

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 2409.12b – Timber and Forest Products Trespass/Theft Procedures
Handbook**

Chapter 10 - Prevention, Legal Considerations, and Reporting

Amendment: 2409.12b-2012-1

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Approved by: James M. Pena, Associate Deputy Chief, NFS

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Responsible Staff:

Last Change: None

Superseded Document(s):

Digest: Following is an explanation of the changes throughout the directive by section.

2409.12b: Establishes new handbook “FSH 2409.12b, Timber and Forest Products Trespass/Theft Procedures Handbook.”

Zero Code: Establishes handbook and sets forth direction on procedures for preventing and investigating trespass and theft of forest products. In addition to consolidating information scattered throughout several different manuals and handbooks, it clarifies existing direction and provides new direction for the prevention of or the investigation of trespass and/or theft of forest products.

10: Establishes chapter 10 and sets forth direction on procedures to address the prevention, discovery, legal concerns, and reporting for timber and forest products trespass and theft.

20: Establishes chapter 20 and sets forth direction on procedures to conduct timber measurements for timber and forest products trespass and theft.

30: Establishes chapter 30 and sets forth direction on procedures for valuation and appraisal method(s) for timber and forest products trespass and theft.

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40: Establishes chapter 40 to set forth procedures for the sale and disposal of seized material from timber and forest products trespass and theft.

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11 - Prevention

Forest Service policies and procedures included in FSM 2400 and associated handbooks for preparing and administering contracts and permits are intended to minimize the chances of trespass or theft and maximize the probability of early detection and successful prosecution if trespass or theft does occur. Regional Forest Products Theft Prevention Plans contain additional direction and procedures for preventing trespass and theft.

11.1 - Presale Theft Prevention Measures

1. Locate and post boundaries of non-National Forest System Lands adjacent to planned harvest units prior to authorizing timber harvest or forest product collection activities.
2. Verify that property boundaries have been properly located and posted when timber harvest or forest product collection activities are found on other ownerships adjacent to National Forest System lands.
3. Sale preparation personnel must use written guides for timber designations and a consistent color scheme for the various designation methods (FSM 2441).
4. File written documentation of marking crew compliance with marking guides in each timber sale case folder (FSH 2409.12, sec. 71.3).
5. Forest Service personnel responsible for preparing marking guides and designating timber and other forest products for removal should receive training in theft prevention methods and procedures.
6. Use only tree marking paint containing registered tracers in designating trees on National Forest System land for removal and designating the boundaries of areas where harvesting timber and other forest products will occur (FSH 2409.12, sec.71).
7. Maintain strict accountability of tree marking tracer paint (FSH 2409.12, sec. 72).
8. When marking with paint adhere to the national paint scheme as outlined in FSH 2409.12, section 71.21, exhibit 01.
9. Monitor timber sale bidding for instances of noncompetitive bidding or possible collusive behavior (FSM 2432.52).
10. Each District and National Forest Office that conducts bid openings for timber sales must develop a bid monitoring plan (FSH 2409.18, sec. 67.12).
11. An annual report (FSH 1309.14, Report No. 240-AC, Results of Bid Monitoring) from each region to the Washington Office Forest Management staff for prior fiscal year activities is required by December 1 (FSH 2409.18, sec. 67.18).

12. Contracting Officers and Forest Service Representatives must complete formal training in antitrust and bid monitoring (FSM 2452.4).

11.2 - Theft Prevention Measures on Active Contracts and Permits

1. Contracting Officers, Forest Service Representatives, and Sale Administrators must complete formal training in timber theft prevention (FSM 2452.4).
2. Check for the presence of tracer paint on each active sale unit at least monthly as a part of normal sale administration and document the findings on the sale inspection report (FSH 2409.15, sec. 13.42a).
3. All additional trees not specifically designated for cutting under the terms of a contract must be designated by the Sale Administrator, Harvest Inspector, or other authorized Forest Service Officer by painting marks at breast height and below stump height with tracer paint. If possible, use a different color paint, normally green, than the original color used to mark the payment unit (FSH 2409.15, sec. 27.32).
4. Forest Service sale administration personnel should keep District and Law Enforcement personnel apprised of where timber and forest product operations are active including haul routes, and if applicable, scaling locations.
5. Rigorously implement and enforce all timber and log accountability procedures detailed in FSH 2409.15, section 27.
6. Follow the policies and procedures in FSM 2443 when scaling timber sale products after felling.
7. Require log haulers on scaled sales, including weight scaled sales in Regions 8 and 9, to possess evidence of authority to transport National Forest timber (FSH 2409.15, sec. 27.1).
8. Implement load accountability procedures for scaled sales as specified in FSH 2409.15, sections 27.21 and 27.22.
9. Follow the branding and painting requirements for timber sales in the western regions where export restrictions apply (FSH 2409.15, sec. 27).
10. Forest Supervisors shall enter into a Yard Scaling Agreement with the yard owner before approving a scaling site (FSH 2409.15, sec. 27.24).
11. It is the responsibility of the Sale Administrator to notify law enforcement personnel if undesignated timber is cut, timber is unnecessarily damaged, the purchaser uses paint on the sale area without the written authorization of the Contracting Officer, or additional trees are marked or designated for cutting by unauthorized personnel including unauthorized Forest Service personnel (FSH 2409.15, secs. 10.4 and 13.42c).

12. Utilize random timber surveillance plots and other innovative prevention measures.
13. Conduct timber and log accountability audits in accordance with the frequency and standards in FSH 2409.15, section 28. At least one audit team member must represent law enforcement.
14. Advise media of successful investigations and criminal and civil penalties assessed for violations.

12 - Discovery of Timber Theft or Trespass

For this handbook, timber theft is defined as the act of cutting and taking timber or forest products from National Forest lands without authorization or consent, with intent to deprive the government of such timber or forest products. Timber trespass is defined as the unauthorized intentional (inadvertent or reckless) cutting, destruction, or removal of timber or forest products from National Forest lands.¹ Timber theft can result in criminal charges. Timber trespass can result in civil charges.

Timber theft or trespass may generally be divided into three subcategories:

1. Theft or unauthorized cutting, removal, or damage associated with timber sales or timber settlement sales.
2. Theft or trespass by adjacent landowners.
3. Theft of individual trees or “timber poaching.”

Theft of timber or timber trespass may be discovered through a variety of circumstances including but not limited to:

1. Surveys of National Forest boundaries;
2. Inspection or surveillance of timber sale units;
3. Reports from private timber companies or landowners;
4. Law enforcement patrols;

¹ Black’s Law Dictionary defines trespass as the “ unlawful interference with one’s person, property, or rights. Or “[d]oing of unlawful act or of lawful act in unlawful manner to injury of another’s person or property. (citations omitted).

Black’s Law Dictionary defines theft as “[t]he taking of property without the owner’s consent. (citations omitted). Or “[t]he fraudulent taking of property belonging to another, from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same...”

5. Reports from visitors or employees;
6. Intelligence obtained from law enforcement informants or confidential information sources; or
7. Timber sale contract administration.

Once a potential theft or trespass has been discovered, notify Law Enforcement to secure the site and any possible evidence.

13 - Statute of Limitations and Restitution/Damages

13.1 - Criminal Prosecutions

The statute of limitations for initiating criminal charges against an entity for theft of or damage to United States government property, including timber (under 18 USC 641 and 18 USC 1361), is 5 years from the date of the theft or damage.

If the investigation of an incident involving timber cut from National Forest System land is resolved through a criminal prosecution, the government may ask for restitution from the defendant in terms of a fair market value which is the value of the product at its “highest and best use” between a “willing buyer and willing seller.” The fair market value does not give the defendant credit for logging costs or the “costs of pulling off the caper” as described in *United States v Campbell*, 42 F.3d 1199 (9th Cir. 1994). It is also important to note restitution statutes do not incorporate civil or contractual law. For example, it would be improper to ask for treble stumpage as the amount of restitution in a criminal case.

Restitution in a criminal case may typically be determined through a plea agreement, restitution hearing, or sentencing hearing. A Law Enforcement Officer or Special Agent is usually responsible for presenting to the prosecutor a defensible value for the timber or forest products stolen or damaged. Defensible value may be the fair market value, an enhanced value, or both depending upon the circumstances of the investigation.

One type of enhanced value is based upon the tree’s lost contribution to the forest ecosystem. This value may be useful if the theft or damage occurred in a designated Wilderness Area, rare ecosystem, or special management area, or if the type of trees involved are unique or are of great size or age. Lost visual quality may also be a factor. Consider using one or more Forest Service Specialists to provide input and/or prepare a written assessment. See FSH 2409.12b, section 30.6, Determining Resource Value of Theft and Trespass Material.

13.2 - Civil Proceedings

The statute of limitations for bringing a trespass action under civil proceedings is 6 years from discovering the trespass (28 U.S.C. 2415 (b)). If the investigation of an incident involving timber cut from National Forest land cannot establish criminal intent or if criminal prosecution is declined by the U.S. Attorney’s Office, the Government should issue a Bill for Collection to the responsible party for the value of the timber and additional stumpage values (for example, treble

damages) allowed pursuant to the law of the state in which the incident occurred. Additional stumpage values may only be applied when the resource was severed from the land.

Generally, the party cutting trees has the burden of determining where the property lines lie. Failure to do a competent survey typically leads to triple damages. Billing for investigative and administrative costs is often not authorized under State timber trespass laws.

Damages for timber trespass, whether innocent or willful, must be in agreement with existing State laws. For example:

State of Washington:

Innocent timber trespass = single stumpage

Willful timber trespass = triple stumpage

State of Oregon:

Innocent timber trespass = double stumpage

Willful timber trespass = triple stumpage

When criminal charges are not filed, and if the responsible party fails to pay the bill, the United States may initiate litigation. Only the USDA, Office of General Counsel or the U.S. Attorney's Office may settle the matter once a Bill for Collection has been issued.

13.3 - Initial Reporting

All timber trespasses or immediately apparent timber or forest products theft discovered by Forest Service employees (such as, Timber Sale Administrators, Wildlife Biologists, and so forth) must be immediately reported to Law Enforcement personnel, per the instructions outlined in FSH 5309.11, section 23.3, "Timber Investigations." An initial report is typically made to a District or Forest Law Enforcement Officer who conducts a preliminary investigation, ensures an incident report (5300-1) has been prepared, and writes a preliminary investigation report. Forest Service Law Enforcement personnel who discover timber and forest products theft or trespass should coordinate with Forest Service Timber Management personnel.

A preliminary investigation is defined as the minimum investigative effort necessary to establish the credibility of the information or allegation. Generally, a preliminary investigation does not extend beyond collection of information at the initial crime scene or recording the initial allegations of criminal activity. The preliminary investigation report should include a description of the approximate number of trees cut or damaged, species, and an approximate value for the timber removed. If later appraisals determine the stolen or damaged trees or forest products are significantly more valuable than the original estimate, an updated incident report should be submitted to the Special Agent in Charge through established protocols.

All working documents related to report preparation, including volume and value determination are sensitive documents which should be secured and not widely distributed. These working documents are subject to the Freedom of Information Act (FOIA) but might be withholdable pursuant to the attorney-client privilege under FOIA Exemption 5 and/or under FOIA Exemption 7. Records release determinations are made on a case-by-case basis and should be coordinated with a FOIA specialist.

14 - Field Procedures

Once a timber or forest products theft or trespass has been discovered and turned over to appropriate Law Enforcement personnel, measurement of the material should be done as part of the investigation at the request of the Law Enforcement Officer in Charge of the case. A certified advanced Cruiser or a certified Scaler, or both, should be used to supervise the measurements (see FSH 2409.11, FSH 2409.11a, or FSH 2409.12). The Scaler or Cruiser who determines the volume may be called as an expert witness in a court of law.

After an investigation team has been put together, it is essential for all members of the team to work together with Law Enforcement in order to maintain evidence integrity and security, and to have a complete investigation report ready to go to court when the investigation is finalized.

15 - Final Report

Forest Service Law Enforcement personnel with support from Forest Management personnel will prepare a final report enabling reviewing officials to clearly assess the facts of the case. The report should contain all supporting documents including but not limited to the following:

1. List of team members including address, phone number, e-mail, and qualifications.
2. Overview of case.
3. Policy and requirements.
4. Map(s) legal description, close in and general area.
5. Cruise and/or scale cards.
6. Photos and narrative.
7. Field diaries.
8. Field procedures.
9. Dates.
10. Volume and value summaries.

11. All letters of direction.
12. Discovery information.
13. All State policies used for report.

Because of the sensitive nature of this report, keep data in a locked environment to ensure access by authorized officials only. The Team Leader is responsible for security measures of original documents. The Team Leader will be selected during the discovery and initial reporting timeframe.