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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 security for satisfactory compliance with its terms.

§ 223.225 Term.

The term of any contract, permit, or other authorizing instrument for the sale of special forest products shall not exceed 10 years, unless the Secretary of

Agriculture finds that better utilization of the various forest resources consistent with the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528–531) will result. Any such finding by the Secretary of Agriculture shall be made in writing.

§ 223.226 Term adjustments for force majeure delay.

Contracts or other authorizing instruments for the sale of special forest products, excluding permits, may contain a provision allowing the term to be extended if circumstances beyond the person's reasonable control delay performance. In determining whether such an extension is appropriate, responsible forest officers shall consider the value of the products or species, the length and type of authorizing instrument, the need for early/accelerated harvest, and any other appropriate factors. Circumstances beyond a person's reasonable control may include, but are not limited to, acts of God, acts of the public enemy, acts of the Government, labor disputes, fires, insurrections, and floods. The responsible forest officer may grant such an extension upon finding:

(a) Circumstances beyond the person's reasonable control delayed performance; and

(b) The person has diligently performed in accordance with the contract or other authorizing instrument.

ADVERTISEMENT AND BIDS

§ 223.227 Sale advertisement.

(a) The Forest Service shall advertise any special forest products sales with an appraised value equal to or greater than $10,000 for at least 30 days, except as provided in paragraph (c) of this section.

(b) When the sale's appraised value is less than $10,000, the Forest Service may sell the products without advertisement; however, if there is competitive interest in a sale valued at less than $10,000, the Forest Service shall advertise the sale for no less than 7 days.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Forest Service may, at its discretion, sell any special forest products without advertisement, or advertise a special forest products sale for a period less than 30 days if:

(1) Deterioration of a special forest product threatens its value; or

(2) The products were previously advertised for competitive bidding and no satisfactory bids were received; or

(3) The products are remaining from expired, cancelled, or abandoned contracts, permits, or other authorizing instruments.

§ 223.228 Contents of advertisement.

The Forest Service shall include the following information in an advertisement for the sale of special forest products:

(a) The location and estimated quantities of special forest products offered for sale;

(b) The time and place at which sealed bids will be opened in public;

(c) A provision asserting the Agency's right to reject any and all bids;

(d) The place where complete information on the offering may be obtained; and

(e) Notice that a prospectus is available to the public and to interested potential bidders.

§ 223.229 Contents of prospectus.

The prospectus for the sale of special forest products shall include the following:

(a) The minimum acceptable value or unit price for a product and the amount or rate of any deposits required in addition to the unit price of a product;

(b) The amount of the bid guarantee that must accompany each bid;

(c) The amount of the deposit or downpayment the successful bidder must make and the time-frame for making such deposit or downpayment;

(d) The location and area of the sale, including acreage;

(e) The estimated volumes, quality, size, or other appropriate measure for the special forest products;

(f) A description of any special harvest and removal requirements for the sale;

(g) The method of bidding that the Forest Service will employ; sealed bid or sealed bid followed by oral auction;