

### Subpart G—Special Forest Products

EFFECTIVE DATE NOTE: At 73 FR 79386, Dec. 29, 2008, subpart G was added, effective Jan. 28, 2009. At 74 FR 5107, Jan. 29, 2009, the amendment was delayed until Mar. 30, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was further delayed until May 29, 2009. At 74 FR 26091, June 1, 2009, the amendment was delayed indefinitely.

#### § 223.215 Applicability.

The regulations contained in this subpart govern the disposal of special forest products from National Forest System lands through sale and free use. Pursuant to the Department of the Interior and Related Agencies Appropriations Act of 2000 (Pub. L. 106–113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (sec. 339 of Title III of H.R. 3423)), as amended in 2004 by Section 335 of Public Law 108–108, special forest products that are also forest botanical products shall be sold, or offered for free use, subject to the requirements of subpart H of this part, until termination of the forest botanical pilot program. A commercial sale of special forest products shall be governed by a contract, permit, or other authorizing instrument. Free use above the incidental-use harvest level shall be conducted under a permit, unless otherwise provided.

#### § 223.216 Special Forest Products definitions.

As used in this subpart:

*Person:* Any individual, partnership, corporation, association, Tribe, or other legal entity.

*Special forest products:* Products collected from National Forest System lands that 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.

#### § 223.217 Authority to dispose of special forest products.

The Forest Service has authority to dispose of special forest products located on National Forest System lands pursuant to the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528–531); the National Forest Management Act of 1976, as amended (16 U.S.C. 472a *et seq.*); and, the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600–1614).

#### § 223.218 Consistency with plans, environmental standards, and other management requirements.

The disposal of special forest products from National Forest System lands shall be consistent with applicable land management plans. Each contract, permit, or other authorizing instrument shall include, as appropriate, provisions requiring the person or user to:

- (a) Provide fire protection and suppression;
- (b) Protect natural resources;
- (c) Regenerate harvested species after harvesting operations;
- (d) Minimize soil erosion;
- (e) Maintain favorable conditions of water flow and quality;
- (f) Minimize adverse effects on, protect, or enhance other national forest resources, uses, and improvements; and
- (g) Deposit voucher specimens with a curator of a nationally recognized herbarium in North America as identified in the *Index Herbariorum* when the permit, contract, or other authorizing instrument allows bioprospecting.

#### § 223.219 Sustainable harvest of special forest products.

(a) *Sustainable harvest levels.* Prior to offering a special forest product for sale or free use, the responsible forest officer must determine the product's sustainable harvest level. A special forest product's sustainable harvest level is the total quantity of the product that can be harvested annually in perpetuity on a sustained yield basis. Responsible forest officers shall not authorize harvest or free use of special

forest products in an amount exceeding known sustainable harvest levels. In determining a sustainable harvest level, the responsible forest officer may consider harvest levels of the product for the previous three years, if such information is available. Responsible forest officers may consider factors such as year-to-year and site-to-site variability, climate, weather change, geographic scale, and scientific data available prior to making their sustainability determination and establishing monitoring time frames consistent with paragraph (c) of this section. 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.

(b) *Harvest of protected species.* 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.

(c) *Monitoring of established harvest levels.* At least once every three fiscal years, or as otherwise established by the Regional Forester, the Forest Service shall monitor the effects of harvesting on the sustainability of special forest products. Such monitoring may include, but is not limited to, on-site examination of the product, including both harvested and non-harvested areas, and a review of past and projected harvest levels to the extent such information is available.

(d) *Revision of harvest levels.* The sustainable harvest level for a special forest product may be increased or decreased, as appropriate, based on monitoring.

#### § 223.220 Quantity determination.

Sale contracts, permits, or other authorizing instruments may provide for determining the quantity of special forest products by scaling, measuring, weighing, counting, or other reliable means.

#### APPRAISAL AND PRICING

#### § 223.221 Establishing minimum rates.

The Chief of the Forest Service shall establish minimum rates for the sale of special forest products or groups of special forest products. Products must be sold for appraised value or minimum rates, whichever is higher. No products may be sold or harvested for less than minimum rates except to provide for the removal of insect infested, diseased, dead or distressed products.

#### § 223.222 Appraisal.

The Chief of the Forest Service shall determine the appraised value of special forest products. Valid methods to determine appraised value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. Special forest products must be sold at minimum rates or appraised value, whichever is higher.

#### CONTRACT AND PERMIT CONDITIONS AND PROVISIONS

#### § 223.223 Advance payment.

Contracts, permits, or other authorizing instruments for the sale of special forest products shall require advance payment, unless the contract, permit, or instrument authorizes the person to furnish a payment guarantee satisfactory to the Forest Service. Advance payments found to be in excess of amounts due the United States shall be refunded to the person or their successor in interest, subject to the requirements of the Debt Collection Improvement Act.

#### § 223.224 Performance bonds and security.

A contract, permit, or other authorizing instrument for the sale of special forest products may require the person to furnish a performance bond or other