

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

**Forest Service Handbook 6509.11h – Service-Wide Claims Management Handbook
Chapter 20 - Administrative Claims for the Government**

Amendment: 6509.11h-1992-1

Effective date: September 04, 1992

Duration: This amendment is effective until superseded or removed.

Approved by:

Date approved:

Responsible Staff:

Last Change:

Superseded Document(s):

Digest:

Table of Contents

20.1 - Authority	3
20.2 - Objectives	3
20.3 - Policy	3
21.04 - Responsibility	3
21.04a - Forest Supervisors.....	3
21 - Tort Claims and Trespass Claims for the Government	3
21.1 - Determining Claim Amount	3
21.11 - Tort Claims for the Government.....	3
21.11a - Damages to Forest Service Vehicles	3
21.11b - Damages to Other Forest Service Property	4
21.11c - Fire Suppression Costs	5
21.12 - Trespass Claims for the Government.....	6
21.12a - Criminal Trespass	6
21.12b - Timber Trespass.....	7
21.12c - Fire Trespass	9
21.12d - Occupancy Trespass Claims	12
21.2 - Initiating Collections.....	13
21.21 - Initial and Follow-up Billings	13
21.21a - Initial Demand Letter and Bill for Collection.....	13
21.21b - Claims for Minimal Amounts	14
21.21c - Interest, Administrative Costs, and Penalty Charge	14
21.21d - Follow-up Demand Letters and Bills for Collection	14
21.21e - Stand-Alone Follow-up Bills for Collection	15
21.21f - Legal Basis of the Indebtedness.....	15
21.21g - Demand Upon a Debtor Charged With a Crime	17
21.21h - Demand Upon a Railroad Company that Starts a Fire.....	19
21.21i - Demand Upon a State Agency	20
21.21j - Demand Upon Debtors Who Are Jointly and Severally Liable	20
21.21k - Demand Upon Another Federal Agency	20
21.21l - Demand for Office of Workmen's Compensation Program Costs	21
21.21m - Demand for Federal Tort Claims Act Payments	21
21.21n - Return of an Unclaimed Demand Letter.....	21
21.3 - Installment Payments.....	21
21.31 - Determination of Debtor's Inability to Pay In One Lump Sum	21
21.32 - Size and Frequency of Installment Payments.....	22
21.33 - Repayment Agreement	22
21.34 - Interest Charge on Repayment Agreements	22
21.35 - Unsecured Claims	23
21.36 - Application of Installment Payment to Debt.....	23
21.37 - Application of Installment Payment to Multiple Debts	23
21.4 - Late Payment Charges on Tort and Trespass Claims	23
21.5 - Releases From Liability	23

This chapter provides procedural direction for the administrative collection of claims for the Government. The direction applies to Claims Officers and their designees except where otherwise stated.

20.1 - Authority

(FSM 6570.1).

20.2 - Objectives

(FSM 6570.2).

20.3 - Policy

(FSM 6570.3).

21.04 - Responsibility

(FSM 6570.4).

21.04a - Forest Supervisors

In addition to the responsibilities provided in FSM 6570.43, it is the responsibility of each Forest Supervisor to issue supplements to section 21.12b, establishing a table of values similar to the sample shown in section 29, exhibit 01, for use in timber trespass cases of 5 thousand board feet or less.

21 - Tort Claims and Trespass Claims for the Government

A tort or trespass claim for the Government results when a person or legal entity, acting negligently or otherwise wrongfully, causes damages to Forest Service resources or property.

21.1 - Determining Claim Amount

Follow the procedures in sections 21.11-23.4 to calculate the amount of claims for damages to Forest Service resources and property. Calculate the associated interest, penalty, and administrative cost charges in accordance with section 24.

21.11 - Tort Claims for the Government

21.11a - Damages to Forest Service Vehicles

Charge the actual amount of loss or damage, including direct expenditures for towage. Also, charge for storage costs and for loss of use if it is necessary to rent a replacement.

1. Cost Support. Ensure that there is adequate support provided in, or attached to, the administrative report for each item of cost included. Support the amount with:

- a. An itemized bill for repairs when such work has been completed.
- b. A reliable estimate of damages when there has been no repair work completed.
- c. The fair and reasonable value before the accident less salvage value if any when a vehicle has been damaged beyond economical repair or destroyed. The fair and reasonable value of Government vehicles is the value immediately before the accident as determined by estimates from at least two reliable dealers or by value shown in the National Automobile Dealers Association used car value book, Kelly Blue Book, or other official used car valuation book.

2. Checks Payable to Parties Other than the Forest Service. On occasion, a private party or an insurance company makes a check payable to a party other than the Forest Service in payment of a claim for damage to Forest Service equipment. Follow the procedures given in the following examples in such a situation and issue a purchase order to the garage in each instance.

- a. Check made payable to employee. Have the employee endorse the check to the order of the Forest Service, Department of Agriculture, and forward it to the unit collection officer for deposit for credit to the working capital fund (WCF).
- b. Check made payable to Forest Service and garage making repairs. Have the garage endorse the check, and then deposit the check to the credit of the WCF.
- c. Check made payable to employee and garage. (Although this is not a recommended practice, the Forest Service can accept the check.) Have the employee endorse the check and give it to the garage in payment for the repairs. Have the garage issue a receipt to the Forest Service. Maintain necessary controls to prevent duplicate payment to the garage.

In all instances where there is a printed release on the check or where the private party requests a release, follow the direction in section 21.5.

21.11b - Damages to Other Forest Service Property

1. Working Capital Fund Equipment. Arrangements for the repair of Working Capital Fund (WCF) equipment should be handled so that the cost is initially charged to WCF; when collected WCF shall be reimbursed. See FSH 6509.11f, section 38.13 for additional direction.

2. Other Equipment. When damage or loss involves other than WCF equipment, a private party responsible for damage to Government property may pay for repairs directly to the party making the repairs, provided the arrangements and the repair work are satisfactory to the Government. A savings to the appropriation, which would otherwise finance the repairs, results when it is possible to make such an arrangement.

When practicable, obtain in writing the private party's acknowledgment of responsibility and agreement to pay the party making the repairs directly.

Forest Service employees (except contracting officers when related to contract) shall not execute releases. When the responsible party has paid for completed repairs that are satisfactory to the Government and has requested a release, submit the request to the Claims Officer along with: (1) a certification that the repair of the damaged Government property is satisfactory and (2) a copy of the receipt repair bill or bills.

The Claims Officer shall send the request to the Office of the General Counsel for release.

3. Other Personal Property. When damages equal the actual repair cost of the damaged property, or when it is beyond repair, charge the property's replacement value less depreciation.

21.11c - Fire Suppression Costs

When a bill will be issued for fire suppression, calculate all direct costs of fire suppression. Generally, these costs represent the gross charges to the fire. The accounting system was designed to capture costs incurred on specific fires through the use of a prestructured management code assigned to the fire. Use these costs to the fullest extent possible to support billings issued as a result of the fire. Review charges to determine if they accurately reflect the Forest Service cost of suppression.

In addition to the cost of suppression, damages to resources, real, or personal property may be billed. See sections 21.11a, 21.11b, and 21.12c for additional information in arriving at amounts to bill for these damages.

1. Billable Costs. The following list of suppression costs is not intended to be all inclusive, but should reflect the majority of costs the Forest Service does incur.

- a. Salaries and wages of Forest Service employees, including Job Corps Civilian Conservation Center staff. Salary costs include base time, overtime, hazard pay, and employer's contributions to retirement, social security, life insurance, and health benefits.
- b. Travel and transportation costs.
- c. Wages of temporary laborers and related costs.
- d. Cost of tools and supplies.
- e. Surface and air equipment operating costs and rentals, including the fixed ownership rate for working capital fund equipment.
- f. Other items, such as telephone, telegraph, and land rental costs.
- g. Costs of trespass investigation, preparation of reports, and damage assessments, unless not allowed by State statute.

The project manager's statement and transaction registers should be used to accumulate trespass costs in lieu of individual payroll registers Form AD-355, travel vouchers, and equipment use tearsheets. Maintain copies of all supporting documentation in the case file.

2. Non-billable Costs. Do not include the cost for the following items:

- a. Tools and supplies purchased, but not used, provided they are available to be used for other fire purposes (such as those able to be stored in the fire cache).
- b. Personnel (labor and overhead) ordered for duty, but not actually used on the fire (for example, held in reserve).
- c. Equipment, tools, and supplies burned, lost, or otherwise destroyed during suppression through inadequate supervision or other administrative error.
- d. Crews used for training purposes.
- e. Management supervision, such as that performed by the District Ranger or Forest Supervisor, unless such officer actually occupies a position in the fire suppression organization.
- f. Labor and equipment contributed at no cost to the Forest Service by cooperating agencies, such as the Navy and Army, provided the Forest Service is not responsible for billing the other agencies costs under an interagency agreement.
- g. Costs of chemicals or equipment used on an experimental basis only in connection with equipment development projects.

When tools, equipment, and supplies are burned or lost without fault of the Forest Service, charge the prorated or depreciated value. The cost of repair and reconditioning small tools should ordinarily substitute for assessing depreciated value.

21.12 - Trespass Claims for the Government

A trespass claim for the Government results when a person or legal entity, acting unlawfully under applicable property laws, takes or causes damages to Forest Service resources or property.

21.12a - Criminal Trespass

A criminal trespass claim for the government results when a person commits a trespass with criminal intent and causes damages to Forest Service resources or property.

If the property would have been used during the time it was stolen, there is indirect damages for the rental value of the property for the period of time it was in the thief's possession. If no usage is lost and the stolen property is recovered in an undamaged condition, there is no property loss or damage. If the stolen property is not recovered or recovered in damaged condition, there is

direct property loss or damage and the amount of the damages is the unrecovered property's value or the repair cost of the recovered, damaged property.

If Forest Service real property or resources are damaged as a result of a theft or a criminal trespass, damages are the costs to restore or repair the damaged real property or resources.

21.12b - Timber Trespass

A timber trespass claim for the Government results when a person or legal entity takes or damages marketable Forest Service timber under circumstances constituting a trespass under applicable law. In most States, a timber trespasser is liable to the landowner under State law for multiple amounts based on the stumpage value of the affected marketable timber.

A timber trespass may be committed without criminal intent, and in most States without negligence.

1. Small Volume Timber Trespass. In order to facilitate Forest Service efforts to collect civil damages due the Government, the Forest Service has developed a simplified process for calculating timber trespass damages for cases involving 5,000 board feet (5 MBF) or less. This process is intended to help overcome several problems prevalent throughout the Forest Service relative to consistency and uniformity in determining values, timeliness in calculating damages, application of double or triple damages under State law, valuation of noncommercial species, adjustment or mitigation of damages, and inclusion of data in damage computations intended to punish the trespasser rather than to recover losses.

In order to reduce the impact on Timber Management personnel and to eliminate the need for separate damage appraisals for each small trespass that occurs, utilize the table of values issued by the Forest. See section 20.4 for responsibility of Forest Supervisor to supplement this section with the table of values. See FSM 2420 for cases over 5 MBF. After establishing the table, update the values at least semianually.

Follow these guidelines in establishing each National Forest table:

a. Species. Each forest shall select and list on its table those resource species most common to the forest and most subject to trespass or removal. The table should include both commercial and noncommercial species. When investigating or reporting trespass, always identify the species on the document(s) in order to compute damages accurately.

b. Product Quality or Grade Identification. Each species identified is often going to have one or more potential uses. For example, Douglas-fir may have sawtimber quality, firewood quality, or may be useful as an ornamental plant. To be effective, the table should recognize and list each of the various uses or end products for each species as shown in the sample table in section 29, exhibit 01.

When computing damages, determine the highest product use or quality and calculate damages using the values established for this level of quality or use. For

example, if sawtimber quality logs are removed from a log deck and converted to firewood, compute the damages using the sawtimber value, not firewood value.

c. Volume (Unit of Measure). The unit of measure is that unit the industry or the Forest Service most commonly uses when identifying or setting unit prices.

When investigating, reporting, or citing for a trespass, the Law Enforcement Officer (LEO) must accurately determine or measure the total volume of resource material involved in the trespass and record the same in the report. (See section 10.4 for responsibility of assessing damage.) To compute the damages, convert this information to the correct unit of measure, if not already done. For instance, if X number of cords of sawtimber are reported taken and the unit of measure for pricing sawtimber is "per MBF," convert the cords to MBF before making the damage computation.

d. Value. The value used in the table should reflect the local fair market prices for the various resources common to the area; develop this value by surveying the local markets rather than by making standard (analytical) appraisals or using timber sales data. To ensure that the values developed remain credible and supportable in courts of law, update them at least semiannually and ensure that they accurately reflect the average price (value) of the resource by using the appropriate unit of measure or price.

For example, depending on size, quality, and grade, Douglas-fir can have a value based upon a unit price per ton, per MBF, per cord, per tree, or per foot. Therefore, if forest historical data indicates that trespasses occur under circumstances where prices in each of these measuring units are necessary, a forest survey should cover each of these and include the resulting data in the table.

To compute damages, determine the highest value and apply that value using the appropriate unit of measure identified with the product or quality of resource(s) taken. For example, 10 trees are cut and removed. Depending on size, quality, and species, the highest value made may be derived using per MBF, per cord, or per foot unit price.

e. Penalties. The provable facts developed in a trespass investigation determine whether additional values or penalties are assessable. Under some State statutes, resource values double if an innocent trespass occurs or triple when a willful trespass occurs. Other State statutes allow only single damages for innocent trespass and triple where the trespass is willful. However, the trespasser must have severed the resource from the land in order for these rules to apply. For instance, when a trespasser takes a sawlog from a deck and cuts it into firewood, a conversion of property has occurred; as such, this trespass entitles the Forest Service to the "timber property" value only. The timber property value in such a case would be the total of the stumpage value plus felling, bucking, yarding, and decking costs. Do not double or triple this value because the trespass involved taking a product rather than severing a resource from the land.

In cases where it can be proved that a resource was severed from the land and it is later "found" in the marketplace where it was sold for a very high price, the damages would be the "where found" value. However, do not apply the "where found" value in such a case if it were not supportable by transaction evidence and/or if the doubling or tripling of the damages per State law would result in a larger damages amount.

f. Adjustments. Whenever a trespass is discovered and all or a portion of the resource involved is either seized or recovered in some other way, it is the Government's responsibility, just as for a private individual, to mitigate its damages whenever possible. The Government accomplishes this by selling the resource involved to the highest bidder or by using the resource for administrative purposes. Never give the resource away. When selling the seized material (FSM 2466), adjust the damages due the Government from the trespasser(s) to reflect the amount already received by the Government from the sales transaction.

Do not delay demand letters for determination of exact damages. If obtaining the exact calculation would delay the issuance of the demand letters more than 60 days, send the trespasser demand letters based on the best estimate using the table of values of cost and damages. Once the actual damages are known or calculated, adjust the billings. However, in no case does the Government refund to the trespasser any monies received from a sale or payments made on estimates in excess of the computed damages.

If the Forest Service decides to use the seized or recovered material for administrative purposes or if circumstances within the control of the Forest Service delay the sale of trespass material, reduce the damages due the Forest Service from the trespasser(s) by the single value of that resource. If, for reasons beyond the control of the Forest Service, the Forest Service cannot mitigate damages, make no adjustments in the damage computation, and demand from the responsible party the full amount calculated.

g. Costs. Allowable costs which may be added to the damage computation may include road repair or maintenance, reforestation, slash disposal, or other cleanup. Only the actual cost to perform the work or replace the resource is allowable. Allowable costs also include the cost of report preparation, timber cruising relative to damage appraisal, investigation, and other costs attributable to assessing the damage, unless prohibited by State law. Doubling or tripling these costs is not appropriate.

h. Application of Table Information to a Sample Case. Section 29, exhibit 02, displays a format for using the information included on the table. It also provides a sample that displays the use of the format.

21.12c - Fire Trespass

A fire trespass claim for the Government results when a person, by negligently or otherwise wrongfully causes a wildfire and burns Forest Service resources or property.

A fire trespass may be committed without criminal intent.

1. Damages to Forest Service Sawtimber and Other Marketable Products. Base the methods used to determine the volume and value of damage to trees on Regional methods and procedures in volume measurement as well as those described in the Regional timber appraisal handbook (FSM 2420). Rely on timber appraisal personnel to gather data.

a. Intensity of the cruise. The intensity of the cruise should vary with:

- (1) Size of the burned area.
- (2) Value of the timber.
- (3) Uniformity of composition and distribution.
- (4) Other factors.

b. Tree measurements and volumes. When some trees are only partly killed, record necessary tree measurements and compute volumes separately for:

- (1) Live trees left.
- (2) Fire-killed trees.
- (3) Injured trees that may die.

c. Value of trees. Determine the value of trees destroyed as follows:

(1) When trees are merchantable, base the stumpage prices on one of these methods in the order listed:

(a) Prices received for comparable Government timber in the vicinity sold reasonably close to the time the fire occurred, including quality, accessibility, and other factors.

(b) Prices received for timber in comparable private sales.

(c) If it is not possible to use either item (a) or item (b), use prices received for the nearest Government or private timber sale with comparable sale conditions.

(2) If all or part of the damaged timber is salvaged and sold, reduce the amount of the claim by the revenue received from the sale.

(3) When timber is inaccessible, use Regional minimum stumpage prices.

(4) For unmerchantable areas, assess the damage under some other applicable heading.

2. Value of Young Tree Growth Damaged by Trespass. When plantations or natural stands of young trees that are too small to have timber stumpage value are damaged or destroyed by trespass action, there are two suggested methods for estimating the value of the damage:

a. Transaction Evidence. Most acceptable to the courts is actual evidence of sale value of lands stocked with immature timber, as compared with sale value of bare land. The difference is the value of the immature timber. This is a preferred method if it is possible to use it; however, it is not always easy to obtain such transaction evidence. Lands staff officers may be able to provide assistance in this area as they generally maintain records of private land and timber sales that have occurred during the previous year. Appraisers should attempt to get as many sales transactions as possible to provide a reasonable basis for value.

b. Analytical Method. When transaction evidence is unavailable, use an analytical method to determine the value of damages to young trees. Explain and calculate damage in young growth timber stands as the difference in value between the trespass area immediately before and immediately after the trespass has occurred. In other words, consider the difference between what the present net worth of the young growth stand or plantation would have been had it not been damaged and the present net worth of the stand or plantation after infliction of the damage. Thus, two present net worth calculations are necessary. Each calculation must take into account all the future values the stand or plantation would have realized and all the future costs it would have incurred. Past investments, which may have been required to establish and protect the original undamaged stand, are "sunk" costs; that is, they preceded the date of the trespass and are irrelevant to the present worth calculation. Costs necessary to start a new stand would, however, be a major part of the damage figure.

Consult with Timber Management to obtain figures for damages as a result of lost timber too small to have a stumpage value.

3. Damages to Improvements on Forest Service Land. In general, the claim amount would include the cost to repair the improvement. When the improvement is not repairable, the claim would include the cost to replace the improvement less depreciation. The following examples show how to appraise damages to improvements:

a. Fence.

(1) Fifteen miles destroyed beyond repair.

(2) Built 10 years earlier at cost \$400 per mile.

(3) In good condition.

(4) Investment record now combines this 15 miles, at \$300 per mile, with others costing more or less.

(5) Replacement cost is \$500 per mile.

(6) Life of fence was 20 more years.

(7) Damage: The cost replacement is \$7,500 (15 x \$500), but the fire destroyed only two-thirds of the life of the fence. Therefore, the damage to collect from the trespasser is \$5,000.

b. Fire Lookouts.

(1) A 14- by 14-foot frame structure on stone masonry foundation.

(2) Built 30 years earlier for \$3,000, of which \$500 was for foundation.

(3) Totally destroyed except for foundation, which is acceptable for reuse.

(4) Life of structure was 20 years.

(5) Cost of replacement estimated to be \$5,000, including \$100 for disposing of fire debris.

(6) Value of structure on books is zero.

(7) Damage: The original cost has been depreciated to zero, but repairs have extended the life. It is estimated the structure should not have needed full replacement for another 20 years. It would be fair to assess the trespasser two-fifths the cost of replacement or \$2,000.

(8) Be aware that employee property in Forest Service lookouts (and other structures) may be damaged or destroyed, occasioning employee claims. Therefore, damaged structures should not be bulldozed or otherwise removed until an investigator has determined whether employee property within was damaged in the incident.

21.12d - Occupancy Trespass Claims

An occupancy trespass claim for the Government results when a person or legal entity commits a trespass and causes resource or property damages or loss of revenue to the Forest Service, in circumstances which do not constitute a criminal, timber, or fire trespass.

An occupancy trespass may be committed without criminal intent.

Some examples of occupancy trespass are unauthorized: (1) grazing of livestock; (2) use of recreation facilities; and (3) disposal of personal property on Forest Service lands.

When determining the amount of the claim, include the cost of impoundment, as authorized by 36 CFR 262 Subpart B as appropriate. In cases of unauthorized use, the claim will also include a charge for the use as authorized. For example, unauthorized grazing will be charged in accordance with 36 CFR 222.5 Subpart C.

21.2 - Initiating Collections

Claims officers must initiate collection actions on all tort and trespass claims due the Forest Service, regardless of the amount (FSM 6570.4).

Tort and trespass claims become due the Forest Service when a Claims Officer determines from all the evidence that there is a substantial likelihood that an identified person or legal entity, acting negligently or otherwise unlawfully, caused damages to Forest Service resources or property. This determination administratively establishes the identified person or legal entity as a debtor of the Forest Service, liable to the Government for the amount of the damage sustained.

21.21 - Initial and Follow-up Billings

21.21a - Initial Demand Letter and Bill for Collection

When a tort or trespass claim is determined to be due the Forest Service, a claims officer will initiate collection action by issuing a demand letter accompanied by a Bill for Collection, Form FS-6500-89, to the debtor. Except in cases of minimal claims (sec. 21.3), issue an initial demand letter and bill for collection regardless of the amount of damages or the financial condition of the debtor. These two factors are relevant to the continuation or termination of collections but not relevant to their initiation. (See section 26 for direction on compromise, suspension, and termination.)

The initial demand letter informs the debtor of the factual and legal basis of the debtor's indebtedness (liability), the date payment is due, the rate of interest to be charged for late payment, and the Forest Service policy for charging interest, administrative costs, and penalties. Mail or hand deliver the initial demand letter and its accompanying bill for collection on the same day they are signed, or as soon as possible thereafter. If mailed, send the initial demand letter and bill for collection "Certified -- Return Receipt Requested". See section 29, exhibit 03 for an example of an initial demand letter and bill for collection.

Many tort and trespass cases paid by the debtor, or their insurance company, require the Forest Service to sign a release for liability. For this reason, notify the debtor that all payments must be submitted to the office issuing the bill. Do not send payments to the lockbox bank until after the release of liability has been reviewed and signed by the appropriate official (sec. 21.5).

If the check is inadvertently mailed to the lockbox address, and the payment or release are not acceptable, immediately notify the Office of the General Counsel (OGC) and the claimant or insurance company of the situation and take appropriate action as advised by OGC.

In cases where the party directly responsible for the resource or property damages is not clear, such as a child, an insurer, an employee of another at the time, or is deceased, it may not be obvious to whom the initial demand letter should be sent. See section 29, exhibit 04, for some examples of the proper party or parties to be billed in particular situations.

21.21b - Claims for Minimal Amounts

Unless circumstances dictate billing to maintain the Government's debt collection credibility, or for other policy reasons, do not initiate collection action for tort or trespass claims involving damages to the agency of less than \$50. For claims involving between \$50 and \$100, send an initial demand letter and Form FS-6500-89, Bill for Collection, but do not continue collection actions if the debtor fails to respond; instead, terminate the claim pursuant to 4 CFR 104.3(a).

21.21c - Interest, Administrative Costs, and Penalty Charge

The initial demand letter and the accompanying Form FS-6500-89, Bill For Collection, notify the debtor that if the bill is not paid in full by its due date, interest will accrue from the date the bill was issued, administrative costs will be charged, and a penalty may be assessed. Enter the due date in the bill for collection's date payment due block, which is typically 30 days from the date of issue. For example, if issued January 1, the bill will have a due date of January 31, if issued February 10, the due date will be March 12.

Include the following statement on late payment charges. It provides the proper notification required under the Debt Collection Act in the initial demand letter and the accompanying bill for collection:

This bill is due upon receipt. If not paid in full by the due date, you will be charged interest on the unpaid principal at the rate of __ (insert the higher of the Department of Treasury rate in effect on the date of the bill's issue or at the prompt payment rate). Additionally, you will be charged an administrative cost to cover processing and handling the overdue debt. Finally, if this bill is not paid in full within 90 days after the date of issue, in addition to the interest and administrative costs, you will be charged a penalty of 6 percent per year on any unpaid portion of the debt. Interest and penalty charges will be calculated from the date the bill was issued.

Simple interest on any principal unpaid after the due date accrues at an annual rate calculated from the date the bill is issued through the date of payment. See FSM 6534.4 for partial waiver of accrued interest for payments received before the due date specified in follow-up bills for collection. The interest rate remains constant once it has been assigned.

Apply payments received to the penalty and administrative costs first, interest second, and the balance to the principal. See section 24 for additional information pertaining to interest, penalties, and administrative costs.

21.21d - Follow-up Demand Letters and Bills for Collection

Three progressively stronger follow-up demand letters may be appropriate if the initial demand for payment is unsuccessful. Each follow-up demand letter should be accompanied by a follow-up Form FS-6500-89, Bill for Collection, showing a new due date and the new total amount due, itemized by principal, accrued interest, administrative costs, and penalty if any.

The follow-up demand letter need not restate the basis for the debtor's liability, but should summarize any delinquency charges which have accrued. Unless the debtor has disclaimed financial ability to pay or has provided convincing reasons why the debtor is not liable for damages, the follow-up demand letter should state that if the debt remains unpaid, the claim shall be referred to a collection agency, the matter will be pursued in Small Claims Court, or forwarded to the Department of Justice for suit. If it appears the debtor does not have the financial resources to pay the bill, enclose a Financial Statement of Debtor, Form FS-6500-40, for the debtor's completion, or request other financial statements to enable the Forest Service to conduct a financial analysis as required by FSH 6509.18. If the debtor has limited financial resources relative to the amount of the debt, include willingness to discuss other methods of payment, such as installment payments. See section 21.3 for information on installments.

Mail follow-up demand letters and accompanying bills for collection Certified -- Return Receipt Requested. See section 29, exhibit 05, for examples of three progressively stronger follow-up demand letters.

21.21e - Stand-Alone Follow-up Bills for Collection

Follow-up bills for collection should normally be accompanied by follow-up demand letters; however, time constraints or the desire to keep costs down may justify the issuance of a follow-up bill for collection without the letter. A follow-up bill for collection without an accompanying demand letter.

1. Shall reference the initial bill, wherein the Forest Service policy on delinquency charges was stated.
2. Should show a new due date and the new total amount due itemized by principal, accrued interest, administrative costs, and penalty if any.
3. Must be mailed Certified -- Return Receipt Requested.

21.21f - Legal Basis of the Indebtedness

It is the responsibility of Claims Officers to be as knowledgeable as possible about State forest and fire tort/trespass laws applicable in their Forest, Region, or Station. These laws normally constitute the legal basis of the indebtedness of tortfeasors and trespassers responsible for damages to Forest Service resources or property. The following four areas of State tort law are of particular importance:

1. State Tort Law/Comparative Negligence. A debtor is generally liable under tort law if the debtor's negligence caused damages. Most States' tort laws are based on the principle of comparative negligence. Under this principle, recovery for damages caused by the debtor's negligence is offset a proportionate amount if a Forest Service employee's negligence contributed to the damages. If both parties were negligent and both parties suffered damages, one party is the net debtor and the other party the net creditor, depending on a double proportionate offset based upon each party's contributory fault (comparative negligence) and each party's damage amount.

In States with comparative negligence-based tort law, if a Claims Officer determines that a shared-fault/shared-damages situation exists and the private party is the net debtor to the Government, demand for the full amount of damages should be made. Do not reduce the amount of the billing by an offset amount reflecting the debtor's damages and the Forest Service employee's comparative negligence.

If the private party responds by offering a reduced amount based on comparative negligence, base consideration of the offer on the legal liabilities as dictated by the comparative negligence law. If a Claims Officer determines that there is a shared-fault/shared damages situation and the Forest Service is the net debtor to the private party, no demand should be made for damages. If a claim from the private party is subsequently received, the offsetting effect of damages and the private party's comparative negligence should be emphasized when referring the matter to the Office of General Counsel (OGC) for adjudication.

The most common shared-fault/shared damages situations involve vehicle accidents.

2. State Tort Law/Vehicle Code Violations. Violations of State vehicle code safety laws generally constitute negligence in itself. Therefore, a demand letter for Forest Service vehicle damages should cite the State code provision violated and state that the private driver's violation of the State vehicle safety code caused the damages. Consequently, the private driver is liable.

3. State Tort Law/Fire Suppression Costs. Reasonable fire suppression costs are recoverable when incurred by the Forest Service to protect Forest Service land and property from human-caused wildfires started unlawfully. This right under federal law was upheld in the Chesapeake & Ohio Railroad vs. U.S. case, based on the well-established doctrine in tort law that a property owner may recover reasonable expenses incurred to protect the owner's property from damages caused by the wrongful conduct of another. Generally, State statutes also specify that fire suppression costs are recoverable from persons or legal entities that start wildfires negligently or in violation of State fire safety laws.

State fire safety laws are usually varied and numerous. A working knowledge of these laws facilitates billing where the fire-starter's conduct was not clearly negligent. Under some State's statutes, such as Nevada's, a person who starts a wildfire is (absolutely) liable for its suppression costs whether or not the person started the fire negligently or in violation of law. See section 29, exhibit 03 for an example of billings for fire suppression costs and Exhibit 04 for examples of potentially responsible parties.

4. State Timber Trespass Damages Laws. Damages to or unauthorized removal of Forest Service sawtimber constitutes a timber trespass for which the timber's value may be recovered from the trespasser. In most States, statutes further authorize recovery of additional (multiple) damages by the landowner. Generally if the landowner did not give the trespasser reason to believe the trespasser was entitled to cut or remove the timber, the trespassor is liable for double or triple stumpage.

21.21g - Demand Upon a Debtor Charged With a Crime

A person who causes damages to or loss of Forest Service property in the course of committing a criminal offense has by definition unlawfully caused damages and is liable for the damage. The law enforcement officer and the claims officer must work in tandem on these cases to protect the interests of the Government relative to both civil and criminal aspects. See section 21.12a for information related to determining the amount of the claim.

Prior to initiating collections against a debtor who has been criminally charged, consult with the Forest Service law enforcement officer assigned to the case. A strategy must be worked out on how to proceed with billing. Because of the differences in the discovery process, criminal proceedings should be completed before civil proceedings if the two are to be handled separately. The prospect, presence, or absence of a criminal conviction is irrelevant to whether the debtor is liable for the damages. An administrative claim does not depend on the debtor's being convicted of criminal charges. However, the outcome of the criminal proceedings will affect the content of the initial demand letter, and in some cases may prohibit the Forest Service from initiating collection action. In addition, it is possible to include the civil action as restitution under the criminal action, and many times is a much more effective means of collecting the debt.

When criminal charges have been brought against a debtor, collection actions will be deferred until the criminal proceedings are completed. No contact with the debtor will be made to effect collections until criminal prosecution is either completed or dismissed.

1. Restitution Versus Collection. When a debtor is charged and prosecuted in Magistrate Court for a criminal offense which causes loss or damages to Forest Service land or property, Forest Service law enforcement personnel may submit at the criminal proceedings evidence of damages and request the U.S. Magistrate to order the debtor, if convicted, to make restitution to the Forest Service. Restitution may take the form of an order to return stolen property, to pay money, or to provide goods or services to the victim.

If the U.S. Magistrate orders a convicted debtor to make restitution to the Forest Service, the ordered restitution satisfies in full the claim against the debtor. Do not initiate collection action. If the Magistrate does not order a debtor to make restitution, initiate collection action against the individual upon the completion of the criminal action.

It is the responsibility of the claims officer to advise Forest Service law enforcement personnel whether to request restitution at the debtor's trial in Magistrate Court. Even though there are risks involved in asking the court to order restitution, it is highly encouraged to take this approach. Some of the risks are:

- a. The U.S. Magistrate could order the debtor to perform directed-services restitution, with the complications described in paragraph c.
- b. Restitution may be an amount less than would have been billed.

Not requesting restitution ensures that the Forest Service will incur the costs of taking collection action, many times to no avail. If convicted, and restitution is ordered, chances of recovery are much greater because the consequences to the offender are more severe if the amount goes unpaid.

c. If the debtor is convicted of criminal charges but the U.S. Magistrate does not order the debtor to make restitution, the fact of the conviction should be alleged in the initial demand letter. The debtor's criminal conviction establishes by law the debtor's liability for any consequent property loss or damage, so only the fact of consequent property loss or damage must be shown.

2. Collection After Acquittal. If a debtor, who has been administratively determined as liable to the Forest Service for property loss or damage caused by a criminal offense, is subsequently acquitted of criminal charges for the offense, the acquittal does not mean that the debtor is not liable for the lost or damaged property. (The acquittal means only that the U.S. Magistrate could not conclude "beyond a reasonable doubt" that the debtor committed the criminal offense, whereas the claim against the debtor is legally enforceable with a lesser burden of proof of the fact.)

Most debtors acquitted of criminal charges, however, could argue and/or believe that their acquittal is proof that they are not liable for the damages. Unless the claims officer determines that new facts revealed during the criminal trial indicate another course of action should be taken, initiate collection actions against the debtor despite the criminal charges having resulted in acquittal. Anticipate strong exception on the debtor's part to the assertion in the demand letter that the debtor is liable in the matter.

3. Debtor Ordered by Magistrate to Perform Directed Services Restitution. The Magistrate may order the offender to perform services for the Forest Service, in lieu of making a monetary restitution order. This is called "directed services restitution." While this type of restitution should be discouraged whenever possible, if it is so ordered, the debt owed to the Forest Service will be considered paid in full upon completion of performing the service.

(An order to perform directed-services restitution should not be confused with community services sentencing. A U.S. Magistrate may impose community services as part of a defendant's criminal sentence, but the services are not intended to provide restitution to any specific victim of the crime. Many defendants are sentenced to community services upon conviction for criminal acts which caused no property loss or damage to any identifiable victim. Accordingly, if a debtor is sentenced to provide community services by working for the Forest Service, but is not ordered to make restitution, the claim against the debtor is still valid and collection action should be initiated.)

Directed-services restitution should be discouraged whenever possible. The Office of the General Counsel has advised that when performing directed services, a debtor is probably a federal employee for purposes of the Federal Tort Claims Act (FTCA), since the debtor is working under the control and supervision of Forest Service personnel in the performance of work beneficial to the Government. Consequently, the Forest Service is exposed to liability under the FTCA for damages caused by a debtor's negligence while performing directed services.

If a debtor is assigned directed services on the unit, initiate administrative action to ensure that the individual receives the maximum supervision practicable to prevent any negligence in the performance of the services. This should reduce the risk of liability to the Government under the FTCA.

If a debtor is ordered to perform directed services restitution on your unit, do not issue a bill for collection. The Forest Service is not entitled to receive any money, unless the court decides otherwise because the offender did not complete the ordered restitution. If the directed services are not performed in accordance with the restitution order, immediately inform law enforcement personnel and request that the U.S. Magistrate be notified of the debtor's violation of the Magistrate's order.

4. Debtor Services in Lieu of Debt Payment. As stated in the preceding subsection, if a U.S. Magistrate orders a convicted debtor to make restitution to the Forest Service by performing directed services, the services will satisfy the claim against the debtor in full. It is only pursuant to a court order, however, that a debtor's services may be substituted for the obligation to pay the claim. There is no authority for the Forest Service to administratively accept a debtor's services in lieu of payment of the claim without a court order. In fact, to administratively accept non-court directed services from a debtor would violate both federal personnel hiring laws and federal appropriations law prohibiting augmentation of appropriations.

5. Debtor Fails to Make Full Restitution. The only recourse available to the Forest Service if a debtor fails to pay or perform restitution as ordered is to notify the U.S. Magistrate. Administrative collection actions are not available. If the debtor does not make payment in accordance with the restitution order, the U.S. Magistrate should be notified immediately of the debtor's violation of the Magistrate's order.

6. Debtor Charged Under State Law and Prosecuted in State Court. The preceding sections assume that the charges against the debtor were based on violations of Federal criminal codes or regulations and brought before a U.S. Magistrate. However, identical billing considerations arise where criminal charges against the debtor are based on State law and prosecuted in State court. If damage to or loss of Forest Service property resulted from a debtor's criminal offense under State law, and prosecution is pending in State court, follow the billing direction in the preceding sections.

21.21h - Demand Upon a Railroad Company that Starts a Fire

A railroad company's tort or trespass liability for damages to Forest Service resources or property, like that of any debtor, is based on the fact that negligent or otherwise wrongful conduct on the railroad's part caused the damages. However, if fire damages are incurred as a result of a railroad's operations within a Forest Service right-of-way, asserting that the railroad's negligence caused the fire may be greatly simplified. Many railroad right-of-way permits contain a clause stating that if a fire starts within a certain distance (usually 200 feet) of the right-of-way's centerline, while a train of the permittee is passing, the fire should be presumed to have resulted from the railroad's negligence. In such a case, the railroad's liability is based on its presumed negligence due to the proximity of the fire's origin to the railroad tracks, and specific negligent or wrongful conduct on the railroad's part need not be alleged in the initial demand

letter; the letter should assert that the railroad's negligence caused the fire, and the railroad's negligence is presumed pursuant to the terms of the right-of-way permit, due to the proximity of the fire's point of origin to the tracks.

21.21i - Demand Upon a State Agency

Most States have statutes requiring that claims against State agencies be filed within a short time after the damages occur. In such cases, issue the initial demand letter within the State's required filing period even if exact amount of total damages has not been calculated by then. Absent a sum certain, provide an estimated damage figure to the State agency, and state in the initial demand letter that an exact total damages figure shall be provided as soon as it is determined. In the initial bill for collection, itemize the known costs and provide an estimated amount for any damages to be determined. Issue a revised bill for collection with the sum certain amount of the damages to the State agency as soon as the exact amount of damages is determined.

State agencies are exempt from interest, penalty, and administrative cost charges under the Debt Collection Act. Do not include the statements of Forest Service policy on delinquency charges from the demand letter and its accompanying bill for collection. Nonetheless, determine the due date for the bill and insert it into the Date Payment Due block on the bill for collection.

21.21j - Demand Upon Debtors Who Are Jointly and Severally Liable

When two or more parties jointly engage in a negligent or otherwise unlawful activity which damages Forest Service property or resources, each is liable for the full amount of the damages. Accordingly, demand the full amount of the damage from each party, not a partial or proportionate amount. The initial demand letter, sent to each party, should state that because the activity that caused the damages was jointly engaged in, each participant is jointly and severally liable for the entire amount of the damages.

Collection of a partial amount from one of the debtors reduces the liabilities of each of the debtors by that amount. Each of the debtors continues to be liable for the remaining uncollected amount.

Do not delay or suspend collection actions against any of the debtors to allow the other(s) to pay "their proportionate shares". Do not attempt to allocate the burden of paying the total amount between the debtors. If the debtors wish to apportion payment between themselves, that is their business. Proceed to liquidate the debt as quickly as possible, being careful that a compromise settlement with one debtor does not lead the other debtors to believe that the claim against them for the unpaid balance is released. In addition, a compromise settlement with one debtor should not be used as a precedent or moral guideline for the amount to be collected from each of the other debtors.

21.21k - Demand Upon Another Federal Agency

Do not issue a demand letter to another Federal agency. There is no authority to support a claim by one Federal agency against another. Any damage to Forest Service property caused by another Federal agency shall be handled as provided for in FSM 6412.11.

21.21l - Demand for Office of Workmen's Compensation Program Costs

Do not issue a demand letter to Forest Service employees for Office of Workers' Compensation Program expenses the Forest Service incurs as a result of an employee's work-related injuries (sec. 40.3).

21.21m - Demand for Federal Tort Claims Act Payments

Do not issue a demand letter to a Forest Service employee for Federal Tort Claims Act (FTCA) damages paid by the Forest Service to a third party. The Government is not authorized to recover from employees any amounts paid under the FTCA for property damages or personal injuries resulting from employee negligence, wrongful act, or omission while acting within the scope of employment.

21.21n - Return of an Unclaimed Demand Letter

When a demand letter is returned unclaimed, the claims officer will exercise reasonable efforts to locate the debtor and ascertain the debtor's ability to pay, through any of the following sources:

1. County Recorder's Office. Determine parcels of property owned, assessed value liens, and the likelihood of insurance coverage.
2. R. L. Polk's City Directory. Locate the debtor's address and possible employer. This directory can be found in banks and public libraries.
3. Local motor vehicle registration office. Obtain the debtor's name, address, and vehicles owned.
4. Sheriff's Department or the Police Department. Ascertain the debtor's address and general reputation.
5. U.S. Post Office, Internal Revenue Service, and other Federal Agencies. Ascertain the debtor's location, financial background, and general reputation.

21.3 - Installment Payments

If a debtor does not deny the obligation to pay the claim but is unable to pay it in one lump sum, installment payments should be arranged. The installment payments should be sufficient in size and frequency to liquidate the debt within 3 years (4 CFR 102.11).

21.31 - Determination of Debtor's Inability to Pay In One Lump Sum

Request that an individual debtor complete the Financial Statement of Debtor, Form FS-6500-40, to demonstrate an inability to pay in a lump sum. Debtors reluctant to provide the required financial information should be informed that law and regulation require that additional administrative and/or legal remedies shall be pursued if installment payments reflecting the debtor's actual financial condition cannot be agreed upon. If the debtor is a commercial

organization, request a balance sheet, income statement, cash flow statement, and other financial documents to establish an inability to pay in a lump sum. FSH 6509.18 provides direction related to assessment of financial ability.

21.32 - Size and Frequency of Installment Payments

The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. However, installment payments should be sufficient in size and frequency to liquidate the debt within 3 years.

If the debtor is an employee, the period of installment deductions should not exceed the anticipated period of employment. Accept installment payments of less than \$50 per month (or \$25 per pay period) only if justifiable on the grounds of extreme financial hardship or other reasonable cause.

21.33 - Repayment Agreement

A legally enforceable written agreement should be obtained from the debtor which specifies all of the repayment terms (sec. 29, ex. 06). As a minimum, the repayment agreement must specify:

1. The debtor's promise to pay the principal sum in specified installments at a designated location.
2. The payment schedule.
3. The interest rate.
4. The debtor's right to prepay.
5. The consequences of failure to pay the debt as required, including penalty and administrative cost charges.
6. The obligations of each person who signs the agreement for the debtor.
7. The amount of security required, if any.

21.34 - Interest Charge on Repayment Agreements

Assess interest on repayment agreements at the higher of the current value of funds or the Prompt Payment Act (sec. 24.1). If interest has accrued on the delinquent debt before the promissory note is executed, advise the debtor of the principal amount due and the total amount of accrued interest. If a debtor defaults on an installment arrangement, a new note may be developed and a new rate charged. Use the rate current at the time the new agreement is executed.

21.35 - Unsecured Claims

Most Forest Service claims are unsecured. When initiating an installment payment agreement, attempt to obtain a confess judgment note from the debtor if the total amount of the deferred installments exceeds \$750. (See section 29, exhibit 07 for an example of a confess judgment note.) Such notes may be sought for unsecured obligations of a lesser amount. Provide the debtor with a written explanation of the consequences of signing the note. Maintain documentation to demonstrate that the debtor signed the note knowingly and voluntarily.

Attempt to obtain security, in the form of a corporate surety bond or other form of security, in the amount of the claim for other than a confess judgment note. Installment payments may be accepted on a case-by-case basis if the debtor refuses to execute a confess judgment note or to provide other security (4 CFR 102.11).

21.36 - Application of Installment Payment to Debt

When a debt is paid in installments, amounts received shall be applied first to outstanding penalty and administrative charges, second to accrued interest, and third to outstanding principal (4 CFR 102.13(f)).

21.37 - Application of Installment Payment to Multiple Debts

If the debtor owes more than one debt and designates how to apply the installment payment among those debts, follow that designation. If the debtor does not designate the application of the payment, apply it to the various debts ensuring that the interests of the Government, as determined by the facts and circumstances of the case, are protected. Pay special attention to applicable statutes of limitations (sec. 31.1).

21.4 - Late Payment Charges on Tort and Trespass Claims

Ensure that late payment charges for tort and trespass billings are in accordance with the Debt Collection Act. See section 24 for direction related to these charges, which include interest, penalties, and administrative costs.

21.5 - Releases From Liability

Only the Office of the General Counsel (OGC) is authorized to sign a release from liability on claims of the United States against private parties for claims which result from damage to or destruction of property of the Forest Service (7 CFR 2.31(d)).

When a signed release is requested, forward all documents necessary to provide complete information to the Regional Claims Officer for transmittal to the Office of General Counsel. Include a copy of both sides of the check and any attachments that may contain a release. Do not mail the check to the Regional office. The forest Claims Officer shall inform the private party of the transmittal. The receiving unit shall deposit the check to the lockbox bank as soon as it receives a copy of the release executed by the OGC.

A release from liability for personal injury to a Forest Service employee is not authorized. Do not endorse and deposit remittance if it includes such a release. Instead, inform the debtor that the Forest Service can release them from liability for damages to Forest Service property only (sec. 43.2).