

14311 *Holden*
T

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Request For Contract Reformation]

FILE: B-195051

DATE: July 17, 1980

MATTER OF: Reformation of Alaska short-term
timber sale contracts

DIGEST:

Reformation of timber sale contract is appropriate where contract as written does not reflect actual agreement of parties. Course of conduct confirms parties' understanding that contract provision for determining rates payable to Government for harvested timber does not express intention of parties.

We refer to a letter from the Secretary of Agriculture requesting our approval to reform existing short-term (maximum of 10 years) timber sale contracts in Alaska, awarded by the Forest Service between 1965 and 1978, by modifying the contract clause which provides for the determination of rates payable to the Government for harvested timber to comport with the actual practice followed in that region. We approve the request.

It is reported that the rates charged for logs under contracts executed before mid-1965, were those market rates in effect at the time the logs were assembled into rafts. Timber sale solicitations were revised by the Forest Service in 1965 to provide for application of rates in effect when the logs were scaled or measured for their amount of sound wood volume after arrival at the mill. Apparently scaling of logs occurs much later than the rafting operation.

However, the Secretary reports that an audit of the Alaska region timber sale program revealed that despite the 1965 revision the earlier practice in Alaska has continued, with the result that substantial sums may be due the Government from purchasers under these contracts because of increases in the market price of timber. The proposed reformations would conform the contracts to the actual practices followed by both the contractors and the Government during the period in question.

OH341 112799

The Secretary suggests that reformation would be appropriate because he believes that the contracts do not reflect the parties' actual agreements regarding the method for determining the rate to be paid by the purchasers for harvested timber in Alaska. He states that because of the unique physical problems found in that area, the parties did not intend to modify the pre-1965 arrangements. Those problems included towing delays frequently exceeding 1 year caused by inclement weather, the need for large inventories of logs to operate the mills when conditions make logging impracticable, and efficiencies involved in moving large volumes of logs long distances in rough, open waters.

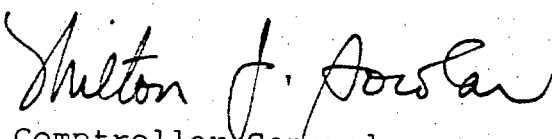
The Secretary further states that it is unfair now to inflict an "economic penalty" on the purchasers by reason of a provision which was designed for use "in the continental United States." He asserts that purchasers in Alaska since 1965 would have abandoned rather than have extended their contracts upon expiration if they had been required to pay the increased rates. Finally, the Secretary reports that a provision will be included in future timber sale contracts which authorizes the actual practice in Alaska.

Reformation is appropriate where a contract as written does not reflect the actual agreement of the parties. 39 Comp. Gen. 363 (1959); 76 CJS Reformation of Instruments § 28 (1952); Ackerlind v. United States, 240 U.S. 531 (1916); it is evident that the Alaska contracts do not express the actual agreement of the parties. The facts show that the parties understood that the pre-1965 arrangement would continue, notwithstanding the inclusion of the revised rate provision. The new provision was not enforced when instituted in 1965 and was never enforced during the 1965-1978 period. The earlier established payment practice continued for the 13 years involved. It was only after the recent audit that the issue of enforcement of the provision was raised.

Moreover, as the Secretary states, it would be unfair to invoke the revised provision. It seems clear that purchasers relied on the Forest Service's course of conduct. The Secretary points out, for example, that had purchasers known that by extending their contract they would be subject to the revised rates they would have declined to extend their contracts beyond the original termination dates. Also, purchasers entering into these sale contracts could have

reasonably assumed that the old practice would continue despite the revised contract rate provision.

In the circumstances, reformation is appropriate.


For the Comptroller General
of the United States