

§ 223.277

§ 223.277 Forest botanical products definition.

As used in this subpart, the following term shall mean:

Forest botanical products are: 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.

§ 223.278 Sale of forest botanical products and collection of fees.

The responsible Forest Officer shall ensure that the sale price of any forest botanical product includes a portion of the product's fair market value and a portion of the costs incurred by the Department of Agriculture associated with granting, modifying, or monitoring the authorization for harvest of forest botanical products, including the costs of any environmental or other analysis. The fair market value of forest botanical products shall be equal to the appraised value determined in accordance with § 223.222. The sum of the portions of fair market value and costs making up the sale price must be greater than or equal to the forest botanical product's fair market value. All other aspects related to the sale of forest botanical products shall be governed under 36 CFR part 223 Subpart G.

§ 223.279 Personal use.

(a) *Personal use.* A person may harvest forest botanical products from National Forest Systems lands free of charge for personal, non-commercial use up to the personal-use harvest level.

(b) *Personal use harvest level.* In conjunction with determining sustainable harvest levels under § 223.219, the responsible Forest Officer shall determine personal-use harvest levels for specific forest botanical products, which shall be equal to the amount or quantity authorized for free use under § 223.239(a).

36 CFR Ch. II (7–1–10 Edition)

(c) *Personal-use permit requirement.* A person seeking personal use of a forest botanical product must comply with the free-use permitting requirements of § 223.239.

§ 223.280 Waiver of fees and/or fair market value.

The Forest Service waives the collection of fees otherwise required pursuant to § 223.278 of this subpart as follows:

(a) For all federally-recognized Tribes seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in § 223.240 of subpart G; and

(b) For Tribes with treaty or other reserved rights seeking to harvest forest botanical products for cultural, ceremonial, and/or 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 § 223.240 of subpart G; and

(c) When a Regional Forester or Forest Supervisor, having proper authorization from the Chief, makes a written determination that:

(1) The harvest of a specified forest botanical product will facilitate non-commercial scientific research such as species propagation or sustainability; or

(2) A forest botanical product is salvage because other management activities will destroy or damage the product.

§ 223.281 Monitoring and revising sustainable harvest levels.

The Forest Service shall monitor and revise sustainable harvest levels for forest botanical products in accordance with § 223.219 of subpart G.

§ 223.282 Deposit and expenditure of collected fees.

(a) Funds collected under the pilot program for the harvest and sale of forest botanical products shall be deposited into a special account in the Treasury of the United States. These funds shall be available for expenditure