

INDIAN AFFAIRS DIRECTIVES TRANSMITTAL SHEET

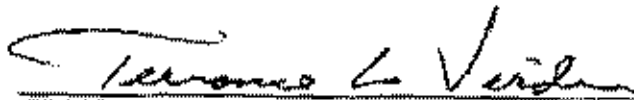
(modified DI-416)

DOCUMENT IDENTIFICATION NUMBER NPM-MW-TRUS-3(REV)	SUBJECT Forestry Policy -	RELEASE NUMBER #111
FOR FURTHER INFORMATION Midwest Regional Office, Division of Natural Resources, Forestry and Fire	Midwest Region Branch of Forestry Authority – Tribal Direct Payments from Purchasers of Forest Products	DATE 8/14/06

EXPLANATION OF MATERIAL TRANSMITTED:

The policy establishes procedures for Tribes in the direct collection of bid deposits, performance bonds, advance deposits, advance payments, and installment payments.

/sgd/
Terrance Virden
Midwest Regional Director


FILING INSTRUCTIONS:

Remove: None

insert: RPM-MW-TRUS-3(REV)
Revises RPM-TRUS-3



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Midwest Regional Office
 Bishop Henry Whipple Building
 One Federal Dr., Rm. 510
 Ft. Snelling, MN 55111



Regional Policy Memorandum

Bureau of Indian Affairs
Midwest Region
Office of the Regional Director

Number: RPM-MW-TRUS-3(REV)

Effective: 8/14/06
Expires: 8/14/07

Title: Forestry Policy - Midwest Region Branch of Forestry Authority – Tribal direct payments from purchasers of forest products

1. Purpose

In accordance with 25 USC §3107, 25 CFR Part 163 and memorandum dated February 24, 2003, from the acting Deputy Commissioner regarding Forest Management Deductions – Direct Collection by Tribes; and as applicable the American Indian Probate Reform Act of 2004 (PL 108-374 §2212), 53 IAM1.7E and 53 IAM 3-H, Contract Sales of Forest Products, this memorandum clarifies and sets Regional policy for tribes desiring direct collection of monies associated with the contract sale and permit sale of forest products.

2. Scope

This policy applies to all Tribal Forest Management Programs within the Midwest Region that desire the direct collection of payments from the sale of forest products.

3. Policy

Tribes desiring direct payments from purchasers of forest products will send a written request to the responsible line officer. The request will contain a resolution approved by the tribe requesting direct payment authority and contain a statement indicating that the Tribe agrees with the following procedures. The Tribe may request direct payments for Tribal forest products sales or for both Tribal and Allotment forest product sales. It should be noted that the American Indian Probate Reform Act of 2004 (§2212) requires that all income from allotment tracts which have Land Consolidation Program Liens must be paid to the Secretary. Upon approval of the Tribe's request, there will be a transition period on the collection of payments. All new timber sale contract funds will be collected directly by the Tribe. However, all existing timber sale contracts which have accounts within the Trust Fund Accounting System (TFAS) will be maintained until satisfactory completion of the contract.

#111 RPM-MW-TRUS-3(REV) 08/14/06
 Revises #68 RPM-MW-3 07/14/05

Procedure for Direct Collection of: Bid Deposits, Performance Bonds, Advance Deposits, Advance Payments, and Installment Payments.

- A. All Timber Sale contracts will have a special provision modifying Part B4.1 of the standard provisions, stating that payments and deposits shall be drawn payable to the "requesting Indian Tribe".
- B. The Tribe will retain the Timber Sale Bid Deposit of the apparent high bidder and of all others, who submit a written request to have their bids retained until the contract is awarded and approved (which may take up to 30 days). All other Bid Deposits will be immediately returned by certified return receipt. If the unsuccessful bidders are present for the bid opening, they may get their deposits with bid back immediately by signing the back of the bid proposal form.
- (1) Retained Deposits with Bid will be placed in a tribally controlled account in the name of the bidder(s), within 24 hours.
 - (2) Upon the awarding and approval of the contract, any Bid Deposits still retained will be returned immediately by certified return receipt postage to unsuccessful bidders.
- C. Performance Bonds – refer to 25 CFR 163.21. The Tribe needs to be able to collect all or part of the bond according to the terms of the timber sale document. The preferred form of performance bond is cash, or irrevocable letter of credit.
- (1) Deposit of Cash – The deposit will be placed in a tribally controlled escrow account designated by a contractor identifier. It is recommended that the cash deposited as a performance bond be supported by an "Agreement and Power of Attorney" naming the tribe as the attorney-in-fact. At the completion of the contract the Bond will be returned to the contractor, minus any funds retained to remedy contract deficiencies.
 - (2) Irrevocable Letter of Credit (LOC) – Irrevocable letter of credit may be used to secure performance bonds. The Tribe will be designated as the Beneficiary. The expiration date must exceed by at least 180 days, the timber contract expiration date. The LOC should be secured in a fireproof safe at the office of jurisdiction. A copy of the LOC will be contained in the contract file. If a draft has been drawn from the LOC, it will not be returned but will be retained. If at the completion of the contract there are no drafts against the LOC it will be returned directly to the issuing bank.
- D. All Advance Deposits, Advance Payments, or Installment Payments, will be collected as required by the timber sale contract, and shall be immediately deposited into a tribally controlled, interest bearing escrow account designated by individual timber sale.
- E. The Tribe shall document all Advance Deposits, Advance Payments, or Installment Payments received with a photocopy of a check, money order, cashier's check, or deposit record, being mailed or faxed to the Approving Officer within three business days.
- F. Upon receipt of each approved Report of Timber Cut (ROTC), timber receipts in an amount of the value of timber scaled and reported, less the tribes forest management deduction percentage will be transferred to the Tribe's bank account along with the current interest associated with the transaction.
- (1) When the Tribe is collecting payments on Allotment Tracts or when the tract is owned by other individual or Tribal entities, the Tribe must make appropriate arrangements for the distribution of all proceeds.

- (2) The American Indian Probate Reform Act of 2004 (§2212) requires that all income from allotment tracts which have Land Consolidation Program Liens must be paid to the Secretary.
- G. Upon receipt of each approved Report of Timber Cut (ROTC), timber receipts in an amount equal to the tribe's forest management deduction percentage of the value of timber scaled and reported will be sent to the Bureau of Indian Affairs, to be placed in the Tribe's Forest Management Deductions account, along with the current interest associated with the transaction.
- (1) As per 25 CFR 163.25(e) the forest management deduction percentage for Indian forest land is set at 10%, however it may be increased or decreased at the request of authorized tribal representatives and at the discretion of the Secretary.
- H. Each transfer of Forest Management Deductions (G) will be accompanied by a written verification that all required deposits, payments and disbursements have been made by the Tribe. Such statements shall be signed by the Tribal Chairman or his designee as delegated by Tribal Resolution.
- I. Upon approval of the Statement of Completion of a Timber Sale document, any remaining Advance Deposit funds within the Tribally controlled escrow account will be returned to the contractor, along with any interest earned. The Performance Bond will also be released at this time.

4. Role and Responsibilities

This policy memorandum will be followed by all line officers within the Midwest Region delegated forest management responsibilities. It is the responsibility of the line officer to ensure that all collections for the contract and permit sale of forest products are either collected directly by the Bureau or approve requests from tribes under their jurisdiction (25 CFR 163.22(b)) that agree to adhere to this policy.

5. Approvals

/sgd/


Terrance Virden
Midwest Regional Director

8/14/06

Date