

BUREAU OF INDIAN AFFAIRS HARVEST OF FOREST PRODUCTS HANDBOOK

53 IAM 3-H



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FOREWORD

This handbook documents the procedures required to implement the Indian Affairs' (IA) Harvest of Forest Products policy, as documented in 53 IAM 3. It supersedes all related content in 53 IAM 3-H: Contract Sales of Forest Products, issued 6/10/2004, as well as in 53 IAM 4-H: Permit Sales of Forest Products, issued 6/15/2005, and all policies and procedures related to the harvest of forest products on Indian lands that may have been created or distributed throughout IA previously.

This handbook is intended for use by Bureau of Indian Affairs' (BIA) agency and regional Forestry staff. It may also be useful for compacted/contracted Tribal staff.

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1 INTRODUCTION

This handbook documents the standards, requirements, and processes needed to prepare and administer the harvesting of Indian trust forest products through contracts, permits, or free use harvesting without permits. The guidelines contained in this handbook interpret 25 Code of Federal Regulations (CFR) § 163. References to the CFR throughout this handbook are provided as a reference for the user and may not be verbatim. A list of relevant authorities is contained in 53 IAM 3: Harvest of Forest Products from Indian Land.

Harvest of the allowable cut identified in Forest Management Plans (FMPs), Integrated Resource Management Plans (IRMPs), and harvest schedules is important to meeting Tribal objectives for forest management, employment, income, and management of forest resources, and is critical to sustained yield management in perpetuity.

Proposed timber harvests must conform to the general harvest schedule set forth in an FMP that is consistent with established Tribal goals and objectives, and with a Tribal IRMP (if one exists). Owner approval must be obtained before any sale activity begins (notwithstanding 25 CFR §163.14 (b)). The National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and other federal and Tribal laws and regulations must also be given consideration throughout the sale preparation process.

Numerous Examples, Exhibits, and Templates are referenced throughout this handbook and are located on BIA.gov under the Division of Forestry (DOF) website at: <https://www.bia.gov/bia/ots/dof>. Some are available in the Trust Asset and Accounting Management System (TAAMS) as well.

Examples include:

- Example 01 - Harvest Preparation Checklist
- Example 02 - Sample Language for Sale of Forest Products below Fair Market Value (FMV)
- Example 03 - Revocable Road Use Permit
- Example 04 - Reciprocal Road Use Permit
- Example 05 - Forest Officers Report
- Example 06 - Timber Sale Advertisement
- Example 07 - Prospectus
- Example 08 - Logging Plan
- Example 09 - Log Yard Agreement
- Example 10 - Ticket Book
- Example 11 - Load Ticket Procedures
- Example 12 - Contract-Permit Modification
- Example 13 - Third-Party Scaling Agreement
- Example 14 - Consumer Scale Authorization
- Example 15 - Addendum to Consumer Scale Authorization
- Example 16 - Forest Products Use Policy (FPUP)
- Example 17 - Forest Enterprise Operating Agreement

Exhibits include:

- Exhibit 01 - Forestry Business Process
- Exhibit 02 - Summary of Permit and Contract Requirements
- Exhibit 03 - Sample Scale Frequency Calculation
- Exhibit 04 - Timber Sale Process Flowchart
- Exhibit 05 - 53 IAM 3-H Frequently Asked Questions

Templates include:

- Template 01 - Power of Attorney for Allotment Timber Sale (PDF and word)
- Template 02 - Bid Proposal and Instructions
- Template 03 - Abstract of Bids (PDF and Excel)
- Template 04 - Irrevocable LOC Guidelines and Template
- Template 05 - Assigned Savings Account Performance Bond
- Template 06 - Advanced Deposit Worksheet
- Template 07 - Harvest Inspection Report
- Template 08 - Truck Ticket Control Record and Sign Out Sheet
- Template 09 - Contract Assignment
- Template 10 - Scale Sheet and Summary
- Template 11 - Scale Report
- Template 12 - Report of Timber Cut
- Template 13 - Statement of Completion and Summary of Operations

The following forms and permits are referenced in this handbook and are located online at <https://www.bia.gov/policy-forms/online-forms>:

- BIA 5-5323, Contract Part B Standard Provisions
- BIA 5-5324, Estimated Volume Contract
- BIA 5-5326, Allotment Supplementary Agreement
- BIA 5-5327, Predetermined Volume Contract
- BIA 5-5328, Sole Owner Allotment Harvest Permit (SOAHP)
- BIA 5-5331, Timber Harvest Permit
- BIA 5-5332, Non-Timber Forest Products Harvest Permit

More specific information regarding these forms and permits is discussed in chapter 2.

2 HARVEST AREA PREPARATION

As part of forest management planning, a harvest schedule will be prepared for a specified period, generally three to 10 years, and is updated annually (see 53 IAM 2-H: Indian Forest Management Handbook - Forest Management Planning, Section 2.8 (c) 17). The proposed harvest of forest products is guided by this harvest schedule.

During the harvest preparation process, adherence to NEPA, NHPA, ESA, and other applicable federal and Tribal laws and regulations must be documented. Initiation of surveys, consultation, biological assessments, and other steps to comply with these laws should be done as early in the sale preparation process as possible. Refer to “Exhibit 01 - Forestry Business Process” for a description of the BIA harvest of forest products process. This document also includes detailed information on the process steps regarding forms and reports used, collection and distribution of funds, Bureau of Trust Funds Administration (BTFA) forestry related responsibilities, and other business processes. Additional documents that may aid in harvest preparation include “Exhibit 02 - Summary of Permit and Contract Requirements” and “Example 01- Harvest Preparation Checklist”. Many of the individual steps in the process of harvest area preparation may occur concurrently and are not necessarily separate steps from one another.

2.1 HARVEST AREA PLANNING AND FIELD RECONNAISSANCE

Harvest area planning is used to determine if an area is ready for harvest. There are multiple methods to obtain the necessary information to determine if harvest is warranted, as described below. A stand or group of stands may need harvest or another silvicultural treatment if its current condition does not meet objectives identified in the FMP or IRMP. Other factors may influence whether an area is to be harvested, such as landowner objectives, which may include homesite development, infrastructure needs, or forest health.

2.1.1 Management plan review

Review the FMP or IRMP, harvest schedule, resource management plans and any pertinent Tribal ordinances. Forest resource goals, objectives, and management limitations should be obtained from the FMP. If an IRMP exists, the resource values and their priorities are identified in that document.

Stand-level resource objectives should be developed from these forest resource objectives, as forest resource goals and objectives described in these plans are broad in scope. This allows for the application of appropriate and site-specific silvicultural systems.

2.1.2 Remote sensing imagery and resource records review

Imagery and resource records may aid in identifying strata (i.e., logging system, forest type, etc.) in the area which may indicate the potential for using different silvicultural systems by providing evidence of differences in stand structure, forest cover types, tree species composition, and variations in stand height and density. Reviewing imagery is done to identify or verify stand attributes which aids in identifying potential harvest unit locations, road access, slope stability, hydrologic features, and treatment feasibility. Proposed harvest units may initially be based on

species composition, stand structure, topography, access, soils, and other site-specific information. Additionally, the following actions are taken:

- Identify resource features that may affect how or when an area is harvested, including but not limited to: cover type, stand structures, plant communities, landforms, hydrology, logging, and transportation systems. This information is used to plan the field inventory.
- Review inventory data, soil surveys, stand management records, NEPA documents, land ownership records, and other resource documents for specific information. The information is useful in determining inventory and sale reconnaissance objectives and procedures.
- Determine preliminary harvest boundaries after reviewing remote sensing imagery and resource records in order to collect site and stand data in the field necessary to prepare silvicultural prescriptions.

2.1.3 Field data collection

The amount of field data collected will depend on the complexity of the stands proposed for treatment. Any broad management objectives outlined in a higher-level plan may also guide the intensity of field data collection.

The following are examples of site and stand data that may be collected but will vary depending on local conditions, needs, and forest type.

Site Data:

- Geology, topography, and landforms
- Soils
- Hydrology
- Habitat type
- Threatened and Endangered Species
- Invasive Species
- Site quality
- Archaeological sites and features
- Potential road and skid trail locations

Stand Data:

- Tree species composition by size class
- Stocking levels and volume
- Age and structure
- Forest health conditions, including insect and disease
- Growth rates and vigor
- Forest fuels metrics

2.2 OWNERSHIP CONSENT

In most cases, harvesting forest products from Indian land requires consent from the owners (25 CFR § 163.20). The Secretary of the Department of the Interior (DOI) may sell the forest products without the consent of the owner(s) when, in their judgment, such action is necessary to prevent loss of value resulting from fire, insects, diseases, wind throw, or other catastrophes (25 CFR § 163.14(b)). Identifying the owners of the land is done by viewing a Title Status Report (TSR) in TAAMS. If the report is out of date, an updated report is requested in TAAMS for action by the BIA's Division of Real Estate Services and the Land Titles and Records Office (LTRO).

2.2.1 Sales without Indian consent

After consultation with the owners, sales of forest products may be made from any individually owned trust or restricted Indian land without the consent of the Indian owners when such action is necessary to prevent or minimize loss of values resulting from fires, insect, disease, wind throw, or other catastrophes (25 CFR § 163.14(b)). The Approving Officer (AO) will determine the form and extent of contact to adequately consult with the owners on a case-by-case basis.

2.2.2 Ownership consent for a below appraised value sale

When a below appraised value sale is proposed, the documented consent must also include written acknowledgment that the owners have been duly apprised of the difference between the appraised value and offered or negotiated value. Documentation of this process must be retained in the Official Sale File in the form of a letter to the allotment owners when sending the Power of Attorney (POA) form or in a Tribal Resolution (25 CFR § 163.14(d)). See also "Template 01 - Timber Power of Attorney for Allotment Timber Sale" and "Example 02 - Sample Language for Sale of Forest Products below FMV".

2.2.3 Ownership consent by tract ownership

Each type of tract ownership discussed below requires a different method to obtain ownership consent.

A. Tribal tracts

A Tribal Resolution or other authority of the governing body of the Tribe giving consent for the sale of Tribal forest products is required. Consent may be required for each sale or may be programmatic. Such consent provides authority for Tribal execution of necessary sale documents. When consent to sell forest products has been delegated to an individual or a committee, a copy of this delegation of authority must be included in every sale file.

B. Allotted tracts

A majority of beneficial, restricted interest owner consent is required to approve harvest of forest products per 25 CFR § 163.20. The sale file must contain evidence of the effort to obtain consent of all owners. The Forest Officer or their designee documents the details of the effort to obtain

ownership consent including name of owner, dates of mailing POA forms, date response received, and the response that was received.

C. Owner consent obtained using a POA

“Template 01 - Power of Attorney for Harvest of Forest Products” is completed manually or printed from TAAMS and is provided to each beneficial owner to seek approval for the contract or permit. The POA form allows the AO to execute the contract or permit on behalf of the allottee (25 CFR § 163.20(b)).

D. Sole owner tracts

The sole owner consents to the sale document by signing as Seller on the contract or permit or by assigning POA to the AO.

E. Multiple owner tracts

If there are multiple owners, a request is sent to each beneficial owner requesting approval of a POA which, once majority consent is received, would then allow the AO to sign the contract or permit as the Seller representing the allottees.

Consent for Tribally owned interests within an allotment is obtained through a Tribal Resolution or through written concurrence of the authorized Tribal representative. A POA form may be utilized but is not required for Tribally owned interests in an allotment. A Resolution that approves an annual or periodic harvest plan which includes the specific harvest area in question is also considered Tribal consent.

A POA form is sent to legal guardians on behalf of minors and non-compos mentis individuals. The guardian may sign the POA form to allow the Secretary to execute sales on behalf of minors and beneficial Indian owners who are non-compos mentis if majority consent has been obtained.

The Secretary may sign a POA consenting to the sale on behalf of:

- an estate that is in probate,
- an individual that cannot be located,
- non-responsive individuals, and
- a non-responsive guardian for minors or *non-compos mentis* owners.

Signing of a POA in this manner can only occur after “a reasonable and diligent search” and the giving of notice as determined by the AO.

A 30-day waiting period from the date of mailing of the POA or from the date of public notice, which may run concurrently, to determine non-responsiveness will constitute “a reasonable and diligent search”. However, the AO may determine a longer or shorter period is appropriate depending on specific circumstances.

F. Unrestricted (fee) interests in multiple owner tracts

An attempt to obtain consent of fee owners must be documented in the Official Sale File, however fee owner approval is not required or counted in calculating majority approval. If unrestricted interests have an undivided interest in a trust tract planned for harvest, the unrestricted interest will be included in the sale once majority interest of the trust ownership has been obtained.

Upon the request of the owner of an undivided and unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted interests in the timber, and collect and disburse payment for the unrestricted interest(s) (25 CFR § 163.20(b)(3)).

2.2.4 Tribally owned fee parcels

Tribes may request that Tribally owned fee parcels be included in a trust timber sale if the fee parcels are within or adjacent to a trust sale area. The Tribally owned fee parcel tract is not included in the TAAMS system, and accounting for any harvested volume from these tracts will not be done by the BIA as part of the harvest documentation. The fee volume and value must be separated from trust volume and value for TAAMS entry and reporting purposes.

Separate accounting, collection, and distribution processes are completed by the Tribe as appropriate. Comments on Reports of Timber Cut (ROTC) and Statements of Completion (SOC) may include notation of the volume and value collected from fee parcels. Performance bonds (PB) collected for the trust sale cannot be used for resolving issues related to the fee parcel.

2.3 CONTRACTS AND PERMITS

Except for free use harvesting without a permit (see 25 CFR § 163.27), forms approved by the Secretary are used for the authorized harvest of forest products from Indian trust land.

Contracts must not exceed five years in duration including extensions and other modifications. Permits must not exceed two years in duration including extensions and other modifications.

2.3.1 Determine the appropriate form for forest product harvest

The Forest Officer will determine:

- If BIA form 5-5328: Sole Owner Allotment Harvest Permit (SOAHP) will be used in the case of a sole owner allottee request.
- If it's free use harvesting with or without a permit.
- If the estimated stumpage value is greater than \$15,000. If so, decide if it will be an estimated volume or predetermined volume contract.

- If the proposed harvest is relatively low complexity and less than \$15,000 estimated stumpage value. If so, decide which form to use: estimated volume contract, predetermined volume contract, timber cutting permit, or non-timber forest products harvest permit.
- If the proposed harvest is high complexity, but below \$15,000 estimated stumpage value. If so, an estimated volume or predetermined volume contract is used.

2.3.2 Permit guidance

Permits are not a method to avoid the requirements within contracts. Although permit options may offer a simplified and quicker process for approving harvest, they do not offer the level of control and resource protection provided by the standard provisions in a contract. Multiple permits over several years must not be used in place of a contract. Additionally:

- The Permittee must furnish a performance bond unless waived by the AO.
- Paid permits must be advertised unless specific conditions are met.
- Forest Management Deductions (FMDs) must be paid if the gross proceeds of sales of forest products harvested is \$5,001 or more.
- Permit forms developed by the Tribe, generally at the time the Forest Products Use Policy (FPUP) is developed, require approval by the Secretary; this approval can be given at the same time as approval of the FPUP, to ensure they meet BIA regulations.
- Permits must not exceed two years in duration from the approval date.

2.3.3 Permit forms

BIA form 5-5331: Timber Harvest Permit may be used for low complexity harvests of timber products and may be issued as paid or free use. The appraised stumpage value of paid permits must be \$15,000 or less. The stumpage value that may be harvested under paid permit authority in a fiscal year (FY) by any individual or operating entity cannot exceed \$25,000. The appraised stumpage value of free use permits must be \$5,000 or less and may only be issued to individual Indians or organized groups of Indians. Free use permits may restrict the sale or exchange of forest products for other goods or services.

BIA form 5-5332: Non-Timber Forest Products Harvest Permit is used as an alternative to BIA 5-5331 and is recommended for harvest of non-timber forest products as defined in 25 CFR § 163.1 or situations that don't require harvesting methods and accounting procedures of a timber sale. Non-timber forest products include products such as berries, mushrooms, Christmas trees, fuelwood, boughs, etc. This form provides for the addition of special provisions that may be unique to non-timber forest products species. The form also includes a Product Removal Record which is completed by the Permittee to document product removals.

2.3.4 Contract guidance

Part A of a contract is developed as a part of the Forest Officer's Report (FOR) for review and approval by the AO. The provisions of Part A must consider the content contained in Part B Standard Provisions. Duplication or diminishment of Part B Standard Provisions should be avoided when developing the contract.

If necessary, Special Provisions are developed to amend or replace Part B Standard Provisions and are included in Part A of BIA forms 5-5324, 5-5326, or 5-5327. Substantive departures from fundamental requirements of the Part B Standard Provisions must be supported in the narrative of the FOR.

Additionally, optional contract language can be included to allow for the addition of Allotment Supplementary Agreements in the following situations:

- The possibility of adding additional allotments through a modification to the Contract.
- To allow payment of Advance Payment (AP) when Allotment Supplementary Agreements are approved rather than at the approval of the contract.
- Other situations as determined by the AO.
- Periodic determination of stumpage rates is an optional A provision for Estimated Volume Contracts:
 - This provision (A9(e)) allows for adjustments of stumpage rates based on the contract stumpage rate, an index, and the difference between the base index rate at time of contract approval and the base index rate at the time of adjustment.
 - The first adjustment usually occurs two years after contract approval and occurs periodically as stated in the contract.
 - The difference may also be moderated by a percentage change that the adjustment cannot exceed, and a minimum stumpage rate may be specified. It is recommended that the percentage change be greater than 25% and not exceed 100%. If 100% is selected, it would capture the absolute change in value from the current and past base rates at time of adjustment, whereas 50% would only be half of the absolute change and spread the risk and benefit to Purchaser and Seller.

2.3.5 Contract forms

The forms used to sell or permit the harvest of forest products must be the forms approved by the Secretary. Forms approved for use are located on the IA Online Forms website. Forms for local use must be approved by the AO prior to use.

The approved forms are as follows:

BIA form 5-5323: Contract Part B Standard Provisions are attached to every contract and provide detail on numerous contractual items and fundamental requirements of the contract that are standard to each. References in this document to Contract Part B Standard Provisions are referred to as Part B Standard Provisions or the specific provision citation.

BIA form 5-5324: Estimated Volume Contract is used for the sale of forest products where the basis for volume and value determination is by scaling or measurement of the products after harvest. When used, this form is referred to as Part A and must be supplemented with BIA form 5-5323: Contract Part B Standard Provisions.

BIA form 5-5326: Allotment Supplementary Agreement may be used for the sale of estimated volumes for forest products on allotments within a sale area covered by a contract executed on BIA form 5-5324. This form is completed for each allotment tract and provides information specific to the tract. This form becomes a part of the contract which includes the BIA form 5-5324: Estimated Volume Contract and BIA form 5-5323: Contract Part B Standard Provisions.

BIA form 5-5327: Predetermined Volume Contract is used for sales in which the volume and value is determined prior to advertisement and paid either on a single lump sum basis or with installment payments. Payment is made from cruise data collected prior to harvest and not made on scale data post-harvest as with an Estimated Volume contract. When used, this form is referred to as Part A and must be supplemented with BIA form 5-5323: Contract Part B Standard Provisions.

2.3.6 Indian labor

If the Tribe has an approved Tribal Employment Rights Ordinance (TERO), the contract or permit must include a special provision that states that the Purchaser must provide the AO with evidence of TERO concurrence prior to commencing operations. If there is no TERO in existence, Standard Provision B12.3.1 will take precedence.

2.3.7 SOAHP guidance

The SOAHP is synonymous with the Special Allotment Timber Harvest Permit referenced in 25 CFR § 163.26(d) and does not have the same rules or restrictions as other permits. It may only be issued to an individual Indian with sole ownership of an allotment. It authorizes the Permittee to arrange for the sale of forest products to a third party and have greater involvement with the implementation of the sale. This is only for sole owners that have knowledge of timber markets and the forest products industry or an advisor that can provide them with this information. The Allottee must show proof that they have arranged a bona fide sale of the forest products on terms that will protect their interests.

The authorized Forestry program must determine if a harvest is appropriate and prepare a FOR if the value is greater than \$15,000. The FOR documents a summary of the species, products, volume, appraised rates, total appraised value, silvicultural prescription, potential markets, and recommended provisions to be used to administer the harvest. The purpose of the report is to

provide information that will assist the allottee in marketing and selling the designated forest products. There is no restriction on the total appraised stumpage value of a SOAHP. Variations from the appraisal, silvicultural prescription, marking guidelines, and cutting instructions must be documented and approved by the allottee and AO.

The Permittee receiving the SOAHP must furnish an acceptable performance bond unless waived by the AO. Additionally, FMDs must be paid if the gross proceeds of sales of forest products harvested is \$5,001 or more. The estimated FMD value is paid prior to the start of harvest operations. An additional payment or refund is made based on the actual value.

The Permittee may conduct the harvest and removal of forest products themselves or subcontract the forest product harvest. The authorized Forestry program may provide technical assistance, if requested by the Permittee, to implement the harvest.

The Permittee must provide evidence to the AO that they have arranged a bona fide sale of forest products with terms that will protect the Indian's interest. The Permittee must also provide harvest volume information to the AO and utilize approved scaling methods for all harvested material.

2.4 PREPARATION OF SILVICULTURE PRESCRIPTIONS

Prior to preparation of any silvicultural prescription, the preparer must be familiar with and follow the guidance contained in 53 IAM 9: Silviculture and its associated handbook.

A silvicultural prescription must be prepared for all areas that will be treated. The role of the silvicultural prescription is to document planned forest management activities so that future land managers may continue the schedule of planned treatments and guide the implementation of current silvicultural actions. The silvicultural prescriptions will be prepared using observations made and data collected during the field reconnaissance described earlier in this chapter.

Silvicultural prescriptions are required for all forest treatments that affect the present or long-term character of a forest stand. Forest treatments may include commercial harvest of forest products, hazardous fuels reduction (including cutting and treatment of vegetation, lopping and scattering, piling, and prescribed fire), forest development, watershed restoration, insect and disease prevention or rehabilitation, and all other treatments that will impact forest vegetation within the forest land base. The prescriptions must identify and quantify existing stand conditions and composition. It must also provide a basis describing how the silvicultural prescription will change those conditions. The prescription must specify the current and future treatments and adhere to the broad FMP silvicultural guidelines. A monitoring plan should be included as part of the silviculture prescription to assess its effectiveness and determine if it was implemented correctly.

2.4.1 Marking guidelines

Marking guidelines are prepared in advance of cruising and will be documented in the Silvicultural Prescription. See 53 IAM 9-H for additional information on marking guidelines. Trees are marked to ensure: silvicultural prescriptions are correctly implemented; only trees

designated for harvest are removed; and volume estimation is within the sampling error for appraisal and advertisement purposes.

2.4.2 Exceptions to marking in advance

Exceptions to marking in advance of harvest is allowed when the forest products are designated for removal using a designation by description (D by D) or designation by prescription (D by P) method. These methods use written instruction that the Purchaser implements based on the written description in the contract or permit provision “Designated Forest Products for Harvest”.

2.4.3 Exception to prescription requirement

The Forest Manager may decide that specific forest treatments will not affect the present or long-term character of a forest stand. These situations do not require prescriptions and may include individual hazard tree removal, small areas of salvage or if a small, forested area is being converted to a non-forest land use (e.g., housing, range, or agriculture).

2.5 HARVEST AREA ACCESS

Road access is important in determining the feasibility of a harvest and the costs associated with accessing the forest products designated for harvest. The FMP may contain a transportation plan, best management practices, and road design specifications which must be followed, as necessary.

Area access routes, road construction, and road maintenance needs must be documented in sufficient detail. This detailed information is for inclusion in a NEPA document and for appraisal purposes. Costs associated with road access, construction, and maintenance activities must be considered in addition to impacts on other resources identified in the FMP. Tables, maps, and other documentation are created to comprehensively display these access items. Tables may be particularly useful to identify locations along the roads where the activities are needed.

2.5.1 Access or transportation plan

A plan must be created for the transportation needs for the area planned for harvest. There are many parts of a transportation plan that are needed to document the needs for short-term and long-term access to an area. These include:

- Identify existing roads available for use.
- Identify main haul routes.
- Identify how the harvest area will be accessed from main haul routes and how the access will be a part of a long-term transportation plan.
- Determine the ownership entity that controls access roads and if any special permitting or fees are required.
- Once road access has been identified, determine how to get access.

- Determine distances for each type of road class and use: highways, main and secondary logging, and spur roads.
- Describe access limitations, including: terrain, environmental protection, weather, or other limitations that may affect either logging operations or season duration. The description must clearly describe any special restrictions or constraints that would limit Purchaser or Permittee access or activity.

2.5.2 New road construction

Road construction builds a necessary road to gain access to an area for harvest operations. This process involves the following:

- Identify proposed road location(s) on maps, as well as any reasonably feasible alternatives to determine the most cost-effective route.
- Consider impacts to other resources and the long-term use of the road and transportation plan.
- In the field, verify the location to determine the road's feasibility while considering constraints and unique situations.
- Determine the distance and type of construction, including road width and surface material.
- Other road improvements may be required such as: installation of cattle guards, bridges, culverts, gates, geotextiles, rolling dips, pullouts, signs, and seeding for bank stability.

2.5.3 Road reconstruction

Road reconstruction improves the standard of an existing road to make it useable for harvest operations and requires more work than just maintenance to get it ready for use during the timber sale. To determine reconstruction needs:

- Identify which road segments need reconstruction for sale access.
- Determine the distance and types of reconstruction required, and the type and amount of material that will be needed to reconstruct a road needed for the intended use.
- Identify road improvements and other requirements to enhance road use and safety that may include, but are not limited to: installation of cattle guards, bridges, culverts, gates, geotextiles, rolling dips, pullouts, signs, and seeding for bank stability.

2.5.4 Road maintenance

Road segments and distance requiring road maintenance must be identified. Road maintenance must be kept current with operations, and must be performed prior to seasonal shutdowns, major runoff periods, or as directed by the Officer in Charge (OIC).

A. Recurring maintenance

Periodic, recurring maintenance may include:

- Keeping the road surface in a smooth, rut-free condition.
- Performing dust abatement activities and methods.
- Removing any slides, rocks, or trees that fall onto the road surface or into the ditch.
- Maintaining functional ditches and other drainage and erosion control structures.
- Cleaning cattle guards.
- Other maintenance as designated by the OIC.

B. Final maintenance and activities required for sale closure

Road segments and distance requiring final maintenance for sale closure must also be identified. Final maintenance activities may include, but are not limited to: adding barriers for road closure; blading, surface replacement or spot rocking of the road surface to improve drainage; installation and cleaning of erosion control structures and cattle guards; obliterating roads; and any other final activities that will be listed in the contract or permit.

2.5.5 Permission to access harvest areas

The following documents are used to secure permission to access harvest areas. The situations in which to use each are listed below.

- **POA** – Use when lands are included in the sale.
- **Revocable Road Use Permit** – This permit may only be used when a short duration of use is required. A Revocable Road Use Permit may be to access across another ownership (25 CFR § 163.30). See also “Example 03 – Revocable Road Use Permit”.
- **Reciprocal Road Use Agreement** – This agreement is utilized where an access exchange is needed. See also “Example 04 – Reciprocal Road Use Agreement”.
- **Rights-of-Way (ROW)** – If the transportation infrastructure is desired for long-term or permanent use, a ROW is obtained under 25 CFR § 169.

A. Access across Tribal and restricted trust lands

The contract or permit provides the Purchaser access across Tribal trust lands both within and outside the sale area as needed to fulfill the requirements. This access is allowed as necessary for logging operations under the contract or permit, subject to regulation by the BIA and Tribe. Haul routes will be approved by the OIC.

B. Access across allotted lands under POA

When the approved POA for sale of allotment timber is obtained, access is granted across those allotted lands.

C. Revocable road use permit for allotted lands not under POA

If access is needed to cross lands not included in the contract or permit under POA, a revocable road use permit must be obtained. Location, maintenance standards, and payment will be applied in the same manner as for the lands within the sale area.

Revocable Road Use Permits require consent of the majority trust interest on each allotment being crossed and must be obtained for road use and road improvements on allotted lands not covered by the contract or permit under a POA. The AO may act for individual owners when it is determined that there will be no substantial injury to the land or the owner and when:

- an owner is a minor or non-compos mentis;
- the owner is “Whereabouts Unknown”;
- the ownership is an estate undergoing probate; or
- the ownership is so numerous that the AO determines it is impractical to obtain the consent of the majority.

Reciprocal Road Use Agreements are a type of Revocable Road Use Permit that is between two or more parties that allow use of each other’s roads usually without financial compensation. Maintenance requirements are documented in the road use agreement when each party uses the other party’s roads. These agreements can vary in duration and are usually a minimum of one year. The AO and each party must approve the Reciprocal Road Use Agreement to be valid.

D. Long term access

If long term access is needed through non-Tribal lands, a ROW is needed. ROW is the legal right, established by usage or grant, to pass along a specific route through grounds or property belonging to another, usually based upon an easement.

E. Access across other lands

The Purchaser or Permittee is responsible for obtaining legal access across land from which access has not been obtained or included as part of the sale area.

2.6 FIELD DESIGNATION OF BOUNDARIES AND FOREST PRODUCTS

Descriptions of the methods for the designation of forest products planned for harvested are included in Part A7 of the Estimated Volume Contract, Part A4 of the Predetermined Volume Contract, page one of a permit, or within a FPUP.

2.6.1 Boundaries

Any boundary, whether marked, man-made, or natural, must be easily visible and unambiguous. Boundaries are identified by paint, flagging, blazes, tags, signs, or other approved methods and ensure only designated forest products are harvested. Methods are described in the contract or permit and subject to approval by the AO.

A. Property

Property boundaries are the physical delineation that identifies a change in ownership. These occur between Tribal, allotted, restricted, private, and fee lands. These boundaries must be clearly marked as harvest area boundaries, even if the treatment type is the same on both sides of the boundary.

B. Cutting block

Cutting block boundaries are the exterior boundaries of where the designated forest products are planned for harvest. Generally, no forest products outside of these boundaries may be harvested unless necessary for access or safety and approved by the OIC. Tracer paint is recommended to prevent forest product trespass and ensure log accountability.

C. Marking area

Marking area boundaries are internal boundaries where the type of marking is different on either side of the boundary. For example, if the method used to designate timber for harvest changes from a leave tree mark to cut tree mark, an internal boundary would be needed.

2.6.2 Forest products marking guidelines

Marking guidelines, based on the silvicultural prescription, must be developed in advance of cruising and marking. This must be documented in the marking guide section of the silvicultural prescription. A description of trees that must be marked for cut or retention should be included. The method for designating trees for harvesting must be described in detail within the marking guidelines.

2.6.3 Quality control of marking

During the sale preparation process, a quality check is made to verify timber and boundary marking in accordance with the silvicultural objectives and marking guidelines. Any deviation from the marking guidelines will be corrected prior to harvest.

2.6.4 Mapping and area determination

Use of a global positioning system (GPS) or other accurate boundary location method to document harvest area boundaries is recommended. Accurate area data are necessary for the FOR, sale area maps, for monitoring checks during harvest operations, and when using an area-based cruise method.

2.7 VOLUME ESTIMATION FOR THE HARVEST OF FOREST PRODUCTS

An inventory of forest products is performed to estimate the quantity of forest products designated for harvest. Data must be collected in sufficient quantities necessary to estimate the volume of the forest products while meeting accuracy standards. Specific requirements are found in 53 IAM 8: Inventory and Monitoring, and the associated handbook.

Volume estimates from a cruise are required for contracts, paid permits, and SOAHPs in advance of advertisement. The AO may require a cruise for free use harvesting with a permit.

2.7.1 Forest inventory for non-timber forest products

Non-timber forest products for sale, such as tree boughs, posts, mushrooms, seedlings, treetops, and others must be estimated as practically as possible. Products may be sold by weight, count, volume, or other methods. How the forest products will be harvested and their unit of measure should be considered in order to determine the best method for estimating the quantity of forest products designated for removal.

2.7.2 Forest inventory for timber (cruise)

A timber cruise is performed to estimate the quantity of timber designated for harvest. Acceptable methods of estimating the volume of forest products must be in accordance with the procedures in 53 IAM 8: Inventory and Monitoring, or as established by the region, Tribe, or BIA agency.

A. Cruise design and description

Prior to cruising the harvest area, a cruise design must be developed and documented that is:

- not biased in plot location, sampling methodology, or other variables,
- feasible to implement,
- captures the information needed to complete an appraisal,
- designed to meet the allowable sampling error,
- cost effective, and
- resource efficient.

The cruise description may be a separate document or included in an FOR and should include the following information:

- A narrative description of the cruise design, which is descriptive enough for another cruiser to reconstruct the cruise or quality check the cruise.
- A cruise map illustrating the cruise design, such as plot location and starting point.
- Log or tree grade rules used, including species groups and diameter breaks for different products.
- Merchantability standards.
- Details for the specific cruise method used, for example:
 - Plot size for fixed radius plots
 - Basal Area Factors (BAF) for variable radius plots
 - Sampling frequency for tree based and count measure sampling
 - 3-P details for 3-P cruising
 - Number of sample points or strips

B. Cruise methods

Some acceptable cruise methods include:

- Tree-based
 - 100%
 - Sample tree
 - Classical 3-P
- Area-based
 - Variable radius plots
 - Point Sample
 - Point Count Measure
 - Big BAF
 - Fixed radius plots
 - Fixed Plot
 - Fixed Count Measure
 - Strip cruise

To aid in cruise design, pre-cruise data may be collected or stand based inventory data may be used to estimate how many samples are needed for the cruise to meet the sampling error target. Cruise methods and practices may vary depending on variation throughout the sale, harvest prescriptions, marking guidelines, and requirements determined by the region, Tribe, or BIA agency. See 53 IAM 8: Inventory and Monitoring for more information on tree measurement, cruising, and cruise design.

C. Cruise volume accuracy

Timber cruises must be designed to meet accuracy standards. These inventories require more intensive sampling than those for management planning since they are for estimating volume on distinct sale areas which are a smaller scale than forest level planning.

Cruise design, other than 100% cruises, must utilize a sampling strategy that is statistically analyzed for sampling accuracy. Accuracy of the appraisal depends on the estimated volume of timber designated for harvest from the sale area and their current stumpage rates. Errors can result in increased risk for the owner and the Purchaser. Cruises must be planned and implemented to meet the required sampling error to fulfill the Secretary’s trust obligations.

Consider current and potential when designing cruises’ future markets so that if the estimated harvest stumpage value does change, the cruise still meets the accuracy standards in 53 IAM 8 Inventory and Monitoring, and as shown in Table 1 below.

Table 1: Accuracy Standards (SE requirements) at 1 Standard Deviation for Timber Products Cruise Estimated Stumpage Values

Type of Sale	≤ \$15,000	> \$15,000
Estimated Volume Sale based on Net Volume	≤ 20%	≤ 15%
Predetermined Volume Sale based on Net Volume	≤ 15%	≤ 10%

The sampling error standards are different for estimated volume harvests and predetermined volume harvests. The error standards are lower for predetermined volume harvests since the payment for forest products is based on a pre-harvest inventory rather than post-harvest scaled products. The decrease of the sampling error standard as the estimated value increases is to reduce the risk to the owner.

Sampling error is calculated based on the net volume of the forest products designated for harvest. Analysis of the data from the cruise must generate summary statistics including sampling error. The sampling error must be determined for the entire harvest area by processing all harvest areas and generating one combined sampling error. Combining sampling errors of individual strata must be calculated using a weighted average based on estimated volume. Individual strata may have a higher sampling error, but the total sale sampling error must meet the minimum requirements. Regional offices may require higher standards, which have a lower error. If assistance is needed on cruise design, the BIA regional office should be contacted.

D. Area accuracy

Accurately calculating the harvest area for area-based cruises is important because the use of area-based cruises will introduce volume error when expanding volumes based on the estimated acres.

E. Analysis of timber cruise

Software is typically used to analyze the data collected and to calculate estimated harvest volume and cruise statistics such as coefficient of variation, standard error, and sampling error. The software must be able to either calculate the sampling error or provide sufficient statistical information to use another method to calculate the sampling error.

Most Forestry programs use publicly available software, commercial inventory software, or BIA software to process inventory data. Any of these programs may be used; however, it is required that calculated volumes are representative of local conditions and that the software calculated metrics such as volume, basal area, and trees per acre are verified for accuracy.

2.8 APPRAISAL

An appraisal is the estimate of the FMV of forest products that a Purchaser is willing to pay and a Seller is willing to accept. Contract or permit provisions and additional Tribal constraints (i.e., TERO) regulations, requirements to use Tribal loggers, etc.) placed on the buyer are considered when developing the appraisal and affect the value.

Appraisals are estimates of value by species and products, and are obtained through transactional evidence from similar sales, residual value analysis, or other approved methods. The estimated product volume and value will be used to estimate total sale value. If assistance is needed with appraisal methods or process, the BIA regional office should be contacted.

There are different types of appraisal methods; these are discussed in more detail below.

A. Residual value appraisal

A residual value appraisal is the estimate of the total value of the forest products sold minus costs incurred by the Purchaser to complete harvest operations, additional requirements of the contract or permit, and a margin for profit and risk.

Forest product value will be determined by using published market analysis information or contacting local mills or other processing facilities to determine delivered product values by species, product, and grade as appropriate. These values are then multiplied by the estimated volumes to determine the product value.

Costs considered or accounted for include, but are not limited to:

- Harvest costs, including felling, skidding or yarding, bucking, processing, hauling, and mobilization.
- Road costs, including new construction, reconstruction, maintenance, activities required for sale closure, and road use payments to owners.
- Silvicultural activity costs that are included in the appraisal include site preparation and reforestation to establish the next stand after a regeneration harvest. Activity costs also include seed collection and sowing; growing and planting of seedlings; and other sale required activities.
- Profit and risk.

These activity costs are included as a Purchaser requirement in the contract or permit, or

collected as project fees for silvicultural activities that will be completed in the future and are not the Purchaser's responsibility to complete. These costs are usually included as a lump sum or per unit of measure charge to the Purchaser.

Any other costs or deductions applicable to the sale are costs for actions not specifically related to the sale but are necessary to complete the project. Examples include rock pit development, delivery of firewood for elders, and other forestry projects.

B. Transaction evidence appraisal

A transaction evidence appraisal uses local transaction evidence of sales of forest products for comparison to determine local market rates for the forest products designated for harvest. These transactions are usually from similar sales of forest products on nearby Tribal, state, or public lands or other recent local sale information. Cost factors of the appraised sale are compared to those of the recent, similar, and local sales and the appraisal will be adjusted for notable differences. These cost factors may include skidding distance, felling and bucking challenges, road maintenance, road construction, hauling distance, volume per acre harvested, and quality of forest products.

Costs as described in the Residual Value Appraisal section above that deviate from the standard sale conditions (i.e., haul costs) and practices in the area must also be considered and adjusted to reflect current sale conditions or location.

C. Approval

The AO's signature on the FOR also approves the appraisal. If a FOR is not required, a separate AO approval of the appraisal is necessary. The approved appraisal establishes the appraised sale value and recommended rates.

2.9 ENVIRONMENTAL AND CULTURAL RESOURCES REQUIREMENTS

All projects that are a federal action (authorized, funded, or carried out by the BIA), require documentation of compliance with federal laws and regulations. The potential environmental and cultural resource impacts of the proposed harvest, post-sale treatments, and road construction and maintenance must be evaluated and documented in compliance with the requirements of the NEPA, ESA, NHPA, and any other applicable statutes, laws, or regulations. Detailed BIA NEPA guidance is found in 59 IAM 3-H: Indian Affairs National Environmental Policy Act (NEPA) Guidebook.

Environmental and cultural reviews must be conducted during the early planning stages of a project to help efficiently guide development of viable alternatives. The reviews may include assessments in addition to those identified in federal law. The review may be needed to address concerns identified by the Tribe or within an FMP or other forest planning document. Involving other resources and subject matter experts in an interdisciplinary team to perform the environmental and cultural review and assessment process will ensure the consideration of impacts on all resources and help identify management alternatives.

Federal laws must be followed to implement forest harvest activities. Tribal, BIA, or other staff develops, reviews, and/or approves documents related to the compliance of these laws:

- NHPA: Tribal Historic Preservation Officer (THPO) review and approval (if Tribe has THPO); BIA regional or delegated local Archeologist review and approval. An Archeologist initiates Section 106 consultation with the State Historic Preservation Officer (SHPO) or THPO when required (consultation is usually required for harvest-related projects).
- ESA: Tribal Fish or Wildlife Biologist review; BIA Fish or Wildlife Biologist review and approval. BIA Fish or Wildlife Biologist initiates ESA Section 7 consultation with the U.S. Fish and Wildlife Service or the National Ocean and Atmospheric Administration, National Marine Fisheries Service when required.
- NEPA: BIA Regional NEPA Coordinator review; BIA Approving Official Approval.

2.9.1 Types of NEPA documents

One of the following environmental documents must be developed for all federal actions.

A. Categorical Exclusion (CE)

The proposed action must fit one of the DOI or BIA categories to qualify as a CE. There are several CEs that may apply to harvest, post-sale treatments, and harvest-related road construction and maintenance activities. The lists that qualify for this documentation may be found in two locations:

- Departmental Categorical Exclusions: 43 CFR § 46.210 Listing of Departmental Categorical Exclusions.
- Bureau of Indian Affairs (BIA) Categorical Exclusions: 516 DM 10: Managing the NEPA Process - Bureau of Indian Affairs, section 10.5 H. Forestry.

Qualified actions may proceed after a Categorical Exclusion Exception Review (CEER) Checklist is approved. An Environmental Assessment (EA) or Environmental Impact Statement (EIS) must be prepared if any boxes on the CEER Checklist are marked “yes” - meaning that there are extraordinary circumstances - or if the AO requires it. The CEER is the decision document for a CE.

B. Environmental Assessment (EA)

This type of NEPA document details the proposed project and its goals, objectives, and concerns, outlines a reasonable range of alternatives to implement the project, details the impacts of the alternatives, and documents a recommended alternative that best achieves the goals and objectives while minimizing impacts. The NEPA review process is concluded when the EA is accompanied by a Finding of No Significant Impact (FONSI), is approved by the AO,

summarizes the selected alternative, certifies that the project complies with environmental law, and that an EIS is not required. The FONSI is the decision document for an EA.

C. Environmental Impact Statement (EIS)

An EIS is reserved for federal actions that may have a significant impact to the human environment (environmental and cultural resources). This process involves thorough study and public involvement, including publication locally and in the Federal Register. In general, BIA and Tribal timber harvest projects are designed such that an EIS is not necessary. A Record of Decision is the decision document for an EIS.

2.10 FOR AND FORMAT

All planned harvests utilizing a contract or SOAHP must have a FOR prepared by authorized forestry personnel unless the estimated stumpage value is less than \$15,000. The amount of detail per element depends on the size and complexity of the harvest. The FOR will contain an appraisal of the forest products offered for sale and the appraisal will be included as Part B of the FOR.

25 CFR §163.14(c) states in part that "...each sale of forest products having an estimated stumpage value exceeding \$15,000 will not be approved until...a report setting forth all pertinent information has been submitted to the AO." Once a FOR is submitted, reviewed, and accepted, the document will be approved by the AO prior to advertisement and execution of the contract or permit.

A FOR is not required for a contract or permit with a value of less than \$15,000, but development of an abbreviated FOR or portions of an FOR document is recommended depending on the size and complexity of the sale. See also "Example 05 - Forest Officer's Report".

The following is a format and guide for completing a FOR:

A **signature cover page** indicating who prepared, reviewed, and approved the FOR is required. Approval by the AO is required after review by the local forestry department and will be included in the Official Sale File. Approval of the FOR indicates approval of the cruise, appraisal, recommended minimum rates, and advertisement if not separately approved.

Part A – Narrative.

1. Introduction – a brief statement that includes:
 - a. General location of the sale area.
 - b. The goals and objectives of the FMP the harvest is meeting.
 - c. The total volume of the harvest and how much it contributes to the annual allowable cut as a percentage.
 - d. An overview of the local forest products market that is applicable to this harvest.
 - e. The estimated contract or permit start and end date.

2. Description of the area:
 - a. Legal description of the sale area; the boundary within which the harvest and other contract or permit activities are authorized to take place or the area where NEPA analysis of activities was completed.
 - b. Description of the cutting block areas.
 - c. TAAMS tract numbers where cutting blocks within the sale area boundary occur.
 - d. Number of acres in the harvest area by harvest type, tract number, and ownership (Tribal, allotted, or fee).
 - e. Brief history of previous forest management activities in the harvest area, including references to previous silvicultural prescriptions.
 - f. Other significant historical uses and resource values that may be affected by the harvest of timber.
 - g. Physical features of the harvest area by cutting block, e.g., slope, aspect, types of terrain, timber type, and vegetative cover.
 - h. Brief soils analysis data, productivity classes, habitat types, or other similar site data.
 - i. If areas within the sale area are designated for non-harvest, provide the basis for this designation. Some areas may be inoperable, excluded, or restricted use; include riparian areas, cultural areas, unstable slopes, non-commercial species, administratively withdrawn, or other designations.
3. Consent of owners:
 - a. Document the approval received, and the procedures used in obtaining owner consent to approve the sale. The supporting Tribal Resolution and the summary of allottee concurrence will be included as an appendix to the FOR.
 - b. A summary of approval, disapproval, and non-response must be documented for each allotment with:
 - The percent of trust or restricted and non-trust ownership.
 - The percent of trust or restricted ownership approval or disapproval.
 - The percent of trust or restricted ownership signed for by the AO; this may include an estate that is in probate, an individual that cannot be located, or non-responsive individuals.
 - c. Include a description of the process used to obtain the consent of trust and non-trust owners.
4. Timber sale access:
 - a. Provide detailed harvest area access information.
 - b. Include maps and tables identifying road locations and haul routes.
 - c. The breakdown of costs is included in Part B – Appraisal only.
5. Other land use resources and values: Describe provisions to protect, enhance, or mitigate the impact of the planned forest management activities on other resources and values, such as recreation, water quality and quantity, range, wildlife, fisheries, aesthetic, cultural, and other traditional values of the forest. Refer to the FMP to identify how the Tribe balances and prioritizes these resources and values.

6. Silvicultural Prescription: Include the silvicultural prescription including maps within the FOR, or refer to an attached silvicultural prescription in an appendix. Logging methods and any special requirements should be discussed as well.
7. Cruise information:
 - a. Summary of the cruise design and methods used, including a cruise map which may be contained in the appendix.
 - b. State the computer program used to calculate the estimated sale volume and the cruise statistics.
 - c. State the cruise met the required sampling error.
8. Appraisal summary: The appraisal summary must include, at a minimum, species or species groups, products, volume, and units of measure, recommended minimum rates, and total estimated value. These species and product groups will match the contract or permit.
9. Form of contract or permit: Identify the contract or permit form(s) used. Describe the intent and provide a brief explanation of specific provisions which change previous practice or add new, unusual, or special clauses not routinely used.
10. Maps:
 - a. Include the following maps as exhibits to the FOR or within the sample contract in the appendices:
 - Sale area maps including Sale Area and Cutting Blocks (Exhibit A).
 - Vicinity map including sale areas and transportation systems.
 - Road maps that include construction, reconstruction, maintenance, and any required closure activities (section 4 in the FOR, Exhibit B).
 - Optional inclusion of soils, fuels management, or other resource maps as appropriate.
 - Cruise maps with plot locations and harvest block boundaries.
 - b. Each map must include:
 - Legend,
 - north arrow,
 - scale or scale bar,
 - title,
 - author,
 - date of map creation,
 - tract information, and
 - appropriate constraints and disclaimers.
11. Required appendices to the FOR:
 - a. Forest products cruise outputs
 - b. Tribal Resolution(s) authorizing the sale at or above minimum prices.
 - c. Complete sample contract or permit
 - d. Advertisement and bid form or justification if no advertisement is required.
 - e. Prospectus if needed.
 - f. NEPA, NHPA, and ESA compliance documents or incorporate by reference.

- g. The Notice of Availability, FONSI, decision document, or CEER must be included in whole.
- h. Other appendices as needed.

Part B – Appraisal.

The complete appraisal and all supporting documentation are included in Part B of the FOR. The appraisal must be treated as confidential, proprietary information unless an owner requests the appraisal in writing and agrees not to provide the information to outside parties. A copy of the FOR, without the appraisal, like the Abstract of Bids, is public information and is released to anyone who requests a copy.

3 ADVERTISING, BIDDING, AND APPROVAL

25 CFR 163.14-20 provides general direction on advertising, bidding, and approval of contracts and permits. Except in the certain cases as stated in section 3.7 of this handbook, advertisements must be conducted. This chapter provides specific guidance on advertising, bidding, and approval of documents. Forest Enterprises are exempted from some of these requirements per 25 CFR 163.13.

3.1 ADVERTISING PROCESS

Sales of forest products may only be made after advertisement (25 CFR § 163.15), except as described in section 3.7 Sales without Advertisement.

3.1.1 Approval of advertisement

Approval of the advertisement will be obtained from the AO in advance of advertisement. The advertisement may be approved concurrently with the FOR or separately, in which case the bottom of the advertisement would be signed by the AO.

3.1.2 No changes to sale conditions described in the advertisement

Once the advertisement is posted, no changes to the sale conditions described in the advertisement may be made such as changes to minimum rates, harvest area, or adjustment of contract or permit dates. If changes are necessary, the advertisement must be rescinded, modified, and reissued with approval by the AO. Minor typographical errors are not considered a change.

3.1.3 Indian Preference (IP)

The advertisement may limit sales of Indian forest products to Indian forest enterprises or members of the Tribe. Bidding may also include allowances for Indian forest enterprises and/or members of the Tribe who submitted bids for the right to meet the higher bid of a non-member. IP bidding must be specified in the advertisement. IP policies are adopted by a Tribe by resolution.

3.1.4 Advertisement

The advertisement will provide basic information and instructions on the submission of bids. See also “Example 06 - Timber Sale Advertisement”. For specifics of the forest products sale, refer potential bidders to the prospectus and to the approved draft form of the contract or permit as contained in the FOR.

Items required in an advertisement include:

- Reservation and sale area name, duration of the sale, and acreage planned for harvest.
- Date of advertisement and name and title of the officer authorizing the advertisement.
- Date, time, place, and person or position to whom the bids will be submitted.

- Bid deposit and bid form requirements.
- A list of forest product species and volumes, and a statement that the volumes are estimates and are not guaranteed. Bidders are responsible for performing their own due diligence.
- If there is IP, include requirements related to the bidding process.
- A statement that the AO reserves the right to accept or reject all bids.
- A statement that the AO reserves the right to waive any technical defects of the advertisement.
- Required insurance for the Purchaser.
- Identify a contact or source for further information concerning the sale and bid submission.

Optional items that can be included in an advertisement are as follows:

- Minimum acceptable bid by product and species and unit of measurement (e.g., cord, thousand board feet (MBF), each, tons, etc.).
- Fixed price for non-biddable items, if any.
- Amount of required AP(s), if any.
- Amount or percentage for single payment or installment payments as required for predetermined volume sales.
- Minimum advance deposit (AD) balance to be maintained during the sale.
- The amount and acceptable form of the performance bond. Also indicate that the bond must be acceptable to the AO.
- Other requirements or special features in the bidding.
- Whether or not an oral bid will be conducted.
- Bidders must submit a bid deposit to participate in the oral auction.
- A statement that the AO may conduct financial investigations of bidders.

3.1.5 Advertisement duration

Advertisement distribution and duration varies based on the value of the forest products offered for sale. Table 2 below summarizes 25 CFR § 163.15(a). A reduction of advertising duration is allowed under certain conditions. The AO may reduce the advertising duration because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed duration (25 CFR § 163.15(b)).

Table 2: Advertisement Duration based on Appraised Stumpage

If the appraised stumpage or product value is...	less than or equal to \$50,000	greater than \$50,000 and less than or equal to \$250,000	greater than \$250,000
Then the Advertisement duration required is...	less than or equal to 15 calendar days	less than or equal to 30 calendar days	less than or equal to 60 calendar days

3.1.6 Forms of advertisement

Advertisements may be in the form of posters, letters, newspapers, posted on Tribal websites, or direct written communication including email or other electronic methods depending on the sale value. Sales with a value less than or equal to \$15,000 are not required to be published in a newspaper. A newspaper advertisement is required for sales \$15,000 or greater and must be made in at least one edition of a newspaper of general circulation in the locality where the forest products are located.

3.1.7 Prospectus

The prospectus is a document that is provided to prospective Purchasers to give notice of an upcoming sale and provide sale specific information beyond what is in the advertisement. Information in the prospectus is a brief and relevant summary of information that is derived from the FOR, advertisement, and contract or permit. Information in the prospectus will assist potential bidders in deciding whether to bid on the offering. See also “Example 07 - Prospectus”.

The following must be included at the beginning of the prospectus:

“This prospectus is furnished to acquaint prospective bidders with some of the requirements and features of this harvest. If its wording or meaning disagrees with the (contract or permit), the (contract or permit) is final and binding. We urge you to discuss complete (contract or permit) obligations with the forestry staff at _____ Agency (or _____ Tribal Forestry Department) in (city and state). Arrangements may be made for examination of the harvest area. No guarantee is made of the forest products volume or quality mentioned herein. You are urged to make your own independent estimates to determine your bidding decisions. Each bidder must be prepared to assume full responsibility for the success of the operation under (contract or permit) terms at the price bid.”

The following information may also be included:

- Introduction
- Name and location of the sale
- Office location
- Bid closing date and location
- Duration of the contract or permit
- Bidding procedures
- Information about how to submit a bid, species and products to bid on, species and products not available for bidding, and if there will be an oral bid.
- Harvest area access
- Unit and vicinity maps
- Unique provisions or considerations
- Cruise summary
- Designation of forest products – tree and boundary marking

- Road construction, reconstruction, maintenance, and closure
- Water quality protection and erosion control
- Planned logging systems
- Scaling requirements
- Slash and cull tree disposal
- Bid deposit
- Utilization specifications
- Payment for timber
- Advance payments
- Advance deposits
- Single or installment payments
- Periodic price adjustment requirements
- Performance bond requirements
- TERO and IP
- Requirement to submit financial status documents: “If requested, company financial status documents must be submitted to evaluate the bidder’s ability to complete the contract or permit.”
- How to obtain additional information including the sample contract or permit and bid forms.

3.2 RECEIVING AND ACCEPTING BIDS

Advertisements for the sale of forest products will state that sealed bids will be received as a bid proposal. A bid proposal is a written offer to purchase forest products and is required for all advertised forest product sales. See also “Template 02 - Bid Proposal and Instructions”.

3.2.1 Bid deposit

A deposit must be made with each bid proposal for the purchase of Indian forest products per 25 CFR § 163.17 (see Table 3 below). A dollar amount for the required bid deposit must be included in the prospectus and advertisement.

Table 3: Minimum Bid Deposit based on Appraised Stumpage Value

If the appraised stumpage or product value is...	less than \$100,000	\$100,000, but less than or equal to \$250,000	greater than \$250,000
Then the bid deposit amount required is at least...	10% of the appraised value, but not less than \$1,000 or full value, whichever is less	5% of the appraised value, but not less than \$10,000	3% of the appraised value, but not less than \$12,500

Deposits must be in the form of a certified check, cashier’s check, bank draft, postal money order, or other form acceptable to the AO and drawn payable as specified in the advertisement.

3.2.2 Disposition of deposits

The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance, will be retained pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

3.2.3 Forfeiture of bid deposit of successful bidder

Upon acceptance of a bid by the AO, the bidder will be considered the successful bidder. The deposit of the successful bidder will be forfeited and distributed to the beneficial owners if the successful bidder fails to execute the contract or permit within the stipulated period after receiving notice of bid acceptance; does not furnish the required performance bond within the time stipulated; or fails to perform the contract or permit.

3.2.4 Further claims for damages

Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or contract or permit terms.

3.2.5 Deposits held during administrative appeals

In the event of an administrative appeal of a decision to accept or reject bids, under 25 CFR § 2, the Secretary may hold such bid deposits in a non-trust suspense deposit account pending resolution of the appeal.

3.3 BIDDING PROCESS

Advertised sales must be made under sealed bids, oral bid, or under a combination of sealed bids followed by oral bids. The bidding or bid opening happens at the location identified in the prospectus.

Bid opening attendees should include the following:

- Bid Official: The Bid Official will be the Forest Officer of highest rank or their designee
- Support Staff:
 - Authorized Collector: The Forest Officer of highest rank will designate an Authorized Collector who is present to hold bid deposits (including bids received before the bid opening date), to return deposits as required, and to deposit the bid deposit of the successful bidder.

- Recorders: It is recommended that two recorders will independently calculate and record bid amounts and values. They also maintain complete and accurate records of sealed and oral bids on an abstract of bid forms. The two separate records will serve to crosscheck each other as information is entered into the bid record form and made visible to observers.
- Invitees: Tribal leaders, owners, interdisciplinary team participants, and Natural Resources staff may be invited to observe the bid opening as well as the general public to the extent space permits.

The Bid Official presents bidding procedures to the participants before the bid opening. If oral bidding will not be allowed, omit those instructions. The bidding procedures may also be distributed in writing to participants.

At the precise time according to the timepiece identified by the Bid Official, and as specified in the advertisement, the Bid Official will declare that sealed bidding has concluded. The official may conduct a five-minute countdown, given at one-minute intervals, to the cutoff time.

The Bid Official will then make introductory remarks and announce who the AO is, give general information about the sale, and explain the bid opening procedures.

The right is reserved by the AO, in the sale advertisement, to reject any bids. The Bid Official has discretion to waive minor technical defects in advertisements and bid proposals, such as typographical errors and misplaced entries.

3.3.1 Valid sealed bids

Bids will be considered valid if they meet all the following criteria:

- Submitted prior to the due date and time as stated in the advertisement.
- Sealed with all required information inside.
- Includes the specified bid deposit in a form designated in the advertisement.
- Bid submitted on the form designated in the advertisement.
- Bid is signed by bidder or their representative.

3.3.2 Non-valid sealed bids

Bids will be considered non-valid if they meet any of the following criteria:

- Bid is received later than the specified date and time.
- The bid does not include a bid for every biddable item, at or above the advertised minimum prices.
- The bid contains conditions for acceptance.
- The bid is not sealed.
- Bid does not include all required information as specified in the advertisement.
- The bid deposit is not acceptable in form or amount.

- Bid is not on the accepted bid form.
- Bid is not signed by the bidder or their representative.

3.3.3 Sealed bid opening

After the designated bid time, sealed bids will be opened, deposits and other documents examined, and any non-valid bids rejected. All valid bids will be announced, given a sequential bid number, and may be posted for display. These bids will be recorded on the Abstract of Bids by one of the recorders and verified by the second recorder. Once a bid is received, it cannot be altered or withdrawn. Oral bidding, if specified, will follow.

3.3.4 Oral bidding

Oral bidding may be a stand-alone process or may be conducted after opening sealed bids. The Bid Official will conduct the oral bidding and must specify the minimum bid increment and maximum time lapse allowed between bids prior to commencement of the oral bidding.

No oral bid will be considered unless the bidder has provided an acceptable bid deposit prior to the designated time.

The following procedures for oral bidding must be followed:

- The Bid Official will identify all bids by consecutive bid numbers in the order they are received.
- Each bid will be documented on a bid record form by the recorders.
- Bid values will be calculated, recorded on a bid record form, and posted for display.
- No bid will be considered unless it is higher than the previous bid.
- Bids must be provided by biddable species and product per unit of measure. The estimated total value of each bid is determined by applying the rates bid to the advertised volumes of the corresponding species and products. This value is used to determine the high bid.
- The display will be kept updated to show each bidder's high bid.
- The bidding will continue to give each bidder an opportunity to submit the highest bid they desire to make.
- When the bidders indicate their final bids have been submitted, or in the event no bids are received in the allowed time increment, the Bid Official will declare the bidding is closed and will announce the apparent high bidder.
- A specific, written record of each bidder's final bid is recorded on the bid form and signed by each bidder.

- The highest bid by each bidder will be included in the Abstract of Bids.

3.3.5 Announcement of apparent high bid

The Bid Official will announce the apparent high bid after the sealed bids are opened or after any oral bidding has concluded. IP bidding opportunities would then be allowed as stated below. All bids will be submitted to the AO on the Abstract of Bids form. See also “Template 03 – Abstract of Bids”.

There will be no formal acceptance or rejection of bids at this time. Formal acceptance or rejection will be by the AO. If the Bid Official waived a minor technical defect in receiving the apparent high bid, all bidders are informed of this waiver.

3.3.6 IP bidding opportunity

If specified in the advertisement, after the apparent high bid is determined, the Bid Official will follow the IP policy approved by Tribal Resolution.

3.3.7 Explanation of formal acceptance or rejection procedure

The bid deposit of the apparent high bidder and of others who submit written requests to have their bids considered for acceptance will be retained pending acceptance or rejection of the bids. All other bid deposits will be returned upon completion of information on the backs of the participant’s two bid proposal forms. One signed form will be given to the participant, and the other retained by the Bid Official.

The AO will investigate the apparent high bidder’s financial responsibility and capacity to successfully complete the contract or permit. Based on the investigation, the AO will accept or reject the apparent high bid.

If the apparent high bid is rejected, other valid retained bids submitted with the apparent high bid to the AO will be considered.

3.3.8 Abstract of bids

The Bid Official will prepare an Abstract of Bids and present the Abstract of Bids to the Forest Manager for review. See also “Template 03 - Abstract of Bids”.

The Forest Manager will recommend the acceptance of a bid or rejection of all bids to the AO for their review and approval after the close of bidding. An Abstract of Bids should contain all of the following information:

- Sale name
- Tribe or BIA agency location
- Date
- Sale volume by species and product

- Total sale volume
- Advertised minimum price per unit of measure by species and product
- Sale value at advertised minimum price by species and product
- Total sale value at advertised minimum price
- Bidder name, address, and bidder representative
- Bid number (each bidder may have multiple bids as the proceedings continue)
- Bid rate per unit of measure by species and product, if applicable
 - Sale value at bid rate by species and product, if applicable
 - Total sale value at bid rate
 - Signature block for the Bid Official and the AO

3.4 REVIEWING CAPABILITIES OF A BIDDER TO COMPLETE THE CONTRACT OR PERMIT

If the apparent high bidder has a demonstrated record of quality work on Indian timber sales or is known for contract and permit compliance and quality work of harvest operations, no further review is required. If not, the AO or their designee will review the experience and financial capabilities of the bidder to determine a bidder's ability to perform the provisions of the contract or permit and request the following information:

- Whether the bidder will log the sale or subcontract to a second party, the bidder must identify any second party by their official name or company so that a financial investigation may proceed.
- The bidder's banking information and bank contact information for a financial investigation by the AO. Request that the bidder advise their bank that the AO or their designee will be making inquiries regarding the bidder's credit line, payment record, and current loans. This sensitive information will be reviewed only by the designated officials.
- A copy of the corporate articles of incorporation, partnership papers, or company papers verifying the bidder has authority to bid, and the business entity is registered to conduct business within the state.
- The bidder's latest certified financial statement.
- A record of past performance on federal, state, or Tribal timber sale contracts or permits for a duration as determined by the AO.

The review includes contacting the bidder's financial institution regarding the bidder's credit line, payment record, and current loans. Also, it should be determined if the bidder owns or leases logging equipment or trucks, and whether there are equipment liens and who holds any such liens.

The Forest Officer checks with the appropriate federal, state, and private forestry offices regarding their past and current dealings with the bidder to determine their performance, as well as fiscal reliability and integrity. This aids in determining the capability and capacity of the bidder and their ability to take on more work or complete a contract or permit within the

specified timeframe. The apparent high bidder must not be currently debarred from federal or Tribal contracting opportunities.

The review must be completed within five business days from receipt of requested information from the bidder. After the review, a written recommendation will be made to the AO regarding bid acceptance.

3.5 ACCEPTANCE AND REJECTION OF BIDS

After review of the apparent high bidder (and if needed, any bidders that requested their bid deposit be retained), the AO will determine the successful bidder or will determine that all bids are rejected; the AO will then notify the Forest Officer of their decision. Formal acceptance, conditional acceptance, or rejection of a bid is done by letter from the AO to the bidder.

3.5.1 Accepting high bid

The high bid received in accordance with any advertisement and meeting all other requirements will be accepted unless an investigation by the AO identifies reasons for rejection or conditional acceptance.

3.5.2 Conditionally accept high bid

If the bidder is unknown, past performance has been poor, or is a new bidder, the AO may reduce the risk to the Seller and accept the high bid only if additional conditions are required of the bidder. Some additional conditions include: increasing the performance bond; increasing AD; or increasing the minimum deposit balance specified by the advertisement and prospectus.

If the conditions proposed by the AO are not accepted by the bidder, they are considered an unsuccessful bidder. The bidder has five business days to respond to the letter outlining the conditions that they are required to meet.

3.5.3 Reject high bid

The AO, having set forth the reason(s) in writing, has the right to reject the high bid if:

- the high bidder is considered unqualified to fulfill the requirements of the contract or permit; or
- there are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

If the high bid is rejected, the AO may:

- reject all bids, and the Forest Officer will notify all bidders of the decision made and arrange for the return of any bid deposits; or
- accept the offer of the next highest bidder who, at the time of the bid opening, made a written request that their bid deposit be retained pending acceptance of the apparent high bid.

3.6 NO BIDS RECEIVED

If no bids are received at the advertised bid opening time, there are two options that are available: 1) adjust the sale conditions and readvertise for a new bid opening; or, 2) have the sale ready and available for purchase for up to one year.

3.6.1 Readvertise the sale

If there is some interest in the sale, but not as it was advertised, then the sale should be readvertised. When readvertising, the following should be considered:

- Update or change sale specifications to meet the local conditions due to:
 - mill capacities and capabilities;
 - purchaser or contractor workforce capacity and capabilities;
 - market fluctuations and risk allowances;
 - change AD or AP amounts and timing of payments; or
 - other circumstances.
- Once the sale specifications are changed, reappraise the sale to update the minimum stumpage rate; then readvertise and bid as normal.

3.6.2 Potential purchaser bids within one year of scheduled bid opening

If no contract or permit is approved after the advertisement, the AO may, within one year from the day on which the bid opening was scheduled as defined in the advertisement, allow the sale of the advertised forest products. The sale will be made under the terms and conditions in the advertisement except that the cut and pay and expiration dates may be changed.

The sale must be readvertised if there are any changes in terms and conditions of the original advertisement and contract or permit other than those shown below.

When a party offers to purchase (within the one-year time frame) a sale for which no bids were received or accepted, and it has not been readvertised:

1. The potential purchaser submits a bid in writing by completing and submitting the Bid Proposal Form (BIA Form 5-5318) (or equivalent) with their bid prices and the bid deposit to the FO.
2. The Forest Officer will reappraise the sale to determine current value under the terms and conditions as originally proposed.
 - If the current sale value is higher than the advertised sale value, then the acceptable value would be based on the reappraised values.
 - If the current sale value is lower than the advertised sale values, then the acceptable value would be based on the original advertised prices.

3. The Forest Officer will evaluate the bid proposal to determine if it is acceptable, and:
 - if the bid proposal is acceptable, refer the bid to the AO for acceptance; or
 - if the bid proposal is less than the acceptable value, then the bid would be rejected.

The permit or contract cut and pay and expiration dates may be changed to meet management objectives and limitations if necessary. Consider readvertising instead if date changes would encourage other bidders.

3.7 SALES WITHOUT ADVERTISEMENT

Sales without advertisement are allowed in certain situations. Under certain conditions, contract and permit sales of forest products may be made without advertisement to Indians or non-Indians. Consent of the authorized Tribal representatives for Tribal forest products, or consent of the beneficial owners of a majority Indian interest of individually owned Indian land, is required. Approval by the AO is also required (25 CFR § 163.16(b)).

Conditions under which forest products may be sold without advertisement as defined by the CFR include the following:

- Forest products are designated to be cut in conjunction with the granting of a ROW.
- An authorized occupancy has been granted where forestland is being developed or converted for other than forestry uses such as homesites, industrial sites, or commercial development.
- An Indian Tribal forest enterprise will purchase Tribal forest products.
- Competition is impractical to secure by formal advertising procedures.
- Forest products must be cut to protect the forest from injury. This applies to sales to prevent imminent financial loss from insect mortality, wind-throw, or wildfire damaged trees.
- Otherwise specifically authorized by law.

Other conditions in which forest products may be sold without advertisement include:

- Free use harvesting is not a sale of forest products and therefore not subject to advertisement. See also section 7: Forest Products Use Policy in this handbook for details on free use harvesting under Tribal authority.
- SOAHPs may be issued if an allotment is owned by one Indian owner. The owner is issued the permit and advertisement, and sale of the designated timber is the responsibility of the owner unless an alternate agreement is made between the owner and the Forestry program.

The AO or their designee will establish a documented record of each negotiated transaction. This will include the following:

- A written determination and finding that the transaction is a type allowing use of negotiation procedures.
- The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based.
- A statement of the factors on which the approval is based, including a determination as to the reasonability of the price accepted.

3.8 CONTRACT OR PERMIT COMPLETION AND APPROVAL

Information must be entered correctly into the contract or permit form using the instructions provided with each form. Signatures must be obtained from the Purchaser and the Seller, then approved by the AO as the final signature. The date of signature by the AO is the contract or permit Approval Date. After contract or permit approval, a paper or digital version should be provided to the Purchaser, to the Tribe or BIA agency Forestry program overseeing the contract or permit, and to the BIA Office of the AO.

4 COLLECTIONS AND DISTRIBUTIONS

TAAMS is the official record for documenting financial transactions regarding contracts and permits. TAAMS allows the recording of the volume and value of forest products harvested by title tract and helps ensure that required contract and permit collections and distributions are completed and accounted for. This also makes this information available for reporting, data calls, and management decisions.

4.1 COLLECTIONS FROM PURCHASER

Except for Indian Tribal forest enterprises and free use harvesting, payment for forest products will be required in advance of cutting or other forest product removal (25 CFR § 163.22(a)).

4.1.1 Bid deposit

Details regarding acceptable forms of bid deposit are documented in chapter 3 of this handbook. The deposit accompanying the bid of the successful bidder will be credited as all or part of the first AD, AP(s), or predetermined volume payment, except when the deposit is converted to a performance bond. The advertisement or the prospectus should specify how the bid deposit will be credited. Failure of the successful bidder to sign the contract or permit within the timeframe specified in the advertisement will result in forfeiture of the bid deposit.

4.1.2 Performance bond (PB)

A PB is a monetary guarantee provided by a Purchaser to ensure performance of a contract or permit. The PB is held until all sale obligations are completed and if not, funds from the PB may be used to complete those obligations. These performance bond requirements are established in 25 CFR § 163.21 (see Table 4 below). If a sale includes fee land, the PB does not apply to those lands.

Table 4: Performance Bond Requirements

If the estimated stumpage is...	≤ \$15,000	> \$15,000 and ≤ \$150,000	> \$150,000 and ≤ \$350,000	>\$350,000
Then the Performance Bond requirement is...	≥ 20% of the estimated stumpage	≥ 15% of the estimated stumpage, but not less than \$3,000	≥ 10% of the estimated stumpage, but not less than \$22,500	≥ 5% of the estimated stumpage, but not less than \$35,000

PBs are considered “non-trust funds” and the government must be able to collect all or part of the bond according to the terms of the contract or permit and associated performance bond documents. PBs will be returned or released to the Purchaser unless otherwise specified per section 4.1.4 of this handbook.

The AO may choose to increase the required PB by linking it to the bid value rather than the estimated stumpage value. The required PB is in the FOR and advertisement. A PB from an active contract or permit may not be applied to another contract or permit unless the original contract or permit is closed, and it is allowed in the PB document.

The minimum amount of PB is determined by the estimated stumpage of the forest products designated for harvest for each contract or permit. A PB for less than \$500 is not recommended. PBs are optional for permits and sales to Indian Tribal forest enterprises at the discretion of the AO.

4.1.3 Types of PBs

The advertisement and prospectus (if applicable) will specify the types of PB acceptable to the AO. The PB must be executed by the Purchaser in the same manner and number of copies as the contract or permit; the PB becomes a part of the contract or permit by attachment and is referenced within the contract or permit. The types of PBs are as follows:

A. Corporate surety bond

This type of bond is held by a separate company to guarantee the Purchaser's performance. The surety company, by holding the bond, is responsible for paying the bond if needed. The bonding company must be one approved by the U.S. Treasury Department (<https://fiscal.treasury.gov/surety-bonds/list-certified-companies.html> and <https://www.gsa.gov/forms-library/performance-bond>).

Standard Form 25 must 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 they signed the bond. Refer to the instructions on the reverse of the form also.

B. Cash bond

This is usually a cashier's check, postal money order, or business check. Cash bonds are sent to the lockbox with a TAAMS invoice. Funds are transferred to the Non-Trust Suspense Deposit System (SDS). See also "Exhibit 01- Forestry Business Process for Detailed Procedures".

C. Irrevocable Letter of Credit (ILOC)

An ILOC may be used to secure a PB. See also "Template 04 - Irrevocable LOC Guidelines and Templates". The Template contains detailed guidelines for using ILOCs, including examples. The ILOC is secured in a location designated by the AO. A copy of the ILOC is to be included in the Official Sale File.

D. Assigned savings account

This type of bond allows the Purchaser of the forest product(s) or other entity to establish a savings account at a federally insured institution in the amount of the bond and to assign the

account to the BIA. The primary benefit of this type of bond or deposit is that it accrues interest for the Purchaser while other bond or deposit types do not accrue interest. The assigned savings account requires a written agreement between the Purchaser or other entity, savings institution, and the BIA AO, which specifies the assignment of the account to the BIA, the duration of the assignment, and the terms under which the BIA can make withdrawals. See also “Template 05 - Assigned Savings Account Performance Bond”.

E. Tribal holding account

This type of bond must be in a format that is acceptable to the AO. Tribes may collect and hold cash bonds for Tribal and allotted timber sales on their respective reservation, but the Tribe must have established procedures that specify:

- collections against or release of the PB must be authorized in writing by the AO;
- how payment is made;
- who receives the accrued interest;
- how the PB is accessed in the event of default; and
- how funds will be returned to the Purchaser or Permittee at the end of the sale.

4.1.4 Bonds from and returned to an entity other than the Purchaser

It is not required that the Purchaser furnish the bond; other entities (e.g., operators, mills) may provide these payments on behalf of the Purchaser. When the bond has been provided by someone other than the Purchaser it will be returned to the Purchaser unless the bond documentation contains the following statement:

“The performance bond has been deposited by the (name of depositor) and will be refunded to (name of depositor) upon satisfactory completion of the contract or permit. The performance bond is made on behalf of the Purchaser and is not an assignment of this contract or permit or the rights thereunder.”

4.1.5 PB waiver

The Secretary may waive the PB requirement for SOAHP, Indian Tribal forest enterprises, or timber cutting permits (25 CFR § 163.26(d) and 25 CFR § 163.21(a)). When waived, the appropriate section in the contract or permit will note: “Performance Bond is hereby waived” and cite the appropriate CFR citation.

4.1.6 Return of PBs

Upon satisfactory completion of a sale, the PB will be returned in conjunction with the sale closure letter, less any amount the AO determines is necessary to satisfy damages or unsatisfied contract or permit obligations.

4.1.7 Transfer of cash PBs

A cash PB may be transferred to another contract or permit. If the amount of the PB is less than the new contract or permit PB requirement, a new invoice will be sent to the Purchaser and payment must be received prior to contract or permit initiation. If the PB that is held is greater than the required PB for the new contract or permit, a partial refund may be made to the Purchaser prior to assigning it to another contract or permit.

4.1.8 Invoicing and types of payments

TAAMS invoicing must be used to collect payments unless another form of invoicing has been authorized by the AO. Provisions for payments and deposits are stipulated in Standard Provision B3.0, and must be clearly defined in permits that do not use the Standard Provisions and/or in situations where the standard payment process is not used.

A. Advance Payment (AP)

AP is required when forest products are harvested from allotted lands using an estimated volume contract. An AP may be required for a permit that is not paid for by lump sum or installment payments. APs are specific to an allotment or tract, are not refundable, and are immediately distributed to the beneficial owners. Payments are split and distributed as stumpage and FMD. An AP may be required on Tribal lands. The AP required is up to 25% of the stumpage value, unless otherwise authorized by the Secretary.

AP due dates are specified in the contract, are typically required within 30 days from the date of contract approval, and must be received prior to harvesting. No AP will be required that would make the sum of such payment *and* of AD and AP previously applied against timber cut from each ownership in a sale, exceed 50% of the bid stumpage values. AP must be credited against the timber of each ownership in the sale as the timber is cut and scaled at stumpage rates governing at the time of scaling. AP credits are applied to scale prior to utilizing AD balances.

If the AP on any tract exceeds the value of forest products harvested on that tract, the amount of the AP will be designated as the value of the forest products. For reporting purposes in TAAMS, the volume is recorded based on whether the tract had harvest or not.

If forest products are removed, the volume - by species actually removed - is reported, and the rates per unit will be adjusted so the total value matches the actual AP total value.

If no forest products are removed from the tract, the volume and rate per unit - by species used to calculate the AP - is used for reporting.

B. Advance Deposit (AD)

An AD is a collection that is required in advance of cutting for estimated volume contracts. An AD is used to maintain a positive balance against which the value of timber planned for harvest in the next scale period will be charged. The minimum AD request and deposit balance are

specified in the contract. The OIC must ensure the minimum deposit balance is maintained throughout the term of the contract or permit. No harvest operations may occur if the AD balance is below the minimum required. When invoicing for scale, no distribution of AD balances will take place until the AP balance is zero for the tract ownership needing payment. The DOF website contains a worksheet that may be used to determine the AD balance and to request additional AD funds if necessary; see “Template 06 - Advanced Deposit Worksheet”.

C. Single payment and installment payments

Payments for predetermined volume contract or permit sales will either be by single payment or installment payments, as specified in Part A9 of the contract or in permit special provisions.

A single payment is one payment made in advance of cutting, that is for the whole value of the contract or permit. An installment payment is when more than one payment is made in advance of cutting, on specific units or sections of the contract or permit area.

If installment payments are planned, no operations are allowed in a harvest block or sale area until payment for that block or sale area is paid in full. The contract requires the Purchaser to make payments in such amounts and at such times as called for by the OIC. Each installment payment will cover the full predetermined value of the timber in the sale, block, or tract.

Payments under this section are not AD, and no refunds or reduction in the size of the payments are made.

Scale is recorded for reporting purposes on the date specified as a payment term in TAAMS. For single payments, the contract approval date should be used. For installment payments, scale is reported in TAAMS on the date designated in the contract.

D. FMDs

These deductions must be withheld from the gross proceeds of sales of forest products harvested from Indian forest lands when the stumpage value is \$5,001 or greater for a contract or permit (25 CFR § 163.25). Additional information is found in 53 IAM 11: Forest Management Deductions and the associated handbook. These FMDs are a portion of the paid stumpage and are deposited to a Forest Management (FM) trust account or approved Tribal FM account.

4.2 DISTRIBUTIONS

Distribution of proceeds from the harvest of forest products occurs through TAAMS, unless otherwise authorized by the AO. Input of scale and the related distribution of funds is to be completed within thirty calendar days after the end of the scale period. The TAAMS interfaces with the BTFA’s accounting systems which allows crediting of the FM and Forest Project (FP) accounts. BTFA systems receive information from TAAMS, which is used to produce a beneficiary statement documenting deposits to accounts detailing the contract or permit and tract from which the funds were generated. This statement may be provided to owners.

Distributions for estimated volume contracts and permits occurs after invoices have been generated and paid. Distributions for predetermined volume contracts and permits are made as soon as the funds reach the lockbox and are matched to a corresponding TAAMS invoice.

Tribes may request direct payment of stumpage, direct payment of FMD, or both. Requests from Tribes are reviewed by the Regional Director. The Regional Director may include requirement for direct pay such as a signature on TAAMS invoices confirming receipt of direct payments.

4.2.1 Refunds to purchaser

TAAMS currently does not include functionality to return AD balances to the Purchaser at contract or permit closure. A manual process must be completed, and form SF-1034: Public Voucher for Purchases and Services Other than Personal, is used to complete the transaction. A request can then be made to the TAAMS helpdesk to correct the AD Balance in TAAMS to zero.

Bid deposit, if appropriate, and cash performance bond refunds to Purchasers also involve a manual process. Instructions for return of PB funds are entered into a disbursement form accessed from the SDS SharePoint site which submits the information to the SDS Team, which then completes the transaction.

4.2.2 Proceeds from allotments with unrestricted (fee) interests

Allotment ownership may include unrestricted (fee), undivided interests. Since the unrestricted interest cannot be partitioned and is inseparably mingled with the restricted interest, the restricted interest cannot be managed without managing the unrestricted interest in the same degree.

The Secretary is authorized via 25 CFR § 163.20 to include the unrestricted interest in a sale of the trust or restricted Indian interests in timber. The Secretary may perform any function required by the sale for both the restricted and unrestricted interests, including the collection and distribution of payments for timber and the deduction from such payments of FMDs.

A. Proof of ownership

When a restriction on an undivided interest in an allotment is removed, a fee patent is issued to the owner by the BIA's LTRO. The BIA keeps a record showing the individual to whom the original patent was issued but does not maintain records for subsequent title transfers. The patented or unrestricted interest holder is supposed to record the patent at the local recorder of deeds; however, this does not always occur.

It is the responsibility of the owner of the unrestricted interest to prove their title to the BTFA, for the purposes of receiving revenues from the contract or permit. Evidence of ownership must also be submitted to LTRO.

B. Distribution of funds

Payments for unrestricted (fee) interests are made to the owner of record until such time as other legal transfers of title are suspected or proof of new ownership is received. If the owner of the unrestricted interest is unknown or the owner is unable to supply evidence of ownership, proceeds for the respective unrestricted interest will be held in an “X” account until ownership is determined or until the BTFA disposes of the funds in accordance with their procedures.

4.3 ACCOUNTING FOR COLLECTIONS AND DISTRIBUTIONS

A detailed accounting record must be maintained for each forest product contract and permit. A spreadsheet log suffices for free use and low value paid permits. A full record of transactions is available in TAAMS using the money record function; however, it is recommended to maintain the data locally using spreadsheets, a database, or an accounting program to verify transactions. The records must contain a ledger of all money collections, disbursements, and transfers and associated forest product scale information.

It is necessary to account for the following items by each tract:

- All money collections including payments and deposits for stumpage and other items, stumpage value and volume, disbursements, and transfers.
- All forest products scale information, including species and product, unit of measure, rate per unit, volume per species and product, value per species and product, gross value per species and product, and totals for these items.
- Other items, such as collections and distributions for a cash performance bond, road use fees, slash disposal deposits, road maintenance fees, road access fees, ROW timber, gravel, reforestation fees, or log scaling service are also accountable and must be included.

Many locations utilize a monthly period to summarize scale accumulations and authorize disbursements. There are some locations that use multiple, shorter periods each month. In those cases, TAAMS allows input from the shorter periods and can accumulate the values to represent a total for the month. As logging progresses over the duration of the contract or permit, each of the monthly reports displays accumulated volume and value by ownership.

5 HARVEST ADMINISTRATION

Harvest administration is oversight and supervision of the Purchaser's or Permittee's operations so that forest products are harvested in accordance with the contract or permit terms. Harvest administration activities also ensure that resources are protected, silvicultural prescriptions are followed, and accountability is provided for the harvest of forest products. The OIC, the Timber Sale Officer (TSO), and any other personnel assigned to harvest administration must understand and enforce provisions of the contract or permit.

Frequent inspection and inspection reports, communication, and close supervision of the Purchaser or Permittee prior to and during field operations and when operating conditions or requirements change is important. This allows harvest administration personnel to communicate expectations and requirements for their operations and to document compliance with contract or permit provisions.

There are several tools that harvest administration personnel may use so the Purchaser or Permittee complies with the terms of the contract or permit, including the assessment of damages and penalties, suspension of operations, revocation, and legal claims.

5.1 HARVEST ADMINISTRATION TASKS

The AO is the responsible official for ensuring the Purchaser's or Permittee's compliance with contractual requirements. The AO delegates tasks to Forestry staff at the field level to accomplish these objectives. Examples of tasks that may be delegated to staff are described below and in the related policy, 53 IAM 3: Harvest of Forest Products from Indian Land. Note that not all locations will have a TSO or a Timber Sale Accountant (TSA), and in those cases, tasks would be completed by available staff.

The OIC is the Forest Officer of highest rank assigned to the supervision of forestry work at the Tribe or BIA agency having jurisdiction over the sale area, or their authorized representative. The OIC will review and inspect contract or permit areas as needed to ensure adherence to harvesting practices and procedures, and compliance with the contract or permit and provisions. Harvest records, including a Harvest Inspection Report or its equivalent, will be completed as needed for contracts or permits.

The TSO reports to the OIC, and reports on the status of harvest operations and Purchaser performance to the OIC. If there is not a designated TSO, the OIC performs these functions.

The TSA is responsible for ensuring that funds, money record reports, and scale data are accurate and accounted for. If there is no TSA, the TSO performs these functions.

As stated above, additional roles and responsibilities for the AO, OIC, TSO, and TSA are documented in 53 IAM 3: Harvest of Forest Products from Indian Land.

5.2 HARVEST OPERATIONS

Harvest operations are the Purchaser's operations in the field, including road clearing, maintenance and construction, cutting, yarding, hauling of forest products, and any other contract obligations, such as site prep, burning, or chipping.

5.2.1 Logging Plan

A Logging Plan is a written record that describes and documents additional information and requirements for harvest operations and other associated activities that may be required by the AO or OIC. If required, it is: 1) cooperatively prepared between the OIC and the Purchaser; 2) approved by the AO or OIC prior to the start of harvest operations; and 3) becomes part of the contract. Logging Plan updates may be required seasonally or whenever conditions change. See also "Example 08 - Logging Plan".

The Logging Plan documents the following:

- Purchaser's representative, OIC, TSO and their contact information
- Operating season and any restrictions, including seasonal closures
- Expected progression of sale activities
- Production rates and time frames
- Delivery locations and haul routes by forest product harvested
- Types and amounts of equipment planned for use
- Logging practices (i.e., directional felling, tail hold locations, ground-based, cable, and helicopter operation requirements, log suspension requirements over streams)
- Slash requirements
- Log scaling and load accountability procedures
- Request for consumer scale
- Road construction and maintenance
- Check scaling processes
- Other information required by the OIC and AO

5.2.2 Field operations

A TSO is responsible for making field visits to monitor harvest operations to ensure contract or permit compliance. This is accomplished in a variety of ways. Initial visits and frequent communication generally prevent non-compliance issues from arising.

On the ground activities include walking the sale area to:

- ensure all designated timber has been harvested and skidded, and no non-designated forest products have been cut;
- ensure harvest has not gone beyond the designated harvest boundaries;
- identify and record waste scale;
- identify and record high stumps;
- monitor skid trails for placement, usage, and remediation;

- monitor damage to residual trees;
- identify unacceptable damage to non-timber resources, and suspend operations as needed and only as necessary to prevent additional damage;
- monitor slash management and ensure work meets contract or permit provisions;
- monitor truck tickets and log accountability;
- inspect road construction, re-construction, and maintenance and ensure location and specifications are correct;
- approve landing size and location;
- ensure erosion control requirements are implemented as specified in the contract or permit; and
- assess progression of harvesting in relation to cut and pay date or permit expiration date.

Each site inspection must be documented on a Harvest Inspection Report, and satisfactory and unsatisfactory items noted and referenced to applicable contract or permit provisions. See also “Template 07 - Harvest Inspection Report”.

5.2.3 Notices to the purchaser

Notices or instructions to the Purchaser must be written, dated, and directed to the Purchaser or their authorized representative. When verbal notice or instruction is given, a written record must be made of this verbal communication and provided to the Purchaser. The OIC or their authorized representative must not state or imply agreement to a verbal modification of a contract or permit, which is not legally binding.

5.2.4 Log accountability and scaling

The log accountability procedures that the Purchaser will follow must be documented, including where forest products will be scaled and who will be scaling them.

5.2.5 Waste material

The Part B Standard Provisions require the Purchaser to remove merchantable material from the harvest area. The Log Scaling Handbook (Forest Service Handbook (FSH) 2409.11) chapter 41 includes guidance specific to scaling waste material or material that has been made waste by Purchaser’s operations. Scale of, and payment for, waste material is a required function of harvest administration for sales of estimated volumes. For predetermined volume sales, designated forest products have already been paid for and no additional charge is required; however, the OIC can require removal of this material.

A. Waste material inspections

The harvest area and landings must be checked thoroughly for merchantable pieces and damage to residual trees. Waste scale must progress with the harvest operations to inform the Purchaser of non-compliance with the permit or contract provisions and to assess the contract or permit stumpage rate in effect at the time the waste occurred, if required. The volume and value of the

waste scale will be charged in the same manner as material scaled at a mill and must be reported to the Purchaser in inspection reports.

B. Waste material penalties

Specific waste volume and penalty assessment policy and procedures may be established by each BIA agency, Tribe, or BIA region. An additional assessment of a monetary penalty may be included in the contract or permit and would be meant to stop or deter such undesirable practices.

5.2.6 Utilization inspections

Timber sale contracts and permits provide for the greatest practicable utilization of the included timber. Product merchantability specifications normally include minimum length, diameter, and net scale in percent of gross scale. Utilization checks in harvest areas should be conducted during or as soon after logging as practical. When more than incidental amounts of material meeting the product specifications have been left in the woods, the TSO must promptly notify the Purchaser in writing to remove the material.

5.2.7 Slash and cull trees

Provisions for treatment of slash resulting from harvesting operations, and the felling of cull trees, are specified in the sale contract or permit.

5.2.8 Purchaser burning of slash

If burning by the Purchaser is specified by the contract or permit as a slash disposal method, burn plans that meet all requirements will be developed in coordination with fire management personnel. These requirements include employee qualifications that meet the Interagency Standards for Fire and Fire Aviation Operations, and smoke management requirements. Approval by the AO is required prior to implementation of any burning.

5.3 ACCOUNTABILITY AND CONTROL

Movement of forest products requires specific accountability procedures for estimated and predetermined volume sales. The procedures established in the Standard Provisions Part B and by the AO must account for all products planned for removal from the sale. Forest products must maintain ownership identity from the time of harvest until the forest products are scaled, recorded, and released to the Purchaser. Specific accountability and control measures such as ticketing, branding, or painting loads are required in the Logging Plan.

Purchaser payment for designated products not cut, or cut and not removed, does not relieve the Purchaser of the obligation to meet contract or permit utilization or site treatment requirements.

5.3.1 Designation of scaling points and Log Yard Agreements

The OIC of a sale has authority, through the Standard Provisions, to designate the scaling point. Products must not be moved from the designated scaling point until they have been scaled,

stamped, numbered, recorded, and released by the OIC. Designated scaling points must be approved for receiving logs with an established Log Yard Agreement. See also “Example 09 - Log Yard Agreement”. The Log Yard Agreement will address the safety of scalers and the presentation of logs for accuracy of scaling and log accountability.

5.3.2 Log marking and branding

The OIC will require that each load be marked or branded in accordance with the Logging Plan or Standard Provisions. If a load contains logs of mixed ownership, on multiple ownership sales, each log on the load must be marked or branded to indicate ownership.

5.3.3 Truck tickets

All log loads under transport from Indian trust land under an estimated volume contract or permit must have a load ticket attached (also called woods receipt or truck ticket) or as otherwise specified in the FPUP. A load ticket or another form of evidence of legal transport may be required for predetermined volume contracts or permits. There are different configurations for the load tickets. Three or four-part load tickets are the most common configuration used, but two-part load tickets are also used. See also “Example 10 - Ticket Book”. For load ticket procedures and accountability of ticket books, see “Example 11 - Load Ticket Procedures”.

Each ticket book contains preprinted tickets consecutively numbered and stapled together. A cover may be added to the book, which lists the logger, issuing office and telephone number, book ticket numbers, contract or permit number, sale area, Purchaser, and date issued. These tickets will be returned during any shutdown and when the sale has been completed.

5.3.4 Records

Load tickets, sample scale pull-tab sheets, and other forms used to monitor and assure load tracking are accountable items. A written record must be maintained of who received the truck ticket books, the contract or permit name and number, the tracking numbers on the issued items, date of issue, and date of return. See also “Template 08 - Truck Ticket Control Record and Sign Out Sheet”.

All accountable items must be returned before sale closure, and the used portions will be maintained as part of the sale record. Accountable items such as the load tickets or load ticket books are assigned liquidated damages, if not returned, as specified in a contract or permit.

5.4 DAMAGES AND PENALTIES

Damages and penalties are monetary amounts that the Purchaser or Permittee must compensate the Seller for. They are the result of not meeting a specific provision in the contract or permit or for collection of costs for resources damaged as specified in a contract or permit provision.

When Purchaser or Permittee operations are non-compliant with contract or permit provisions, one way to address non-compliance is the assessment of liquidated damages, actual damages, penalties, and fire damage. In most cases these actions are sufficient to correct the behavior and

compensate the owner for the damage to the resource. The assessment of damages and penalties is one tool in harvest administration to change behavior; other tools are discussed throughout this chapter.

5.4.1 Liquidated damages

Liquidated damages are predetermined amounts that are paid to the owners for failure to comply with a contract or permit provision where determination of actual damages may require impractical effort or be difficult to estimate. Liquidated damages are documented in the provisions of the contract or permit. Two commonly used provisions that include liquidated damage are:

- a per stump charge for a residual stump that exceeds maximum height specifications (Standard Provisions B2.1 and B8.3); and
- an amount for not meeting a specified minimum harvest in a contract year (Standard Provisions B4.2.1 and B6.2).

Other examples of liquidated damages which could be specified include:

- a per tree charge for harvest of or damage to non-designated forest products in addition to actual damages and penalties (Standard Provisions B4.2.2);
- a specified charge for a lost load ticket or woods receipt book; and
- a specified charge for a hazardous spill.

The monetary amount for each liquidated damage is not specified in the Standard Provisions and must be included in Special Provisions or added to the detail of Slash and Cull Tree Disposal or Road Construction and Maintenance provisions. The estimated volume contract table A8(d) or predetermined volume contract A7(d) is used to summarize liquidated damages. Provisions for collecting liquidated damages for permits are included in Permit Section 6. Other Provisions.

A liquidated damage that is outside of a contract or permit is the forfeiture of a bid deposit when a successful bidder fails to consummate the contract or permit. This requirement is found in the bid proposal form.

5.4.2 Actual damages

Actual damages occur when:

- the Purchaser or Permittee completes OIC-directed work to repair, replace, or rehabilitate damaged property or resources;
- costs are billed to the Purchaser or Permittee for repair, replacement, or rehabilitation as a result of damage to property or resources from Purchaser operations where the Purchaser or Permittee does not complete the work themselves; or

- charges are invoiced against the Purchaser or Permittee to compensate the owner for loss based on calculated loss if the property or resources cannot be repaired, replaced, or rehabilitated by the Purchaser or Permittee.

Examples of actual damages include, but are not limited to, the following:

- damage to utilities, fences, roads, trails, and other existing improvements;
- damage to land or other property;
- loss of value of forest products resulting from the delay in completing required harvest activities. A liquidated damage may be identified in the contract or actual damages may be calculated (see Standard Provision B4.2.1);
- loss of growth for future stands due to delay in harvesting designated forest products (see Standard Provision B4.2.1);
- costs to replace damaged Public Land Survey System corner evidence; and
- fire suppression costs (see Standard Provision B11.6 and B11.7 and Permit Standard Provision 4.5).

5.4.3 Penalties

Unlike liquidated and actual damages which have the purpose of recovering losses or repairing or replacing property, penalties are punitive and intended to deter additional violations. Contract standard provisions include penalties for:

- undesignated forest products cut or damaged (see Standard Provision B4.2.2);
- unauthorized harvest (see Standard Provision B4.2.3); and
- unauthorized movement of forest products (see Standard Provision B4.2.4).

Provisions for some violations require an additional penalty in addition to actual damages, which may be based on the actual value. An example is unauthorized movement of forest products. Both contract Standard Provision B4.2.4 and Permit Standard Provision 3.2 require payment of double the permit stumpage rates, which is the actual value of scaled forest products plus a penalty of an equal amount. Standard Provisions B4.2.2 and B4.2.4 are charged at triple value, which is the actual value, plus a penalty of double the value. Additional penalties may be included in contract or permit special provisions.

5.4.4 Documentation

Damages must be documented in an official letter to the Purchaser or Permittee in conjunction with documentation in a Harvest Inspection Report, and be placed in the Official Sale File (see also section 5.9 of this handbook). The letter and inspection report must include details of the damage, monetary value assigned, penalties, method used in the calculation, and any action required.

5.4.5 Recording damages and penalties in TAAMS

The single stumpage value of any waste, unauthorized harvest, or products moved without authorization is reported in TAAMS as actual scale along with other products harvested. FMD is charged on the single stumpage only.

Any payment or stumpage penalty above single stumpage is reported in TAAMS as a lump sum amount as a penalty, and a specific explanation is documented in the remarks section. FMD is not collected on any payment above the single stumpage.

Any significant sale violations are included in the remarks section in the TAAMS document, Report of Timber Cut, and in the SOC. Documentation of damages and penalties should also be scanned and uploaded to the TAAMS document.

5.5 ACTIONS REQUIRING AO APPROVAL

The AO is required to review and authorize numerous actions prior to, during, and after the harvest of forest products, The AO is the local official with the responsibility to ensure BIA trust oversight. The various actions are listed below.

5.5.1 Suspension of operations

Suspension of operations is an authority given to the AO and may be delegated to the OIC. Action to suspend does not normally occur until warnings have been unsuccessful. Immediate suspension occurs if circumstances warrant; for example, when payments or deposits have not been received or if resource damage is excessive and suspension is necessary to prevent further resource damage.

Oral or written notice given by the OIC may be followed up with a written notice of suspension by the AO depending on the duration and circumstances of the suspension. The written suspension notice will state the reasons for the suspension and the conditions the Purchaser must meet before resumption of operations.

5.5.2 Resumption of operations

Authorization for the Purchaser to resume suspended operations must be in writing from the OIC or AO who suspended the operations. The written notice will describe how the Purchaser corrected the problem which caused the suspension.

5.5.3 Modifications

The conditions of sale, as set forth in the contract or permit, may be modified only by a written agreement between the Seller and the Purchaser, and must be approved by the AO prior to the expiration of the contract or permit. A request for modification must be submitted in writing by the Purchaser at least 14 calendar days prior to the expiration date and justification provided for the modification request. See also "Example 12 - Contract-Permit Modification".

When a Purchaser requests a modification, they are doing it for their benefit, usually to extend the timeframe of the contract or permit. The AO evaluates how much compensation is charged to the Purchaser, in the form of liquidated damages, to approve a modification. It is recommended to include this value in the Special Provisions of the contract or permit.

A. Elements of a modification

The modification must contain at least the following elements:

- a listing of the contract or permit name and number, previous modification(s) if any, AO's title, date approved, and the name of the Purchaser;
- modification number;
- identification of the party proposing the contract or permit modification and the reason it is being requested;
- the purpose of the modification and assurance that it is in the best interest of the owners;
- the specific contract or permit provision that is being modified and how the provision is being changed;
- a statement declaring that all other provisions of the contract or permit are still in effect;
- the effective date of the modification; and
- signature lines, with dates, for all parties.

B. Modification execution and approval

The Purchaser's, Seller's, and AO's signatures are required to execute the modification. A Tribal Resolution or other authorized Tribal approval must be obtained for modifications including a Tribally owned tract. The performance bond expiration date (e.g., an ILOC) must continue past the new expiration date.

C. Extension of time

A request for an extension of time for the performance of a contract or permit is a modification. An extension presents the opportunity to review and modify other terms of the contract or permit if needed. A modification to a contract cannot result in the duration of the contract to exceed five years. Predetermined volume contracts are recommended not to exceed two years in duration. Permits must not exceed two years in duration.

The designated staff determines whether the condition that made an extension necessary was beyond the Purchaser's control. Liquidated damages may be applied if no reasonable attempt was made by the Purchaser to harvest designated forest products during the initial contract or permit duration. Damages should be assessed for failing to complete the contract or permit harvest within the allotted time frame(s) or from the delay in the receipt of planned income.

5.5.4 Relief from cutting requirements in contracts

The cutting schedule of the contract is based on the volume designated for cutting and designated in A13 for estimated volume contracts. Requests may be initiated by the Purchaser for relief

from cutting requirements. Procedures for granting such relief have been provided in the contract (see Standard Provision B6.2.1). Relief from the minimum cutting requirements for all designated forest products will be handled as a modification of the contract.

5.5.5 Assignment and execution of interest

An assignment of interest is a transfer of all or portions of the interest and responsibility in a contract from one party to another (Standard Provision B2.11). Assignments are not allowed for permits. See also “Template 09 - Contract Assignment”.

Factors to consider will include, but are not limited to, the following:

- protection of Seller’s interest;
- identification of assignor’s interests and responsibilities;
- identification of assignee’s interests and responsibilities;
- maintenance of or issuance of a new performance bond;
- release of liability; and
- effective date of transfer.

Execution of an assignment is done by incorporating signatures of the assignor, assignee, the Seller, and AO. When provisions of the contract are changed at the time of transfer, a contract modification, which may be incorporated into the assignment, is required. A Tribal Resolution or other authorized Tribal approval must be obtained in contracts for Tribal timber. Care must be taken to ensure that the assignment does not weaken the provisions of the contract.

5.5.6 Periodic determination of stumpage rates

For estimated volume contracts that exceed two years, adjustments of stumpage rates and periodic determinations of stumpage rates will be determined by the AO. The contract instructions should be followed to complete this process. Use of this provision in the estimated volume contract is optional.

5.5.7 Revocation

Revocation of a contract or permit follows a decision by the AO that the Purchaser has continued a pattern of breaching the terms of the contract or permit, or a serious breach has occurred requiring revocation to protect the interests of the Seller. Once the need for revocation is evident, initiation of the process must begin immediately. Revocation will address title and ownership of harvested material not removed from the sale area, equipment not removed, unresolved contract or permit obligations, and other items determined by the AO.

A. Written notice to Purchaser

The process is initiated by written notice from the AO to the Purchaser describing the breach or failure to perform. It further stipulates that all rights of the Purchaser under the contract or permit are revoked, and that the Purchaser is liable for such damages as may be determined. It is

recommended that the regional forester and Solicitor's Office be consulted for assistance in the preparation of the formal notice to the Purchaser, preparation of a claim against the Purchaser and the surety who provided the performance bond under the contract or permit, and for subsequent action concerning the timber.

B. Establishment of damages and preparation of claim against Purchaser

The procedures used to calculate damages must be clearly documented and preserved for the record. Establishment of damages will be in accordance with Standard Provision B2.13.

5.5.8 Termination

Contracts or permits may be terminated at any time by written agreement between the Seller and the Purchaser. A termination agreement must be developed that documents the outstanding obligations of the Purchaser for the contract or permit and any compensation due to either party. Termination agreements must be signed by all parties and are not effective until approved by the AO.

5.6 DISPUTES AND APPEALS

Standard Provisions in contracts and permits provide guidance for contract disputes of AO decisions. Disputes are settled at the lowest possible level and contract disputes follow the procedures provided in the contract. The Solicitor's Office may be consulted early in the dispute process to obtain guidance and assistance. This guidance may help keep the dispute from escalating into an appeal situation.

Appeals are a written request for review of an action or the inaction of the AO that is claimed to adversely affect the interested party making the request. Standard Provisions in the contracts and permits provide guidance for appeals. When any actions as described in section 5.5 Actions Requiring AO Approval have the potential for appeal, the Purchaser or Permittee must be given a notice of the right to appeal (Refer to 25 CFR § 2).

5.7 REPORTS

Various reports are needed to document the activities related to the harvest of forest products. These reports are discussed below.

5.7.1 Inspection Report

An Inspection Report is used to document contract or permit operations with detailed notes that identify areas or activities that are compliant or deficient with the terms of the contract or permit and Logging Plan, as well as to document progress. An Inspection Report must be completed a minimum of once per week when the sale is active. See also "Template 07 - Harvest Inspection Report".

These reports will reside in the Official Sale File and are valuable during discussions with the Purchaser and/or for possible legal proceedings. Inspection Reports are signed by the Purchaser,

Permittee, or their authorized representative, and the OIC or TSO. Copies of the report should be distributed to the Purchaser and retained in the Official Sale File.

When documenting deficiencies or non-compliance of Purchaser's operations, the applicable contract or permit provisions should be referenced. If deficiencies or non-compliance were documented during previous inspections, any follow up site visit to determine if the matter has been corrected or continues must be documented in subsequent Inspection Reports. The Purchaser or Permittee must be provided with copies of the reports so that deficiencies or non-compliance are documented.

Non-compliance is when the Purchaser or Permittee has violated a provision of the contract or permit. Deficiency is a type of non-compliance that occurs when the Purchaser or Permittee has not met timelines or production schedules as specified in the contract or permit.

5.7.2 Reports for recording and reporting volume and value

Reports used for recording scale information are listed below. Use of electronic versions or alternate forms are allowed if they contain equivalent information. These forms contain information that is entered into TAAMS. Scale must be reported in TAAMS each reporting period, as well as on a monthly basis (at a minimum). The reports are also included in the Official Sale File at the end of the sale.

A. Scale Sheet and Summary

The Scale Sheet is used to record forest product species, diameter, and volumes at the time of scaling, including waste and penalty scale for each load or for all volume if only a few pieces. The Summary Sheet may be used to summarize data from multiple scale sheets for a scale period. See also "Template 10 – Scale Sheet and Summary."

B. Scale Report

A Scale Report is required when scale for forest products is entered during a reporting period. After scale data is entered into TAAMS, a "Preliminary" Scale Report is generated for review prior to invoicing. Running an "Actual" Scale Report finalizes the scale for reporting purposes. The "Actual" Scale Report form signatures are optional unless required by the AO. A copy of the "Actual" Scale Report is placed in the Official Sale File and a copy is provided to the Purchaser.

A Scale Report is completed for each individual tract and may require combining or assigning volume from different cutting blocks to present tract specific information. The report shows the volume and value of scaled timber charged to the Purchaser for the scaling period. It is specific to species, product, price, and value, and carries over the total data from previous reporting periods. The last page of the Scale Report is a summary of all tract information for the sale to date and includes value cut, FMDs, other charges and collections, payments, and balances for AP and AD.

See also “Template 11 - Scale Report” for the template and instructions for completing the Scale Report.

C. ROTC

This report is generated monthly and documents volume and value of timber by species, type of forest product scaled, scale previously reported, and the accumulated totals for all tracts in the contract or permit. It also documents the total of all payments and deposits received from the Purchaser, deductions for timber scaled, timber cut but not scaled, and the balance of payments and deposits. See also “Template 12 – Report of Timber Cut”.

This report may be manually generated in TAAMS at the end of each calendar month that forest products are scaled, or AD or AP are received, starting with the first month in which forest products are scaled. No report is generated if there is no volume scaled or payments received during a calendar month.

“Preliminary” or “Actual” reports are created depending on the situation. A “Preliminary” ROTC is created when scale has not been finalized for the monthly period. An “Actual” ROTC is created when scale has been finalized for the monthly period.

D. Timber Money Record

The Timber Money Record is a ledger documenting volume and value of timber harvested, Purchaser payments, balance of funds, and disbursements. This report (i.e., record) is viewed in TAAMS, or can be printed. In addition, an individual Timber Money Record on a spreadsheet can be maintained to track payments and disbursements for comparison to the TAAMS record to confirm accuracy. A copy of the final Timber Money Record is placed in the Official Sale File after the sale is closed.

E. SOC

The purpose of this form is to summarize sale information to close the contract or permit. The SOC contains a summary of the volumes and values by species, product, and unit of measure, and a summary of the distribution of funds by FMD, amount paid to the Seller(s), and amount collected for project specific items. A SOC is created for all tracts combined, and additional SOC pages are added for each allotment tract.

The SOC is not signed until the entire contract or permit has been completed. Once signed by the Purchaser or Permittee, the OIC and AO can then sign the document. By signing the SOC:

- the Purchaser or Permittee surrenders all rights under the contract or permit, and requests release from further obligations;
- the OIC is attesting that they have inspected the sale area and have determined that all contract or permit requirements have been met, and is recommending that the Purchaser or Permittee be released from further obligations; and

- the AO certifies all timber has been accounted and paid for, and officially closes the contract or permit, thereby releasing the Purchaser or Permittee from further obligation.

The SOC will include a Summary of Operations page for sales with multiple allotment tracts or when there are Tribal and allotment tracts. This page will provide species volumes and values by product, unit of measure and ownership type, Tribal and allotted, along with the summary distribution of money. See also “Template 13 - Statement of Completion and Summary of Operation”.

5.8 CLOSURE OF PERMIT OR CONTRACT

A SOC is required for contracts and SOAHPs. SOC's are also required for paid permits that require a performance bond and may be required for other permits as directed by the AO. If a SOC is not required for a paid permit, a certification letter from the OIC should be sent to the Permittee that documents that all permit obligations have been completed. The letter should include a summary of the total volume and value harvested, and information concerning the disposition of any remaining AD funds and the performance bond, if applicable.

Once the SOC is signed by the Purchaser, OIC, and AO, the AO will notify the purchaser in writing that they are relieved of any further liability under the contract. The letter to the Purchaser must include the following language (use words in parenthesis as appropriate):

“You are hereby notified that the Approving Officer of the _____ Sale area, Contract No _____ has relieved you (and your surety) of any further liability under the contract arising after _____. (A copy of this letter of notice is enclosed for you to forward to your Surety.) A Copy of the Statement of Completion of the Contract is enclosed for your records (and that of your surety).”

5.9 OFFICIAL SALE FILE

The following section identifies documents which are in the Official Sale File. The Official Sale File is the record of all sale actions and activities from presale through sale closure. One consolidated file contains all documents for ease of review and documentation. This file may be set up in a digital or hard copy format. The AO is responsible for ensuring these records are maintained; however, daily recordkeeping is generally delegated to the OIC, TSO, or TSA.

Management of the file folders and records created for each sale is designed to provide easy access to all relevant information and follows federal guidelines for records management. Records are created and may be held in several different locations that will be organized into one “Official Sale File” upon completion of the sale.

Official Sale Files are organized into six subdivisions, and documents are organized in a standard order or sequence. Each subdivision is organized in chronological order so that the oldest documents are the first filed, and the newest document is on top. Documents in this file that require signatures are originals except for inspection reports, and collection and distribution documents.

Permits are generally low complexity, low value harvests that do not require the same level of documentation as higher value and complexity harvests. The Official Sale File must contain information that is relevant to development and implementation of the permit and the disposition and payment of forest products in sufficient detail for accountability purposes. Some of the items listed below are not needed in all situations.

The file cover and label must include:

- Contract or permit number
- Contract or permit name
- Approval date
- Expiration date

Subdivision 1 - Pre-sale documents:

- Permission of owners, including signed POAs for allotments and a summary of attempts and results. For Tribal lands, a copy of the signed Tribal Resolution or other approval.
- FOR, including all referenced appendices and maps.
- Advertisement information, including a list of who the advertisement was sent to, a copy of the bid package, and evidence of advertisement.
- Prospectus
- Bid information, submitted bid forms, signed abstract of bids, and bid acceptance letter.
- Harvest preparation checklist
- Record of negotiated transactions, including documentation of the process used, who was involved, and the outcome of the negotiation.
- NEPA documentation, including a copy of the decision document (CEER for a CE, FONSI for an EA, or a ROD for an EIS).
- Other correspondence or documentation prior to sale approval.

Subdivision 2 - Contract or Permit Documents:

- Approved contract or permit, including a copy of the Part B Standard Provisions, all maps, and exhibits.
- Subsidiary contracts
- PB, including copies of all documents, where the original documents are held or deposited, and amount.
- Logging Plan
- Correspondence, including all correspondence with the Purchaser that occurs after the bid acceptance letter.
- Approved modifications
- SOC and Summary of Operations Document, including fully signed reports.

Subdivision 3 - Inspection Reports:

- Inspection Reports, including reports completed and signed by the Purchaser, Permittee, or their authorized representative and the OIC or TSO.
- Maps detailing progress and deficiencies by date.
- Documentation of how inspection report information is provided to the Purchaser.

Subdivision 4 - Accountability Information:

- Truck ticket book issue and return evidence, including a summary spreadsheet that details all ticket books issued with the ticket number range, and the return of used books and unused tickets and by whom.
- Truck ticket book information, including load ticket and weight tickets for low volume sales. Larger volume sales can include a companion folder for all truck ticket receipts and weight tickets.
- Log scaling information, including BIA, Purchaser, or third-party scale. Any log scale comparisons, formal check scales, or verification of assigned weight factors.
- Sale-specific log yard or scaling agreements.
- Consumer scale agreement.

Subdivision 5 - Scale reports and Collection and Distribution Documents:

- Invoices generated in TAAMS or another source, and invoices to collect non-trust funds for bid deposits and cash performance bonds.
- Scale Sheets and Summary
- Scale Report for each tract term. Minimum requirement is monthly during periods of sale activity.
- Monthly ROTC manual money movement. Manual processes that are used include the following situations: AD refunds to Purchasers (using SF-1034 Public Voucher for Purchases and Services other than Personal), and Intra Bureau Cash Transaction Authorization (BIA-4285) showing movement of funds between trust accounts.
- Timber Money Record (created in TAAMS). A final ledger may be printed for inclusion in this file.

Subdivision 6 - All Other Sale Related Information:

- Purchaser or Permittee information, including FBMS Customer Request Form, W-9 (Request for Taxpayer Identification Number and Certification), and the Non-Trust Transaction Process Suspense Deposit Record.
- Documentation of communication with beneficiaries, including documentation regarding distributions or other discussion with beneficial owners.
- Documentation of communication with other Federal Government agencies (other than documents regarding NEPA (i.e., ESA correspondence including determinations)).
- All internal correspondence and communication that pertains to money collections and distributions, as well as any communications with BTFA.

- Unofficial worksheets or calculations, including documents that add valuable information not captured elsewhere.
- Any other relevant information.

Contracts or permits with large amounts of documentation may require creative alternatives for folder organization. For example, scale, truck, and weight tickets or sale documentation could be divided into two folders, or one for pre-sale and one for harvest operations.

If records are organized in ways other than those noted in this handbook (i.e., the six-part folder guidelines discussed above), then a Table of Contents that details where sub-sections and documents may be found should be included, and files labeled as 1 of 3, 2 of 3, 3 of 3, etc. The Table of Contents is in the front of the first sale folder for easy reference of subdivision content.

5.10 TAAMS

A forestry document must be created in TAAMS for all contracts and paid permits, except a summary permit entry may be made for low value paid permits and free use permits.

Images of the following sale information must be uploaded into TAAMS for contracts and permits:

- approved contract or permit;
- approved modifications; and
- approved SOC.

Regions provide guidance to TAAMS users on how to create forestry documents in TAAMS and enter data into the documents within TAAMS. Recordation of forestry documents is not required unless a document is modified. In that case, it must be recorded prior to the modification.

TAAMS has no record of manually moved money, therefore, within a TAAMS forestry document, all manual money movements are documented with a reference under the Remarks tab.

Regional TAAMS business rules, if developed, may require and provide additional direction for TAAMS processes and procedures. For additional information on using TAAMS, see the TAAMS Forestry Document Training Guide at the TAAMS SharePoint site at:

<https://doimspp.sharepoint.com/sites/bia-taams-system/SitePages/TAAMS%20Manuals.aspx>.

6 SCALING

Scaling of forest products is the determination of the volume of forest products, and is used as the basis for payment for estimated volume sales. Scaling may include, but is not limited to, the following volume determination methods: Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, sampling, or any reasonable method approved by the AO.

Products presented for scaling in other than sawlog form must be measured as provided for in the contract or permit. A record of scaling volumes must be maintained as described in chapter 5 of this handbook. Additional guidance includes:

- For Scribner log scaling, the National Forest Log Scaling Handbook (FSH 2409.11 is the most recent version) has been adopted as the standard BIA log scaling handbook.
- BIA regions and agencies, or Tribes that use cubic scaling, use the Cubic Scaling Handbook (FSH 2409.11a is the most recent version) as the reference for cubic scaling.
- The BIA may supplement or amend FSH 2409.11 or FSH 2409.11a procedures to account for local or regional scaling requirements. These supplements or amendments must be approved by the AO prior to implementation.
- Forest products may be scaled by BIA, Tribal, or third-party scalers as authorized by scaling agreements and incorporated in the contract or permit. Third-party scale refers to the scale of forest products by a party other than the BIA, Tribe, or their representatives which may include consumer scale by a mill and scaling by an acceptable scaling organization.
- Additional information regarding scaling as a part of contract compliance is found in Standard Provision B7.0 Scaling.

6.1 SCALING UNITS

Forest products must be reported as a combination of species, product, volume, and grade as defined in the contract or permit. Units of measure (e.g., MBF, cord, piece, ton, cubic feet, gallon, pound, load, etc.) used to quantify volume are specified in the contract or permit. The units of measure will allow for the measurement of other forest products like gravel, boughs, ferns, poles, maple syrup, cones, etc., which may be harvested as part of a contract or permit.

6.2 MEASUREMENT METHODS

Forest products can be measured in a variety of ways to allow for the accounting of trust resources removed from trust lands as discussed below.

6.2.1 Log scaling

Volume is determined by using a scale stick, tape, or other measuring tool or technology(s) to measure diameters, lengths, and dimensions of defects in individual logs to determine gross and net scale. Log scaling is done by either board foot or cubic scaling.

A. Board foot scaling

Board foot scaling is the determination of the gross and net volume of logs by the customary commercial units for the product involved and is reported in Scribner Decimal C scale (per FSH 2409.11).

For estimated volume contracts and permits, the contract or permit provisions must be supplemented with the appropriate log scaling rules which provide standard instructions for volume determination. The use of FSH- 2409.11, including revisions thereto; Official Rules for Log Scaling and Grading Bureaus; and other rules authorized by the AO, must be specified in contracts or permits.

Predetermined volume contracts and permits and free use harvesting permits do not require the scaling of harvested products because volumes and values are reported for these permits prior to implementation.

B. Cubic scaling

FSH 2409.11a is the standard reference for cubic foot scaling when determining the quantity of forest products such as logs, poles, piling, and small roundwood in customary commercial measurement units such as cubic foot volume, linear feet, cords, number of pieces, and stacked solid cubic foot volume. Any BIA agency or Tribal program that plans to offer sawlog products for sale utilizing cubic scale and product values must have an approved BIA procedure in place prior to sale approval or advertisement, if applicable.

6.2.2 Sample scaling

Sample scaling may be utilized for log scaling if it meets BIA agency, Tribal, or BIA regionally established guidelines for accuracy. Sample scaling specifications including frequency must be described either in the contract or permit, or in the Logging Plan. Sample scaling is statistically sound and is less expensive than 100% scaling. This method is most applicable when the harvested forest products are generally uniform in species, grade, and amount of defect.

If truckloads of logs are being scaled, then load volume will be the sampling unit. Load variability, individual species volume, value of forest products, and acceptable sampling error all influence sample frequency, but total sale volume by species usually has the most influence. Lower volume sales will be sampled more intensely than larger volume sales.

Acceptable sampling error in percent is the difference between a sample estimate of total sale volume and the volume that would result from 100% scaling, divided by the estimated total volume. Sampling error must not exceed 2% at a 95% confidence interval. See also “Exhibit 03 - Sample Scale Frequency Calculation”.

6.2.3 Weight scaling

Weight scaling may be used where log measure scaling is not necessary or practical. Weight scaling is used to sell forest products, when grade and sort are not considerations, by weighing every load and is a simple, consistent, and accurate way to measure wood fiber. Sale of forest products by weight from a consumer's scales may be made only from currently certified scales and are subject to periodic examination by a bonded or licensed inspector (e.g., a state inspector).

Considerations for conversion of weight scale to volume: Although weight provides an efficient basis for selling forest products, the weight per unit of volume can vary greatly depending on species, uniformity in size, seasonal conditions, defect, and site. BIA regions or agencies may formulate a policy that specifies the acceptable weight conversion for a given species and forest product for a given locality, season, or geographic region within their jurisdiction to ensure that all trust owners receive appropriate compensation for their forest products. The AO's responsibility is to ensure that the conversion factor is reasonable, and to recommend changes to the policy if it is not acceptable.

6.2.4 Other scaling

Other marketable forest products (e.g., bark, roots, branches, boughs, cones, vegetation, maple syrup, berries, wild rice, mosses, nuts, herbs, gravel etc.) may be sold utilizing different measurement methods such as per gallon, piece count, load, etc. and the methods for volume determination will be specified within the contract or permit.

6.3 SCALER QUALIFICATIONS

New employees with scaling duties must have a training plan, be mentored by experienced personnel, and be certified as a Production Scaler before scaling on a regular basis for payment. All BIA and Tribal Production Scalers must attend training courses or workshops on scaling to enhance and refine their skills. BIA and Tribal scalers who scale forest products for payment or as part of their duties must pass the check scale requirements of the BIA as discussed below. The scaler qualifications and certification standards offer sound procedures for any jurisdiction to ensure their log scaling procedures and staff abilities meet minimum standards; however, the BIA agency, BIA regional, or Tribal forester may adopt standards more appropriate to the product types and values of forest products harvested within their jurisdiction.

6.3.1 Scaler certification

The use of a certification system ensures that individuals have the appropriate knowledge and ability to perform accurate and consistent scaling, and to provide a level of quality assurance regarding the scaling program.

All BIA or Tribal personnel who estimate the volume of sawlogs and non-timber forest products removed from or waste remaining on Indian trust lands must have complied with the requirements for the appropriate level of certification. The forester of highest rank at the BIA agency or Tribe will maintain individual training records and must ensure that scalers under their administrative control are properly certified.

6.3.2 Scaler certification levels

There are three levels of certification: Utilization Scaler, Production Scaler, and Check Scaler. Scalers must be certified at the appropriate level prior to assignment of scaling duties. Certification for the Utilization Scaler and Production Scaler will be by a Check Scaler or regional forester. Check Scalers will be certified by a BIA AO. BIA regions may also require a certification test. Recertification must be completed at least every two years.

Scalers must be familiar with scaling procedures through their local policies, experience, and education. If scalers from one BIA agency or reservation scale for another BIA agency or reservation, then a written agreement must be developed and put in place before scaling occurs. The minimum elements of the written agreement include: Log Yard Agreements, data transfer, compensation, and other specifications pertinent to the project.

More specific information on scaler certifications is discussed below.

A. Utilization Scaler

This certification level is for people who perform incidental scaling of waste material in conjunction with harvest administration, and occasional scaling of minor amounts of sawlogs or non-timber forest products. All sale administrators and harvest inspectors must be certified at this level. Minimum qualification standards include:

- Attend a classroom or field review of scaling methods, utilization standards, and merchantability specifications.
- Demonstrate the ability to manually record and maintain scaling records, and the ability to use automated data entry equipment used for recording scale and defect.
- Demonstrate an adequate understanding of scaling principles and the use of log rules to determine gross and net volumes of merchantable material left in the woods by successfully completing a field comparison with a Production Scaler or Check Scaler. If applicable, log grades or other quality determinations may be required.

B. Production Scaler

This level is for those individuals who determine volume of sawlogs or non-timber forest products on a regular basis. Production Scalers can provide training and certification for Utilization Scalers. In addition to Utilization Scaler qualifications, the following additional qualifications are required:

- Must have scaled a minimum of 200 logs under the direct supervision of a Check Scaler or more experienced Production Scaler designated by an AO.
- Demonstrate ability to accurately record and maintain scaling records, processing of scale data, and pass all check scales.

- Pass an annual check scale.

C. Check Scaler

Duties of a Check Scaler will normally include certifying Production and Utilization Scalers, recommending modifications to the scaling handbook and manual, establishing certification and education requirements, certifying scaler training, conducting check scales, and reviewing and recommending changes to log rules or other measurement systems. Individuals must meet all qualifications for a Utilization and Production Scaler, and must also meet the following qualifications:

- Demonstrated continuous scaling proficiency and capability for assignment to any production scaling situation.
- Must have 12 months experience scaling at the Production Scaler level.
- Must be recommended by a Check Scaler and supervisor for certification, and be approved by the AO through appropriate written documentation.

6.4 THIRD-PARTY SCALING

Third-party scaling is when an entity that is not BIA or Tribal staff completes the scaling. Third-party scalers may be any of the following groups: Scaling Bureaus, U.S. Forest Service (USFS), Bureau of Land Management (BLM), state, or other local government scalers.

A third-party scaling agreement between the BIA and a third-party scaling group must be approved prior to the third-party scaling of forest products. The agreement must specify the appropriate rules, methods, and reporting requirements for scaling. The agreement must also include check scaling requirements and corrective actions for unacceptable check scales and violations of scaling agreement requirements that correspond to requirements in section 6.7 Check Scaling of this handbook. See also “Example 13 - Third-Party Scaling Agreement”.

Third-party scalers have their own standards for certification and conduct their own check scales of their employees. However, the BIA must also conduct periodic check scales of third-party scalers. Periodic check scales are the responsibility of the OIC to ensure scaling accuracy.

6.5 CONSUMER (MILL) SCALE

Consumer scale is scale for payment of forests products by the receiving mill and should only be used when deemed necessary by the Tribe or BIA. Authorization of consumer scale by the AO is required prior to consumer scaling of forest products.

Consumer scale generally applies to mills that purchase raw material from independent contractors, and whose scale is subject to periodic examination by a federal, Tribal, or state licensed scaler or state bonded inspector. It can also apply to mills that purchase forest products. Consumer scale of forest products measured in units other than weight is not recommended

unless appropriate checks and balances are documented in an approved consumer scale authorization form. See also “Example 14 - Consumer Scale Authorization”.

Periodic checks are the responsibility of the OIC to ensure scale ticket accountability, scale accuracy, and that weight scales used are certified by a responsible agency or authority. A list of consumers having certified weight scales is kept at the BIA agency or Tribal office.

6.5.1 Scaling by a consumer who is not the Purchaser

If scaling will be done by a consumer who is not a Purchaser, then a consumer scale authorization must be approved prior to implementing the consumer scale. The OIC evaluates the consuming mill and recommends approval to the AO if the consuming mill may act as a scaling agent. The past performance of the consuming mill is evaluated, and any history of unacceptable performance may warrant declination of the agreement. The agreement must specify the unit of measure and conversion factor that the consuming mill will use.

6.5.2 Scaling by the consumer as the Purchaser

When the Purchaser or Permittee is also the consumer or mill, an addendum must be approved. The agreement requires that an independent producer must cut and skid the timber for scaling and that the basis for payment between the two parties will be by volume. See also “Example 15 - Addendum to Consumer Scale Authorization”.

6.6 SCALING MATERIAL LEFT IN THE WOODS

Waste material is any material left in the woods or decks and includes all material as defined in Standard Provision B7.8 Waste Material and in Standard Provision B6.4 Damaged Timber. This material must be paid for as specified under Standard Provision B4.0 Rates of Payment or Permit Provision 3.2. This is for recovery of actual single stumpage value plus a penalty of single stumpage value; additional damages or penalties may be specified in Part A of the contract. Permit Standard Provision 3.2 specifies a penalty of double the single stumpage value. This does not apply to predetermined volume sales.

For estimated volume contracts and permits, merchantable material, which is designated for removal but was not removed, is billed to and paid by the Purchaser. The material may be required to be removed and penalties above single stumpage may apply.

6.7 CHECK SCALING

The purpose of check scaling is to ensure accurate, consistent, and uniform scale of forest products. Check scaling that meets established standards helps to ensure that the owner is properly compensated for their forest products. Check scaling is used to evaluate individual and organizational scaling performance, and to determine corrective actions or future training needs. Check Scalers must be aware of compensating errors which could be evidence that the Production Scaler needs further training. The objective is to check scale a minimum of five percent of total annual production volume scaled by each Production Scaler through a mixture of announced and unannounced check scales.

6.7.1 Training

Each BIA region will provide log scaling training as needed. At least one log scaling training per year is recommended at regions that use BIA or Tribal scalers and have active estimated volume sales.

6.7.2 Scaler variance

The acceptable scaler's variance from the Check Scaler's volume on gross scale is plus or minus one percent (1%) unless otherwise justified by the excessive incidence of unique defects caused by fire, etc. A variance of up to five percent (5%) is acceptable on net scale volumes depending on the Check Scaler's defect, as described below:

- If the defect calculated by the Check Scaler is 10% or less, the scaler's allowable variance of the net volume is two percent (2%) or less.
- If the defect calculated by the Check Scaler is greater than 10%, the scaler's allowable variance of the net volume is the Check Scaler's calculated defect multiplied by 0.2, as referenced in FSH 2409.11, Part 64 - Standards.

BIA regional offices may supplement these standards to allow for difficult or unique scaling situations. Check scaling includes all procedures used for verifying accuracy of timber product measurement. A check scale report, periodic or annual, is prepared that includes a narrative description of the procedures used and results obtained.

In addition, other accuracy standards may be implemented for species identification, special product identification, ownership identification, and log quality/grade. Standards may also be developed for minor forest products, truck weight scale, and truck sample weight/log scale. A check of scaling procedures must also verify the accuracy of the final output when data recorders and computer programs are used to record and compile scale. Key punch errors are considered errors; it is the scaler's responsibility to ensure the accuracy of the data.

6.7.3 Check scale performance

The following performance rating policy is the standard unless a separate policy is adopted. Each BIA region, BIA agency, or Tribe may develop their own check scale policies and procedures and have them approved by an AO.

The scaler's performance may be reported as acceptable, conditionally acceptable, or unacceptable.

- *Acceptable scale* meets the standard for allowable variance as described above.
- *Conditionally acceptable scale* meets the net standard only or meets the gross and net standards because of unacceptable compensating errors.
- *Unacceptable scale* fails to meet the net standard.

Other standards in rating scaling performance may make these rating levels more difficult to determine.

Two unacceptable check scales in succession is sufficient reason to remove a scaler from scaling duties or revoke certification. Utilization and Production Scalers demonstrate their scaling ability by passing at least one check scale per year at the acceptable level.

If possible, BIA and Tribal scalers are certified before scaling timber for payment. Arrangements are made for a Check Scaler to provide quality control checks.

Third-party scalers have their own standards for certification and conduct their own check scale of employees; however, the BIA must also conduct periodic check scale of third-party scalers. Agreements between the BIA or Tribe and scaling organizations detail responsibilities and corrective actions. A final decision by the AO must be made when unsatisfactory performance occurs. Periodic checks will be carried out by the OIC to ensure scale ticket accountability and accuracy of the scaling.

6.7.4 Check scale recommended Special Provisions

This section provides example check scale guidance, which may be included in the Contract Special Provisions, Logging Plan, or scaling agreements as discussed below:

- A minimum of 200 logs or a gross scale volume of at least 20,000 board feet is required for all check scales.
- If the check scale is outside the variance discussed in section 6.7.2 Scaler variance (above), an adjustment to the recorded scale will be made.

Scaling adjustments are made, by species, either up or down, for the checked loads only unless other specifications are made within the contract or permit to adjust additional loads.

- If the Purchaser requests a check scale, all log loads in question must be held intact as scaling units for verification and scale by the designated Check Scaler. If loads are accepted at the mill and placed in decks without retaining their load and scaling identity, the Purchaser is non-compliant with Standard Provision B4.24 Unauthorized Movement for the loads based on the scale of those loads by the authorized scaling party.
- If the Purchaser requests a check scale, they are required to pay for check scaling costs.

In the event there is a dispute remaining after the BIA's check scale, a mutually agreed upon neutral Check Scaler is requested to verify the scale. A USFS, BLM, state, or Scaling Bureau Check Scaler is used to resolve a check scale dispute.

6.8 LOG YARD AGREEMENTS

Log Yard Agreements provide information to scalers, mills, and forestry staff regarding scale site conditions and requirements. Log Yard Agreements may be developed for each mill or scaling site and are prepared by contract or permit or on an annual basis. Information to include in such an Agreement is as follows:

- Operations
 - Map of the mill yard or scaling site, specifying the scaling area
 - Traffic flow patterns and parking
 - Location of cold decks, scaling bays, loading/unloading areas etc.
- Safety
- Accountability
- Scaling Offices
- Yard Maintenance
- Contact Personnel

See also “Example 09 - Log Yard Agreement”.

7 FOREST PRODUCTS USE POLICY (FPUP)

The FPUP is a Tribal and BIA document that is approved by both parties and documents local policy for three types of approved harvests on Tribal trust lands only. It includes:

- lower value (<\$5,000) and lower complexity harvests than allowed under general paid permits;
- free use harvesting with a permit; and
- free use harvesting without a permit.

If the Tribe wants a FPUP, it will be prepared in consultation with the BIA to ensure it meets CFR and handbook requirements.

Each FPUP must be reviewed at a minimum every two years and updated as necessary. Establishment of an FPUP does not supersede other requirements for the harvest of forest products in the CFR, Indian Affairs Manual (IAM) chapters, or handbooks, including:

- NEPA, and other laws and regulations.
- Cruise accuracy standards
- Advertisement
- Bid deposit
- Performance bond

See also “Example 16 - Forest Products Use Policy (FPUP)”.

7.1 FPUP USES

A FPUP is needed in many situations, such as when a Tribe wants:

- more specific or restrictive policy(s) for low value harvests than is stated in this handbook or CFR;
- to implement their own permitting system for forest products harvesting;
- blanket approval from the BIA for specific types of forest products harvests;
- to establish base rate prices for products; or
- to allow free use harvesting without a permit.

If a Tribe does not have a FPUP, only harvest activities using contract and permit forms listed in this handbook in section 2.3 Contracts and Permits, along with the standards and limitations, are allowable, and the AO must continue to approve all permits.

Harvests authorized by a FPUP are not exempt from NEPA. Appropriate NEPA documentation must be developed for any actions authorized by a FPUP. A programmatic NEPA document may be used, but the type of NEPA documentation will depend on the type of activities and complexity that is proposed.

Contracts and paid permits (including Non-Timber Forest Product Harvest Permits) with a value greater than \$5,000 must not be included within or authorized by a FPUP.

7.2 FPUP CONTENT

The FPUP content outlined below provides both an outline that guides the FPUP document and required content and limitations of the FPUP. Most of the guidance listed below is the upper limit of what is allowed for harvest under an approved FPUP. The Tribe and BIA office must collaborate on this document and may implement shorter timelines, lower value amounts, a more limited land base, or a more limited selection of harvest authorizations.

- A. Purpose and intent - Explain the purpose of the FPUP, and the Tribe's intent for authorizing these harvest types. Discussion should include who and what benefits from this policy and who authorizes the action.
- B. Regulatory and Tribal authority
 - List the Tribal FMP, ordinances, resolutions, and other authorities that allow for implementation of this policy.
 - List the BIA references that guide this policy including 25 CFR § 163, 53 IAM 3, and 53 IAM 3-H.
- C. Definitions - The terms that are commonly used within the permits, attachments to the permits, and the policy is defined. The terms within the FPUP supplement those that are within 25 CFR § 163.
- D. Procedures for permit issuance, revocation, monitoring, and administration.
 - Describe who can obtain permits. For example: "Tribal members over 18 years of age only."
 - List the position title of the person who can approve and revoke permits if different from the BIA AO.
 - Provide the location where harvest under the permit can occur.
 - Describe how the permit will be monitored and administered.
 - Describe the process for collection of payments.
 - Describe the process for how payments collected will be dispersed to Tribal accounts.
- E. Penalties
 - A description of penalties for harvesting without a permit or approval; may need to reference other Tribal ordinances as appropriate.
 - A description of penalties for violating a condition of the permit or the FPUP.
- F. Types of harvest and standards and limitations - General standards and limitations for each of the authorizations for harvest.
 - Free use harvesting without a permit (25 CFR § 163.27).
 - Personal use only.
 - No selling or exchanging of forest products harvested for goods or services.
 - Tribal trust lands.

- Free use harvesting with a permit (25 CFR § 163.26).
 - Requires the use of Form 5-5331 Timber Harvest Permit or 5-5332 Non-Timber Forest Products Harvest Permit, or a Tribal permit, included as part of the FPUP and approved by the BIA AO for use.
 - The value of forest products harvested per calendar year may not exceed \$5,000.
 - Free use harvesting is restricted to personal use.
 - Permit duration may not exceed one year and expires at the end of the calendar year.
 - Tribal trust lands.
- Paid permit (25 CFR § 163.26).
 - Requires the use of Form 5-5331 Timber Harvest Permit, 5-5332 Non-Timber Forest Products Harvest Permit, or a Tribal harvest permit which is included as part of the FPUP and approved by the BIA AO for use.
 - The value of an individual permit may not exceed \$5,000.
 - The value of forest products harvested by an individual per year may not exceed \$25,000.
 - Must be of lower complexity than standard paid permits. Examples include:
 - Simple appraisal
 - Only a few forest product categories
 - Simple accessibility to harvest areas
 - Low risk of damage to other resources
 - Little administrative oversight needed
 - Lump sum payment of the total permit value is required prior to harvest. Describe specific payment collection procedures (direct pay or agency pay, roles and responsibilities).
 - Paid permit duration is not recommended to exceed one year and must not exceed two years.

G. Additional limitations or requirements that may apply to all authorizations for harvest:

- Tract number or locations that may have forest products harvested.
- Restrictions on season, equipment, location, or any other factors.
- What may be done with the harvested forest products – sold or personal use only.
- Bonding requirements.

H. Operational guidelines for all harvests either with or without a permit may include:

- Road construction limitations or requirements.
- Keeping existing roads clean and free of debris.
- Harvest restrictions in cultural or recreational areas.
- Harvest restrictions in wetlands or near streams.
- Utilization standards.
- Follow local best management practices.

I. Designation of Products - Describe the type of forest products and quantities that can be harvested under this policy for each type of harvest.

- J. Rate schedule for forest products that may be harvested - These rates may be used for paid permits. They could also be base rates that could be indexed for a valuation of products for unusual circumstances. These rates will also be used to estimate the value harvested in free use harvests with a permit. Rate schedules are reviewed annually and adjusted as necessary.
- K. A statement that the approval of the FPUP is a blanket approval of permits authorized under the FPUP, by the AO or Tribal representative.
- The blanket approval may be for every permit, or have specific limitations on the approval, such as value or permit type. For example: “free use permits only.”
 - The blanket approval may be for just the AO or for both the AO and Tribal representative.
 - The signature area on the permit must state that “Approval is authorized by the FPUP dated XX/XX/XXXX”.
- L. A signature page for approval of the FPUP by the AO and Tribe to include signatures, titles, and date for the Tribe and AO, and reference to the approving Tribal Resolution.

8 FOREST ENTERPRISES

In accordance with 25 CFR § 163.13, Indian Tribal forest enterprises may utilize Tribal and allotted timber as provided in their approved enterprise agreement. An enterprise is an extension of the Tribe and may enter into contractual agreements associated with performing services, such as executing contracts and permits, or harvesting and marketing of forest products. Enterprises purchasing trust forest products under contract or permit authority must use forms approved by the Secretary.

There are many reasons that a Tribe may choose to have an enterprise, these include:

- The ability to market forest products to multiple Purchasers instead of selling an entire sale to one Purchaser, to return greater revenue to the Tribe.
- Provide Tribal employment as employees of the enterprise, a mill, or logging company.
- Limit the financial risk to the Tribe through an enterprise organized as an LLC or Corporation.
- Utilize enterprise personnel to expedite implementation of logging, road maintenance, or other services either directly or through service contracts.
- Accomplish treatments in locations lacking available logging and milling infrastructure.
- Accomplish services that are not readily available from local contractors.
- Ability to take advantage of niche markets in a timely manner.

8.1 OPERATING CONSIDERATIONS

The following are some of the considerations to be made when operating or developing a Tribal forest enterprise.

8.1.1 FMV

Owners are entitled to FMV, which is the appraised values established for payment of trust resources harvested from their lands. An enterprise must pay at least FMV for forest products unless the owner has been duly apprised of the value and they have decided to sell or transfer forest products at less than the appraised value (25 CFR § 163.14(d)).

8.1.2 Sales of forest products

Forest products must be sold according to generally accepted trade practices (25 CFR § 163.13(b)).

8.1.3 Allotment sales

Contracts or permits that include allotments may be sold to enterprises without advertisement at or above FMV. Advertised open market sales can be used to verify that the FMV is valid, and that maximum revenue is being obtained for the owners. Enterprise agreements must address the handling of allotment contracts or permits including the determination of payment for trust resources.

8.1.4 Separation of duties and avoidance of conflict of interest

Separation of duties and avoidance of any conflict of interest will be considered when organizing and operating an enterprise. In some cases, these situations may not be avoided but must be identified and monitored.

8.2 TRIBAL FOREST ENTERPRISE STRUCTURE

An enterprise can take several forms, including marketing of forest products, selling forest products as an intermediary, or as a mill providing a variety of forest products to the market. Independent of the form of enterprise, the enterprise is a Purchaser that pays stumpage rates based on Estimated Volume Sales or lump sum prices based on Predetermined Volume Sales as specified in the contract or permit.

When considering forming an enterprise, Tribes may wish to contact or visit the website of the Indian Affairs' Office of Indian Economic Development (IED) at: <https://www.bia.gov/as-ia/ied> for information such as completing a feasibility study, the different types of business structures, or for information related to financing an enterprise.

8.3 REVIEW AND APPROVALS

BIA's review of Charters, Articles of Incorporation, or Operating Agreements occurs prior to Tribal approval to ensure there is no conflict between these documents and the CFR.

The formation of an enterprise must have the consent of the authorized Tribal representatives and be approved by Tribal Resolution. The formation may include a Charter, Articles of Incorporation, or Operating Agreement that describe enterprise operations.

The following items require BIA approval and are to be included within the Enterprise Agreement:

- Special instructions for payment by methods other than those in 25 CFR § 163.22.
- PB waiver or requirement (25 CFR § 163.1(e)).
- Forest Enterprise Operating Agreements.

Contracts and permits are signed by the Seller, Purchaser or Permittee, and the AO. Owner approval is required when entering into formal agreements (contracts and permits) with Tribal representatives for the harvest of Tribal forest products and with individual Indian owners (allottees) for harvest of their forest products. Tribal officials sign as the Seller for Tribal trust

land. Allotment owners should follow the guidance in this handbook in section 2.2 Ownership Consent. The designated enterprise official(s) signs as the Purchaser or Permittee on the contract or permit respectively. The AO signs last to approve the contract or permit prior to commencement of operations.

Harvest of forest products on allotted lands must include language in the cover letter for the POA asking if the owner agrees with allowing the sale of the forest products as a negotiated sale without advertisement to the enterprise, instead of an open market advertisement. If greater than 50% of the beneficial Indian owner interest approves of the enterprise purchasing the sale, the sale may be sold to the enterprise.

8.4 FOREST ENTERPRISE OPERATING AGREEMENT

The Forest Enterprise Operating Agreement is a written agreement that has two main purposes: 1) to specify how the enterprise will operate; and 2) to specify how the enterprise will work with the Forestry program.

Agreements currently have a variety of titles such as: Timber Allocation Agreement, Plan of Operations, Timber Harvest Agreement, Operating Agreement, Memorandum of Understanding, etc. All new agreements must be titled “Forest Enterprise Operating Agreements” for consistency. See also “Example 17 - Forest Enterprise Operating Agreement”.

The following sections are recommended for inclusion in the Forest Enterprise Operating Agreement:

- Authority: Provide the CFR and any other citations that allow this enterprise to perform forestry actions.
- Parties to the agreement: Enterprise, Tribe, Tribal program, etc.
- Definitions as needed.
- General conditions that describe the use of standard contracts, modifications, effective date, and termination of prior agreements.
- Manager Responsibilities: Enterprise manager’s responsibilities and their role in running and overseeing the day-to-day operations of the enterprise.
- Stumpage rates and stumpage rate adjustment procedures: Methods describing net stumpage paid to the Tribe and how rates may be adjusted during the contract or permit term.
- Negotiation: If rates will be negotiated for contracts or permits, the method used to determine prices should be described. A description of how Forestry determined FMV should also be included so the owner is aware of market prices.

- Payments: Describe requirements for AD, AP, and full payment on estimated volume contracts or permits, or installment payments on predetermined volume sales or permits.
- Describe invoicing procedures by the Forestry program and payment timeframes once the enterprise receives the invoice.
- Describe penalties and collection measures if payments are not received when due.
- Allocation of timber: The proportion of the annual allowable cut offered to the enterprise. The allocation of timber addresses both Tribal and allotted timber. Specify if the enterprise has first right of refusal and identify the type of contracts and permits this would pertain to.
- Timber sale process: Describe the tasks performed by the Forestry program to set up a timber sale and the steps that involve the enterprise. See also “Exhibit 04 - Timber Sale Process Flowchart”.
- Quality control: Describe how harvest contract or permit compliance will be performed by the enterprise.
- Quality assurance: Describe quality assurance measures that will be utilized.
- Suspension of work: Failure to follow contract or permit provisions may result in suspension of work.
- PB requirements: Describe performance bond amounts and type, if required.
- General dispute resolution: Describe the process to resolve disputes between the parties subject to this agreement.
- Effective and termination dates of agreement.
- Signatures and titles of reviewers and approver.

8.5 STUMPAGE RATES

Appraised stumpage rates are determined by the Forestry program and in the case of Tribal sales, recommended to the Tribe for approval with final approval by the AO. The enterprise can accept the approved prices or negotiate with the Tribe or allotment owners to change the stumpage rates. Rates may be set lower than appraised value if the owner(s) is duly apprised and willing to accept less and it is approved by the AO (25 CFR § 163.14(d)).

8.6 PAYMENT

Payment for forest products in advance of cutting may not be required; however, if payment history is not satisfactory, the AO has the discretion to require payments and deposits in advance of cutting. Additionally:

- The collection of AP up to 25% is recommended on allotted lands in advance of cutting for estimated volume contracts.
- The collection of AD is recommended on allotted lands in advance of cutting.
- Payment is verified when the TAAMS invoice is signed by the enterprise (Purchaser) and received by the BIA lockbox.
- Direct Payment of stumpage payments are required to go through the BIA lockbox, unless a Direct Pay Agreement is approved by the BIA.
- FMD payments are paid through the BIA lockbox unless a FMD Direct Pay agreement has been approved by the BIA.

8.7 FAILURE TO MAKE PAYMENTS

If an enterprise fails to make payments per contract or permit provisions, the following actions are recommended:

1. The OIC notifies the BIA AO of the issue, including the amount owed and time since last payment.
2. Designated staff continues to send invoices to the Purchaser (enterprise) even if it appears they do not have the means to pay or have not been paying.
3. The AO sends a letter to the enterprise and Tribal Council stating:
 - the facts of non-payment, including timeframes;
 - amounts not paid;
 - an appropriate interest rate, if not specified in the contract or permit;
 - repayment time period; and
 - amortization schedule.
4. If the enterprise fails to make timely payment(s) as stated in the letter, the AO will issue a cease-and-desist letter to the enterprise to suspend all harvest and hauling operations. The Tribal Council must also receive the letter in order to keep them apprised of the situation.
5. The AO must consider additional actions which may include, but are not limited to:
 - modification of current contract(s) or permit(s) to require AD;
 - require AD on future contracts or permits;
 - require PBs on future contracts or permits;
 - restriction from purchasing trust timber sales or limits to competitively bidding on trust timber sales for a designated period; and
 - ensuring the AO and Tribal Council are apprised regularly and continue to have discussions with them about their enterprise.

8.8 ADVERTISEMENT

Advertisement of contracts or permits may be limited to approved enterprises if specified in the advertisement or allow the enterprise the right to meet the higher bid of a non-member if specified in an IP policy adopted by the Tribe (25 CFR § 163.15 (a)).

For Tribal trust land sales, no advertisement is required when the sale is purchased by the enterprise (25 CFR § 163.16 (a)(3) and 163.13 (b)).

For sales that include allotments, advertisement is required unless authorized by a majority consent of the beneficial Indian owner interests (25 CFR § 163.13 (c)). Allotment owners may be given the option in the cover letter for the POA for a negotiated sale to the enterprise. If an option is not provided, the sale will be advertised as an open market sale.

8.9 TRIBAL PROGRAM AS AN ENTERPRISE

A Tribe may operate an Indian Tribal forest enterprise as a function of a Tribal program. Having a Tribal program operate as an enterprise may reduce overhead and duplication of activities, consolidate workloads if the enterprise does not need a full-time manager to function, and reduces conflict between the Forestry program and the enterprise.

Operating as an enterprise, the Tribal program can market different species, product size, and quality to various Purchasers which may achieve a higher overall price for products sold rather than selling the entire sale to one Purchaser.

Tribal programs that operate the enterprise must have a Forest Enterprise Operating Agreement that at a minimum includes:

- an organizational description, describing who is responsible for supervision, management, and daily operation of the enterprise, and who oversees the enterprise;
- an explanation of the separation of authority for rate determination;
- how enterprise rates for the forest products are determined;
- a description of the tasks performed by the Forestry program to set up a timber sale and the steps that involve the enterprise;
- a description of the process and responsibilities for contract and permit compliance;
- how and when payments are collected and processed; and
- a description of the dispute resolution process.

If a Tribal program operates as an enterprise, precautions must be taken because they may be: liable for injuries; responsible for logger default; responsible for the change in revenue from mill

price changes; at an increased risk of conflicts of interest due to a lack of separation of duties; and/or liable for inability to make payments.

Other potential drawbacks may include:

- Lack of separation of duties to provide adequate quality control and assurance.
- Reliance on the Forestry program to implement the contract or permit if the program is the Forestry program itself.
- Use of BIA funds to implement enterprise operations.
- Increased liability associated with the requirements of contracts and permits.
- Difficulty in ensuring contract or permit requirements are completed due to lack of PBs.
- Difficulty in enforcing payment requirements.
- Difficulty in enforcing contract or permit requirements if they aren't met (who enforces them and who bears the fault and liability).
- Difficulty dealing with the Tribal contracting office unless the Forestry program hires or is delegated contracting authority.
- Holding cash reserves to pay for services rendered by contractors.

DEFINITIONS

Definitions for terms that are not below are available within 25 CFR § 163.1, and Timber Sale Contract Part B Standard Provisions Form 5-5323.

Acceptable Bid – A bid that meets the technical specifications and equals or exceeds the minimum bid value of the advertisement.

Advance Deposit (AD) – Required deposits in advance of cutting, which the Purchaser provides to maintain an operating balance against which the value of the forest products planned for harvest in the next scale period will be charged.

Advance Payment (AP) – Non-refundable partial payments of up to 25% of the estimated stumpage value of the forest products designated for harvest are required on allotted and restricted Indian forest land, and optional on Tribal land. APs are not required on permits.

Approving Officer (AO) – The individual approving instruments of harvest for forest products.

Authorized Harvest – The removal of forest products from Indian forest land when authorized by law.

Beneficial Owner – An individual or entity who holds an ownership interest in Indian land and receives income derived from authorized leases, forest product contracts, and permits.

Certified Financial Statement – A certified financial statement is a financial document, such as an income statement, cash flow statement, or balance sheet that has been audited by an independent accountant.

Fair Market Value (FMV) – The price that a timber sale would sell for on the open market. It is the price that would be paid by a willing Buyer to a willing Seller, with both being required to act, and both parties having reasonable knowledge of the relevant facts.

Forest Management Deduction (FMD) – A percentage of the gross proceeds from the sale of forest products harvested from Indian land, which is collected by the Secretary pursuant to 25 USC § 413. This fee is assessed against all sales of forest products with a value of \$5,001.00 or more. Also known as “Administrative Fees” or “10%”. FMDs are utilized for the performance of forest land management activities in accordance with an approved expenditure plan (25 CFR § 163.25).

Forest Officer – The person of highest rank assigned to the supervision of forestry work at the BIA or Tribal office having jurisdiction over the sale area, or their authorized representative.

Forest Products Use Policy (FPUP) – A document that reflects Tribal and BIA policy towards harvesting products under permit authority. It describes the BIA and Tribal prices, policies, and procedures for issuing low value paid and free use permits, and authorizing free use harvesting without permits on designated Tribal lands.

Gross Proceeds – The value in money or money’s worth of consideration furnished by the Purchaser of forest products purchased under a contract, permit, or other sale document. Forestry project costs, if any, are deducted prior to stumpage payments to the owners and are not considered part of the gross proceeds.

Harvest – To cut or take forest products.

Individual – A sole person or any operating entity comprised of more than one person.

Log Scaling – The determination of the gross and net volume of logs by the customary commercial units for the product involved; volume may be expressed in terms of board feet, cords, cubic feet, linear feet, tons, or other previously accepted metric.

Non-Timber (Other) Forest Products – Forest products that are generally not processed using heavy ground disturbing methods utilized in timber removal. Non-timber forest products include, but are not limited to: Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms, herbs, gravel extracted from and utilized on Indian forest land, and other marketable material.

Officer in Charge (OIC) – The OIC is the Forest Officer of the highest rank assigned by the AO to oversee the day-to-day operations of forest product harvests, or their designated representative.

Official Sale File – A file folder that includes documents as shown in this handbook in section 5.9 Official Sale File and will be maintained by the AO or their designee.

Performance Bond (PB) – A monetary guarantee provided by a Purchaser to ensure performance of a contract or permit.

Purchaser – The person or entity that has acquired the legal right under a contract or permit to harvest and remove forest products from Indian land. May also be referred to as Contractor or Permittee.

Restricted or Trust Interests – Interest in land which title is held by a Tribe or individual Indian(s) and are subject to federal restrictions against alienation or encumbrance, and/or the title is held in trust by the United States for the benefit of the Tribe or individual Indians. These ownerships are not subject to local or state property taxes, and income generated from these properties is not subject to income or timber taxes.

Scale Report – A report that summarizes scale data for a specified period, usually a monthly or bi-weekly report.

Scale Sheet – The log scale paper or electronic record of forest products measured and recorded, usually for a single truckload.

Stumpage Rate – The value per unit of measure for a forest product.

Stumpage Value – The appraised value of forest products designated for harvest within a specified area. Stumpage value is the monetary value available to an owner of forest products for the right to harvest and remove the trees or forest products from the land. Stumpage value is often based on the value of the forest product received upon delivery to a processing facility (delivered log price) minus the costs of delivering the forest products to a processing facility, harvesting costs, and forestry project costs, but before the FMD allocation is subtracted.

Timber – Standing trees or cut wood that retains many of the recognizable characteristics of a tree: round, bark covered, and tapering, but without the limbs and leaves that are of species, size, and quality suitable for processing into lumber, pulpwood, poles, or veneer products.

Timber Sale – Refers either to a contract or paid permit for the sale of timber.

Tract – A parcel of land that has a legal land description and is an individual allotment or Tribal parcel with a specific land alphanumeric designation assigned by the BIA LTRO.

Truck Ticket – A numbered card (ticket), which is part of an accountable book of tickets, used to monitor transportation of raw forest products from the woods to the scaling point or destination manufacturing facility. Each ticket is associated with a Scale Sheet and independently cross referenced with a list of tickets issued for a particular unit to assure all loads were measured and accounted for.

Trust Asset Accounting Management System (TAAMS) – The official federal system of record which documents the sale and harvest of forest products from Indian land, and all associated collections and distributions.

Unit of Measure – A standard measurement used to describe volume of forest products. Types of units include MBF, cubic feet, cords, tons, lineal foot, etc.

Unrestricted or Fee Interests – Interests in land which title is held by the owners without federal restrictions or encumbrance. Unrestricted interests are subject to local government taxes and regulations. In addition, any money generated from the unrestricted interest is subject to income tax.