



**FOREST SERVICE HANDBOOK  
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**FSH 2409.18 – TIMBER SALE PREPARATION HANDBOOK**

**CHAPTER 80 – USES OF TIMBER OTHER THAN COMMERCIAL TIMBER SALES  
SPECIAL FOREST PRODUCTS - FOREST BOTANICAL PRODUCTS**

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Associate Deputy Chief, NFS

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**Posting Instructions:** Amendments are numbered consecutively by Handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this Handbook was 2409.18-2016-1 to chapter 80.

<b>New Document</b>	2409.18_80	37 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	2409.18_80 (Amendment 2409.18-2016-1, 10/26/2016)	37 Pages

**Digest:**

82.5 - Revises references to 36 CFR 223.15 throughout the section.

82.53 - Removes reference to the interim directive, at paragraph 4.

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## **80.1 - Authority**

The laws, Executive Orders, and regulations that govern uses of timber other than commercial timber sales are abstracted at FSH 2401. Office of Management and Budget sets out requirements (Office of Management and Budget Circular No. A-25, July 8, 1993) pertaining to establishing fair market value of special forest products. The sections of Title 36, Code of Federal Regulations, part 223 that apply to direction in this chapter are sections 223.1 through 223.13, 223.111, 223.217, and subparts G and H.

## **81 - DISASTER RELIEF**

Within disaster areas, as designated by the President, accept timber purchaser requests for relief in construction costs or contract cancellation that are made in writing to the Contracting Officer. Free administrative use of National Forest System timber may also be granted (sec. 83.32).

### **81.1 - Construction Cost Increases**

The Forest Service may not provide a purchaser with relief for any increased cost caused by a major physical change on an accepted specified road or a temporary road, except as provided in a timber sale contract by provision B or BT 8.3. Therefore, limit relief for increased construction costs to specified roads that have not been accepted under timber sale contract form FS-2400-6 or 6T, provision B or BT 6.36. Follow the procedures in provision B or BT 5.252 to repair damage caused by a physical change on specified roads that have not been accepted.

If the increased construction cost exceeds the stumpage value above base rates, reimburse the purchaser with a cash payment from road construction funds for the amount of increased construction cost that may not be reimbursed by a credit to the timber sale account if:

1. The sale is less than 2,000 CCF (hundred cubic feet);
2. The sale is between 2,000 CCF and 6,000 CCF and the increased construction cost exceeds \$0.50 per hundred cubic feet; or
3. The sale is larger than 6,000 CCF and the increased construction cost exceeds \$3,000.

### **81.2 - Contract Termination**

Accept timber sale purchasers termination requests within disaster areas, even if the requirements of provision B or BT 8.221 are not met. If the Chief determines that damage to specified roads that have not been accepted is so great that restoration, reconstruction, or construction is not practical, the Contracting Officer may cancel the contract.

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### **81.3 - Shortening Advertisement Period**

For timber sales prepared after a disaster, use a 7-day timber sale advertisement period if one of the following conditions exists (36 CFR 223.111):

1. The sale would assist in the reconstruction of a damaged area.
2. The sale would help sustain the economy of the affected area.
3. The sale is necessary to salvage the value of damaged timber or to protect undamaged timber.

In addition to the authority to shorten the advertisement period in 36 CFR 223.81, the Chief or Regional Forester may authorize a 7-day timber sale advertisement. Include in the prospectus a statement that one or more of the stated situations exist.

### **82 - FREE USE**

Free use of forest products is authorized under certain circumstances. See FSM 2462 and 36 CFR, sections 223.5 through 223.11, and 223.238, and 223.239 for specific situations where free use may be granted. See FSM 2404.28 for delegation of authority. See section 53.6 of this Handbook for direction on the proper use of Forest Product Free Use Permit form FS-2400-8. Report quantities of timber disposed through free use (FSM 2490). Also see the Food, Conservation, and Energy Act (FCEA), Title VIII, Subtitle B, Section 8105 for free use for Indian tribes.

#### **82.1 - Special Forest Products**

Free use of special forest products may be granted to individuals for personal use in accordance with the requirements in FSM 2462, and 36 CFR 223 subpart G. Review Office of Management and Budget Circular No. A-25 to determine if issuing a permit constitutes a special benefit not generally available to the public. If this is the case, then a charge must be made unless special circumstances warrant otherwise.

#### **82.2 - Resource Protection**

Free-use permits must contain sufficient provisions to protect resource values (2409.15, sec. 53). Prepare and administer the permit to ensure this protection and to ensure that the permittee follows the terms of the permit.

Follow the procedures in this Handbook and the Timber Sale Administration Handbook (FSH 2409.15, ch. 10) to the extent that they can be practically applied to free use projects to ensure protection of other resources when forest products are removed from the forest.

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### **82.3 - Prohibition of Resale**

Permittees may not sell or exchange any portion of the material obtained under free use, except as provided under section 87.51. Permittees shall be informed of this prohibition (FSM 2462.3) except in Alaska Region as authorized under ANILCA Title VIII.

### **82.4 - Denial of Free Use**

Do not grant free use of forest products to an individual, organization, or business if they convey intent to sell or exchange the product, except as provided under section 87.51. Do not grant free use of forest products to companies or corporations. However, consider an officer or stockholder of a corporation or owner of a business for free use as an individual if the individual meets all the requirements of FSM 2462.

### **82.5 - Forest Products for Traditional and Cultural Purposes**

Trees, portions of trees, or forest products may be provided, by Regional Foresters and designated Forest Officers, to Indian tribes free of charge for traditional and cultural purposes, in accordance with the requirements in 36 CFR 223.15. The trees, portions of trees, or forest products provided may not be used for commercial purposes (reference 36 CFR 223.15(a)(2)).

### **82.51 - Definitions**

“Indian tribe,” “traditional and cultural use,” and “tribal officials” have the following meanings, which is consistent with section 8102 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651) and Executive Order 13175 (reference 36 CFR 223.15(a)):

Indian Tribe. The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

Traditional and Cultural Purpose. The term “traditional and cultural purpose,” with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

Tribal Officials: The term “tribal officials” means elected or duly appointed officials of Indian tribal governments.

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## **82.52 - Authority**

Section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651) (reference 36 CFR 223.15(a)) provides as follows:

1. IN GENERAL. -- Notwithstanding section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a), the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.
2. PROHIBITION. -- Trees, portions of trees, or forest products provided under subsection (a) may not be used for commercial purposes.

## **82.53 - Policy**

1. Regional Foresters or designated Forest Officers may, at their discretion, provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes provided that:
  - a. The trees, portions of trees, or forest products are provided to tribal officials on behalf of an Indian tribe for traditional and cultural purposes; and
  - b. The trees, portions of trees, or forest products will not be used for commercial purposes.
2. Requests for trees, portions of trees, or forest products made under 36 CFR 223.15 must be submitted to the local Forest Service District Ranger's office(s) in writing. Requests may be made:
  - a. Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or
  - b. By providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.
3. Requests for trees, portions of trees, and forest products made under 36 CFR 223.15 must be directed to the appropriate Forest Service District Ranger(s) office from which the items are being requested. Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a traditional and cultural purpose. When an Indian tribe requests forest products located on two or more National Forests, authorized tribal officials should notify each of the affected Forest Service District Ranger's offices of the requests made on other forests. (Reference 36 CFR 223.15(d).)

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4. Delegations of authority to designated Forest Officers by Regional Foresters under this directive must not exceed the limitations set forth at 36 CFR 223.15(e).
5. A request for trees, portions of trees, or forest products under 36 CFR 223.15 may be conditioned or denied for reasons including, but not limited to:
  - a. Protecting public health and safety,
  - b. Preventing interference with Forest Service and/or commercial operations,
  - c. Complying with Federal and State laws and regulations,
  - d. Ensuring sustainability, or
  - e. Otherwise protecting National Forest System land and resources.
6. All decisions made under 36 CFR 223.15 must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, all other applicable laws and regulations, and are subject to tribal treaty and other reserved rights and the savings provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. § 3057(b)).

#### **82.54 - Responsibility**

1. The Washington Office, Director of Forest Management will coordinate with the Washington Office, Director of Tribal Relations on tribal issues involving section 8105 of the 2008 Farm Bill.
2. Regional Foresters, Forest Supervisors, and District Rangers will ensure that all decisions made under 36 CFR 223.15 comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, all other applicable laws and regulations and are subject to tribal treaty and other reserved rights and the savings provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. § 3057(b)).
3. Regional Foresters or designated Forest Officers shall document all decisions made under 36 CFR 223.15.

#### **83 - ADMINISTRATIVE USE**

Administrative use may be granted under the situations identified in FSH 2463.02. Before proposing or authorizing administrative use of timber, prepare a sound, written justification for allowing administrative use, rather than following commercial sale procedures (36 CFR 223.2). The justification may be in the form of a report, letter to the record, or cooperative agreement.

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Follow the instructions in other sections of this Handbook for appraising timber, advertising sales, receiving bids, and making contract awards needed to implement administrative use sales or permits.

Use the following guidance to determine which method to use when disposing of merchantable timber for administrative use.

### **83.1 - Sale of Stumpage**

The preferred procedure for disposal of merchantable timber is by competitive sale through commercial procedures whenever there is sufficient time to do so in advance of occupancy of the proposed improvements and when access, logging, and sale conditions are such that the costs of selling and sale administration are not greater than those under customary timber sale operating conditions.

When the objective is to protect or improve the forest as a property and the appraised value of the timber is less than minimum rates, advertised rates may be established at the appraised value or at \$0.25 per hundred cubic feet, whichever is higher. Examples of timber valued at less than minimum rates include insect-infested trees; fire-hazardous snags; and trees damaged by ice, fire, or wind.

In administrative use sales, require deposits to the trust funds for slash disposal, road maintenance, and sale area improvement work, under the Knutson-Vandenberg Act, to the extent authorized by law and as needed. Minimum payments must also be made to the U.S. Treasury for the National Forest Fund in administrative use sales.

### **83.2 - Service Contract**

Timber may be disposed of without charge through service contract procedures by including rights of removal in the service contract, if there are insignificant amounts of forest products that have no apparent commercial value and product removal is insignificant to the services being performed. This procedure permits use of the forest products. Because the contractor considers the value of any forest product available for removal in the bid, the Government receives compensation for the forest product removed. If a service contract is used, stipulate additional provisions in the service contract for export control, product identification, and road maintenance deposits.

### **83.3 - Disposal Without Charge**

1. Dispose of the forest products without charge when removal is in the best interest of the United States for the protection or administration of a National Forest and the products removed are not being used for a commercial purpose. See FSM 2404.28 for specific delegations of disposal authority.

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2. Permit cutting of National Forest timber, free of charge, as a part of administrative use for fuel in work camps operated by the Forest Service or other Federal agencies. Use free administrative use procedures to supply fuel wood free of charge to users of camps and public recreation areas, including any recreation area operated under a free special use permit (FSM 2710) on National Forest or other Federal lands. Allow free administrative use of fuel wood from the National Forests for Ranger District offices and similar Federal buildings on National Forest or other Federal lands.
3. Permit timber cutting for research and demonstration projects under free administrative-use procedures, even though such use is not of direct value to the protection or administration of a National Forest. The cutting of timber for testing at the Forest Products Laboratory is an example of permissible free administrative use. Free administrative use also includes cutting of noncommercial trees in experimental thinning.
4. Issue free administrative use permits for timber to Federal or State fish hatcheries that cooperate in the stocking of streams within the National Forests.

**83.31 - Administrative Use for Research and Demonstration Projects Outside Experimental Forests**

Limit the research use of forest products to testing or similar special products studies by either the Government or private operators furthering the purposes of Government sponsored studies.

Lands outside Experimental Forests may be used for research and demonstration cutting normally conducted on Experimental Forests. When contemplating such cutting, consider in each case whether the proposed cutting is practicable on an Experimental Forest. Before issuing administrative use permits for research and demonstration cuttings outside Experimental Forests, obtain the concurrences of the Station Director and the Regional Forester.

**83.32 - Other Administrative Uses**

Permit the use of National Forest System timber free of charge for use in disaster relief work conducted by public agencies, even when the structures, such as bridges, are at such distance from the National Forest that they are of no real benefit to the forest. Report National Forest System timber disposed of in this manner as required in FSM 2490.

**83.4 - Forms to Use for Administrative Use**

**83.41 - When Payment Is Required**

When administrative use requires payment for the timber, use Timber Sale Contract Forms FS-2400-6 or 6T or FS-2400-3S, 3T, or 3P. Add the words "Administrative Use" to the name of the sale or to the remarks and add a reference to 36 CFR 223.2 in the remarks.

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### **83.42 - When No Payment Is Required**

Use Forest Products Free Use Permit form FS-2400-8, if that permit sufficiently sets forth the requirements for use. Otherwise, use any of the authorized timber sale contract forms (sec. 83.41). Add the words "Administrative Use" and reference 36 CFR 223.2 in the remarks. When a permittee is a recipient, as defined in FSH 1709.11, and Forest Product Free Use Permit form FS-2400-8 is used, attach a completed and signed form FS-1700-1, Assurance of Compliance with the Department of Agriculture Regulation under Title VI of the Civil Rights Act of 1964.

No written requirements are necessary where the Forest Service does the cutting; however, provide clear and specific instructions from the officer authorizing the work to those doing the cutting, concerning related silvicultural and protective measures.

### **83.43 - Cutting Under Cooperative Agreement on Experimental Forests**

Authorize cutting on Experimental Forests by commercial sale (sec. 83.41) or free-use permit (sec. 83.42) through cooperative agreement under the provisions of the Forest and Rangeland Renewable Resources Planning Act of 1978 (16 U.S.C. 1641-1646; FSM 4060; FSM 4080). Prepare the statement of account for timber cut from National Forest land under a cooperative agreement in the manner described at FSH 6509.17.

## **84 - TIMBER SETTLEMENT**

1. Refer to 36 CFR 223.12 and FSM 2464 for further guidance on timber settlement. Use timber settlement procedures when necessary, under an authorized occupancy or right-of-way, to cut, damage, or destroy trees, portions of trees, or other forest products on National Forest System land. When the special use permit or occupancy has been approved, Line Officers may approve disposal methods and volume up to the limits of delegated authority at FSM 2404.28.
2. Require permittees to pay for timber of merchantable size and quality that is cut or destroyed incident to any authorized use of National Forest land at its appraised value, but not less than applicable minimum rates (FSM 2431.31b). Exceptions to this general rule are stated in section 84.1. Appraisal procedures are found in section 84.2.
3. Require permittees to pay for cut or destroyed young growth that is part of a stand of young growth with 25 percent or more stocking. Also require payment for young growth in stands of less than 25 percent stocking, where the presence of the young growth has been determined to contribute to the market value of the tract; that is, where the value is greater than bare-land value. Base the amount of payment on damage appraisal procedures. See section 84.1 for exceptions to this requirement.

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## **84.1 - Payment Exceptions**

There are specific exceptions to the general rule that payment is mandatory for trees cut or destroyed in timber settlement. Do not charge for timber if any of the following conditions apply:

1. The cut or destroyed timber benefits the National Forest and the products removed are not being used for a commercial purpose, including use in construction or as fuel wood.
2. The permittee qualifies for free use (sec. 82) or free administrative use (sec. 83.3).
3. The timber is decked for sale by the Forest Service under competitive bidding or the Forest Service retains the material for sale in log or other product form.
4. The trees are too young or too small to be used as timber and one of the following applies:
  - a. The trees cut or destroyed benefit the National Forest and there is a permanent change in land use from timber production.
  - b. The trees form an under story to a well-stocked stand of old growth and will not survive harvest of the old growth.
  - c. The trees occur on a poor site, are of doubtful merchantability, and are determined to have no value.
  - d. The trees occur in scattered patches interspersed with merchantable timber and comprise, in the aggregate, less than 25 percent of the tract area, and contribute no value to the tract.
  - e. Analysis shows the trees have an insignificant volume or value.

When the use of timber is granted for free or at rates less than minimum rates, each contract or permit used for timber settlement must either include wording similar to provision B or BT 8.63 of the Timber Sale Contract form FS-2400-6 or 6T as a provision, or have attached a completed and signed form FS-1700-1, Assurance of Compliance with the Department of Agriculture Regulation under Title VI of the Civil Rights Act of 1964.

## **84.2 - Measurements and Other Requirements**

1. Cruise timber of merchantable size and quality. Determine the condition classes of the area occupied by young-growth timber in accordance with regional instructions.

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2. When the settlement involves timber of merchantable size and quality, follow damage appraisal procedures. Do not subject the Government to any loss because of timber cutting in illogical logging units or at inappropriate times. The appraisal of timber on a right-of-way, for example, should reflect the timber's value as if it were removed from a logical logging unit. Do not include an appraisal allowance for construction of roads or other improvements that are necessary to gain access to the area or for performing the permit's description. Stumpage rates must be at least the established minimum rates for any timber of merchantable size and quality (FSM 2431.31b). In appraising young-growth timber, follow regional appraisal instructions for estimating trespass damage to young growth. Do not include timber property values in settlement sales, unless the forest product has been partially processed by someone other than the permittee.
3. When the timber settlement requires payment for the timber, use Timber Sale Contract forms FS-2400-4, FS-2400-3S or 3T, or FS-2400-6 or 6T. When the timber settlement does not require payment for the timber, use Forest Product Free Use Permit form FS-2400-8. Include the words "Timber Settlement" in the name of the timber sale or in the remarks and a reference to 36 CFR 223.12 in the remarks.
4. To the extent practicable, use the same requirements for utilization and disposal of timber cut in timber settlement as for timber cut in commercial sales. Regional instructions must cover any relaxation of such requirements, as in cases where small quantities are involved or where transportation costs exceed the value of the logs or other products.
5. When the Forest Service retains ownership of timber cut in timber settlement for subsequent competitive sale, the permit for the use must stipulate the necessary procedures, such as bucking and decking, that the permittee must follow.
6. Require deposits in advance of cutting. A performance bond may be used in lieu of a cash deposit.
7. In areas west of the 100th meridian, ensure that forest products disposed of under timber settlement meet domestic processing and product identification requirements.
8. Close timber sale contracts or permits issued in connection with timber settlement in the same manner as commercial timber sales. Coordinate closing with use permit requirements and provisions.

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9. Use competitive sale procedures, rather than timber settlement sale procedures, when the Forest Service sells timber cut under an authorized occupancy or right-of-way. The appraisal for such timber must include the value of wholly or partially preparing the timber for market as an increase in the indicated advertised value. Credit the additional receipts that are the result of previous processing as timber property, as explained in FSM 2469.

## **85 - TIMBER SELECTED AND OFFERED IN EXCHANGE**

Instructions for various types of exchanges are in FSM 5430 and FSH 5409.13. Instructions in this section apply only to standing timber that is either to be acquired by the Government or to be transferred from Government control under a land exchange agreement (36 CFR 223.4 and FSM 2465).

### **85.1 - Tripartite Exchange**

The timber sale contract may contain or be amended to include provisions for cutting of exchange timber on existing sale areas by the timber sale purchaser for the benefit of a third party (FSM 5430).

Under the tripartite procedure, payment for the timber may be collected and placed in a land exchange suspense account. Make no deposits before advertising the exchange, consulting with Tribes who may be affected, and informing the affected counties and State clearinghouse of the proposal. Make a formal obligation of collected funds when the non-Federal party and the Authorized Officer execute an Agreement to Initiate an Exchange. Payment and closing of the transaction must be made in accordance with 36 CFR 254.16.

Frequently, only a portion of an existing sale area is described as the exchange selection area from which the exchange timber is to be cut. Under such circumstances, perform scaling on timber only from the advertised selection area.

### **85.2 - Bipartite Exchange**

In this type of exchange, the United States grants the right to cut National Forest System timber in exchange for property conveyed to the Federal Government. The landowner may cut the timber under an existing timber sale contract, or the Forest Service gives the landowner cutting rights to other timber.

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### **85.21 - Under Existing Timber Sale Contract**

When the exchange timber is located within an existing sale area and the purchaser is the exchange landowner, treat deposits to the exchange account in the same manner as tripartite exchanges involving third parties for exchange timber cut before acceptance of title to the non-Federal lands. Waive this requirement if arrangements for acceptance of bonds in lieu of cash deposits are included in the land exchange offer. After acceptance of title, enter the value of any remaining uncut exchange timber as a credit in the purchaser's land exchange suspense account. Permit cutting of that remaining balance without further cash deposits by the landowner.

The sample contract available for review by all prospective bidders prior to the bidding procedures must not contain a provision for exchange of land for timber. Add such a provision in any contract by agreement either at the time the successful bidder signs the contract or by modification of the contract when it is determined that such a provision is necessary.

### **85.22 - Exchange Timber**

1. In a land for timber exchange, the Regional Forester may authorize the cutting of timber not included in an existing sale. Receipt of notice of acceptance of title to non-Federal lands automatically authorizes the Regional Forester to permit cutting of the timber. See FSM 1230 and FSM 5430 for delegation of authority and responsibility by organizational level for exchanges of land or interest.
  - a. Establish terms and conditions for cutting exchange timber, not included in existing sales in an exchange-cutting agreement, with the same care and with the same objective as used for timber sale contracts.
  - b. Include wording in the individual sections of the exchange-cutting agreement that parallels the comparable sections of a timber sale contract.
  - c. Collect deposits for timber stand improvement, when needed, under the Knutson-Vandenberg Act, for use on areas from which timber is cut.
  - d. Prepare exchange-cutting agreements for signature by the landowner and the Regional Forester (FSM 5430). When submitting an exchange case to the Chief, attach a draft copy of the exchange-cutting agreement for review and approval.
2. In accordance with provisions of the exchange-cutting agreement and after receipt of notice of approval of the exchange, the Regional Forester may authorize cutting of timber in advance of acceptance of title.

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3. An exchange-cutting agreement is a prepaid timber sale. Such an agreement differs from a timber sale because the Forest Service grants the right to cut timber for a specific time period.
  - a. Do not extend the time period of cutting in an exchange-cutting agreement if it is to the disadvantage of the Government to do so. Because all rights and interest in the granted timber on the part of the non-Federal owner expire on a definite date, it is to the disadvantage of the Government to extend the period, unless there is some public benefit in delaying the cutting. There is seldom any basis for extension of cutting periods.
  - b. Ensure that exchange landowners understand this condition at the time of negotiation and, if necessary, give them ample, specific warning when it becomes clear that at the rate of cutting, it is unlikely that harvesting will be completed within the agreed time period.
4. If the landowner has not completed cutting the timber by the expiration date, the Forest Service shall inspect the cutting on the expiration date and record its status at that time. Formally notify the landowner to cease cutting on the expiration date, but allow a reasonable period (usually 6 months), if specifically provided for in the agreement, within which felled timber may be removed from the area.

### **85.3 - Non-Federal Timber**

Land acquired by the Government in an exchange might include merchantable timber. The exchange agreement may reserve to the landowner the right to cut some or all of such timber, subject to 36 CFR 251.14. The following are guides to consider when such a situation exists.

1. On lands the Government acquires by purchase, exchange, or donation, maintain supervision of cutting of reserved timber to the standards for commercial sales of National Forest System timber, insofar as the terms of the reservation permit. Require written cutting stipulations for such timber reservations in accordance with the procedures and policies in FSM 5430 and FSM 5470. Where possible, negotiate for timber reservation stipulations that result in the same type of treatment and cutting as would be used if the area were included in a commercial sale of National Forest System timber.
2. Do not require deposits for planting or timber stand improvement under the Knutson-Vandenberg Act for work on non-Federal lands subject to timber reservations under cutting stipulations.
3. Apply the same principles for the cutting stipulations that expire on definite dates as apply to National Forest exchange timber.

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## **86 - SALES OF SEIZED AND INNOCENT TRESPASS MATERIALS**

Refer to 36 CFR sections 223.3, 223.241, and FSH 2466 for direction regarding sales of seized and innocent trespass materials; consult FSH 2490 for reporting requirements.

## **87 - SALES OF SPECIAL FOREST PRODUCTS AND FOREST BOTANICAL PRODUCTS**

Refer to 36 CFR 223 subparts G and H and FSH 2467 for direction regarding sales of special forest products; consult FSH 2490 for reporting requirements.

### **87.05 - Definitions**

Convertible Products. Timber products that can be measured in cubic or board feet of solid wood (FSH 2442.03).

Non-Convertible Products. Timber products that do not have a common standard conversion to cubic or board feet of solid wood (FSH 2442.03).

Special Forest Products. Products collected from National Forest System lands and include, but are not limited to, bark, berries, boughs, bryophytes, bulbs, burls, Christmas trees, cones, ferns, firewood, forbs, fungi (including mushrooms), grasses, mosses, nuts, pine straw, roots, sedges, seeds, transplants, tree sap, wildflowers, fence material, mine props, posts and poles, shingle and shake bolts, and rails. Special forest products do not include sawtimber, pulpwood, non-sawlog material removed in log form, cull logs, small roundwood, house logs, telephone poles, derrick poles, minerals, animals, animal parts, insects, worms, rocks, water, and soil (36 CFR part 223 Subpart G).

Forest Botanical Products. Naturally occurring special forest products, including, but not limited to, bark, berries, boughs, bryophytes, bulbs, burls, cones, ferns, fungi (including mushrooms), forbs, grasses, mosses, nuts, pine straw, roots, sedges, seeds, shrubs, transplants, tree sap, and wildflowers. Forest botanical products are not animals, animal parts, Christmas trees, fence material, firewood, insects, mine props, minerals, posts and poles, rails, rocks, shingle and shake bolts, water, worms, and soil (36 CFR part 223 Subpart H).

Person. Any individual, partnership, corporation, association, Tribe, or other legal entity (36 CFR 223.216).

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## **87.1 - Sustainability of Special Forest Products**

1. Special forest products must be sold in a manner that maintains these products on a sustainable basis (36 CFR 223.219).
2. Require specific harvest methods when necessary to ensure sustainable harvest levels.
3. Conduct an analysis prior to the issuance of a contract, permit, or other authorized instrument to determine the effects on the sustainability level if a special forest product is harvested and sold, and to determine whether there is sufficient information to determine a sustainable sale level. This analysis may consist of a review of past harvest levels allowed for products and an on-the-ground inventory estimate of the special forest product to be harvested. Where there is insufficient information available to determine sustainable levels, monitor the amounts harvested and their effects. When insufficient information is available, the amounts to be harvested must be limited to previous levels permitted until sustainable harvest levels are determined unless it is estimated that previous levels of harvest may not be sustainable in which case harvest should be limited to the quantities that are estimated to be sustainable by those responsible for the special forest product program. The monitoring timeframes must be established by the Forest Supervisor and approved by the Regional Forester with the objective of determining sustainable harvest levels as soon as possible but within a time frame that will provide for sufficient monitoring to gather sufficient information to determine the level of sustainable harvest.
4. Responsible Forest Officers will consult with Tribes, to the extent appropriate, to determine sustainable harvest levels based on historical information. In addition, responsible Forest Officers may consult with other appropriate parties to determine sustainable harvest levels based on historical information (36 CFR 223.219(a)).
5. When there is a request for a special forest product permit, contract, or other authorized instrument, and no permits for the special forest product has been issued in the past, quantities must be limited to the amount which is estimated to be a sustainable level and monitoring must be initiated to confirm the sustainable level.
6. The sale or free use of special forest products listed or proposed for listing as endangered or threatened under the Endangered Species Act is prohibited, except as authorized by the U.S. Fish and Wildlife Service. Moreover, regional guidelines will identify when the sale or free use of any special forest product listed on the Regional Forester's sensitive plant list, species of concern list, species of interest list, or protected under the Convention on International Trade in Endangered Species may be authorized (36 CFR 223.219(b)). Contracts, permits, or other forms of authorization must not abrogate any existing treaty rights of federally recognized Tribes.

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### **87.11 - Sustainability of Ecosystems**

The Multiple-Use Sustained-Yield Act of 1960 requires that natural resources be managed in such a manner that there is not impairment of the productivity of the land. The National Forest Management Act requires that management maintain the diversity and viability of the natural resources located on the respective National Forests and Grasslands.

### **87.12 - Inventories**

Use inventories, if needed, to determine the effects of proposed management actions. If an inventory is needed, determine what level of inventory would be suitable, by considering the following: abundance of species, harvesting techniques, access for harvesting, demand for harvesting, and the proximity of other resources to the product being harvested. Maintain inventory data for future reference and tracking. Work with Tribes to determine the quantities they utilize for cultural purposes.

### **87.13 - Management Plans**

1. The harvest and sale of special forest products must be authorized in accordance with forest land management plans on National Forest System lands (36 CFR 223.218). The Approving Officer shall ensure that each contract, permit, or other authorized form of disposal used to transfer rights to special forest products harvested from National Forest System lands:
  - a. Is consistent with applicable land management plans, including environmental quality standards, and
  - b. Includes, as appropriate, requirements for:
    - (1) Providing fire protection and suppression;
    - (2) Protecting natural resources including providing wildlife habitat;
    - (3) Regenerating harvested species as needed after harvesting operations;
    - (4) Minimizing soil erosion;
    - (5) Maintaining favorable conditions of water flow and quality;
    - (6) Minimizing adverse effects on, protecting, or enhancing other National Forest resources, uses, and improvements; and

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- (7) Depositing voucher specimens with a curator of a nationally recognized herbarium in North America as identified in the Index Herbariorum for all permits authorizing bioprospecting. Verify whether the herbarium is identified at website <http://www.nybg.org/bsci/ih/>.
2. Consider treaty rights, customary and traditional uses (including subsistence and other historical uses of plant material by Tribes), the Federal trust responsibility to Tribes, and competitive market demands in determining which products would be excluded from or allowed for sale to commercial harvesters. When there is a shortage of any particular special forest product for tribal use, commercial permits will be issued only to the extent that the tribal use can be accommodated. Amend forest plans, as needed, to provide standards and guidelines for the management of special forest products.
3. Memoranda of understanding (MOU) or other forms of agreements with individuals, groups, or Tribes must be in compliance with the direction provided in the regulations and this Handbook. When a MOU or other agreement is found not to be in compliance, they must be brought into compliance as soon as practicable and must not be used as a basis for further issuance of any special forest product.
4. Do not grant patents for special forest products found to be valuable through bioprospecting activities. Special consideration should be given only when directed through legislative action.

### **87.14 - Environmental Analysis**

Proposed actions to harvest special forest products are subject to the National Environmental Policy Act. Determine the level of environmental analysis documentation needed for disclosing the environmental effects of individual programs or projects (FSH 1909.15). Consult with American Indian Tribes who may be affected, prior to development of alternatives.

Proposed actions should fall into one of five categories (FSM 1950 and FSH 1909.15):

1. Actions that may be categorically excluded, not requiring a Decision Memorandum.
2. Actions that may be categorically excluded, requiring a Decision Memorandum.
3. Actions covered by an existing environmental analysis document.
4. Actions that require preparation of an environmental assessment to determine if an environmental impact statement is needed.
5. Actions that require preparation of an environmental impact statement.

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## **87.15 - Endangered Species Act Compliance**

All harvesting activities are subject to compliance with the Endangered Species Act. Coordinate and consult with biologists and botanists concerning plants that are being considered for harvest.

### **87.15a - Special Exemptions for Threatened and Endangered Species**

Collection of species listed or proposed for listing as threatened or endangered under the Endangered Species Act is prohibited without a permit and approval through the appropriate regulatory agency, generally the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (NOAA Fisheries).

### **87.15b - Sensitive Species**

Collection of species on the Regional Forester's sensitive species list is generally prohibited. Some exemptions may be permitted on a case-by-case basis. Consult with Forest Service biologists and botanists and the appropriate regulatory agency to determine if a species has restrictions on collection and whether or not an exemption can be made.

## **87.16 - Research**

The amount of research concerning active management of special forest products varies by product. Research on special forest products must continue to obtain relevant information for managing forest products. Research information is available within Agency publications and through other agencies, universities, organizations, interest groups, or professional societies.

Research findings should be incorporated into management decisions where they can be applied to improve sustainability and conservation of the resource and associated ecosystem. Where critical information is lacking, a conservative approach should be used, and research needs identified and prioritized. High priority research needs should be communicated to the research community. The amount and kinds of relevant research information is increasing from a variety of sources including the Forest Service.

Information related to special forest products may be available based on anecdotal knowledge, or found via electronic communications. Care must be taken on using such information with regard to reproducibility of results and applicability across different areas.

## **87.17 - Collaboration with Local Communities**

Encourage the use of locally based partnerships and collaborative projects in managing special forest products. Coordinate with the Forest Service, State and Private Forestry, Bureau of Land Management, Tribes, local, State, and county agencies, and the public to provide for and engage in interagency collaboration across functional, administrative, and ownership boundaries for managing special forest products.

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### **87.18 - Consultation with Tribes**

Comply with FFSM 1560, USDA Departmental Regulation 1350-001 (Tribal Consultation), and the November 6, 2000, Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments). Consultation with federally recognized Tribes is required prior to issuing any permits, contracts, or other authorized instrument when there is a possible impact to tribal treaty and other rights and interests in the permitted or contracted area. The Forest Service is required to honor the unique legal relationship, including the trust relationship, between the Federal Government and Indian tribal governments. As appropriate, consider socio-economic impacts and how Tribes might be involved in permit or contract areas. Consider and document the analysis in the appropriate NEPA document. The Forest Service may keep confidential, as an exemption from FOIA, any information provided by an Indian Tribe concerning the identity, use, or specific location in the National Forest System of sites or resources used for traditional and cultural purposes by an Indian Tribe (refer to the Food, Conservation, and Energy Act of 2008, Title VIII, Subtitle B, Section 8106).

### **87.2 - Reserved Treaty Rights**

Rights reserved by Indian treaties and other legal mechanisms must be honored in the management of the Special Forest Products program. Regional Foresters may set conditions for Tribes with treaty or other reserved rights related to special forest products, to protect the sustainability of special forest products or to otherwise protect National Forest System land. The Regional Forester may only prohibit such Tribes from harvesting a special forest product to protect public health and safety or to ensure sustainable harvest (See 36 CFR 223.240).

The Forest Service has the responsibility to honor Indian Tribes' reserved rights. Although each treaty is unique and should be reviewed by the Line Officer with advice from the Office of General Counsel, the gathering of forest products by treaty Tribes or treaty tribal members is often a reserved right on ceded land. Allow forest products reserved by treaty rights to be removed without charge or permit (36 CFR 223.239(e)).

### **87.3 - Valuation of Special Forest Products**

Office of Management and Budget Circular No. A-25, July 8, 1993, National Forest Management Act (NFMA), and Forest Botanical Products - Public Law 106-113 and Public Law 108-108 (Pub. L. 106-113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (enacting into law sec. 339 of title III of H.R. 3423) as amended in 2004 by Section 335 of Pub. L. 108-108) requires an agency to receive the fair market value for all sales or use of Government goods or resources, or to recoup those benefits available to the individuals receiving a "special benefit beyond those received by the general public."

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1. **Minimum Rates.** The minimum rates in FSM 2431.31b apply to convertible special forest products. Regional Foresters may establish minimum rates for non-convertible special forest products. The minimum rate is the lowest rate for which the Forest Service may sell a forest product, except for the removal of insect-infested, diseased, dead, or distressed timber (36 CFR 223.61 and 223.221; FSM 2431.31b, sec. 54.3).
2. **Standard Rates.** Each Forest Supervisor shall establish standard rates for special forest products sold on their National Forest (FSM 2431.31a). The standard rate should be set at the pre-harvested fair market value of the product, 10 percent of the wholesale fair market value, or the minimum rate (see preceding paragraph 1), whichever is higher. Consultation and coordination between adjoining National Forests is required in order to standardize rates and, to the extent practicable, coordinate with the Bureau of Land Management and other land management agencies selling special forest products. Standard rates should apply to Districts, National Forests, or appraisal zones, where situations do not justify a detailed appraisal for each permit or contract issued.

Both minimum rates and standard rates should be reviewed and updated annually or more frequently to ensure the fair market value is being charged.

3. **Appraised Rates.** Appraised rates for selling special forest products should be based on standard appraisal methods (FSM 2421 and section 45 of this Handbook).
4. **Value Determination Methods.** Valid methods to determine fair market value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. The Regional Forester shall establish appraisal methods to determine fair market value for forest botanical products.

### **87.31 - Minimum Charge for Special Forest Products Permits**

The minimum charge for a forest product permit is given in FSM 2431.31c, and section 53 of this Handbook.

Refunds are not allowed when using Forest Product Free Use Permit form FS-2400-1.

Contract forms FS-2400-4, FS-2400-3S, 3T, and 3P, are governed by the Contracts Disputes Act, and refunds will be determined following the provisions within the contract.

### **87.32 - Advance Payment**

Sale contracts, permits, or other authorized instruments of disposal must provide that special forest products be paid in advance of harvest and removal, unless the contract, permit, or other authorized instrument authorizes the purchaser to furnish a payment guarantee satisfactory to the

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Forest Service. Advance payment found to be in excess of the amount due the United States must be refunded to the current holder of the contract, permit, or other authorized instrument or to successors in interest (36 CFR 223.223).

### **87.33 - Performance Bonds and Security Fees**

Sale contracts, permits, or other authorized instruments may require the purchaser to furnish a performance bond or security fee for satisfactory compliance with its terms (36 CFR 223.224).

### **87.34 - Special Forest Products Contract and Permit Term**

Harvest and removal contracts, permits, or other authorized instruments must not exceed 10 years in duration, unless approved by the Chief. See 36 CFR 223.225 and section 53 of this Handbook.

### **87.4 - Collections and Deposits**

1. Direction for collections and deposits follows:
  - a. Knutson-Vandenberg funds (K-V) may be collected for the sale of special forest products that are timber related (firewood, post and poles, Christmas trees, and other timber products). A “Sale Area Improvement” plan must be done for K-V collection. It is unlawful to collect K-V funds for botanical products (mushrooms, grasses, seeds, fruits and other vegetation). See FSM 2430, FSM 2470, FSM 6510, and FSH 2409.19 for direction on sale area improvement under the Knutson-Vandenberg Act.
  - b. Salvage Sale Funds (SSF) may be collected with an appropriate SSF plan. Salvage sale collections are only allowed for convertible timber products. It is unlawful to collect salvage sale funds for botanical products (mushrooms, grasses, seeds, fruits, and other vegetation). See FSM 2435, Salvage Sale Funds, and section 52.4 of this Handbook for further direction.
  - c. Purchasers of special and botanical forest products may be required to make deposits for brush disposal resulting from only their cutting operations. See FSM 2430, Brush Disposal Funds, and section 52.01 of this Handbook for further direction.
  - d. Purchasers of special and botanical forest products may be required to make deposits for maintenance of roads only for the portion used (FSM 7730; FSH 7709.58).

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Before obligating funds for any project listed above in items a through d, ensure that the sale generates sufficient funds and the funds have been collected.

2. Forest Botanical Products (FBP) - Public Law 106-113 and Public Law 108-108 and regulations at 36 CFR part 223 subpart H, provide a mechanism for funding the environmental analysis and administrative tasks (inventory, analysis, permit issuance and administration, and monitoring) necessary to facilitate the botanical products program. Collect fees to recover at least a portion of the fair market value of these products. A Regional Forester or Forest Supervisor, having proper authorization from the Chief, may waive all or a portion of the collection of fees for the following:

- a. Free use. See section 82 - Free Use, for guidance on when free use may be appropriate. Regions shall establish a maximum value allowed for forest botanical products personal use based on appraised values (not retail value). The value should not exceed an amount that would provide more than what a person would reasonably use for personal use. See 36 CFR 223.8 for direction on value amounts;
- b. Scientific research. When a written determination is made that the harvest of a specific forest botanical product will facilitate non-commercial scientific research such as species propagation or sustainability (36 CFR 223.280(b));
- c. All federally-recognized Tribes. When seeking to harvest botanical products for cultural, ceremonial, and traditional purposes. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in 36 CFR 223.240 of subpart G (36 CFR 223.280(a));
- d. Tribes with treaty or other reserved rights. When seeking to harvest botanical products for cultural, ceremonial, and traditional purposes in accordance with such treaty or other reserved rights. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in 36 CFR 223.240 of subpart G (36 CFR 223.280(a)); or
- e. Salvage. When other management activities would destroy or damage the product.

Funds collected under this authority through fiscal year 2009 will be placed in a designated account. Funds from the account may be used for conducting surveys for botanical products, determining sustainable levels of harvest, monitoring and assessing impacts from harvest levels, and conducting restoration activities, including vegetation restoration, resulting from the collection, harvest, or removal of FBP or materials. Retain fees collected from the pilot project at local units (administrative forest level). These funds must be available for expenditure at National Forest or National Grasslands until September 30, 2010, (unless the Act is extended or made permanent). Collections would cease at that time and expenditures would be allowed only as indicated in the regulations at 36 CFR 223.281.

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### **87.41 - Other Contract and Permit Requirements**

Direction for other contract and permit requirements can be found in the following directives:

1. Advertisements. See 36 CFR 223.227 and section 56 of this Handbook.
2. Contents of advertisement. See 36 CFR 223.228 and section 56 of this Handbook.
3. Contents of prospectus. See 36 CFR 223.229 and section 55 of this Handbook. In the prospectus section “21 General,” if products for Tribal treaty rights are present, this should be noted after consultation with the Tribe.
4. Noncompetitive sale of special forest products. See 36 CFR 223.227 and section 67 of this Handbook.
5. Bidding procedures; restrictions, relation to other bidders, award. See 36 CFR sections 223.231 through 233, and sections 57 and 62 of this Handbook.
6. Determination of purchaser responsibility. See 36 CFR 223.234 and section 76 of this Handbook.
7. Modifications of contract and permits. See 36 CFR 223.235 and FSH 2409.15 section 33.
8. Termination. See 36 CFR 223.236 and FSH 2409.15 section 37.

### **87.42 - Control and Understanding of Harvesting Activities**

To ensure sustainability of special forest products, educate the public concerning special forest product management, provide oversight of the quantity of products removed, and/or control the manner in which the harvesting is accomplished. Make an effort to prevent damage to resource values caused by destructive harvesting, out-of-season harvesting, and control against the spread of non-native invasive species. The use of permits or contracts allows the Agency to contact and educate user(s) about harvest requirements, laws, and regulations.

To provide for greater understanding and enjoyment by forest users and improved permit compliance, Forests and Districts are encouraged to provide information in multiple languages, as appropriate to the audience and the needs.

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## **87.5 - Methods of Disposal**

### **87.51 - Free Use**

When supply is not limited and value is low, free use of special forest products may be granted to individuals for personal use, which may include customary and traditional uses by rural residents for direct personal or family consumption (sec. 82). Prohibit individuals from selling or exchanging material harvested or gathered under free use, except for customary trade and barter, as defined in the Alaska National Interest Lands Conservation Act (ANILCA), Title VIII, Sec. 803 (16 U.S.C. 3101 et seq.) for rural residents of Alaska. A member of a Tribe with treaty or other reserved rights related to special forest products retain their ability to harvest such products in full accordance with existing rights, including free-use harvest. (Refer to FSH 2404.28 for limits on authority to grant free use. See 36 CFR sections 223.238, 223.239, 223.240, and 223.242. Also refer to the Food, Conservation and Energy Act of 2008, Title VIII, Subtitle B, Section 8105.) These purposes may include exchange in the form of gifts, ceremonial exchange, or traditional barter.

1. Incidental Free Use Without a Permit. Tribes with treaty or other reserved rights or others with reserved rights retain their historical rights to harvest special forest products in accordance with the terms of such rights. Alaskan settlers, miners, residents, and prospectors are entitled to 25 cords of wood, or an equivalent volume in other forms, per individual per year. In addition, forest campers may be allowed to gather firewood.

Unless it is necessary to control use or there have been significant removals of a resource, do not require either a free-use permit or a sale agreement for the gathering of small amounts of minor products, such as cones, mushrooms, berries, acorns, black walnuts, or medicinal roots. Persons availing themselves of this privilege on National Forest land are expected to exercise reasonable care in protecting the resource from damage. Exercise control where necessary to prevent damage to resource values by destructive harvesting, or out-of-season harvesting.

Carefully analyze applications that may collectively indicate large-scale or organized commercial removals projects. Report to the next higher organizational level if contemplating a decision whether or not to charge for a collection.

2. Forest Product Free Use Permit form FS-2400-8. Require a free use permit for gathering more than minor amounts of forest products intended for personal use. Indian Tribes with reserved rights retain their historical rights to harvest forest products without a permit.

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3. **Free Use Without a Permit Upon the Request of the Governing Body of a Tribe.** Responsible Forest Service officers may, upon the result of a representative of the governing body of a Tribe, when it is in the best interest of the Agency, issue a permit to a Tribe with treaty or other reserved rights as related to special forest products for the free use of a specified quantity of special forest products. A Tribe may then allocate specified quantities of the special forest product(s) to individual Tribal members, up to the maximum amount specified in the Tribal free-use permit. Any Tribe issued such a permit shall provide the Forest Service with information related to the permitted harvest, upon request (36 CFR 223.239).
4. **Supplemental Guidance.** Regional Foresters may issue supplemental guidance and approve Memorandums of Agreement and Memorandums of Understanding, consistent with subparts G and H, to promote local collaboration, issue resolution, and local implementation of these regulations. Existing Memorandums of Agreement and Memorandums of Understanding must be made consistent with subparts G and H, within 24 months from the rule's publication date (36 CFR 223.242).

#### **87.52 - Charge Permits or Sale of Products**

When supply is limited, the product has value, or the permittee intends to sell the product, a charge permit or sale contract is required. In addition, when issuing a permit constitutes a special benefit not generally available to the public, a charge must be made to recoup the Government's costs for issuing the permit or for administering the program, unless special circumstances warrant otherwise (sec. 87.3). Individuals may sell or exchange material harvested under a charge permit or product sale contract.

1. **Forest Products Removal Permit and Cash Receipt, form FS-2400-1.** This permit is a legal instrument between specific parties developed by the Agency to regulate the access and harvest of forest products. Charge permits are limited to direct sales of \$300 or less with limited resource effects (sec. 53.5). Permits must include the product designation, quantity that can be removed, permit area description, time frames for removal, and general terms and conditions of the permit.
2. **Forest Products Contract, form FS-2400-4, Timber Sale Contract, forms FS-2400-3S, 3T, or 3P and 2400-6 or 6T.** Sale contracts for forest products are legal instruments between specific parties to sell designated amounts of forest products requiring removal within defined terms and conditions. Refer to section 53, exhibit 01, in determining which contract form is appropriate for the sale of forest products.

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**87.53 - Bioprospecting, Research, and Demonstration Project Permit Terms and Conditions**

Refer to exhibit 01 for Other Terms and Conditions required for all permits issued to Colleges and Universities. Additionally, use this exhibit for terms and conditions for botanical organizations that may be involved in bioprospecting. Forest Product Removal Permit and Cash Receipt Permit form 2400-1 or Forest Product Free Use Permit form 2400-8 should be used for permits issued as free use or for charge up to \$300 value. Charge fair market value when the permit does not qualify for free use. This charge will be only for the plant or other product material. No authority is present to collect any future revenues from valuable discoveries from these plants or other material discovered during the bioprospecting process. Issue a permit under disposal of timber for administrative use (36 CFR 223.2) for research and demonstration projects with those entities that have cooperative agreements with the Forest Service or other Federal Government agencies or departments. The terms and conditions are designed for use with a Categorical Exclusion (CE) from the National Environmental Policy Act and, therefore, these permits must be limited in context and intensity. If it is determined that there are extraordinary circumstances or other reasons that a CE is not appropriate, then an environmental assessment or environmental impact statement is needed and the terms and conditions of the permit are identified during that process. Permits are not required for activities such as elementary school students collecting leaves for a class project.

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**87.53 - Exhibit 01**

**Add to “Other Conditions” in permits**  
**Terms and Conditions for Botanical Collection Permits**

These Other Terms and Conditions govern the collection of Forest Botanical Products.

1. Field collections must be performed only by the lead investigator or botanical personnel under their direct field supervision. By signing this permit, the permittee agrees that they or those under their direct supervision certify that those doing the collections have the qualifications necessary to properly identify the species collected.
2. The quantity (number and/or biomass) of live species to be collected from a population is limited to that specified in this permit for purposes of the survey, consistent with Forest Service responsibilities for maintaining diversity of plant and animal communities based on the suitability and capability of the specific land area under the National Forest Management Act.
3. The permittee shall prepare a voucher specimen for each species collected during the survey, deposit the voucher in a scientifically recognized herbarium from the herbaria listed in the Index Herbariorum (a joint project of the International Association for Plant Taxonomy (IAPT) and the New York Botanical Garden (NYBG) and published by the NPBG Press), and advise the agency of the herbarium selected.
4. The permittee shall provide the Forest Service with a list of the species collected, quantity taken, and location sites by forest.
5. The permittee is encouraged to provide the Forest Service with one copy of each publication or report resulting from this collection.
6. The permittee shall advise the Forest Service of any materials collected that are conveyed to a third party for scientific and research purposes.
7. The Forest Service may use the information obtained through this permit as needed, to further the management and conservation of the species collected under this permit.
8. Collection or disturbance of any federally listed, proposed, threatened, or endangered species or any Regional Forester's Sensitive Plant Species or Forest Plan Species of Concern shown on the attached list is prohibited, except as otherwise authorized.
9. Entry into closed areas is prohibited.

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**87.53 - Exhibit 01--Continued**

10. Collecting specimens in Primitive Areas, Wilderness, Research Natural Areas, Botanical Areas, Scenic Areas, Forest Service Campgrounds or Picnic Areas is prohibited, except as otherwise authorized.
11. The permit area does not include areas within 200 feet of any highway, road, or trail and thus collecting of specimens is not permitted in those areas.
12. This permit must be carried at all times when collecting and must be shown upon request, to a Forest Service officer.
13. The granting of this permit does not convey any rights for future collection.
14. General Condition 15 is made inapplicable in its entirety.
15. To the extent any inconsistencies exist between the General Conditions and Other Terms and Conditions, the Forest Service has sole discretion to determine which terms or conditions apply.

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## **87.6 - Reporting Harvest Volumes and Revenue**

### **87.61 - Reporting of Special Forest Products and Forest Botanical Products**

A wide variety of forest products are removed from the National Forest System lands. The Timber Information Manager (TIM) creates national databases and tracking systems to report the permit issuing and product sales of special forest products and forest botanical products.

### **87.62 - Units of Measure**

Special forest products have been assigned specific product and unit of measure combinations to facilitate reporting of volumes removed and revenue collected. Refer to exhibit 01 for the national product and unit of measure combinations. The use of these product and unit of measure combinations is mandatory.

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**87.62 - Exhibit 01**

**Product and Unit of Measure Combinations**

PRODUCT NAME	UNITS OF MEASURE *
Sawtimber	CCF, Ton, PAM, MBF
Pulpwood	CCF, Cords, Ton, PAM, MBF
Pilings	CCF, Piece, Ln. Ft., PAM, MBF
Mine Props	CCF, Piece, Ln. Ft., PAM, MBF
Float Logs	CCF, Piece, Ln. Ft, MBF
Non-saw	CCF, Ton, MBF
Posts	CCF, Piece, Ln. Ft., PAM, MBF
Poles	CCF, Piece, Ln. Ft., PAM, MBF
Fuelwood	Cords, CCF
Ties	CCF, Piece, Ln. Ft., PAM, MBF
Coop Bolts	CCF, Piece, Ln. Ft, MBF
Acid Distillate & Pine Distillate Wood	Ton
Trap Float	CCF, Piece, Ln. Ft, MBF
Miscellaneous Convertible	CCF, Cords, Piece, Ton, Ln. Ft., PAM, MBF
Christmas Trees	Piece, Ln. Ft., Each
Non-convertible	Piece, Each, Lbs., Bushels, Taps, Faces, Acres, Gal
Cull Logs	CCF, Ton, PAM, MBF
Small Roundwood	CCF, Piece, Ln. Ft., PAM, MBF
Green Biomass Convertible	Ton, CCF
Dry Biomass Convertible	Ton, CCF
Specialty Wood Product	Cu. Ft.
Bee Trees	Each
Transplants	Each
Limb/Bough	Ton, Lbs.
Foliage	Ton, Lbs.
Needles	Cu. Ft.
Bark	Lbs.
Cones-Green	Bushels
Cones-Dry	Bushels
Seed	Lbs.
Nuts/Seed	Lbs.
Fruits/Berries	Lbs, Gallons
Tree Sap	Taps
Tree Resin (Naval Stores)	Faces per Year

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**87.62 - Exhibit 01--Continued**

**Product and Unit of Measure Combinations**

PRODUCT NAME	UNITS OF MEASURE *
Roots	Lbs.
Bulbs	Lbs.
Mushrooms	Lbs, Gallons.
Fungi	Lbs.
Moss	Tons, Lbs.
Herbs	Lbs.
Ferns	Acres
Wildflowers	Lbs.
Grass	Tons, Lbs.
Aquatic Plants	Tons
Vines	Lbs.
Mistletoe/Spanish Moss	Lbs.
Cacti	Each
Green Biomass Non-convertible	Ton
Dry Biomass Non-convertible	Ton
Other Plants	Ton, Lbs.

\* KEY TO ABBREVIATIONS:

CCF	Hundred Cubic Feet
Cu. Ft.	Cubic Feet
Gal.	Gallons
Lbs.	Pounds
Ln. Ft.	Lineal Feet
MBF	Thousand Board Feet
PAM	Per Acre Material

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## **87.63 - Forest Botanical Products**

For a definition of Forest Botanical Products see section 87.05.

1. Collection and waiver of fees (36 CFR 223.278 and 223.280).
  - a. Fees must be charged for all forest botanical products to recover a portion of the fair market value and a portion of the costs associated with granting, modifying, or monitoring the harvest of forest botanical products through permits, contracts, or other authorized instruments issued for such products, except when a Regional Forester or Forest Supervisor has proper authorization from the Chief to waive all or a portion of the collection of fees for the following:
    - (1) Free use. See section 82 – Free Use, for guidance on when free use may be appropriate. Regions shall establish a maximum value allowed for forest botanical products personal use based on appraised values (not retail value). The value should not exceed an amount that would provide more than what a person would reasonably use for personal use. See 36 CFR 223.8 for direction on value amounts;
    - (2) Scientific research. When a written determination is made that the harvest of a specific forest botanical product will facilitate non-commercial scientific research such as species propagation or sustainability (36 CFR 223.280(b));
    - (3) All federally-recognized Tribes. When seeking to harvest botanical products for cultural, ceremonial, and traditional purposes. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in 36 CFR 223.240 of subpart G (36 CFR 223.280(a));
    - (4) Tribes with treaty or other reserved rights. When seeking to harvest botanical products for cultural, ceremonial, and traditional purposes in accordance with such treaty or other reserved rights. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in 36 CFR 223.240 of subpart G (36 CFR 223.280(a)); or
    - (5) Salvage. When other management activities will destroy or damage the product (36 CFR 223.280(b)).
  - b. Regional Foresters shall establish the maximum value that may be waived for personal use. In determining the maximum fair market value the appraised values rather than retail values should be used, and values should be established for each product that is expected to be permitted for personal use. Free use amounts authorized by the designated official should not exceed amounts under 36 CFR 223.8.

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2. Disposition of fees collected under the forest botanical products pilot program (36 CFR 223.282).
  - a. Funds collected under the forest botanical product pilot program from any contract, permit, or other authorized instrument authorizing the collection, harvest, or removal of forest botanical materials, except those waived in 36 CFR 223.280(a) and (b), must be deposited into a special account in the U.S. Treasury. These funds must be available for expenditure at National Forests or National Grasslands where the funds were collected until September 30, 2010, unless the program is extended.
  - b. Funds deposited into the U.S. Treasury special account specified in paragraph (a) of this section must be expended at a National Forest or National Grassland in proportion to the charges and fees collected at that unit to pay for costs associated with:
    - (1) Conducting inventories of forest botanical products;
    - (2) Determining, monitoring, and revising sustainable harvest levels for forest botanical products;
    - (3) Monitoring and assessing the impact of harvest levels and methods;
    - (4) Conducting restoration activities, including vegetation restoration; or
    - (5) Administering the pilot program, including environmental or other analyses.

## **88 - COOPERATIVE AND FEDERAL SUSTAINED-YIELD UNITS**

1. Use standard commercial timber sale procedures, requirements, and forms, modified as needed to include special provisions and conditions of sale, as required by 36 CFR 223.117 and by the cooperative agreement or the Federal sustained-yield unit policy statement (FSM 2468).
2. Take extra care in making stumpage appraisals, because the element of competition is absent or reduced. There must be full assurance that the public stumpage is appraised fairly in comparison with that sold in other National Forest transactions. Do not include a roll-back factor if there is only one responsible operator since the sale will be a noncompetitive sale.

Advertise each sale involving more than \$500 in stumpage value once weekly for 4 consecutive weeks. See FSM 2490 for reports on sustained-yield units.

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3. As described in 36 CFR 223.88, require prospective purchasers to submit sealed bids for sales within Federal sustained-yield units, unless the Chief authorizes a departure from the requirement. Consider departures only when there is sound evidence that sealed bidding is jeopardizing the economic well-being of a Federal unit community.

## **89 - TIMBER PROPERTY SALES**

Timber property sales are sales of timber partially or wholly processed into products either by direct Forest Service expenditures or by the expenditures of others that result in prices in excess of stumpage value. Examples include the sale of:

1. Logs cut in clearing rights-of-way across National Forest System land or ski areas, or
2. Seized material cut in trespass (FSM 2466).

Handle sales of timber property in a manner similar to commercial sales, but show the value of stumpage and the additional value due to the manufacture of the product separately. Deposit the collection for stumpage to the National Forest Fund. Deposit the excess over that due for stumpage to the sale of miscellaneous products and byproducts (FSM 6530).