

Regulations Governing Disposition Of Forest Products Of State-owned Forests

法規沿革(Legislative):

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Article 17 amended and Article 16 deleted, promulgated on July 8, 2005 by the Council of Agriculture, Executive Yuan Order (94)Nong-Shou-Lin-Wu-Zi No. 941740545

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法規內文(Content):

Chapter 1 General Provisions

Article 1

These Regulations are enacted pursuant to the provisions of the third paragraph of Article 15 of the Forestry Act (hereinafter "Act").

Article 2

The disposition of the forest products of a state-owned forest (hereinafter briefly "forest products") shall be conducted by the relevant managing administration.

Article 3

Forest products are divided into two types:

1. Main products, including unrefined, withered, lodging bamboos/trees and the remaining roots of plants and remnant materials.
2. By-products, including barks, pitch, seeds/fruits, fallen twigs, leaves, shrubs/vines, bamboo shoots, grass, fungi and forest products other than the main products.

Article 4

The managing administration shall conduct disposition of the forest products by way of

1. Direct distribution which is by directly cutting and harvesting the forest products in accordance with the management plan for the state-owned forest business area concerned.
2. Bidding which is by announcing an invitation to bid for the cutting and harvesting of the designated area in accordance with the management plan for the state-owned forest business area concerned.
3. Special approval where disposition by way of bidding is not appropriate.

Article 5

The managing administration shall prescribe the annual cutting/harvesting plan each year in accordance with the management plan for each state-owned forest business area concerned and submit the same up to the National Principal Authority ("NPA") for approval, announcement and implementation. The same shall govern in case of an adjustment or change of such annual plan.

The annual cutting/harvesting plan provided in the preceding paragraph shall indicate the location of the cutting/harvesting site, the area, tree species and the operation method.

Where it is difficult to restore/reforest the forest land or where cutting and harvesting is likely to frustrate the relevant soil and water conversation, no disposition of the bamboos and trees shall be conducted.

The density of the roadways, operation paths built for conducting disposition of forest products and the operation method shall be properly controlled. Where the forest land area concerned is considerable in size, a separation protective belt area shall be set up.

Article 6

The National Property Administration shall prescribe the cutting/harvesting plan for each state-owned forest under its administration and management and for each state-owned forest located within the aboriginal reservation land in accordance with the above provisions and the designated purposes of management of such forests.

Article 7

Prior to conducting the disposition of forest products, the relevant managing administration shall dispatch personnel to conduct an on-site check to identify the location, area, tree species, timber volume, and production conditions and may designate personnel to conduct re-checks.

Thinning cutting for reforestation/cultivation purposes may be exempt from the timber volume check except where the trees harvested from the thinning cutting are valuable for utilization, in which case the relevant managing administration may account the actual timber volume and move the same for utilization.

Article 8

Except as otherwise provided in the relevant cutting and harvesting contract, no root of the forest products may be cut and harvested.

The roots of plants and remnant materials remained as a result of the disposition shall in principle not be harvested.

Chapter 2 Direct Distribution; Bidding; Special Approval

Article 9

Disposition of forest products by direct distribution shall be conducted by the relevant managing administration in accordance with the management plan for the state-owned forest business area concerned and the relevant annual cutting/harvesting plan after such disposition is approved by the NPA.

Article 10

The invitation to bid for cutting and harvesting forest products shall be announced by the relevant managing administration.

The announcement provided in the preceding paragraph shall indicate the following matters:

- 1.The location, area, timber volume, tree species, materials types, operation method, and duration of the cutting and harvesting;
- 2.Date and place of bidding and opening of bids.
- 3.Other matters relating to the bidding.

Article 11

The announcement provided in the preceding article may, where necessary, include such additional conditions to require that the successful bidder harvester sell and not refuse to sell the harvest to the designated buyer, if any, according to the tree species, specification, price, quantity delivery schedule and destination of delivery approved by the competent authority.

Article 12

Except when bidding for forest products of which the utilizable timber volume is less than 100M3, or for bamboos or other forest products which are not the object of disposition, the harvester to bid for forest products must

- 1.be a company or firm whose authorized business items include management of lumbering business;
- 2.have a capital of three million New Taiwan Dollars;
- 3.have its responsible person not being the subject of an adjudication of bankruptcy of interdiction and
- 4.who must meet any of the following qualifications, or the company has hired personnel who meets one of the qualifications provided in subparagraphs 4(1) to 4(3) to undertake the technical work:

- (1) a certified forestry (forest) technician or successful examinee of the national examination for higher-ranking forestry civil servant candidacy.

- (2) a collegiate graduate majoring in forestry or successful examinee of the national examination for common forestry civil servant candidacy, and in either case, having two years of experience or more in forestry business.

- (3) a graduate from a high school of agriculture, having four years of experience or more in forestry business.

- (4) having six years of experience or more in forestry business.

- (5) having engaged in lumbering business with the successful timber volume amounting to 4000M3 or more in total.

- 5.without its qualifications for bidding for forest products being cancelled by the managing administration by reason of its acting in violation of the forest laws and regulations or the cutting/harvesting contract.

The experience in forestry business referred to in subparagraphs 4(2) to 4(4) of the preceding paragraph means holding a certificate of forestry technician service performed issued by the competent authority or having worked for a lumbering company or firm as the on-site director or managerial officer of a higher rank with such work experience being verified by the competent authority's record.

Article 13

The successful bidder harvester shall, after being awarded the contract and throughout the term of the contract, report the change to its license (if any) to the relevant managing administration with a statement of such change and the cause thereof within 15 days of the occurrence of such change. The harvester shall apply to the managing administration for approval of assignment of the management to another person due to its inability to continue the management or other cause which calls for an

assignment.

Article 14

Forest products falling into any of the following may be approved for cutting and harvesting by way of special approval:

1. Forest products which are to be used to serve the purposes of management by the relevant managing administration.
2. Forest products which are to be used for forestry experiment/research purposes.
3. Forest products which are required by the government for performing disaster-resulted emergency repair work.
4. Bamboos, trees and bamboos shoots which are to be harvested for purposes of reforestation on leased forest land or conservation of the bamboo forest.
5. Additional materials which must be cut and harvested in the course of the lumbering operation and such fact is verified.
6. Bamboos and trees which must be removed to facilitate the lumbering operation, reforestation, mining survey, mining, quarrying and public construction work and such fact is verified.
7. Bamboos and trees which must be removed to facilitate the reforestation and cultivation work to be performed by the aborigines and such fact is verified.
8. Forest products which are required by the aborigines to meet the needs of their production activities or for building dwelling and/or making furniture and/or farming utensil for private use (hereinafter "materials for aborigines' private use").
9. Forest products which must be removed on site by the public business institution to facilitate the public construction work.
10. Forest products which are by-products or to be used for medical purposes.
11. Forest products which are required by the relevant government agency for repairing or building an office or public facilities in the mountainous region (hereinafter "materials used for public facilities in mountainous region").
12. Forest products which are salvaged bamboos and/or trees.

The object of the special approval provided by reason of subparagraphs 7, 8 or 11 of the preceding paragraph shall be such and only such bamboos and/or trees within the aboriginal reservation land and the harvester must obtain the relevant certificate issued by the administration office of the hsiang (township, city, district) concerned.

The special approval provided in the first paragraph shall not be governed by the restriction set out in the annual cutting/harvesting plan provided in the first paragraph of Article 5. Notwithstanding, the restriction set out in the relevant annual cutting/harvesting plan provided in the first paragraph of Article 5 shall govern where the bamboos in the bamboo forest provided in subparagraph 4 exceed 20,000 in number, and where the timber volume of such blocking wood to be removed to facilitate reforestation as provided in subparagraphs 6 and 7 exceeds 30M3 per hectare or the blocking bamboos exceed 20,000 in number.

The managing administration shall grant the special approval provided in subparagraph 10 of the first paragraph according to the production season. Each approval shall be for up to ten and only ten compartments. Where there are two or more applicants for the same special approval, the disposition shall be conducted by way of bidding or price comparison. Indigenous persons, tribes or registered aboriginal groups in the compartments have the priority of price competition or price negotiation.

In subparagraph 12 of the first paragraph, the applicants of indigenous persons, tribes /registered aboriginal groups or indigenous people, who registered and reside in the township (city, district) where driftwood located, must provide relevant identification and documents required for the use of traditional culture, rituals or personal use issued by the administration office of the township (city, district). The qualified applicants have the priority ,by special approval, to gather driftwood of a certain percentage of particular timber species.

The particular timber species and quantity shall be announced by the management authorities.

Article 15

The special approval provided by reasons of subparagraphs 1, 2, 3, 8 or 11 of the preceding paragraph may be granted free of charge, provided that the cutting and harvesting to be conducted under subparagraph 1 of the foregoing article is to serve educational or exhibition purposes only.

The special approval according to subparagraphs 12 of the first paragraph of the foregoing article, the indigenous persons, tribes or registered aboriginal groups shall gather driftwood free of charge and only for the purpose of traditional culture/rituals or personal use. The managing administration may by special approve sell to the harvester the blocking bamboos/wood cut by such harvester in accordance with subparagraph 6 of the first paragraph. Notwithstanding, where the price for such forest products as determined by the managing administration is a negative amount or less than one tenth of total market price, the harvester shall be required to pay the reimbursement of an amount equal to one tenth of the market price with respect to natural bamboos/trees and equal to the reforestation cost with respect to reforested bamboos/trees. In such case, none of such forest products may be moved for utilization.

The blocking bamboos/trees within the aboriginal reservation land shall be provided free of charge to the aborigines as materials for aborigines' private use. The harvester shall transport the remainder, if any, to the designated place and hand over to the managing administration for handling. The receiving agency shall assess and reimburse the gathering-up and transportation expenses. Above rule apply to driftwood provided to indigenous people for traditional cultural/rituals or personal use that announced according to the fifth paragraph of the preceding article.

No materials provided free of charge as materials for aborigines' private use or materials used for public facilities in mountainous region or driftwood used for aborigines' traditional cultural / rituals may be assigned or used for other purposes. A report on the use of such materials, including driftwood, shall be submitted to the local administration office of the hsiang (city, district) for inspection.

Article 16

Deleted.

Article 17

The applicant for special approval of cutting/harvesting shall submit an application to the managing administration.

Article 18

The floor price of the forest products to be disposed of by bidding shall be the confirmed total price or accounted according to the unit volume rate determined. Except as otherwise provided by these Regulations, the selling price of the forest products disposed of by special approval shall be the confirmed total price or accounted according to the unit volume rate determined.

Article 19

The relevant managing administration shall account the price of the forest products according to the following formula:

Price of the forest products = (Total market price of such forest products/1 + profit margin + capital interest rate) — production expenses

The market price of the forest products and the production expenses shall be determined based on the prevalent current price.

The profit margin shall be 10% to 15% to be determined in accordance with the conditions of operation

of the disposition case.

The capital interest rate shall be determined by reference to banks' posted interest rates.

The price of the forest products provided in the first paragraph shall be accounted as follows if the subject forest products belong to the blocking bamboos and/or trees provided in subparagraph 6 of the first paragraph of Article 14: where the subject forest products are those which must be removed to facilitate lumbering operation and reforestation, the price shall be accounted without regard to the profit margin; where the subject products are those which must be removed to facilitate mining survey, mining, quarrying and public construction work, the price shall be accounted without regard to the profit margin and the capital interest rate.

Article 20

The harvester shall pay the price in full by lump sum to the designated financial institution within 30 days from its receipt of the notice of payment from the managing administration.

Article 21

If the harvester fails to pay the price in full within the given time period, the award shall be revoked if the harvester is the successful bidder and the bid bond shall not be returned; and the special approval shall cease to be operative if the harvester is the successful applicant for special approval.

Article 22

The managing administration shall, within seven days from receiving the price paid by the harvester, enter into the forest products harvesting and transporting contract with and issue the cutting/harvesting permit or the moving/transporting permit to the harvester. The harvester may commence the harvesting/transporting operation after receiving the relevant permit and shall report the date of commencement of work to the managing administration.

The standard form of the harvesting and transporting contract, and the form of the cutting/harvesting permit and the moving/transporting permit provided in the preceding paragraph shall be prescribed by the NPA.

Where the cutting and harvesting is to be approved free of charge, the managing administration shall

issue the cutting/harvesting permit upon issuance of the approval.

Article 23

The harvester to assign the harvesting/transporting of forest products to another person shall cease the harvesting/transporting activities and file with the managing administration a written statement of the reasons for the assignment together with the assignment document and the original permit in conjunction with the assignee. The managing administration shall dispatch personnel to conduct an on-site for verification and approval. The harvester shall not proceed with the assignment until after obtaining such approval. The assignee shall assume the legal responsibilities of the original harvester after assigning the harvesting/transporting of the forest products. The assignee shall enter into a new harvesting and transporting contract with the managing administration and must not commence the harvesting/transporting work until after the cutting/harvesting permit is re-issued. The harvesting/transporting right may be assigned once and only once.

The harvesting/transporting amount and duration indicated in the re-issued permit shall be in accordance with the original contract, provided that the duration of the suspended harvesting/transporting operation due to assignment shall be made up.

Article 24

The harvester shall properly maintain the forest management facilities to be included for accounting the production expenses by the managing administration and may not use such facilities until after they are inspected and approved subject to the harvester's production of a signed undertaking of custody. The harvester shall, after completing the harvesting/transporting operation, deliver to the managing administration and the managing administration shall unconditionally retrieve such facilities the amount and specification of which shall be in accordance with those specified in the production expenses accounting statement. The harvester shall, at its own cost, disassemble those facilities (if any) which are not listed in the accounting statement, and if the harvester fails to do so, such facilities shall be subject to disposal by the managing administration.

Chapter 3 Administration of Cutting And Transporting of Harvest

Article 25

The managing administration shall, prior to selling the forest products by way of bidding, set up boundary posts or boundary markers around the boundaries of the subject operation area, note the same in the relevant area/location map and dispatch personnel to conduct the demarcation in conjunction with the harvester after the harvesting/transporting contract is executed. Disposition of forest products by way of special approval shall be governed by the provisions of the preceding paragraph *mutatis mutandis*.

Article 26

No harvester shall engage in any of the following act in the course of cutting/harvesting the forest products:

1. destroying the relevant soil and water conservation.
2. damaging the bamboos or work products of another person.
3. destroying, damaging or removing the boundary posts or boundary markers.
4. cutting/harvesting bamboos and/or trees to be reserved according to the government's requirement or bearing a reservation mark.
5. pirate cutting, unauthorized cutting of forest products.

Article 27

The managing administration shall dispatch personnel to supervise and provide guidance to the harvester from time to time during the cutting/harvesting period and the harvester must not refuse.

Article 28

The harvester shall assume and be solely responsible for the interests and risks in the forest products upon issuance of the cutting/harvesting permit or transporting permit.

Article 29

The harvester shall complete the harvesting/transporting work within the period provided in the harvesting/transporting contract. Failing to do so, the harvester shall apply in writing to the relevant managing administration for extension one month prior to the expiration of the period and pay the extension charges due. Notwithstanding, affected operation days as a result of the force majeure event occurring within one month following the expiration of the time period (if any) may be made up in full based on the harvester's application filed for such purpose after the event.

The extension charges shall be accounted from the day following the expiration of the original harvesting/transporting period. Subject to the relevant investigation and verification by the managing administration, an extension equal to the duration of suspension of work due to interruption arising from whatever cause not imputable to the harvester may be approved without the harvester having to pay the extension charges.

The extension charges shall be accounted as follows:

Extension charges = (The original total price determined × Remaining timber volume for utilization/Allowed timber volume for utilization) × (1/1000) × (Number of days of extension)

Article 30

The extension for harvesting/transporting forest products shall not exceed one half of the original period provided in the contract. The harvester shall, within 10 days from its receipt of the notice of approval of extension, pay up the extension charges by lump sum to the designated financial institution. Failing to do so shall render the approval deemed to have been abandoned.

Chapter 4 Supplementary provisions

Article 31

Except as otherwise provided by the Regulations for Management of Protection Forests, disposition of state-owned protection forests shall be governed by these Regulations.

Article 32

These Regulations shall come into force on the day of promulgation.