments are contained in Section 4 of the Standard Provisions. Form 5-5327 provides for alternative methods for payment of the total purchase price shown in Timber Sale Contract Part B 4.1.

(1) Single Payment. This subsection provides for the payment of the full purchase price prior to the approval of the contract. The single payment method should be used unless there are compelling reasons for allowing the purchaser to make installment payments. If a single payment is considered to be so great a financial burden that competition may be significantly reduced, consideration should be given to reducing the size of the sale where this action is practicable. If installment payments are used, the "single payment" subsection must be deleted.

(2) Installment Payments. When this payment method is used, timber will be released for cutting in blocks of known volume and value. No block will be released until payment for that block has been received. The contract requires the purchaser to make payments in such amounts and at such times as called for by the Superintendent. Ordinarily, each installment payment will cover the exact value of the timber in the block to be released.

The regular advance payments must be collected on any allotment timber not paid for in full under an installment payment within 30 days of the contract approval unless the Approving Officer authorizes an exception to the advance payment requirements in accordance with 53 BIAM 5.4A and B. The amount of the advance payments will be credited against subsequent installment payments on blocks that include the allotments.

Payments under this section are not advance deposits, and no refunds or reduction in the size of the payments may be made under any conditions. If the installment payment provision is used, the single payment provision of the contract must be deleted.

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(3) Payment for Additional Timber. Insert the appraised stumpage rates for timber which may be cut pursuant to contract Section 4(b). The product should be specified if the volume is to be determined by log scale or other measurement of products after cutting. If the volume of additional timber is to be determined by tree measurement, only the species need be specified.

H. Performance Bond. See 53 BIAM 4.2K.

I. Designating Timber for Cutting. See 53 BIAM 4.2M.

J. Scaling.

(1) Designated Timber. Insert a brief description of the method used to determine the volume of designated timber prior to the sale. When cut logs are sold, as in a trespass sale, this section may state that volumes were determined in accordance with Timber Sale Contract Parts B 7.0 and 7.1. In tree measurement sales, the portion of trees measured (100 percent or sample), the volume tables used, and any other information that will clearly set forth the basis of the sale agreement should be included. Area instructions may cover particular types of situations as necessary.

(2) Additional Timber. Reference to appropriate sections of Timber Sale Contract Part B7 can be used to describe volume determination of additional timber if it is to be log scaled. For tree measurement, specify the volume table to be used and other pertinent facts. Depending on the conditions in the sale, alternative methods of determining the volume of additional timber (such as tree measurement or log scale at the discretion of the Officer in Charge) may be described.

K. Slash and Cull Tree Disposal. See 53 BIAM 4.2P.

L. Road Construction and Maintenance. See 53 BIAM 4.2Q.

M. Inapplicable Standard Provisions. Completion of the contract package for predetermined volume (lump sum) sales shall include appropriate notations regarding which of the standard provisions of the Timber Sale Contract Part B are (are not) applicable to the sale currently in the process of development.

N. Special Provisions. See 53 BIAM 4.2R.

O. Effective Date This section is self-explanatory.

P. Last Page. See 53 BIAM 4.2T.

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4.5 Performance Bond. See Standard Form 25 (Illustration 9). Refer to 25 CFR 141.14. Bonds may be in the form of corporate surety, cash, or negotiable United States bonds. The performance bond shall be executed by the purchaser in the same manner and number of copies as the timber contract, and it becomes a part of the timber contract by attachment and reference in the bonding document. The officer who approved the contract should obtain legal advice of the Solicitor before using the cash or negotiable bonds in the satisfaction of damages.

A. Corporate Surety Bonds. The bonding company shall be one approved by the U.S. Treasury Department. Standard Form 25, Performance Bond, shall be used and accompanied by the surety company's regular form giving evidence that the attorney-in-fact who signed for the surety was authorized to do so on the date he or she signed the bond. Refer to instructions on the reverse of the form and the additional instructions provided herein.

B. Deposit of Cash. The cash deposited as performance bond must be supported by a bond agreement and power of attorney naming the officer who will approve the contract as attorney-in-fact. The deposit is held in the accounts of the Branch of Finance. Refer to the form of agreement and power of attorney provided herein.

C. Deposit of U.S. Bonds. United States securities deposited as performance bond must be supported by a bond agreement and power of attorney naming the officer who will approve the contract as attorney-in-fact. Securities so posted will be deposited and held by the Treasury of the United States. The deposit is facilitated by the Branch of Finance who, upon request, will make the necessary arrangement with the Federal Reserve Bank. The term "U.S. Bond" encompasses Treasury Bonds, Notes, and Bills.

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Contracts

4.6 Checklist

Contract, Supporting Documents Signature, Order of Arrangement, Distribution	Designated Filing Office (GAO File)	Purchase	Seller	Area or Agency (not Approving Office)	Approving Office	Surety on Bond	Total No. of Copies					
								Manually Affixed Signatures		Facsimiles or Conformed Copies		
								Original	1st	2nd	3rd	4th
1. Contract - Part A	X	X	X	X	X	X	6					
2. Contract - Part B Standard Provisions	X	X	X	X	X	X	6					
3. Advertisement	X	X	X	X	X	X	6					
4. Logging Unit Map	X	X	X	X	X	X	6					
5. Performance Bond	X	X	X	X	X	X	6					
6. Surety Certificate or Bond Power-of-Attorney (as applicable)	V	V	V	V	V	V	6					
7. Tribal Resolution	V		V	V	V		4					
8. Allottee Power of Attorney	V		V	V	V		4					
9. Corporation Articles of Incorporation and Bylaws; Partnership Articles of Partnership			V	V	V		3					
10. Proposal to Purchase and Authorization for Ind.			V	V	V		3					
11. Abstract of Bids Received			V	V	V		3					
12. Forest Officers Report			V	V	V		3					
13. Environmental Assessment			V	V	V		3					
14. Archeological Endangered Species, Water Quality Clearances, etc. <u>1/</u>			V	V	V		3					

X Contract
V Supporting Documents

1/ As required.

CONTRACT SALES OF TIMBER
Sale Administration

5. SALE ADMINISTRATION

5.1 General. Instruction for timber sale administration is contained in 25 CFR 141, 53 IAM 1 and the Timber Contract Parts A and B. These should be used and referred to directly and the instructions herein (53 BIAM 3) used concurrently. Sale administrators shall maintain familiarity with the contract provisions and recognize both the strength and the responsibility entailed in their application.

5.2 Sale Supervision.

A. Responsibilities of the Officer in Charge assigned to a Forester or Forest Technician shall be in writing for each logging unit.

B. The Forester or Forest Technician designated in charge of a logging unit will report the state of the timber sale and the purchaser performance to the Officer in Charge by established methods.

C. The Officer in Charge or his or her designated representative, will regularly review and inspect logging units to insure (1) adherence to forestry practices and procedures applicable to timber sales, and (2) compliance with contract terms. Timber sale records, including a Supervisory Check List (illustration 12 form no. K-BIA-5347 or its equivalent), will be regularly completed for each logging unit and be available for examination at the request of the Area Forester.

D. The Area Forester or a designated representative, will review and inspect logging units, in cooperation with the Officer in Charge, as deemed necessary to obtain adherence to basic policy and forestry practices and to assist and advise in the resolution of contractual, administrative, and technical problems. The Area Forester will develop policy, procedures, and forest practice guidelines in cooperation with the Officer in Charge.

5.3 Designation of Timber to be Cut. The Forest Officer's Report outlines management objectives of the contract. Authority for designating timber to be cut is found in Timber Contract Part A4.

A. Order of Cutting. The order of cutting is established by the Superintendent. No timber shall be cut under any timber contract until marked or otherwise designated by an authorized forest officer.

CONTRACT SALES OF TIMBER
Sale Administration

B. Marking Unit Boundaries.

(1) Exterior boundaries will be clearly marked on the ground in advance of timber marking or cutting operations by blazing, painting, staking, or other approved procedures.

(2) Interior boundaries such as boundaries of allotments will be marked clearly on the ground by blazing, painting, staking, or other approved procedures in advance of timber marking or cutting operations. If provided for in the contract, the purchaser may be required to do the work of locating and marking allotment boundaries, but when so done the officer in charge shall check sufficiently to verify purchaser performance.

C. Marking Rules. Marking Rules based on the silvicultural prescriptions being applied shall be developed in advance to guide cruising, marking, inspection, and training. Marking rules shall be stipulated in the Forest Officers Report. The rules are developed locally for timber sales to meet defined silvicultural objectives.

D. Control of Marking Quality. The Officer in Charge will check timber marking to insure compliance with the marking rules.

E. Marking Method. Individual trees and clearcuts shall be clearly marked in accordance with procedures stipulated in the timber contract.

5.4 Payment for Timber. Payments for timber are referenced in 25 CFR 141.10, 141.15, 141.16. Other methods of payment may be authorized for Indian operations under 25 CFR 141.6.

A. Deposit with Bid. The deposit accompanying the bid of the successful bidder who executes the timber contract will be credited as all or part of the first advance deposit required in payment of timber cut upon contract approval, except when provision is made for the deposit to be held in lieu of bond. Failure of the successful bidder to execute or perform under the contract will result in forfeiture of the deposit with bid.

B. Payment for Timber. Advance deposits and advance payments shall be requested by use of Form DI 1040, Bill for Collection (Illustration 13), unless another form of request has been authorized by the Approving Officer. The due date shall reflect the need to maintain the minimum advance deposit required by the timber contract. Contract Part B 4.2, Advance Payment for Allotment Timber, applies unless specifically modified by the contract, Part A.

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C. Waste Scale. The material scaled is paid for at the rates in effect at the date of scaling. Waste material scaled after the expiration of the cut and pay period is paid for at the rates in effect at the expiration date (Timber Contract, Part B 7.4).

5.5 Logging Operations.

A. Logging Plan. The purpose of the logging plan is to maintain a clear understanding by the purchaser of the performance required and to reduce contention in the day-to-day relations of purchaser/forest officer. The general order of cutting, logging practices, and road development shall be considered before purchaser operations begin and/or advance agreements are developed in a written logging plan as required by the Superintendent. Written instructions concerned with the practices and progression of specific timber sale activities may be required and will become parts of the logging plan.

B. Notices to the Purchaser. Notices or instructions to the purchaser should ordinarily be in writing, dated, and directed to the purchaser or his or her authorized representative. When verbal notice or instruction is given or used preliminary to a written notice or instruction, record of the fact should be made.

C. Timber to be Taken. A purpose of timber contracts is removal of the timber designated to be cut for beneficial use. Where necessary to the success of silvicultural prescriptions being applied, removal to contract utilization standards may be mandatory. Payment by the purchaser for designated timber either not cut, or cut and not removed, does not preclude requiring removal to contract utilization standards. Scale of and payment for the waste material is a required function of timber sale administration; however, it is not a substitute for acceptable performance by the purchaser.

D. Damage to Reserve Stands. Despite use of care and skill in the logging operation, at least some damage to reserve stands is inevitable. Constant attention is required to minimize damage. The forest officer will notify the purchaser of any damage resulting from the operations and the required corrective action (Timber Contract Part B 2.6).

E. Slash and Cull Trees. Piling and burning of slash resulting from logging operations and the felling of cull trees are mandatory unless some other method of treatment is specifically provided for in the timber contract. The Superintendent may relieve the purchaser of slash treatment and/or cull tree felling on specific areas of the logging unit. Relief under this authority shall always be given in writing. The

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document stating the relief should carefully designate the reserved areas and give the reasons for the relief. Logging plans should include guides and instructions for slash and cull tree treatment. Specific slash burning plans should be developed and used to the extent and intensity burning would require. Regional and local regulation and management plans concerned with slash fire smoke must be observed.

5.6 Scaling and Reporting.

A. Scaling Handbook. The scaling provisions of the timber contract shall be supplemented with USDA Forest Service National Log Scaling Handbook FSH 2409.11 to provide standard instructions for volume determination. The National Log Scaling Handbook, including revisions thereto, are applicable unless other standards are authorized by the Area Director and are provided for in timber contracts.

B. Records. The scaling record and the record of timber money shall be maintained either as set forth in Section 6 of this supplement or as prescribed and approved by the Area Director.

C. Units of Measure. The units of measure are specified in the timber contract. Volume determination by log rule is limited to the Scribner Decimal C, International $\frac{1}{4}$ inch, and International Decimal $\frac{1}{4}$ inch log rules, and otherwise by cubic volume, piece count, lineal foot, or weight. Use of other log rules or other forms of measurement require authorization from the Secretary.

D. Order of Scaling. The time and place of scaling should be adapted to the operating methods of the purchaser so far as is practicable. However, the purchaser should be required to present material for scaling at such time, place, and in such manner as to permit scaling at reasonable cost and under controls required by the Superintendent. When a logging unit includes more than one ownership, the purchaser shall be required to maintain ownership identity under terms of the contract.

E. Certification of Scalers. Timber Measure Certification procedures, as appropriate, may be required by the Area Forester as a means of gaining uniform and accurate volume determination and of recognizing levels of scaling proficiency of individuals.

F. Scaling Waste Material. The Officer in Charge will designate by logging unit the procedure to be used for scaling or measuring all waste material encountered. The entire logging unit will be examined unless other methods are approved by the Area Director.

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G. Check Scale. Check scaling includes all procedures used for verifying accuracy of timber products measurement. Check scaling objectives should be to scale a minimum of five (5) percent of the total production volume scaled. Check scales should consist of a mixture of announced and unannounced scales as determined by the Officer in Charge. The check scale report should include a narrative description of the procedures used in the check scale to meet varied conditions. Reports on check scales will be prepared as instructed by the Area Forester. An annual summary of the check scaling activity will be prepared on an approved form and presented to the Area Director. Purchaser check scaling for the purpose of comparison of volume determination shall be arranged through the Officer in Charge.

5.7 Fire Prevention and Suppression.

A. Purchaser Responsibility. The general responsibility of the purchaser is stated in Part B of the timber contract. Special provision for specific conditions or actions are to be included in Part A of the timber contract.

B. Prevention and Presuppression. The purchaser will exercise standards of prevention as required in writing by the Superintendent under terms of the timber contract. Standards may include, but are not limited to:

- (1) rules for personnel activity and conduct.
- (2) requirements for communications.
- (3) requirements for fire tools and equipment.
- (4) requirements for an organization for fire fighting.
- (5) procedures for suspension of operations in critical fire danger periods.
- (6) procedures for control and use of purchaser's manpower and equipment.
- (7) procedures for inspection and compliance with prevention and presuppression measures.

C. Suppression. The purchaser is obligated to suppress all fires occurring on the logging unit or caused by the operations of the purchaser. The purchaser will also provide workers and equipment for fire suppression outside the sale area when required by the Superintendent. Employees and

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sub-contractors of the purchaser will work directly under forest officers as required. The purchaser ordinarily will not be called upon for fire suppression work on fires outside or not threatening the logging unit. Reasonable effort will be made to minimize interruption of the purchaser's operation.

D. Additional Assistance. The purchaser may be required to provide lookouts, patrolmen, smoke chasers, equipment, or other direct assistance to supplement the over-all reservation fire control effort in accordance with Parts A and B of the timber contract or by cooperative agreements with the Superintendent.

E. Fire Suppression Cost. Determination of responsibilities for fire suppression costs depends on careful identification of fire cause and origin. Liability for purchaser suppression cost will be established as soon as practicable (Timber Contract Part B 11.4).

F. Fire Category. Each fire must be categorized as a Purchaser-Neglect Fire, Purchaser-Operations Fire, or a Non-Purchaser Fire. Where the decision is obscure and may require investigation, the matter will be referred promptly to the Area Director. The purchaser shall be given written notice of fire category.

5.8 Road Construction and Maintenance.

A. Standards. Standards for construction and maintenance of forest roads and associated improvements constructed under the terms of timber contracts shall be developed under guidance of the Area Director.

B. Branch of Roads. Where road conversion to general purpose use may occur, the Branch of Roads should be consulted for planning and technical assistance.

5.9 General Administrative Actions.

A. Disputes and Appeals. Refer to the timber contract titles B 2.10 and B 2.11 and 25 CFR 2. Disputes may be settled by the processes provided in the timber contract. Careful adherence to these processes will increase the chance that the dispute may be settled without recourse to appeal. Not all disputes are appealable and each level of authority handling a dispute should consider this in their action and recommendation to the higher level. When a matter proceeds to appeal, or any party to

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the timber contract has appeal rights, they must be given notice of the right to appeal and furnished appeal rules and basic advice on how to proceed with the appeal. The appropriate Solicitor should be advised of appeals as early as possible to obtain guidance and assistance.

B. Damages. Damages for which the purchaser is to be held responsible by payment or by action on his or her part shall be documented, and written notice shall be provided to the purchaser. This record will include detail of the damage, the monetary value assigned, the method used in the calculation, and whatever action is required of the purchaser. The Area Forester should assist in the assignment of values and provide standard damage valuation and techniques to be used. Damages may include but are not limited to the following;

- (1) damage to reserve timber stands.
- (2) cutting of timber not designated for cutting.
- (3) damage to lands or streams.
- (4) damage to improvements.
- (5) failure to act expeditiously.
- (6) failure to repair damage or to maintain roads.
- (7) delay in the application of silvicultural treatment.
- (8) deterioration in the value of forest products.
- (9) delay in the receipt of planned income.
- (10) damage from Purchase-Neglect and Purchaser-Operations

Fires.

Damage titles of Timber Contract Part B are B 7.3, B 7.5, B 11.5, B 12.1, and B 12.2. The provisions of B 12.2 applying to land and improvements also apply to reserve trees not designated for cutting in the timber contract.

C. Suspension of Operations. Suspension is an authority given to the Superintendent (Timber Contract Part B 2.6). Action to suspend is normally resorted to after administrative processes, including warnings, have been unsuccessful. Immediate suspension should occur where circumstances warrant prompt mitigation of damages; for example, when the required advance payments or deposits have not been received.

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Oral or written notice, given by a forest officer, due to circumstances present and/or emergency conditions, may be reduced to a written notice of suspension by the Superintendent. The suspension notice will set forth in writing the reasons for the suspension and the conditions the purchaser must meet before the suspended operations may be resumed. Authorization for the purchaser to resume suspended operations shall be in writing from the Superintendent. It will accurately describe how the purchaser corrected the problem which caused the suspension.

The Superintendent may request assistance from the Area Forester in determining cause or need for suspension. The Area Director may direct the Superintendent to suspend a specific operation. Whenever suspension results by direction of the Area Director, resumption of operations must be authorized by the Area Director.

D. Relief from Cutting Requirements. The cutting schedule of the timber contract is based on the volume designated for cutting (Timber Contract Part A).

During the cutting period of the timber contract, requests may be initiated by the purchaser for relief from cutting requirements. Procedures from granting such relief have been provided in the timber contract (Timber Contract Part B 6.0). Relief from the minimum cutting requirements in the final year of the cutting period for all designated timber shall be handled as a modification of the contract. See below.

E. Modification of Contract. The conditions of sale as set forth in the contract may be modified only through a written agreement between the seller and the purchaser prior to the expiration of the contract (Timber Contract Part B 2.3). The modification document should contain the following basic elements:

- (1) a preamble giving the contract name and number, previous modification or assignments of contract if any, the name of the approving officer, the date approved, and the name of the purchaser.
- (2) the origin of the proposed modification.
- (3) the purpose of the modification.
- (4) the terms of the modification.
- (5) a statement of continuing effect of the contract.
- (6) the effective date of the modification.

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Execution by the parties to the modification and the approval is identical to that of the timber contract and includes authorization of the seller(s) and separate acknowledgement of surety if appropriate.

F. Extension of Time. An extension of time for the performance of the contract is a modification of contract and shall be treated as provided in the timber contract (Timber Contract Part B 2.3). An extension presents the opportunity to review and revise the terms of the contract if needed.

G. Assignment of Interest. An assignment is a transfer of all or portions of the interest and responsibility in a timber contract from one party to another (Timber Contract Part B 2.4). The Area Forester shall be consulted and shall provide technical assistance throughout the assignment process. Factors to be considered will include but are not limited to the following;

- (1) protection of seller's interest.
- (2) consultation with the appropriate solicitor.
- (3) identification of assignor's interests and responsibilities.
- (4) identification of assignee's interests and responsibilities.
- (5) maintenance of surety.
- (6) release of liability.
- (7) effective date of transfer.

When provisions of the contract are changed at the time of transfer, a contract modification, which may be incorporated into the assignment, is required. Execution of an assignment is similar to that of a contract modification incorporating signatures of the assignor and assignee.

H. Review of Stumpage Rates. Request for adjustment of stumpage rates provided by terms of the timber contract (Timber Contract Part A 9(e)) shall include specific written evidence in support of the request. Upon decision by the Approving Officer to review stumpage rates, a detailed report will be prepared which includes, but is not limited to, the following points;

- (1) the bid ratio(s) established at bid opening by purchaser are to be maintained.

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(2) assurance that the highest return is obtained consistent with the conditions under which the timber was sold and changes to be considered.

(3) the review method does not have the purpose of assuring the purchaser a specific profit.

(4) any variation from the appraisal method and factors used in the Forest Officer's Report must be substantiated in the review.

(5) review is based on the total sale as though no sale activity had transpired.

(6) the review will state the dollar amount of stumpage rate change(s).

The Approving Officer should implement indicated stumpage rate changes.

I. Revocation of the Timber Contract. Revocation of the timber contract follows decision by the Approving Officer that the purchaser has failed to complete or has breached the timber contract. When breach has occurred and need for revocation is clearly evident, initiation of the process should not be delayed. The process is initiated by written notice to the purchaser describing the breach or the failure to perform. It further stipulates that all rights of the purchaser under the contract are revoked and that the purchaser shall be liable for such damages as may be determined. The purchaser is also notified of the right to appeal and is provided with the appeal rules. The Area Forester and appropriate solicitor shall be consulted for assistance in the preparation of the formal notice to the purchaser, preparation of a claim against the purchaser and the surety, and for subsequent action concerning the timber. Usually the timber should be advertised for sale to establish damages and/or to protect the interests of the Indians.

j. Consultations. Superintendents and forest officers shall maintain businesslike relations with the purchaser and the seller(s) in administering timber sales. Bureau officials should avoid giving the appearance of committing the Bureau on matters requiring review or approval of the Approving Officer.

K. Indian Labor. The Superintendent will keep the Indians fully informed of their employment preference and will encourage their participation. The Superintendent will provide for routine inquiry and recording of information about Indian employment to maintain compliance on the part of the purchaser. Specific reports may be made in support of positive actions taken to accrue employment and business opportunities to Indians. Guides are Public Law 88-352, Title VII, Section 703(i), Timber Contract Part B 13.6, and tribal actions.

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L. Rights-of-Way. The timber contract provides the purchaser access across unallotted trust lands both within and outside the logging unit as necessary for logging operations under the timber contract subject to regulation by the Bureau. When the power of attorney for sale of allotment timber is obtained, similar access is granted for allotted lands within the logging unit and over other allotted lands outside the logging unit in which the allottee has an interest; provided, such right is limited to the operations of the logging unit for which the power of attorney is granted. In exercising the right-of-way outside the logging unit, the same care in location, standards, and payment will be applied as for the lands within the logging unit.

Consent of the allottees must be obtained for roads and improvements on allotted lands not covered by the timber contract and the power of attorney. Revocable permits may be used when a short period of use only is required. Where the transportation facilities are desired for long-term or permanent use, rights-of-way are obtained under 25 CFR 161.

M. Financial Statements. The financial statements required of purchasers include a balance sheet, income statement, and detailed statement of operating costs (Timber Contract Part B 13.7, 13.8). The purchasers may use their own format if the necessary information is provided. Examples of desired format may be given to the purchaser. The statements should be submitted to the Superintendent within a specified period following the end of the purchaser's fiscal year. Bureau Officials shall exercise judgment in preparing timber contracts to provide for modification or formal release of the requirement for financial statements when they would be of small value or reliability. In applying Timber Contract Part B 13.7, the Approving Officer may require:

(1) certified financial statements from purchasers when it is company policy to prepare certified statements or when it is a requirement imposed by the Securities and Exchange Commission.

(2) certified financial statements from a company's operating division or subsidiary if it is company policy to certify financial statements by division or subsidiary.

(3) financial statements submitted by a purchaser to include a statement from the purchaser or other management official attesting to the validity and accuracy of the data presented.

(4) notwithstanding the above, the Bureau may, at its discretion, require certified financial statements from a purchaser, including its divisions or subsidiaries, when it is not the purchaser's normal policy to certify such statements and if there is reasonable doubt regarding the validity of the purchaser's financial system and/or data.

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N. Closure of the Timber Contract. Upon determination that the timber sale is completed, a Statement of Completion of Timber Contract and Summary of Operations is prepared. Forms used shall include 5-5319 (old form 5-500a) Statement of Completion of Timber Contract (Certificate of Completion) (Illustration 18) and ADP printouts approved by the Area Director. When a master contract or more than one (1) ownership is involved, a Statement of Completion is prepared for each ownership and a Statement of Completion and Summary of Operations are prepared for a total of all ownerships. These reports are distributed as directed by the Approving Officer. Certification signatures shall be as provided on form 5-5319 (old form 5-500a). After concurrence with the certificate of completion, the Approving Officer will give written instruction to the Superintendent to notify the purchaser(s) that they are relieved of any further liability under the timber contract arising after the date of the Approving Officer's letter. The Superintendent's notice to the purchaser shall include the following language (use words in parenthesis as appropriate):

"You are hereby notified that the Approving Officer of the _____ Logging Unit, Timber Contract No. _____, has relieved you (and your surety) of any further liability under the timber contract arising after _____. (A copy of this letter of notice

date

is enclosed for you to forward to your Surety.) (A) (Two) copy(ies) of the Statement of Completion of Timber Contract and Summary of Operations (is) (are) enclosed for your records (and that of your surety)."

The notice to the purchaser shall also include suitable language concerning disposition of any unobligated advance deposits, other deposits, and bonds.

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6. TIMBER SALE RECORDS

6.1 General. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.2 Scale Records. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.3 Reporting Records. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.4 Timber Sale Accounts. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.5 Closing Timber Sale Contracts and Accounts. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)

6.6 Deductions For Forest Management Purposes

A. Authority. Refer to Section 1.3 of this supplement. Following is a list of pertinent instructional memorandums issued by the Offices of the Assistant Secretary and Commissioner of Indian Affairs since 1972. They represent the chronology of administrative decisions which have produced the procedural guidelines that follow.

(1) Memorandum dated June 15, 1972, from the Assistant Secretary, Public Land Management.

(2) Memorandum dated August 10, 1972, from the Commissioner of Indian Affairs.

(3) Memorandum dated May 22, 1975, from the Commissioner of Indian Affairs.

(4) Memorandum dated May 25, 1979, from the Assistant Secretary - Indian Affairs.

(5) Memorandum dated June 27, 1979, from the Acting Deputy Commissioner.

B. Basic Policy

(1) As provided in 25 CFR 141.18, unless special instructions have been issued by the Assistant Secretary of Indian Affairs, deductions from timber sale proceeds shall be made as follows:

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(a) Ten (10) percent of the gross amount received for timber sold under regular supervision, or

(b) Five (5) percent of the gross amount received for timber sold in such a manner that little administrative expense is incurred by the Bureau.

(2) The aforementioned deductions shall be made from the proceeds of timber sales from either allotted or tribal lands.

(3) Except as provided in Section 6.6E below, amounts deducted pursuant to this policy shall be collected into the U.S. Treasury as miscellaneous receipts.

(4) Exceptions to the basic policy shall be made only with the approval of the Assistant Secretary - Indian Affairs.

C. Actions Subject to Deduction. Deductions to cover forest management expenses are made from the following types of payments.

(1) Gross proceeds from estimated volume timber sales.

(2) Gross proceeds from predetermined volume timber sales.

(3) Gross proceeds from paid permits.

(4) Total estimated value of forest products included in special allottee permits.

(5) Gross proceeds resulting from the cutting or destruction of trees not designated for cutting.

(6) Gross proceeds resulting from deficiencies in cutting requirements.

(7) Gross proceeds resulting from unauthorized movement of products.

(8) Deposits with bids when treated as liquidated damages.

(9) Unrestricted interests' share of the gross proceeds from the sale of forest products (these are "Service Fees").

(10) Gross proceeds from right-of-way timber, either within or without the timber area.

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(11) Proceeds in settlement of a timber trespass. Deductions are made on the basis of single stumpage value regardless of whether the timber is disposed of as stumpage, logs, or other forms of products.

D. Actions Not Subject to Deduction. No deduction for forest management expenses is made from the following types of payments.

(1) Gross proceeds from damage to land or property other than forest products.

(2) Gross proceeds from failure of purchaser to dispose of slash or to perform other services required by contract.

(3) Estimated value of forest products included in free-use permits.

E. Special Instructions. These special instructions shall apply in all cases where a forest management deduction is taken.

(1) Forest Management Deductions From the Stumpage Proceeds of Reservation Trust Lands.

(a) Forest management deductions made during any fiscal year shall not exceed the cost of the forestry program during the same fiscal year. The cost of the forestry program includes both federal and tribal obligations.

(b) When tribes participate in the management of the forestry program on their respective reservations, the following shall apply:

(i) Prior to the beginning of each fiscal year, a budget and use plan supportive of the forestry program on the respective reservation shall be prepared, approved by the Bureau of Indian Affairs, and concurred with by the tribe. The forest management deduction shall then be deposited into an IIM special deposit account entitled "Forest Management Deductions - Reservation Trust Lands" to be available for the purposes defined in the budget and use plan. Refer to section 6.6G(2)(c) for further accounting instructions.

(ii) Forest management deductions may be held in the IIM special deposit account through the end of the fiscal year following the year in which the deduction was made. During this period, the forest management deductions shall be applied to obligations made in accordance with the approved budget and use plan. Forest management deductions carried

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over from the prior fiscal year shall be applied first. Any balance remaining at the end of the second fiscal year of availability shall then be collected into the U.S. Treasury as miscellaneous receipts.

(2) Forest Management Deductions From the Stumpage Proceeds of Public Domain and Homestead Allotment Timber Sales.

(a) Prior to the beginning of each fiscal year, the Bureau of Indian Affairs shall approve a budget and use plan supportive of the forestry program on public domain or homestead allotments under each Agency Superintendent's jurisdiction. The forest management deduction shall then be deposited in an IIM special deposit account entitled "Forest Management Deductions - Public Domain Allotments" to be available for the purposes defined in the budget and use plan. Refer to section 6.6G(2)(d) for further accounting instructions.

(b) Except as provided in (2)(c) below, section 6.6E(1)(b)(ii) shall apply to public domain or homestead allotment timber sales.

(c) In cases involving predetermined volume sales on public domain or homestead allotments, the two-fiscal year provisions of 6.6E(1)(b)(ii) shall not begin until the harvest is completed and the Certificate of Completion (form 5-5319) issued.

(d) The total forest management deductions taken from the proceeds of public domain or homestead allotment timber sales at each Agency during a fiscal year shall not exceed the cost of the forestry program or public domain or homestead allotments at that Agency during that fiscal year.

F Justifiable Forestry Program Activities. Forest management deductions shall be available for use in the following four general areas: Timber Sale Administration, Protection from Fire, Forest Development, and Modernized Forest Management Inventories and Planning. Examples of justifiable uses within each of these general areas are included below.

(1) Timber Sale Administrative Functions (consisting of presale cruises, timber appraisals, and administration of on-going sales). Justifiable costs include:

(a) Payment for "needed additional" services (salaries).

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- (b) Cost of transportation.
 - (i) Vehicle purchase (tribal).
 - (ii) Cost of motor fuel and servicing.
 - (iii) Increases in GSA rental charges.
- (c) Contracts for forestry-related consulting services.
- (2) Protection from Fire.
 - (a) Preparation of Normal Fire Year Plans.
 - (b) Transportation (subdivided as under Timber Sale Administration).
 - (c) Heavy equipment purchase and repair.
 - (d) Hazard reduction.
 - (e) Cost of contract protection.
 - (f) Maintenance of secondary roads where necessary to assure access for fire suppression efforts (only when roads funds are not available).
- (3) Forest Development.
 - (a) Timber stand improvement.
 - (i) Thinning.
 - (ii) Mistletoe eradication.
 - (iii) Pruning.
 - (iv) Brush or "trash" tree removal.
 - (b) Reforestation.
 - (i) Seed collection.
 - (ii) Seed orchard establishment and maintenance (genetic improvement).
 - (iii) Nursery supplement.

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- (iv) Site preparation.
 - (v) Planting.
 - (vi) Seeding.
 - (c) Fertilization.
 - (d) Measuring and evaluating the results of developmental work.
- (4) Modernized Forest Management Inventories and Planning.
- (a) Continuous forest inventories.
 - (i) Field collection of data.
 - (ii) Analyses of data.
 - (b) Forest land use planning such as selection of areas to be reserved for recreation use or other special use only (as opposed to timber production). Designation of areas where "modified" timber harvest is compatible with recreation and other uses; and determination of how cutting is to be "modified."
 - (c) Intensified inventories and analyses of "in-place" data. (This is detailed information concerning exact location of areas needing various types of forest development and/or opportunities for utilization. It includes the determination of priorities for accomplishing the needed development and utilization.)
 - (d) Determination of allowable cut alternatives. (Must be compatible with reservation-wide plan for economic development.)
 - (e) Forest management planning.
 - (f) Feasibility studies.
 - (i) Utilization of waste materials.
 - (ii) Sawmills or other primary utilization industries.

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G. Accounting for Forest Management Deductions.

(1) Forest management deductions are considered earned, as follows:

(a) Estimated Volume Sales. When forest products are scaled.

(b) Predetermined Volume Sales. When the contract is approved, except as provided in 6.6E(2)(c) above. Deductions will be made when the journal voucher is prepared for either the total sale payment or when installment payments are received.

(c) Paid Permit Sales.

(i) Estimated Volume Sales. When forest products are scaled.

(ii) Predetermined Volume Sales. When proceeds from the forest products are received including those which may not have been included in the permit.

(d) Special Allottee Permits. When funds representing forest management deductions are received from the permittee.

(e) Trespass. When the approving officer accepts payment(s) of damages in settlement of a trespass case.

(2) Accounting for and distributing forest management deductions will be accomplished through the use of the IIM special deposit accounts identified above. Each account will be established by work order number coded to delineate the year monies are earned and the year by which they must be used. Funds will be available from each account through the end of the fiscal year following the one in which the fund was established.

(a) A separate IIM special deposit account will be established for each reservation under an Agency's jurisdiction. One IIM special deposit account will be established for all public domain or homestead allotments under an Agency's jurisdiction.

(b) Where advance payments are involved, the superintendent shall establish a separate IIM special deposit account entitled "Forest Management Deductions - Advance Payments" for the forest management deduction included in the advance payment. This shall be transferred to the appropriate IIM special deposit account(s) at the time the deduction is earned.

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(c) Forest management deductions earned from reservation trust lands shall be credited to tribal accounts to the extent of tribal obligations made from these accounts in accordance with approved budget and use plans. Amounts so credited shall be transferred from the IIM special deposit account(s) as provided in the budget and use plan.

(d) Forest management deductions earned from public domain or homestead allotment lands shall be applied based upon obligations incurred consistent with the approved budget and use plan. Amounts so applied shall be transferred from the IIM special deposit account as provided in the budget and use plan.

(3) At the close of each fiscal year, a comparison shall be made between forest management deductions taken from the proceeds of timber sales and the cost of the forestry program for the fiscal year. If the total forest management deductions exceed forestry program costs, the excess shall be returned to landowners. Distribution of the excess should be apportioned to individual sales according to the percentage the deductons from individual sales bear to the total deductions withheld.

6.7 Miscellaneous. (To be issued later. Use Timber Sale Records Handbook - Supplement 1 to 53 IAM until superseded.)