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Authority: 16 U.S.C. 478, 551; 30 U.S.C. 226, 352, 601, 611; 94

Stat. 2400.

Source: 39 FR 31317, Aug. 28, 1974, unless otherwise noted.

Redesignated at 46 FR 36142, July 14, 1981.

Subpart A\_Locatable Minerals

Sec. 228.1 Purpose.

It is the purpose of these regulations to set forth rules and

procedures through which use of the surface of National Forest System

lands in connection with operations authorized by the United States

mining laws (30 U.S.C. 21-54), which confer a statutory right to enter

upon the public lands to search for minerals, shall be conducted so as

to minimize adverse environmental impacts on National Forest System

surface resources. It is not the purpose of these regulations to provide

for the management of mineral resources; the responsibility for managing

such resources is in the Secretary of the Interior.

Sec. 228.2 Scope.

These regulations apply to operations hereafter conducted under the

United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et

seq.), as they affect surface resources on all National Forest System

lands under the jurisdiction of the Secretary of Agriculture to which

such laws are applicable: Provided, however, That any area of National

Forest lands covered by a special Act of Congress (16 U.S.C. 482a-482q)

is subject to the provisions of this part and the provisions of the

special act, and in the case of conflict the provisions of the special

act shall apply.

Sec. 228.3 Definitions.

For the purposes of this part the following terms, respectively,

shall mean:

(a) Operations. All functions, work, and activities in connection

with prospecting, exploration, development, mining or processing of

mineral resources and all uses reasonably incident thereto, including

roads and other means of access on lands subject to the regulations in

this part, regardless of whether said operations take place on or off

mining claims.

(b) Operator. A person conducting or proposing to conduct

operations.

(c) Person. Any individual, partnership, corporation, association,

or other legal entity.

(d) Mining claim. Any unpatented mining claim or unpatented millsite

authorized by the United States mining laws of May 10, 1872, as amended

(30 U.S.C. 22 et seq.).

(e) Authorized officer. The Forest Service officer to whom authority

to review and approve operating plans has been delegated.

Sec. 228.4 Plan of operations--notice of intent--requirements.

(a) Except as provided in paragraph (a)(1) of this section, a notice

of intent to operate is required from any person proposing to conduct

operations which might cause significant disturbance of surface

resources. Such notice of intent to operate shall be submitted to the

District Ranger having jurisdiction over the area in which the

operations will be conducted. Each notice of intent to operate shall

provide information sufficient to identify the area involved, the nature

of the proposed operations, the route of access to the area of

operations, and the method of transport.

(1) A notice of intent to operate is not required for:

(i) Operations which will be limited to the use of vehicles on

existing public roads or roads used and maintained for National Forest

System purposes;

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(ii) Prospecting and sampling which will not cause significant

surface resource disturbance and will not involve removal of more than a

reasonable amount of mineral deposit for analysis and study which

generally might include searching for and occasionally removing small

mineral samples or specimens, gold panning, metal detecting, non-

motorized hand sluicing, using battery operated dry washers, and

collecting of mineral specimens using hand tools;

(iii) Marking and monumenting a mining claim;

(iv) Underground operations which will not cause significant surface

resource disturbance;

(v) Operations, which in their totality, will not cause surface

resource disturbance which is substantially different than that caused

by other users of the National Forest System who are not required to

obtain a Forest Service special use authorization, contract, or other

written authorization;

(vi) Operations which will not involve the use of mechanized

earthmoving equipment, such as bulldozers or backhoes, or the cutting of

trees, unless those operations otherwise might cause a significant

disturbance of surface resources; or

(vii) Operations for which a proposed plan of operations is

submitted for approval;

(2) The District Ranger will, within 15 days of receipt of a notice

of intent to operate, notify the operator if approval of a plan of

operations is required before the operations may begin.

(3) An operator shall submit a proposed plan of operations to the

District Ranger having jurisdiction over the area in which operations

will be conducted in lieu of a notice of intent to operate if the

proposed operations will likely cause a significant disturbance of

surface resources. An operator also shall submit a proposed plan of

operations, or a proposed supplemental plan of operations consistent

with Sec. 228.4(d), to the District Ranger having jurisdiction over the

area in which operations are being conducted if those operations are

causing a significant disturbance of surface resources but are not

covered by a current approved plan of operations. The requirement to

submit a plan of operations shall not apply to the operations listed in

paragraphs (a)(1)(i) through (v). The requirement to submit a plan of

operations also shall not apply to operations which will not involve the

use of mechanized earthmoving equipment, such as bulldozers or backhoes,

or the cutting of trees, unless those operations otherwise will likely

cause a significant disturbance of surface resources.

(4) If the District Ranger determines that any operation is causing

or will likely cause significant disturbance of surface resources, the

District Ranger shall notify the operator that the operator must submit

a proposed plan of operations for approval and that the operations can

not be conducted until a plan of operations is approved.

(b) Any person conducting operations on the effective date of these

regulations, who would have been required to submit a plan of operations

under Sec. 228.4(a), may continue operations but shall within 120 days

thereafter submit a plan of operations to the District Ranger having

jurisdiction over the area within which operations are being conducted:

Provided, however, That upon a showing of good cause the authorized

officer will grant an extension of time for submission of a plan of

operations, not to exceed an additional 6 months. Operations may

continue according to the submitted plan during its review, unless the

authorized officer determines that the operations are unnecessarily or

unreasonably causing irreparable damage to surface resources and advises

the operator of those measures needed to avoid such damage. Upon

approval of a plan of operations, operations shall be conducted in

accordance with the approved plan. The requirement to submit a plan of

operations shall not apply: (1) To operations excepted in Sec. 228.4(a)

or (2) to operations concluded prior to the effective date of the

regulations in this part.

(c) The plan of operations shall include:

(1) The name and legal mailing address of the operators (and

claimants if they are not the operators) and their lessees, assigns, or

designees.

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(2) A map or sketch showing information sufficient to locate the

proposed area of operations on the ground, existing and/or proposed

roads or access routes to be used in connection with the operations as

set forth in Sec. 228.12 and the approximate location and size of areas

where surface resources will be disturbed.

(3) Information sufficient to describe or identify the type of

operations proposed and how they would be conducted, the type and

standard of existing and proposed roads or access routes, the means of

transportation used or to be used as set forth in Sec. 228.12, the

period during which the proposed activity will take place, and measures

to be taken to meet the requirements for environmental protection in

Sec. 228.8.

(d) The plan of operations shall cover the requirements set forth in

paragraph (c) of this section, as foreseen for the entire operation for

the full estimated period of activity: Provided, however, That if the

development of a plan for an entire operation is not possible at the

time of preparation of a plan, the operator shall file an initial plan

setting forth his proposed operation to the degree reasonably

foreseeable at that time, and shall thereafter file a supplemental plan

or plans whenever it is proposed to undertake any significant surface

disturbance not covered by the initial plan.

(e) At any time during operations under an approved plan of

operations, the authorized officer may ask the operator to furnish a

proposed modification of the plan detailing the means of minimizing

unforeseen significant disturbance of surface resources. If the operator

does not furnish a proposed modification within a time deemed reasonable

by the authorized officer, the authorized officer may recommend to his

immediate superior that the operator be required to submit a proposed

modification of the plan. The recommendation of the authorized officer

shall be accompanied by a statement setting forth in detail the

supporting facts and reasons for his recommendations. In acting upon

such recommendation, the immediate superior of the authorized officer

shall determine:

(1) Whether all reasonable measures were taken by the authorized

officer to predict the environmental impacts of the proposed operations

prior to approving the operating plan,

(2) Whether the disturbance is or probably will become of such

significance as to require modification of the operating plan in order

to meet the requirements for environmental protection specified in

Sec. 228.8 and

(3) Whether the disturbance can be minimized using reasonable means.

Lacking such determination that unforeseen significant disturbance of

surface resources is occurring or probable and that the disturbance can

be minimized using reasonable means, no operator shall be required to

submit a proposed modification of an approved plan of operations.

Operations may continue in accordance with the approved plan until a

modified plan is approved, unless the immediate superior of the

authorized officer determines that the operations are unnecessarily or

unreasonably causing irreparable injury, loss or damage to surface

resources and advises the operator of those measures needed to avoid

such damage.

(f) Upon completion of an environmental analysis in connection with

each proposed operating plan, the authorized officer will determine

whether an environmental statement is required. Not every plan of

operations, supplemental plan or modification will involve the

preparation of an environmental statement. Environmental impacts will

vary substantially depending on whether the nature of operations is

prospecting, exploration, development, or processing, and on the scope

of operations (such as size of operations, construction required, length

of operations and equipment required), resulting in varying degrees of

disturbance to vegetative resources, soil, water, air, or wildlife. The

Forest Service will prepare any environmental statements that may be

required.

(g) The information required to be included in a notice of intent or

a plan of operations, or supplement or modification thereto, has been

assigned Office of Management and Budget Control #0596-0022. The public

reporting burden for this collection of information is estimated to vary

from a few minutes for

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an activity involving little or no surface disturbance to several months

for activities involving heavy capital investments and significant

surface disturbance, with an average of 2 hours per individual response.

This includes time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and

reviewing the collection of information. Send comments regarding the

burden estimate or any other aspect of this collection of information,

including suggestions for reducing this burden, to Chief (2800), Forest

Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the

Office of Information and Regulatory Affairs, Office of Management and

Budget, Washington, DC 20503.

[39 FR 31317, Aug. 28, 1974. Redesignated at 46 FR 36142, July 14, 1981,

and amended at 54 FR 6893, Feb. 15, 1989; 69 FR 41430, July 9, 2004; 70

FR 32731, June 6, 2005]

Sec. 228.5 Plan of operations--approval.

(a) Operations shall be conducted in accordance with an approved

plan of operations, except as provided in paragraph (b) of this section

and in Sec. 228.4 (a), (b), and (e). A proposed plan of operation shall

be submitted to the District Ranger, who shall promptly acknowledge

receipt thereof to the operator. The authorized officer shall, within

thirty (30) days of such receipt, analyze the proposal, considering the

economics of the operation along with the other factors in determining

the reasonableness of the requirements for surface resource protection,

and;

(1) Notify the operator that he has approved the plan of operations;

or

(2) Notify the operator that the proposed operations are such as not

to require an operating plan; or

(3) Notify the operator of any changes in, or additions to, the plan

of operations deemed necessary to meet the purpose of the regulations in

this part; or

(4) Notify the operator that the plan is being reviewed, but that

more time, not to exceed an additional sixty (60) days, is necessary to

complete such review, setting forth the reasons why additional time is

needed: Provided, however, That days during which the area of operations

is inaccessible for inspection shall not be included when computing the

sixty (60) day period; or

(5) Notify the operator that the plan cannot be approved until a

final environmental statement has been prepared and filed with the

Council on Environmental Quality as provided in Sec. 228.4(f).

(b) Pending final approval of the plan of operations, the authorized

officer will approve such operations as may be necessary for timely

compliance with the requirements of Federal and State laws, so long as

such operations are conducted so as to minimize environmental impacts as

prescribed by the authorized officer in accordance with the standards

contained in Sec. 228.8.

(c) A supplemental plan or plans of operations provided for in

Sec. 228.4(d) and a modification of an approved operating plan as

provided for in Sec. 228.4(e) shall be subject to approval by the

authorized officer in the same manner as the initial plan of operations:

Provided, however, That a modification of an approved plan of operations

under Sec. 228.4(e) shall be subject to approval by the immediate

superior of the authorized officer in cases where it has been determined

that a modification is required.

(d) In the provisions for review of operating plans, the Forest

Service will arrange for consultation with appropriate agencies of the

Department of the Interior with respect to significant technical

questions concerning the character of unique geologic conditions and

special exploration and development systems, techniques, and equipment,

and with respect to mineral values, mineral resources, and mineral

reserves. Further, the operator may request the Forest Service to

arrange for similar consultations with appropriate agencies of the U.S.

Department of the Interior for a review of operating plans.

Sec. 228.6 Availability of information to the public.

Except as provided herein, all information and data submitted by an

operator pursuant to the regulations in this part shall be available for

examination by the public at the Office of the District Ranger in

accordance with the provisions of 7 CFR 1.1-1.6 and 36 CFR

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200.5-200.10. Specifically identified information and data submitted by

the operator as confidential concerning trade secrets or privileged

commercial or financial information will not be available for public

examination. Information and data to be withheld from public examination

may include, but is not limited to, known or estimated outline of the

mineral deposits and their location, attitude, extent, outcrops, and

content, and the known or planned location of exploration pits, drill

holes, excavations pertaining to location and entry pursuant to the

United States mining laws, and other commercial information which

relates to competitive rights of the operator.

Sec. 228.7 Inspection, noncompliance.

(a) Forest Officers shall periodically inspect operations to

determine if the operator is complying with the regulations in this part

and an approved plan of operations.

(b) If an operator fails to comply with the regulations or his

approved plan of operations and the noncompliance is unnecessarily or

unreasonably causing injury, loss or damage to surface resources the

authorized officer shall serve a notice of noncompliance upon the

operator or his agent in person or by certified mail. Such notice shall

describe the noncompliance and shall specify the action to comply and

the time within which such action is to be completed, generally not to

exceed thirty (30) days: Provided, however, That days during which the

area of operations is inaccessible shall not be included when computing

the number of days allowed for compliance.

Sec. 228.8 Requirements for environmental protection.

All operations shall be conducted so as, where feasible, to minimize

adverse environmental impacts on National Forest surface resources,

including the following requirements:

(a) Air Quality. Operator shall comply with applicable Federal and

State air quality standards, including the requirements of the Clean Air

Act, as amended (42 U.S.C. 1857 et seq.).

(b) Water Quality. Operator shall comply with applicable Federal and

State water quality standards, including regulations issued pursuant to

the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et

seq.).

(c) Solid Wastes. Operator shall comply with applicable Federal and

State standards for the disposal and treatment of solid wastes. All

garbage, refuse, or waste, shall either be removed from National Forest

lands or disposed of or treated so as to minimize, so far as is

practicable, its impact on the environment and the forest surface

resources. All tailings, dumpage, deleterious materials, or substances

and other waste produced by operations shall be deployed, arranged,

disposed of or treated so as to minimize adverse impact upon the

environment and forest surface resources.

(d) Scenic Values. Operator shall, to the extent practicable,

harmonize operations with scenic values through such measures as the

design and location of operating facilities, including roads and other

means of access, vegetative screening of operations, and construction of

structures and improvements which blend with the landscape.

(e) Fisheries and Wildlife Habitat. In addition to compliance with

water quality and solid waste disposal standards required by this

section, operator shall take all practicable measures to maintain and

protect fisheries and wildlife habitat which may be affected by the

operations.

(f) Roads. Operator shall construct and maintain all roads so as to

assure adequate drainage and to minimize or, where practicable,

eliminate damage to soil, water, and other resource values. Unless

otherwise approved by the authorized officer, roads no longer needed for

operations:

(1) Shall be closed to normal vehicular traffic,

(2) Bridges and culverts shall be removed,

(3) Cross drains, dips, or water bars shall be constructed, and

(4) The road surface shall be shaped to as near a natural contour as

practicable and be stabilized.

(g) Reclamation. Upon exhaustion of the mineral deposit or at the

earliest practicable time during operations, or within 1 year of the

conclusion of operations, unless a longer time is allowed by the

authorized officer, operator

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shall, where practicable, reclaim the surface disturbed in operations by

taking such measures as will prevent or control onsite and off-site

damage to the environment and forest surface resources including:

(1) Control of erosion and landslides;

(2) Control of water runoff;

(3) Isolation, removal or control of toxic materials;

(4) Reshaping and revegetation of disturbed areas, where reasonably

practicable; and

(5) Rehabilitation of fisheries and wildlife habitat.

(h) Certification or other approval issued by State agencies or

other Federal agencies of compliance with laws and regulations relating

to mining operations will be accepted as compliance with similar or

parallel requirements of these regulations.

Sec. 228.9 Maintenance during operations, public safety.

During all operations operator shall maintain his structures,

equipment, and other facilities in a safe, neat and workmanlike manner.

Hazardous sites or conditions resulting from operations shall be marked

by signs, fenced or otherwise identified to protect the public in

accordance with Federal and State laws and regulations.

Sec. 228.10 Cessation of operations, removal of structures and equipment.

Unless otherwise agreed to by the authorized officer, operator shall

remove within a reasonable time following cessation of operations all

structures, equipment and other facilities and clean up the site of

operations. Other than seasonally, where operations have ceased

temporarily, an operator shall file a statement with the District Ranger

which includes:

(a) Verification of intent to maintain the structures, equipment and

other facilities,

(b) The expected reopening date, and

(c) An estimate of extended duration of operations. A statement

shall be filed every year in the event operations are not reactivated.

Operator shall maintain the operating site, structures, equipment and

other facilities in a neat and safe condition during nonoperating

periods.

Sec. 228.11 Prevention and control of fire.

Operator shall comply with all applicable Federal and State fire

laws and regulations and shall take all reasonable measures to prevent

and suppress fires on the area of operations and shall require his

employees, contractors and subcontractors to do likewise.

Sec. 228.12 Access.

An operator is entitled to access in connection with operations, but

no road, trail, bridge, landing area for aircraft, or the like, shall be

constructed or improved, nor shall any other means of access, including

but not limited to off-road vehicles, be used until the operator has

received approval of an operating plan in writing from the authorized

officer when required by Sec. 228.4(a). Proposals for construction,

improvement or use of such access as part of a plan of operations shall

include a description of the type and standard of the proposed means of

access, a map showing the proposed route of access, and a description of

the means of transportation to be used. Approval of the means of such

access as part of a plan of operations shall specify the location of the

access route, design standards, means of transportation, and other

conditions reasonably necessary to protect the environment and forest

surface resources, including measures to protect scenic values and to

insure against erosion and water or air pollution.

Sec. 228.13 Bonds.

(a) Any operator required to file a plan of operations shall, when

required by the authorized officer, furnish a bond conditioned upon

compliance with Sec. 228.8(g), prior to approval of such plan of

operations. In lieu of a bond, the operator may deposit into a Federal

depository, as directed by the Forest Service, and maintain therein,

cash in an amount equal to the required dollar amount of the bond or

negotiable securities of the United States having market value at the

time of deposit of not less than the required dollar amount of the bond.

A blanket bond covering nationwide or statewide operations may be

furnished if the terms and conditions thereof are sufficient to comply

with the regulations in this part.

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(b) In determining the amount of the bond, consideration will be

given to the estimated cost of stabilizing, rehabilitating, and

reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in

accordance with Sec. 228.4 (d) and (e), the authorized officer will

review the initial bond for adequacy and, if necessary, will adjust the

bond to conform to the operations plan as modified.

(d) When reclamation has been completed in accordance with

Sec. 228.8(g), the authorized officer will notify the operator that

performance under the bond has been completed: Provided, however, That

when the Forest Service has accepted as completed any portion of the

reclamation, the authorized officer shall notify the operator of such

acceptance and reduce proportionally the amount of bond thereafter to be

required with respect to the remaining reclamation.

[39 FR 31317, Aug. 28, 1974; 39 FR 32029, Sept. 4, 1974]

Sec. 228.14 Appeals.

Appeal of decisions of an authorized officer made pursuant to this

subpart is governed by 36 CFR part 214 or 215.

[78 FR 33724, June 5, 2013]

Sec. 228.15 Operations within National Forest Wilderness.

(a) The United States mining laws shall extend to each National

Forest Wilderness for the period specified in the Wilderness Act and

subsequent establishing legislation to the same extent they were

applicable prior to the date the Wilderness was designated by Congress

as a part of the National Wilderness Preservation System. Subject to

valid existing rights, no person shall have any right or interest in or

to any mineral deposits which may be discovered through prospecting or

other information-gathering activity after the legal date on which the

United States mining laws cease to apply to the specific Wilderness.

(b) Holders of unpatented mining claims validly established on any

National Forest Wilderness prior to inclusion of such unit in the

National Wilderness Preservation System shall be accorded the rights

provided by the United States mining laws as then applicable to the

National Forest land involved. Persons locating mining claims in any

National Forest Wilderness on or after the date on which said Wilderness

was included in the National Wilderness Preservation System shall be

accorded the rights provided by the United States mining laws as

applicable to the National Forest land involved and subject to

provisions specified in the establishing legislation. Persons conducting

operations as defined in Sec. 228.3 in National Forest Wilderness shall

comply with the regulations in this part. Operations shall be conducted

so as to protect National Forest surface resources in accordance with

the general purposes of maintaining the National Wilderness Preservation

System unimpaired for future use and enjoyment as wilderness and to

preserve its wilderness character, consistent with the use of the land

for mineral location, exploration, development, drilling, and production

and for transmission lines, water lines, telephone lines, and processing

operations, including, where essential, the use of mechanized transport,

aircraft or motorized equipment.

(c) Persons with valid mining claims wholly within National Forest

Wilderness shall be permitted access to such surrounded claims by means

consistent with the preservation of National Forest Wilderness which

have been or are being customarily used with respect to other such

claims surrounded by National Forest Wilderness. No operator shall

construct roads across National Forest Wilderness unless authorized in

writing by the Forest Supervisor in accordance with Sec. 228.12.

(d) On all mining claims validly established on lands within the

National Wilderness Preservation System, the operator shall take all

reasonable measures to remove any structures, equipment and other

facilities no longer needed for mining purposes in accordance with the

provisions in Sec. 228.10 and restore the surface in accordance with the

requirements in Sec. 228.8(g).

(e) The title to timber on patented claims validly established after

the land was included within the National

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Wilderness Preservation System remains in the United States, subject to

a right to cut and use timber for mining purposes. So much of the mature

timber may be cut and used as is needed in the extraction, removal, and

beneficiation of the mineral deposits, if needed timber is not otherwise

reasonably available. The cutting shall comply with the requirements for

sound principles of forest management as defined by the National Forest

rules and regulations and set forth in stipulations to be included in

the plan of operations, which as a minimum incorporate the following

basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil

movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken

to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity, including

prospecting, for the purpose of gathering information about minerals in

National Forest Wilderness except that any such activity for gathering

information shall be carried on in a manner compatible with the

preservation of the wilderness environment as specified in the plan of

operations.

Subpart B\_Leasable Minerals

Secs. 228.20-228.39 [Reserved]

Subpart C\_Disposal of Mineral Materials

Source: 49 FR 29784, July 24, 1984, unless otherwise noted.

Sec. 228.40 Authority.

Authority for the disposal of mineral materials is provided by the

Materials Act of July 31, 1947 (30 U.S.C. 601 et seq.), as amended by

the Acts of August 31, 1950 (30 U.S.C. 603-604), July 23, 1955 (30

U.S.C. 601, 603), and September 25, 1962 (30 U.S.C. 602), and by the

following: the Act of June 4, 1897 (16 U.S.C. 477); the Act of March 4,

1917 (16 U.S.C. 520); the Bankhead-Jones Farm Tenant Act of July 22,

1937 (7 U.S.C. 1010); the Act of September 1, 1949 (section 3) (30

U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508b); the Act of June

28, 1952 (section 3) (66 Stat. 285); the Act of September 2, 1958 (16

U.S.C. 521a); the Act of June 11, 1960 (74 Stat. 205); the Federal

Highway Act of August 27, 1958 (23 U.S.C. 101 et seq.); and the Alaska

National Interest Lands Conservation Act of December 2, 1980 (section

502) (16 U.S.C. 539a).

Sec. 228.41 Scope.

(a) Lands to which this subpart applies. This subpart applies to all

National Forest System lands reserved from the public domain of the

United States, including public domain lands being administered under

the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); to

all National Forest System lands acquired pursuant to the Weeks Act of

March 1, 1911 (36 Stat. 961); to all National Forest System lands with

Weeks Act status as provided in the Act of September 2, 1958 (16 U.S.C.

521a); and to public lands within the Copper River addition to the

Chugach National Forest (16 U.S.C. 539a). For ease of reference and

convenience to the reader, these lands are referred to, throughout this

subpart, as National Forest lands.

(b) Restrictions. Disposal of mineral materials from the following

National Forest lands is subject to certain restrictions as described

below:

(1) Segregation or withdrawals in aid of other agencies. Disposal of

mineral materials from lands segregated or withdrawn in aid of a

function of another Federal agency, State, territory, county,

municipality, water district, or other governmental subdivision or

agency may be made only with the written consent of the governmental

entity.

(2) Segregated or withdrawn National Forest lands. Mineral materials

may not be removed from segregated or withdrawn lands where removal is

specifically prohibited by statute or by public land order. Where not

specifically prohibited, removal of mineral materials may be allowed if

the authorized officer determines that the removal is not detrimental to

the values for which the segregation or withdrawal was made, except as

provided in paragraph (b)(1) of this section. Where

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operations have been established prior to the effective date of this

Subpart and where not prohibited by statute, they may be permitted to

continue. Nothing in this subparagraph is intended to prohibit the

exercise of valid existing rights.

(3) Unpatented mining claims. Provided that claimants are given

prior notice and it has been determined that removal will neither

endanger nor materially interfere with prospecting, mining, or

processing operations or uses reasonably incident thereto on the claims,

disposal of mineral materials may be allowed from:

(i) Unpatented mining claims located after July 23, 1955; and/or

(ii) Unpatented mining claims located before July 23, 1955, and on

which the United States has established the right to manage the

vegetative and other surface resources in accordance with the Multiple

Use Mining Act of July 23, 1955 (30 U.S.C. 601, 603, 611-615).

(4) Acquired Bankhead-Jones lands. Mineral materials on lands which

were acquired under the authority of the Bankhead-Jones Farm Tenant Act

of July 22, 1937 (7 U.S.C. 1010-1012), and which lie outside the

exterior boundaries of National Forests, or on acquired lands which are

being administered under the Act and which also lie outside the exterior

boundaries of National Forests, may be disposed of under these

regulations only to public authorities and agencies, and only on

condition that the mineral materials are used for public purposes (7

U.S.C. 1011(c)).

(c) Mineral materials to which this subpart applies. This subpart

applies to mineral materials which consist of petrified wood and common

varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and

other similar materials. Such mineral materials include deposits which,

although they have economic value, are used for agriculture, animal

husbandry, building, abrasion, construction, landscaping, and similar

uses. This subpart also applies to other materials which may not be

minerals but are produced using mining methods, such as peat. The

categories of these materials, including representative examples, are:

(1) Agricultural supply and animal husbandry materials. This

category includes, but is not limited to, minerals and vegetative

materials used as or for: Soil conditioners or amendments applied to

physically alter soil properties such as direct applications to the soil

of carbonate rocks, soil containing ``trace elements'' and peat; animal

feed supplements; and other animal care products.

(2) Building materials. Except for minerals identified as Uncommon

Varieties, this category includes, but is not limited to, minerals used

as or for: Paint fillers or extenders; flagstone, ashlar, rubble,

mortar, brick, tile, pipe, pottery, earthenware, stoneware, terrazzo,

and other nonstructural components in floors, walls, roofs, fireplaces,

and the like; and similar building uses.

(3) Abrasive materials. This category includes, but is not limited

to, minerals used for: Filing; scouring; polishing; sanding; and

sandblasting.

(4) Construction materials. This category includes, but is not

limited to, minerals such as sand, gravel, clay, crushed rock and

cinders used as or for fill; borrow; rip-rap; ballast (including all

ballast for railroad use); road base; road surfacing; concrete

aggregate; clay sealants; and similar construction uses.

(5) Landscaping materials: This category includes, but is not

limited to minerals and peat used as or for: Chips, granules, sand,

pebbles, scoria, cinders, cobbles, boulders, slabs, and other components

in retaining walls, walkways, patios, yards, gardens, and the like; and

similar landscaping uses.

(d) Minerals not covered by this subpart. Mineral materials do not

include any mineral used in manufacturing, industrial processing, or

chemical operations for which no other mineral can be substituted due to

unique properties giving the particular mineral a distinct and special

value; nor do they include block pumice which in nature occurs in pieces

having one dimension of two inches or more which is valuable and used

for some application that requires such dimensions. Disposal of minerals

not covered by this subpart is subject to the terms of the United States

Mining Laws, as amended (30 U.S.C. 22 et seq.), on those portions of the

National

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Forest System where those laws apply. Such minerals may include:

(1) Mineral suitable and used as soil amendment because of a

constituent element other than calcium or magnesium carbonate that

chemically alters the soil;

(2) Limestone suitable and used, without substantial admixtures, for

cement manufacture, metallurgy, production of quicklime, sugar refining,

whiting, fillers, paper manufacture, and desulfurization of stack gases;

(3) Silica suitable and used for glass manufacture, production of

metallic silicon, flux, and rock wool;

(4) Alumino-silicates or clays having exceptional qualities suitable

and used for production of aluminum, ceramics, drilling mud, taconite

binder, foundry castings, and other purposes for which common clays

cannot be used;

(5) Gypsum suitable and used for wallboard, plaster, or cement.

(6) Block pumice which occurs in nature in pieces having one

dimension of two inches or more and which is valuable and used for some

application that requires such dimensions; and

(7) Stone recognized through marketing factors for its special and

distinct properties of strength and durability making it suitable for

structural support and used for that purpose.

(e) Limitations on applicability. (1) The provisions of paragraphs

(c) and (d) of this section shall not apply to any mining claims for

which a Mineral Entry Final Certificate was issued on or before January

16, 1991. Nor shall these provisions apply to any mining claim located

on or before July 23, 1955, which has satisfied the marketability test

for locatable minerals from on or before July 23, 1955, until the

present date.

(2) A use which qualifies a mineral as an uncommon variety under

paragraph (d) overrides classification of that mineral as a common

variety under paragraph (c) of this section.

[49 FR 29784, July 24, 1984, as amended at 55 FR 51706, Dec. 17, 1990]

Sec. 228.42 Definitions.

For the purposes of this subject, the following terms are defined:

Acquired National Forest lands. National Forest System lands

acquired under the Weeks Act of March 1, 1911 (36 Stat. 961), and

National Forest System lands with Weeks Act status as provided in the

Act of September 2, 1958 (16 U.S.C. 521a).

Authorized officer. Any Forest Service officer to whom authority for

disposal of mineral materials has been delegated.

Common-use area. Generally, a broad geographic area from which

nonexclusive disposals of mineral materials available on the surface may

be made to low volume and/or noncommercial users.

Community site. A site noted on appropriate Forest records and

posted on the ground from which nonexclusive disposals of mineral

materials may be made to low volume and/or noncommercial users.

Contract. A signed legal agreement between the Forest Service and a

purchaser of mineral materials, which specifies (among other things) the

conditions of a competitive, negotiated, or preference right sale of

mineral materials to the purchaser.

Mineral materials. A collective term used throughout this subpart to

describe petrified wood and common varieties of sand, gravel, stone,

pumice, pumicite, cinders, clay, and other similar materials. Common

varieties do not include deposits of those materials which are valuable

because of some property giving them distinct and special value, nor do

they include ``so-called `block pumice' '' which occurs in nature in

pieces having one dimension of two inches or more and which is valuable

and used for some application that requires such dimensions.

Permit. A signed legal document between the Forest Service and one

who is authorized to remove mineral materials free of charge, which

specifies (among other things) the conditions of removal by the

permittee.

Preference right negotiated sale. A negotiated sale which may be

awarded in response to the finding and demonstration of a suitable

deposit of mineral material on acquired National Forest lands as the

result of exploratory activity conducted under the authority of a

prospecting permit.

Prospecting permit. A written instrument issued by the Forest

Service

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which authorizes prospecting for a mineral material deposit on acquired

National Forest lands within specific areas, under stipulated

conditions, and for a specified period of time.

Single entry source. A source of mineral materials which is expected

to be depleted under a single contract or permit or which is reserved

for Forest Service use.

Unpatented mining claim. A lode or placer mining claim or a millsite

located under the General Mining Law of 1872, as amended (30 U.S.C. 21-

54), for which a patent under 30 U.S.C. 29 and regulations of the

Department of the Interior has not been issued.

Withdrawn National Forest lands. National Forest System lands

segregated or otherwise withheld from settlement, sale, location, or

entry under some or all of all of the general land laws (43 U.S.C.

1714).

[49 FR 29784, July 24, 1984, as amended at 55 FR 51706, Dec. 17, 1990]

Sec. 228.43 Policy governing disposal.

(a) General. Forest Service policy is to make mineral materials on

National Forest lands available to the public and to local, State, and

Federal government agencies where reasonable protection of, or

mitigation of effects on, other resources in assured, and where removal

is not prohibited.

(1) A contract or permit limits processing of the mineral material

onsite to the first salable product.

(2) Additional onsite processing may be authorized by a separate

permit (36 CFR 251.50).

(3) The authorized officer must ensure that an environmental

analysis is conducted for all planned disposals of mineral materials.

(4) Decisions to authorize the disposal of mineral materials must

conform to approved land and resource management plans (36 CFR 219.22).

(b) Price. Mineral materials may not be sold for less than the

appraised value. The authorized officer may assess a fee to cover costs

of issuing and administering a contract or permit.

(c) Conservation. Adequate measures must be taken to protect, and

minimize damage to the environment. Mineral materials may be disposed of

only if the authorized officer determines that the disposal is not

detrimental to the public interest.

(d) Ownership. Title to the mineral materials vests in the purchaser

or permittee immediately before excavation, subject to the provisions of

Secs. 228.47 through 228.56 and other provisions of the contract or

permit. Title to excavated material not removed within the time provided

revests in the United States.

(e) Decisions. All decisions as to whether or not to grant disposals

proposed under this subpart shall be made in writing by the authorized

officer. Such decisions must specify their factual and legal basis.

(f) Option for mining claimants. All mining claimants holding mining

claims which are located for a mineral classified in accordance with

this subpart as a mineral material have the option of maintaining that

the mineral is locatable and filing for patent. All mining claimants

holding mining claims located in good faith on or before January 16,

1991, for a mineral classified in accordance with this subpart as a

mineral material may accept the classification and, if appropriate,

receive a sale by negotiated contract for that mineral material under 36

CFR 228.57(b)(2) of this subpart.

[49 FR 29784, July 24, 1984, as amended at 55 FR 51706, Dec. 17, 1990]

Sec. 228.44 Disposal on existing Federal leased areas.

Mineral material contracts or permits may be issued within existing

areas leased or under permit under the 1920 Mineral Leasing Act, as

amended (30 U.S.C. 181-187); section 402 of Reorganization Plan No. 3 of

1946 (5 U.S.C. Appendix); the 1947 Mineral Leasing Act for Acquired

Lands, as amended (30 U.S.C. 351 et seq.); and the 1970 Geothermal Steam

Act (30 U.S.C. 1001-1025), provided that it has been determined that

removal will neither endanger nor unreasonably interfere with lease

operations, and provided further that the lease terms do not prohibit

disposal.

Sec. 228.45 Qualifications of applicants.

The authorized officer may require applicants for prospecting

permits, negotiated contracts, or free-use permits

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or bidders for the sale of mineral materials to furnish information

necessary to determine their ability to perform the obligations of the

contract or permit.

Sec. 228.46 Application of other laws and regulations.

All mining operations for removal of mineral materials from National

Forest lands must meet or exceed applicable Federal standards for the

protection of public safety, health, and the environment, and must also

meet or exceed State and local standards for the protection of public

safety, health, and the environment, to the extent that such standards

are not in conflict with Federal purposes and functions.

General Provisions

Sec. 228.47 General terms and conditions of contracts and permits.

(a) Disposal of designated mineral materials. Only those specified

mineral materials found within the area designated in the contract or

permit may be extracted and removed.

(b) Unauthorized removal (trespass) of mineral materials. The

removal of mineral materials from National Forest lands, except when

authorized in accordance with applicable law and regulations of the

Department of Agriculture, is prohibited (36 CFR 261.9).

(c) Conservation. Mineral material contracts and permits must

contain provisions to ensure the efficient removal and conservation of

the mineral material.

(d) Improvements. Contracts and permits must contain provisions for

removal or Government retention of improvements.

(e) Use of existing National Forest development roads. The

authorized officer may require purchasers and permittees to obtain

appropriate road-use permits, make deposits for or perform their

commensurate share of road maintenance, and comply with road-use rules

contained in 36 CFR part 212, depending upon their planned extent of

road use.

(f) Reclamation. Requirements for reclamation of areas disturbed by

mineral material operations must be included in contracts and permits,

except for disposals from community sites and common-use areas.

Sec. 228.48 Appraisal and measurement.

(a) Appraisal. All mineral materials for sale must be appraised to

determine fair market value. Appraisals must be based on knowledge of

the extent of the deposit, quality of material, and economic value. A

sale must not be made at less than the appraised value which may be

expressed as either price per cubic yard or weight equivalent. In all

cases the units of measurement must correspond to the units used in the

appraisal. The authorized officer must estimate and record the amount

and value of minerals to be disposed of by free-use permit.

(b) Measurement. The amount of mineral material actually removed may

be measured by volume, weight, truck tally, by combination of these

methods, or by such other form of measurement as the authorized officer

determines to be appropriate and in the public interest.

Sec. 228.49 Reappraisal.

If an extension of time is granted as provided in Sec. 228.53(b),

the authorized officer must reappraise or reestimate the mineral

materials covered by the contract or permit and which remain unexcavated

at the time of extension. The recalculated unit value becomes the new

unit value for the remaining unexcavated material; excavated and

stockpiled material is not subject to reappraisal.

Sec. 228.50 Production records.

At least annually, the purchaser or permittee must furnish a record

of the volume extracted, in cubic yards or weight equivalent, to the

authorized officer. The units of measurement must correspond to the

units used in the appraisal or estimate.

Sec. 228.51 Bonding.

(a) Bond requirements. Before operations may begin under any

contract or permit, a bond must be furnished to the authorized officer

to ensure performance of payment (as necessary), reclamation, and other

conditions of the contract or permit, except as noted

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in paragraphs (a) (1) and (3) of this section, where the authorized

officer may waive such bonding. If an extension of time is granted as

provided in Sec. 228.53(b), the bond requirements must be recalculated

and changed accordingly.

(1) For advance payment contracts for 10,000 cubic yards or more in

volume (or weight equivalent), a bond of not less than 10 percent of the

total contract price or the value of the estimated annual production

(whichever is less), plus the reclamation cost for the area covered by

annual mining, is required. When the total volume is less than 10,000

cubic yards, bond requirements, if any, are at the discretion of the

authorized officer.

(2) For any deferred payment contract, a bond equaling the value of

the estimated annual production plus the reclamation cost for the area

covered by annual mining is required.

(3) For free use, the authorized officer may require a reclamation

bond which must be sufficient to cover the cost of reclamation of the

anticipated annual work.

(b) Types of bonding. A bond must be one of the following:

(1) A bond of a corporate surety shown on the latest approved list

issued by the U.S. Treasury Department and executed on an approved

standard form;

(2) A cash bond;

(3) Negotiable securities of the United States;

(4) An irrevocable letter of credit acceptable to the Forest

Service;

(5) A performance bond required by other Forest Service contracts or

permits, provided the bond covers the performance and reclamation

requirements related to the removal of mineral material from a

designated pit or area for use in the performance of the contract or

permit; or

(6) Any other types of bond specified in the Forest Service Manual.

Sec. 228.52 Assignments.

(a) Limitations. A purchaser or permittee may not assign the

contract or permit, or any interest therein, without the written

approval of the authorized officer.

(b) Requirements of assignee. The authorized officer will not

approve any proposed assignment involving contract or permit performance

unless the assignee:

(1) Submits information necessary to assure the authorized officer

of the assignee's ability to meet the same requirements as the original

purchaser or permittee (assignor); and

(2) Furnishes a bond or obtains a commitment from the previous

surety to be bound by the assignment when approved.

(c) Rights and obligations. Once the authorized officer approves an

assignment, the assignee is entitled to all the rights and is subject to

all of the obligations under the contract or permit, and the original

purchaser or permittee may be released from any further responsiblity

under the contract or permit.

Sec. 228.53 Term.

(a) Time allowed. Except as provided in Sec. 228.61(f),

Sec. 228.62(b), and elsewhere in this paragraph, a contract or permit

may not exceed 1 year from the effective date of the contract or permit

unless a written extension is obtained. For those mineral materials sold

under a duration of production contract or under a contract for the sale

of all mineral material within a specified area, or under a construction

contract where removal cannot reasonably take place before completion of

other work under the same contract, the authorized officer will

establish a reasonable time period for removal.

(b) Extension of time. If it is shown that a delay in removal was

due to causes beyond the control of the purchaser or permittee, the

authorized officer may grant an extension, not to exceed 1 year, upon

written request. Written requests for extensions of contracts must be

received between 30 and 90 days before the expiration date of the

contract. Written requests for extensions of permits must be received

between 15 and 90 days before the permit expiration date. The authorized

officer may grant a total of two extensions for contracts and permits.

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Sec. 228.54 Single entry sales or permits.

The purchaser or permittee is required to reclaim a single entry

source in accordance with an approved operating plan which describes

operating procedures and reclamation measures, unless the requirement is

waived by the authorized officer.

Sec. 228.55 Cancellation or suspension.

The authorized officer may cancel or suspend a contract, permit, or

prospecting permit if the purchaser or permittee fails to comply with

its terms and conditions. If the noncompliance is unnecessarily or

unreasonably causing injury, loss, or damage to surface resources, the

authorized officer may cancel or suspend the contract, permit, or

prospecting permit immediately. In cases where noncompliance is of a

less serious nature, the authorized officer may cancel or suspend a

contract, permit, or prospecting permit if such noncompliance continues

for 30 days after service of written notice by the authorized officer.

If the noncompliance is not corrected, the authorized officer may attach

the bond to ensure compliance with the provisions of the contract,

permit, or prospecting permit.

Sec. 228.56 Operating plans.

Any surface-disturbing operation under a contract, permit, or

prospecting permit is subject to prior approval by the authorized

officer of an operating plan and to reasonable conditions as may be

required to ensure proper protection of the environment and

improvements, including timely reclamation of disturbed lands.

Significant changes to operations require prior approval of an amended

operating plan. The operating plan must include, as a minimum, a map and

explanation of the nature of the access, anticipated activity, surface

disturbance, and intended reclamation including removal or retention of

structures and facilities. Operating plans must be submitted by the

purchaser, permittee, or prospecting permittee, except as noted in

Sec. 228.64(b).

Types and Methods of Disposal

Sec. 228.57 Types of disposal.

Except as provided in Sec. 228.41(b), disposal of mineral materials

may be made by:

(a) Competitive sale to the highest qualified bidder after formal

advertising and other appropriate public notice;

(b) Sale by negotiated contract. (1) For removal of materials to be

used in connection with a public works improvement program on behalf of

a Federal, State, or local government agency if the public exigency will

not permit delays incident to advertising, or

(2) For the removal of mineral materials for which it is

impracticable to obtain competition;

(c) Preference right negotiated sale to the holder of a Forest

Service-issued prospecting permit under which a suitable mineral

material deposit has been demonstrated on acquired National Forest

lands;

(d) Free use when a permit is issued to any nonprofit association,

corporation, individual, or others listed in Sec. 228.62(d), for other

than commercial purposes, resale, or barter, or to any Federal, State,

county, local unit, subdivision, municipality, or county road district

for use in public projects; or

(e) Forest Service force account or by contract where the material

is to be used to carry out various Forest Service programs involving

construction and maintenance of physical improvements.

Sec. 228.58 Competitive sales.

(a) Invitation for bid. Sales must be conducted as described below

after inviting competitive bids through publication and posting. The

authorized officer may not offer a competitive sale unless there is a

right-of-way or other access to the sale area which is available to

anyone qualified to bid.

(b) Advertising--(1) Sales over 25,000 cubic yards. Mineral material

sales offered by competitive bidding and which exceed 25,000 cubic yards

must be advertised on the same day once a week for two consecutive weeks

in a newspaper of general circulation in the area where the material is

located, and in a trade or industrial newspaper when

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considered appropriate. Notice of the sale must be posted in a

conspicuous place in the office where bids are to be submitted. In

addition, the authorized officer may send the advertisement directly to

known interested persons. Bids may be received but not evaluated before

the end of the advertising period, which may be extended at the

discretion of the authorized officer.

(2) Content of advertising. The advertisement of sale must specify

the location by legal description of the tract or tracts or by any other

means identify the location of the mineral material deposit being

offered, the kind of material, estimated quantities, the unit of

measurement, appraised price (which sets the minimum acceptable bid),

time and place for receiving and opening of bids, minimum deposit

required, major special constraints due to environmental considerations,

available access, maintenance required over haul routes, traffic

controls, required use permits, required qualifications of bidders, the

method of bidding, bonding requirement, notice of the right to reject

any or all bids, the office where a copy of the contract and additional

information may be obtained, and additional information the authorized

officer deems necessary.

(3) Advertising smaller sales. Advertisement of mineral materials

amounting to 25,000 cubic yards in volume (or weight equivalent) or less

must be published and/or posted. The methods of advertisement are at the

discretion of the authorized officer.

(c) Conduct of sales. (1) Bidding at competitive sales may be

conducted by the submission of written sealed bids, oral bids, or a

combination of both as directed by the authorized officer. In the event

of a tie in high sealed bids, the highest bidder will be determined by

oral auction among those tied bidders; when no oral bid is higher that

the sealed bids, the selected bidder will be determined by lot, the

purchase price being the amount of the tied bid. For all oral auctions,

including those used to break sealed-bid ties, the high bidder must

confirm the bid in writing immediately upon being declared the high

bidder. The authorized officer must mail notification of the bidding

results to all bidders within 10 days.

(2) The authorized officer may require bidders to furnish evidence

of qualification at the time of award or, if such evidence has already

been furnished and is still valid, make appropriate reference to the

record containing it.

(3) When it is in the interest of the United States to do so, the

authorized officer may reject any or all bids.

(d) Bid deposits and award of contract. Sealed bids must be

accompanied by a deposit. For mineral materials offered at oral auction,

bidders must make the deposit before opening of the bidding.

(1) Bid deposits must be equal to 10 percent of the appraised value

but not less than $100.00.

(2) Bid deposits must be in the form of cash, money order, bank

drafts, cashier's or certified checks made payable to the Forest

Service, or bonds acceptable to the Forest Service (Sec. 228.51(b)).

(3) Upon conclusion of the bidding, the authorized officer will

return the deposits of all unsuccessful bidders. The successful bidder's

deposit will be applied toward the purchase price. If the contract is

not awarded to the high bidder due to an inability to perform the

obligations of the contract, the deposit, less expenses and damages

incurred by the United States, may be returned. The return of a deposit

does not prejudice any other rights or remedies of the United States.

The contract may be offered and awarded to the next successive qualified

high bidder, or, at the discretion of the authorized officer, the sale

may be either readvertised or negotiated if it is determined that a

competitive sale is impracticable.

(4) Within 30 days after receipt of the contract, the successful

bidder must sign and return the contract, together with any required

bond, unless the authorized officer has granted an extension for an

additional 30 days. The bidder must apply for the extension in writing

within the first 30-day period. If the successful bidder fails to return

the contract within the first 30-day period or within an approved

extension, the bid deposit, less the costs of readvertising and damages,

may be returned without prejudice to any other

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rights or remedies of the United States.

(5) All sales must be processed on Forest Service-approved contract

forms. The authorized officer may add provisions to the contract to

cover conditions peculiar to the sale area. Such additional provisions

must be made available for inspection by prospective bidders during the

advertising period.

Sec. 228.59 Negotiated or noncompetitive sales.

(a) Volume limitations. When it is determined by the authorized

officer to be in the public interest and when it is impracticable to

obtain competition, mineral materials not exceeding 100,000 cubic yards

in volume (or weight equivalent) may be sold in any one sale at not less

than the appraised value, without advertising or calling for bids,

except as provided in paragraphs (b) and (c) of this section. The

authorized officer may not approve noncompetitive sales that exceed the

total of 200,000 cubic yards (or weight equivalent) made in any one

State for the benefit of any applicant in any period of 12 consecutive

months.

(b) Government programs. In connection with a public works

improvement project on behalf of a Federal, State, or local governmental

agency, the authorized officer may sell to an applicant, at not less

than the appraised value, without advertising or calling for bids, a

volume of mineral materials not to exceed 200,000 cubic yards (or weight

equivalent) when the public exigency will not permit delays incident to

advertising (30 U.S.C. 602).

(c) Appropriation for highway purposes. For interstate and/or

Federal aid highways, the Secretary of Transportation may appropriate

any volume in accordance with 23 U.S.C. 107 and 317.

(d) Use in development of Federal mineral leases. When it is

determined to be impracticable to obtain competition and the mineral

materials are to be used in connection with the development of mineral

leases issued by the United States (Sec. 228.44), the authorized officer

may sell to a leaseholder a volume of mineral material not to exceed

200,000 cubic yards (or weight equivalent) in one State in any period of

12 consecutive months. No charge will be made for materials which must

be moved in the process of extracting the mineral under lease, as long

as the materials remain stockpiled within the boundaries of the leased

area.

(e) Exceptions. (1) The Chief of the Forest Service may authorize

the noncompetitive sale of mineral materials in excess of the volume

limitations in paragraphs (a), (b), and (d) of this section when

necessary to:

(i) Respond to an emergency affecting public health, safety or

property;

(ii) Prevent the curtailment of operations conducted under the

United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et

seq.) which generate large volumes of mineral materials as a by-product;

or

(iii) Respond to a critical public need for the prompt development

of a mineral lease issued by the United States or a mining claim located

under the United States mining laws of May 10, 1872, as amended (30

U.S.C. 22 et seq.).

(2) Any noncompetitive sale of mineral materials in excess of the

volume limitations in paragraphs (a), (b), and (d) shall be subject to

such restrictions as the Chief of the Forest Service determines to be in

the public interest.

(3) Nothing in this paragraph shall otherwise alter the requirements

of paragraphs (a) through (d) of this section.

[49 FR 29784, July 24, 1984, as amended at 52 FR 10565, Apr. 2, 1987; 53

FR 43691, Oct. 28, 1988]

Sec. 228.60 Prospecting permits.

(a) Right conferred. On acquired National Forest lands, prospecting

permits may be issued which grant the permittee the exclusive right to

explore for and to demonstrate the existence of a suitable mineral

material deposit when existing information is insufficient. After the

demonstration of a suitable deposit and confirmation of this by the

authorized officer, the permittee will have a preference right to apply

for a negotiated sale.

(b) Limitations. Mineral material may be removed from lands under a

prospecting permit only to the extent necessary for testing and analysis

or for the demonstration of the existence of a suitable deposit.

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(c) Environmental analysis. Prospecting permits will be issued only

after submission by applicant and approval by the authorized officer of

a detailed operating plan. The authorized officer may require a bond in

accordance with Sec. 228.51. The authorized officer must ensure

compliance with the National Environmental Policy Act (42 U.S.C. 4321 et

seq.).

(d) Acreage and permit limitations. A prospecting permit may not

cover more than 640 acres. No individual or group may have an interest

at any one time in more than three prospecting permits on Forest Service

lands administered by one Forest Supervisor.

(e) Duration and extension of permits. Prospecting permits may be

issued for a period not to exceed 24 months, but they may be extended

once for up to an additional 24 months if necessary to complete

prospecting. Any application for extension must be submitted no later

than 30 days before the expiration of the permit. The application for

extension must provide evidence of diligence and state the reasons why

additional time is considered necessary to complete prospecting work.

(f) Refusal to extend permits. The authorized officer may reject

applications for extension of prospecting permits for the following

reasons:

(1) Failure to perform. Failure of the permittee to perform

prospecting or exploration work without adequate justification may

result in the denial of an extension; or

(2) Failure to apply. If an application for extension is not

submitted within the specified period, the permit may expire without

notice to the permittee.

(3) Public interest. If the authorized officer determines that an

extension may not be in the public interest, the application may be

rejected.

Sec. 228.61 Preference right negotiated sales.

(a) Qualification for sale. When applying for a preference right

negotiated sale, the permittee must demonstrate to the satisfaction of

the authorized officer that a suitable deposit of mineral material has

been discovered within the area covered by the prospecting permit.

Information concerning trade secrets and financial matters submitted by

the permittee and identified as confidential will not be available for

public examination except as otherwise agreed upon by the permittee.

(b) Application for sale. The application must be submitted to the

District Ranger's office on or before the expiration date of the

prospecting permit or its extension. The authorized officer may grant 30

additional days for submitting the application if requested in writing

by the permittee before expiration of the prospecting permit or its

extension.

(c) Terms and conditions of contract. The terms and conditions will

be evaluated on an individual case basis. Only those mineral materials

specified in the contract may be removed by the purchaser. Before a

preference right negotiated contract is awarded, the authorized officer

must ensure that an environmental analysis is conducted. All contracts

are subject to the conditions under Secs. 228.47 through 228.56.

(d) Acreage limitations. The authorized officer will determine the

amount of acreage in the preference right negotiated sale based on a

presentation of the permittee's needs. The maximum acreage allowable to

any individual or group must not exceed 320 acres on National Forest

lands administered by one Forest Supervisor. The allowable acreage may

be in one or more units which are not necessarily contiguous.

(e) Volume limitations. Preference right negotiated sales are exempt

from volume limitations.

(f) Contract time allowable. A contract or a renewal must not exceed

5 years; however, the purchaser may have renewal options at the end of

each contract or renewal period. The authorized officer may renew a

contract if it is determined that the renewal is not detrimental to the

public interest and that the purchaser has demonstrated diligence in

conducting operations. The authorized officer may cancel the contract,

or the purchaser may forfeit the contract, if no substantial commercial

production occurs during any continuous 2-year period after the award of

the contract or if the contract terms and conditions are breached.

However,

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if a delay is caused by conditions beyond the purchaser's control, the

authorized officer may grant an extension equal to the lost time.

(g) Contract renewal reappraisal. At the time of contract renewal,

the authorized officer will reappraise the mineral material deposit in

accordance with Sec. 228.49.

Sec. 228.62 Free use.

(a) Application. An application for a free-use permit must be made

with the appropriate District Ranger's office.

(b) Term. Permits may be issued for periods not to exceed 1 year and

will terminate on the expiration date unless extended by the authorized

officer as in Sec. 228.53(b). However, the authorized officer may issue

permits to any local, State, Federal, or Territorial agency, unit or

subdivision, including municipalities and county road districts, for

periods up to 10 years.

(c) Removal by agent. A free-use permittee may extract the mineral

materials through a designated agent provided that the conditions of the

permit are not violated. No part of the material may be used as payment

for the services of an agent in obtaining or processing the material. A

permit may be issued in the name of a designated agent for those

entities listed in Sec. 228.62(d)(1), at the discretion of the

authorized officer, provided there is binding agreement in which the

entity retains responsibility for ensuring compliance with the

conditions of the permit.

(d) Conditions. Free-use permits may be issued for mineral materials

to settlers, miners, residents, and prospectors for uses other than

commercial purposes, resale, or barter (16 U.S.C. 477). Free-use permits

may be issued to local, State, Federal, or Territorial agencies, units,

or subdivisions, including municipalities, or any association or

corporation not organized for profit, for other than commercial or

industrial purposes or resale (30 U.S.C. 601). Free-use permits may not

be issued when, in the judgment of the authorized officer, the applicant

owns or controls an adequate supply of mineral material in the area of

demand. The free-use permit, issued on a Forest Service-approved form,

must include the basis for the free-use as well as the provisions

governing the selection, removal, and use of the mineral materials. No

mineral material may be removed until the permit is issued. The

permittee must notify the authorized officer upon completion of mineral

material removal. The permittee must complete the reclamation prescribed

in the operating plan (Sec. 228.56).

(1) A free-use permit may be issued to any local, State, Federal, or

Territorial agency, unit, or subdivision, including municipalities and

county road districts, without limitation on the number of permits or on

the value of the mineral materials to be extracted or removed.

(2) A free-use permit issued to a nonprofit association,

corporation, or individual may not provide for the removal of mineral

materials having a volume exceeding 5,000 cubic yards (or weight

equivalent) during any period of 12 consecutive months.

(e) Petrified wood. A free-use permit may be issued to amateur

collectors and scientists to take limited quantities of petrified wood

for personal use. The material taken may not be bartered or sold. Free-

use areas may be designated within which a permit may not be required.

Removal of material from such areas must be in accord with rules issued

by the authorized officer and posted on the area. Such rules must also

be posted in the District Ranger's and Forest Supervisor's offices and

be available upon request. The rules may vary by area depending on the

quantity, quality, and accessibility of the material and the demand for

it.

Sec. 228.63 Removal under terms of a timber sale or other

Forest Service contract.

In carrying out programs such as timber sales that involve

construction and maintenance of various physical improvements, the

Forest Service may specify that mineral materials be mined,

manufactured, and/or processed for incorporation into the improvement.

Where the mineral material is located on National Forest lands and is

designated in the contract calling for its use, no permit is required as

long as an operating plan as described in

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Sec. 228.56 is required by the contract provisions. Title to any

excavated material in excess of that needed to fulfill contract

requirements revests in the United States without reimbursement to the

contract holder or to agents or representatives of the contract holder.

Such excess material may be disposed of under Secs. 228.58, 228.59, or

228.62.

Sec. 228.64 Community sites and common-use areas.

(a) Designation. Nonexclusive disposals may be made from the same

deposit or areas designated by the authorized officer; the designation

of such an area and any reclamation requirements must be based on an

environmental analysis.

(b) Pit plans. The Forest Service must prepare operating plans

(Sec. 228.56) for the efficient removal of the material and for

appropriate reclamation of community sites and common-use areas.

(c) Reclamation. The Forest Service is responsible for reclamation

of community sites and common-use areas.

Sec. 228.65 Payment for sales.

(a) Conditions. Mineral materials may not be removed from the sale

area until all conditions of payment in the contract have been met.

(b) Advance payment. (1) For negotiated and competitive sales the

full amount may be paid before removal is begun under the contract or by

installment at the discretion of the authorized officer. Installment

payments must be based on the estimated removal rate specified in the

operating plan and must be, as a minimum, the value of 1 month's

removal. The first installment must be paid before removal operations

are begun; remaining installments must be paid in advance of removal of

the remaining materials as billed by the authorized officer. The total

amount of the purchase price must be paid at least 60 days before the

expiration date of the contract.

(2) All advance payment contracts must provide for reappraisal of

the mineral material at the time of contract renewal or extension.

(3) Minimum annual production must be sufficient to return a payment

to the United States equal to the first installment. In lieu of minimum

production, there must be an annual payment in the amount of the first

installment which will not be credited to future years' production.

Payments for or in lieu of minimum annual production must be received by

the authorized officer on or before the anniversary of the effective

date of the contract.

(4) If the purchaser fails to make payments when due, the contract

will be considered breached, the authorized officer will cancel the

contract, and all previous payments will be forfeited without prejudice

to any other rights and remedies of the United States.

(5) In order to determine payment amount, the purchaser must make a

report of operations. The report must include the amount of mineral

material removed, which must be verified by the authorized officer.

(c) Deferred payments. The authorized officer may approve deferred

payments for sales.

(1) The purchaser may make payments monthly or quarterly which must

be based on the in-place value (volume or weight equivalent) of material

removed during the contract period. The units of measurement must

correspond to the units used in the appraisal. The purchaser must make

all payments before contract renewal.

(2) The purchaser must deliver a bond which conforms to the

provisions of Sec. 228.51(a)(2) to the authorized officer before

operations are begun under the contract.

[49 FR 29784, July 24, 1984, as amended at 78 FR 33724, June 5, 2013]

Sec. 228.66 Refunds.

Upon termination of any contract, payments in excess of $10 may be

refunded, less the costs incurred by the United States, under any of the

following conditions:

(a) Payment in excess of value. If the total payment exceeds the

value of the mineral material removed, unless it is the minimum annual

payment in lieu of production;

(b) Insufficiency of material. If insufficient mineral material

existed in the sale area to provide the quantity of material estimated

to have been available;

(c) Cancellation. (1) If the contract is cancelled by the authorized

officer for

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reasons which are beyond the purchaser's control; or

(2) If the contract is cancelled by mutual agreement. This refund

provision is not a warranty that a specific quantity of material exists

in the sale area.

[49 FR 29784, July 24, 1984, as amended at 78 FR 33724, June 5, 2013]

Sec. 228.67 Information collection requirements.

(a) The following sections of this subpart contain information

collection requirements as defined in the Paperwork Reduction Act of

1980 (5 CFR part 1320): Sec. 228.45, Qualifications of applicants;

Sec. 228.51, Bonding; Sec. 228.52(b)(1), Requirements of assignee;

Sec. 228.53(b), Extension of time; Sec. 228.56, Operating plans;

Sec. 228.57(c), Conduct of sales; Sec. 228.60, Prospecting permits;

Sec. 228.61, Preference right negotiated sales; and Sec. 228.62, Free

use. These requirements have been approved by the Office of Management

and Budget and assigned clearance number 0596-0081.

(b) The public reporting burden for this collection of information

is estimated to vary from a few minutes to many hours per individual

response, with an average of 2 hours per individual response, including

time for reviewing instructions, searching existing data sources,

gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding the burden

estimate or any other aspect of this collection of information,

including suggestions for reducing this burden, to Chief (2800), Forest

Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the

Office of Information and Regulatory Affairs, Office of Management and

Budget, Washington, DC 20503.

[55 FR 51706, Dec. 17, 1990]

Subpart D\_Miscellaneous Minerals Provisions

Sec. 228.80 Operations within Misty Fjords and Admiralty Island

National Monuments, Alaska.

(a) Mineral activities on valid mining claims in the Misty Fjords

and Admiralty Island National Monuments must be conducted in accordance

with regulations in subpart A of this part and with the provisions of

this section.

(b) Prior to approving a plan of operations, the authorized officer

must consider:

(1) The resources of ecological, cultural, geological, historical,

prehistorical, and scientific interest likely to be affected by the

proposed operations, including access; and

(2) The potential adverse impacts on the identified resource values

resulting from the proposed operations.

(c) A plan of operations will be approved if, in the judgment of the

authorized officer, proposed operations are compatible, to the maximum

extent feasible, with the protection of the resource values identified

pursuant to paragraph (b)(1) of this section.

(1) The authorized officer will deem operations to be compatible if

the plan of operations includes all feasible measures which are

necessary to prevent or minimize potential adverse impacts on the

resource values identified pursuant to paragraph (b)(1) of this section

and if the operations are conducted in accordance with the plan.

(2) In evaluating the feasibility of mitigating measures, the

authorized officer shall, at a minimum, consider the following:

(i) The effectiveness and practicality of measures utilizing the

best available technology for preventing or minimizing adverse impacts

on the resource values identified pursuant to paragraph (b)(1) of this

section; and

(ii) The long- and short-term costs to the operator of utilizing

such measures and the effect of these costs on the long- and short-term

economic viability of the operations.

(3) The authorized officer shall not require implementation of

mitigating measures which would prevent the evaluation or development of

any valid claim for which operations are proposed.

(d) In accordance with the procedures described in subpart A and

paragraphs (c)(1) through (c)(3) of this section, the authorized officer

may approve modifications of an existing plan of operations:

(1) If, in the judgment of the authorized officer, environmental

impacts unforeseen at the time of approval of the

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existing plan may result in the incompatibility of the operations with

the protection of the resource values identified pursuant to paragraph

(b)(1) of this section; or

(2) Upon request by the operator to use alternative technology and

equipment capable of achieving a level of environmental protection

equivalent to that to be achieved under the existing plan of operations.

[51 FR 20827, June 9, 1986]

Subpart E\_Oil and Gas Resources

Source: 55 FR 10444, Mar. 21, 1990, unless otherwise noted.

Sec. 228.100 Scope and applicability.

(a) Scope. This subpart sets forth the rules and procedures by which

the Forest Service of the United States Department of Agriculture will

carry out its statutory responsibilities in the issuance of Federal oil

and gas leases and management of subsequent oil and gas operations on

National Forest System lands, for approval and modification of attendant

surface use plans of operations, for monitoring of surface disturbing

operations on such leases, and for enforcement of surface use

requirements and reclamation standards.

(b) Applicability. The rules of this subpart apply to leases on

National Forest System lands and to operations that are conducted on

Federal oil and gas leases on National Forest System lands as of April

20, 1990.

(c) Applicability of other rules. Surface uses associated with oil

and gas prospecting, development, production, and reclamation

activities, that are conducted on National Forest System lands outside a

leasehold must receive prior authorization from the Forest Service. Such

activities are subject to the regulations set forth elsewhere in 36 CFR

chapter II, including but not limited to the regulations set forth in 36

CFR parts 251, subpart B, and 261.

Sec. 228.101 Definitions.

For the purposes of this subpart, the terms listed in this section

have the following meaning:

Authorized Forest officer. The Forest Service employee delegated the

authority to perform a duty described in these rules. Generally, a

Regional Forester, Forest Supervisor, District Ranger, or Minerals Staff

Officer, depending on the scope and level of the duty to be performed.

Compliance Officer. The Deputy Chief, or the Associate Deputy

Chiefs, National Forest System or the line officer designated to act in

the absence of the Deputy Chief.

Leasehold. The area described in a Federal oil and gas lease,

communitized, or unitized area.

Lessee. A person or entity holding record title in a lease issued by

the United States.

National Forest System. All National Forest lands reserved or

withdrawn from the public domain of the United States, all National

Forest lands acquired through purchase, exchange, donation, or other

means, the National Grasslands and land utilization projects

administered under title III of the Bankhead-Jones Farm Tenant Act (7

U.S.C. 1010 et seq.), and other lands, waters, or interests therein

which are administered by the Forest Service or are designated for

administration through the Forest Service as a part of the system (16

U.S.C. 1609).

Notices to Lessees, Transferees, and Operators. A written notice

issued by the authorized Forest officer. Notices to Lessees,

Transferees, and Operators implement the regulations in this subpart and

serve as instructions on specific item(s) of importance within a Forest

Service Region, National Forest, or Ranger District.

Onshore Oil and Gas Order. A formal numbered order issued by or

signed by the Chief of the Forest Service that implements and

supplements the regulations in this subpart.

Operating right. The interest created out of a lease that authorizes

the holder of that interest to enter upon the leased lands to conduct

drilling and related operations, including production of oil and gas

from such lands in accordance with the terms of the lease.

Operating rights owner. A person holding operating rights in a lease

issued by the United States. A leasee also may be an operating rights

owner if

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the operating rights in a lease or portion thereof have not been

conveyed to another person.

Operations. Surface disturbing activities that are conducted on a

leasehold on National Forest System lands pursuant to a current approved

surface use plan of operations, including but not limited to,

exploration, development, and production of oil and gas resources and

reclamation of surface resources.

Operator. Any person or entity, including, but not limited to, the

lessee or operating rights owner, who has stated in writing to the

authorized Forest officer that they are responsible under the terms and

conditions of the lease for the operations conducted on the leased lands

or a portion thereof.

Person. An individual, partnership, corporation, association or

other legal entity.

Substantial modification. A change in lease terms or a modification,

waiver, or exception of a lease stipulation that would require an

environmental assessment or environmental impact statement be prepared

pursuant to the National Environmental Policy Act of 1969.

Surface use plan of operations. A plan for surface use, disturbance,

and reclamation.

Transfer. Any conveyance of an interest in a lease by assignment,

sublease or otherwise. This definition includes the terms: Assignment

which means a conveyance of all or a portion of the lessee's record

title interest in a lease; and sublease which means a conveyance of a

non-record interest in a lease, i.e., a conveyance of operating rights

is normally a sublease and a sublease also is a subsidiary arrangement

between the lessee (sublessor) and the sublessee, but a sublease does

not include a transfer of a purely financial interest, such as

overriding royalty interest or payment out of production, nor does it

affect the relationship imposed by a lease between the lessee(s) and the

United States.

Transferee. A person to whom an interest in a lease issued by the

United States has been transferred.

Leasing

Sec. 228.102 Leasing analyses and decisions.

(a) Compliance with the National Environmental Policy Act of 1969.

In analyzing lands for leasing, the authorized Forest officer shall

comply with the National Environmental Policy Act of 1969, implementing

regulations at 43 CFR parts 1500-1508, and Forest Service implementing

policies and procedures set forth in Forest Service Manual chapter 1950

and Forest Service Handbook 1909.15.

(b) Scheduling analysis of available lands. Within 6 months of April

20, 1990, Forest Supervisors shall develop, in cooperation with the

Bureau of Land Management and with public input, a schedule for

analyzing lands under their jurisdiction that have not been already

analyzed for leasing. The Forest Supervisors shall revise or make

additions to the schedule at least annually. In scheduling lands for

analysis, the authorized Forest officer shall identify and exclude from

further review the following lands which are legally unavailable for

leasing:

(1) Lands withdrawn from mineral leasing by an act of Congress or by

an order of the Secretary of the Interior;

(2) Lands recommended for wilderness allocation by the Secretary of

Agriculture;

(3) Lands designated by statute as wilderness study areas, unless

oil and gas leasing is specifically allowed by the statute designating

the study area; and

(4) Lands within areas allocated for wilderness or further planning

in Executive Communication 1504, Ninety-Sixth Congress (House Document

No. 96-119), unless such lands subsequently have been allocated to uses

other than wilderness by an approved Forest land and resource management

plan or have been released to uses other than wilderness by an act of

Congress.

(c) Leasing analyses. The leasing analysis shall be conducted by the

authorized Forest officer in accordance with the requirements of 36 CFR

part 219 (Forest land and resource management planning) and/or, as

appropriate,

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through preparation of NEPA documents. As part of the analysis, the

authorized Forest officer shall:

(1) Identify on maps those areas that will be:

(i) Open to development subject to the terms and conditions of the

standard oil and gas lease form (including an explanation of the typical

standards and objectives to be enforced under the standard lease terms);

(ii) Open to development but subject to constraints that will

require the use of lease stipulations such as those prohibiting surface

use on areas larger than 40 acres or such other standards as may be

developed in the plan for stipulation use (with discussion as to why the

constraints are necessary and justifiable); and

(iii) Closed to leasing, distinguishing between those areas that are

being closed through exercise of management direction, and those closed

by law, regulation, etc.

(2) Identify alternatives to the areas listed in paragraph (c)(1) of

this section, including that of not allowing leasing.

(3) Project the type/amount of post-leasing activity that is

reasonably foreseeable as a consequence of conducting a leasing program

consistent with that described in the proposal and for each alternative.

(4) Analyze the reasonable foreseeable impacts of post-leasing

activity projected under paragraph (c)(3) of this section.

(d) Area or Forest-wide leasing decisions (lands administratively

available for leasing). Upon completion of the leasing analysis, the

Regional Forest shall promptly notify the Bureau of Land Management as

to the area or Forest-wide leasing decisions that have been made, that

is, identify lands which have been found administratively available for

leasing.

(e) Leasing decisions for specific lands. At such time as specific

lands are being considered for leasing, the Regional Forester shall

review the area or Forest-wide leasing decision and shall authorize the

Bureau of Land Management to offer specific lands for lease subject to:

(1) Verifying that oil and gas leasing of the specific lands has

been adequately addressed in a NEPA document, and is consistent with the

Forest land and resource management plan. If NEPA has not been

adequately addressed, or if there is significant new information or

circumstances as defined by 40 CFR 1502.9 requiring further

environmental analysis, additional environment analysis shall be done

before a leasing decision for specific lands will be made. If there is

inconsistency with the Forest land and resource management plan, no

authorization for leasing shall be given unless the plan is amended or

revised.

(2) Ensuring that conditions of surface occupancy identified in

Sec. 228.102(c)(1) are properly included as stipulations in resulting

leases.

(3) Determining that operations and development could be allowed

somewhere on each proposed lease, except where stipulations will

prohibit all surface occupancy.

[55 FR 10444, Mar. 21, 1990, as amended at 56 FR 56157, Nov. 1, 1991]

Sec. 228.103 Notice of appeals of decisions.

The authorized Forest officer shall promptly notify the Bureau of

Land Management if appeals of either an area or Forest-wide leasing

decision or a leasing decision for specific lands are filed during the

periods provided for under 36 CFR part 217.

Sec. 228.104 Consideration of requests to modify, waive, or grant

exceptions to lease stipulations.

(a) General. An operator submitting a surface use plan of operations

may request the authorized Forest officer to authorize the Bureau of

Land Management to modify (permanently change), waive (permanently

remove), or grant an exception (case-by-case exemption) to a stipulation

included in a lease at the direction of the Forest Service. The person

making the request is encouraged to submit any information which might

assist the authorized Forest officer in making a decision.

(b) Review. The authorized Forest officer shall review any

information submitted in support of the request and any other pertinent

information.

(1) As part of the review, consistent with 30 U.S.C. 226 (f)-(g),

the authorized

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Forest officer shall ensure compliance with the National Environmental

Policy Act of 1969 (42 U.S.C. 4331 et seq.) and any other applicable

laws, and shall ensure preparation of any appropriate environmental

documents.

(2) The authorized Forest officer may authorize the Bureau of Land

Management to modify, waive, or grant an exception to a stipulation if:

(i) The action would be consistent with applicable Federal laws;

(ii) The action would be consistent with the current forest land and

resource management plan;

(iii) The management objectives which led the Forest Service to

require the inclusion of the stipulation in the lease can be met without

restricting operations in the manner provided for by the stipulation

given the change in the present condition of the surface resources

involved, or given the nature, location, timing, or design of the

proposed operations; and

(iv) The action is acceptable to the authorized Forest officer based

upon a review of the environmental consequences.

(c) Other agency stipulations. If a stipulation was included in a

lease by the Forest Service at the request of another agency, the

authorized Forest officer shall consult with that agency prior to

authorizing modification, waiver, or exception.

(d) Notice of decision. (1) When the review of a stipulation

modification, waiver, or exception request has been completed and the

authorized Forest officer has reached a decision, the authorized Forest

officer shall promptly notify the operator and the appropriate Bureau of

Land Management office, in writing, of the decision to grant, or grant

with additional conditions, or deny the request.

(2) Any decision to modify, waive, or grant an exception to a lease

stipulation shall be subject to administrative appeal only in

conjunction with an appeal of a decision on a surface use plan of

operation or supplemental surface use plan of operation.

Authorization of Occupancy Within a Leasehold

Sec. 228.105 Issuance of onshore orders and notices to lessees.

(a) Onshore oil and gas orders. The Chief of the Forest Service may

issue, or cosign with the Director, Bureau of Land Management, Onshore

Oil and Gas Orders necessary to implement and supplement the regulations

of this subpart.

(1) Surface Use Plans of Operations and Master Development Plans.

Operators shall submit Surface Use Plans of Operations or Master

Development Plans in accordance with Onshore Oil and Gas Order No. 1.

Approval of a Master Development Plan constitutes a decision to approve

Surface Use Plans of Operations submitted as a part of the Master

Development Plan. Subsequently submitted Surface Use Plans of Operations

shall be reviewed to verify that they are consistent with the approved

Master Development Plan and whether additional NEPA documentation or

consultation pursuant to the National Historic Preservation Act or the

Endangered Species Act is required. If the review determines that

additional documentation is required, the Forest Service will review the

additional documentation or consult as appropriate and make an

independent decision regarding the subsequently submitted Surface Use

Plan of Operations, and notify the BLM and the operator whether the

Surface Use Plan of Operations is approved.

(2) Adoption of additional onshore oil and gas orders. Additional

onshore oil and gas orders shall be published in the Federal Register

for public comment and codified in the CFR.

(3) Applicability of onshore oil and gas orders. Onshore Oil and Gas

Orders issued pursuant to this section are binding on all operations

conducted on National Forest System lands, unless otherwise provided

therein.

(b) Notices to lessees, transferees, and operators. The authorized

Forest officer may issue, or cosign with the authorized officer of the

Bureau of Land Management, Notices to Lessees, Transferees, and

Operators necessary to implement the regulations of this subpart.

Notices to Lessees, Transferees,

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and Operators are binding on all operations conducted on the

administrative unit of the National Forest System (36 CFR 200.2)

supervised by the authorized Forest officer who issued or cosigned such

notice.

[55 FR 10444, Mar. 21, 1990, as amended at 72 FR 10328, Mar. 7, 2007]

Sec. 228.106 Operator's submission of surface use plan of operations.

(a) General. No permit to drill on a Federal oil and gas lease for

National Forest System lands may be granted without the analysis and

approval of a surface use plan of operations covering proposed surface

disturbing activities. An operator must obtain an approved surface use

plan of operations before conducting operations that will cause surface

disturbance. The operator shall submit a proposed surface use plan of

operations as part of an Application for a Permit to Drill to the

appropriate Bureau of Land Management office for forwarding to the

Forest Service, unless otherwise directed by the Onshore Oil and Gas

Order in effect when the proposed plan of operations is submitted.

(b) Preparation of plan. In preparing a surface use plan of

operations, the operator is encouraged to contact the local Forest

Service office to make use of such information as is available from the

Forest Service concerning surface resources and uses, environmental

considerations, and local reclamation procedures.

(c) Content of plan. The type, size, and intensity of the proposed

operations and the sensitivity of the surface resources that will be

affected by the proposed operations determine the level of detail and

the amount of information which the operator includes in a proposed plan

of operations. However, any surface use plan of operations submitted by

an operator shall contain the information specified by the Onshore Oil

and Gas Order in effect when the surface use plan of operations is

submitted.

(d) Supplemental plan. An operator must obtain an approved

supplemental surface use plan of operations before conducting any

surface disturbing operations that are not authorized by a current

approved surface use plan of operations. The operator shall submit a

proposed supplemental surface use plan of operations to the appropriate

Bureau of Land Management office for forwarding to the Forest Service,

unless otherwise directed by the Onshore Oil and Gas Order in effect

when the proposed supplemental plan of operations is submitted. The

supplemental plan of operations need only address those operations that

differ from the operations authorized by the current approved surface

use plan of operations. A supplemental plan is otherwise subject to the

same requirements under this subpart as an initial surface use plan of

operations.

Sec. 228.107 Review of surface use plan of operations.

(a) Review. The authorized Forest officer shall review a surface use

plan of operations as promptly as practicable given the nature and scope

of the proposed plan. As part of the review, the authorized Forest

officer shall comply with the National Environmental Policy Act of 1969,

implementing regulations at 40 CFR parts 1500-1508, and the Forest

Service implementing policies and procedures set forth in Forest Service

Manual Chapter 1950 and Forest Service Handbook 1909.15 and shall ensure

that:

(1) The surface use plan of operations is consistent with the lease,

including the lease stipulations, and applicable Federal laws;

(2) To the extent consistent with the rights conveyed by the lease,

the surface use plan of operations is consistent with, or is modified to

be consistent with, the applicable current approved forest land and

resource management plan;

(3) The surface use plan of operations meets or exceeds the surface

use requirements of Sec. 228.108 of this subpart; and

(4) The surface use plan of operations is acceptable, or is modified

to be acceptable, to the authorized Forest officer based upon a review

of the environmental consequences of the operations.

(b) Decision. The authorized Forest officer shall make a decision on

the approval of a surface use plan of operations as follows:

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(1) If the authorized Forest officer will not be able to make a

decision on the proposed plan within 3 working days after the conclusion

of the 30-day notice period provided for by 30 U.S.C. 226(f), the

authorized Forest officer shall advise the appropriate Bureau of Land

Management office and the operator as soon as such delay becomes

apparent, either in writing or orally with subsequent written

confirmation, that additional time will be needed to process the plan.

The authorized Forest officer shall explain the reason why additional

time is needed and project the date by which a decision on the plan will

likely be made.

(2) When the review of a surface use plan of operations has been

completed, the authorized Forest officer shall promptly notify the

operator and the appropriate Bureau of Land Management office, in

writing, that:

(i) The plan is approved as submitted:

(ii) The plan is approved subject to specified conditions; or,

(iii) The plan is disapproved for the reasons stated.

(c) Notice of decision. The authorized Forest officer shall give

public notice of the decision on a surface use plan of operations and

include in the notice that the decision is subject to appeal under 36

CFR part 214 or 215.

(d) Transmittal of decision. The authorized Forest officer shall

immediately forward a decision on a surface use plan of operations to

the appropriate Bureau of Land Management office and the operator. This

transmittal shall include the estimated cost of reclamation and

restoration (Sec. 228.109(a)) if the authorized Forest officer believes

that additional bonding is required.

(e) Supplemental plans. A supplemental surface use plan of

operations (Sec. 228.106(d)) shall be reviewed in the same manner as an

initial surface use plan of operations.

[55 FR 10444, Mar. 21, 1990, as amended at 72 FR 10328, Mar. 7, 2007; 78

FR 33724, June 5, 2013]

Sec. 228.108 Surface use requirements.

(a) General. The operator shall conduct operations on a leasehold on

National Forest System lands in a manner that minimizes effects on

surface resources, prevents unnecessary or unreasonable surface resource

disturbance, and that is in compliance with the other requirements of

this section.

(b) Notice of operations. The operator must notify the authorized

Forest officer 48 hours prior to commencing operations or resuming

operations following their temporary cessation (Sec. 228.111).

(c) Access facilities. The operator shall construct and maintain

access facilities to assure adequate drainage and to minimize or prevent

damage to surface resources.

(d) Cultural and historical resources. The operator shall report

findings of cultural and historical resources to the authorized Forest

officer immediately and, except as otherwise authorized in an approved

surface use plan of operations, protect such resources.

(e) Fire prevention and control. To the extent practicable, the

operator shall take measures to prevent uncontrolled fires on the area

of operation and to suppress uncontrolled fires resulting from the

operations.

(f) Fisheries, wildlife and plant habitat. The operator shall comply

with the requirements of the Endangered Species Act of 1973 (16 U.S.C.

1531 et seq.) and its implementing regulations (50 CFR chapter IV), and,

except as otherwise provided in an approved surface use plan of

operations, conduct operations in such a manner as to maintain and

protect fisheries, wildlife, and plant habitat.

(g) Reclamation. (1) Unless otherwise provided in an approved

surface use plan of operations, the operator shall conduct reclamation

concurrently with other operations.

(2) Within 1 year of completion of operations on a portion of the

area of operation, the operator must reclaim that portion, unless a

different period of time is approved in writing by the authorized Forest

officer.

(3) The operator must:

(i) Control soil erosion and landslides;

(ii) Control water runoff;

(iii) Remove, or control, solid wastes, toxic substances, and

hazardous substances;

(iv) Reshape and revegetate disturbed areas;

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(v) Remove structures, improvements, facilities and equipment,

unless otherwise authorized; and

(vi) Take such other reclamation measures as specified in the

approved surface use plan of operations.

(h) Safety measures. (1) The operator must maintain structures,

facilities, improvements, and equipment located on the area of operation

in a safe and neat manner and in accordance with an approved surface use

plan of operations.

(2) The operator must take appropriate measures in accordance with

applicable Federal and State laws and regulations to protect the public

from hazardous sites or conditions resulting from the operations. Such

measures may include, but are not limited to, posting signs, building

fences, or otherwise identifying the hazardous site or condition.

(i) Wastes. The operator must either remove garbage, refuse, and

sewage from National Forest System lands or treat and dispose of that

material in such a manner as to minimize or prevent adverse impacts on

surface resources. The operator shall treat or dispose of produced

water, drilling fluid, and other waste generated by the operations in

such a manner as to minimize or prevent adverse impacts on surface

resources.

(j) Watershed protection. (1) Except as otherwise provided in the

approved surface use plan of operations, the operator shall not conduct

operations in areas subject to mass soil movement, riparian areas and

wetlands.

(2) The operator shall take measures to minimize or prevent erosion

and sediment production. Such measures include, but are not limited to,

siting structures, facilities, and other improvements to avoid steep

slopes and excessive clearing of land.

Sec. 228.109 Bonds.

(a) General. As part of the review of a proposed surface use plan of

operations, the authorized Forest officer shall consider the estimated

cost to the Forest Service to reclaim those areas that would be

disturbed by operations and to restore any lands or surface waters

adversely affected by the lease operations after the abandonment or

cessation of operations on the lease. If at any time prior to or during

the conduct of operations, the authorized Forest officer determines the

financial instrument held by the Bureau of Land Management is not

adequate to ensure complete and timely reclamation and restoration, the

authorized Forest officer shall give the operator the option of either

increasing the financial instrument held by the Bureau of Land

Management or filing a separate instrument with the Forest Service in

the amount deemed adequate by the authorized Forest officer to ensure

reclamation and restoration.

(b) Standards for estimating reclamation costs. The authorized

Forest officer shall consider the costs of the operator's proposed

reclamation program and the need for additional measures to be taken

when estimating the cost to the Forest Service to reclaim the disturbed

area.

(c) Release of reclamation liability. An operator may request the

authorized Forest officer to notify the Bureau of Land Management of

reduced reclamation liability at any time after reclamation has

commenced. The authorized Forest officer shall, if appropriate, notify

the Bureau of Land Management as to the amount to which the liability

has been reduced.

Sec. 228.110 Indemnification.

The operator and, if the operator does not hold all of the interest

in the applicable lease, all lessees and transferees are jointly and

severally liable in accordance with Federal and State laws for

indemnifying the United States for:

(a) Injury, loss or damage, including fire suppression costs, which

the United States incurs as a result of the operations; and

(b) Payments made by the United States in satisfaction of claims,

demands or judgments for an injury, loss or damage, including fire

suppression costs, which result from the operations.

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Administration of Operations

Sec. 228.111 Temporary cessation of operations.

(a) General. As soon as it becomes apparent that there will be a

temporary cessation of operations for a period of 45 days or more, the

operator must verbally notify and subsequently file a statement with the

authorized Forest officer verifying the operator's intent to maintain

structures, facilities, improvements, and equipment that will remain on

the area of operation during the cessation of operations, and specifying

the expected date by which operations will be resumed.

(b) Seasonal shutdowns. The operator need not file the statement

required by paragraph (a) of this section if the cessation of operations

results from seasonally adverse weather conditions and the operator will

resume operations promptly upon the conclusion of those adverse weather

conditions.

(c) Interim measures. The authorized Forest officer may require the

operator to take reasonable interim reclamation or erosion control

measures to protect surface resources during temporary cessations of

operations, including during cessations of operations resulting from

seasonally adverse weather conditions.

Sec. 228.112 Compliance and inspection.

(a) General. Operations must be conducted in accordance with the

lease, including stipulations made part of the lease at the direction of

the Forest Service, an approved surface use plan of operations, the

applicable Onshore Oil and Gas Order (Sec. 228.105(a)), an applicable

Notice to lessees, transferees, and operators (Sec. 228.105(b)), and

regulations of this subpart.

(b) Completion of reclamation. The authorized Forest officer shall

give prompt written notice to an operator whenever reclamation of a

portion of the area affected by surface operations has been

satisfactorily completed in accordance with the approved surface use

plan of operations and Sec. 228.108 of this subpart. The notice shall

describe the portion of the area on which the reclamation has been

satisfactorily completed.

(c) Compliance with other statutes and regulations. Nothing in this

subpart shall be construed to relieve an operator from complying with

applicable Federal and State laws or regulations, including, but not

limited to:

(1) Federal and State air quality standards, including the

requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(2) Federal and State water quality standards, including the

requirements of the Federal Water Pollution Control Act, as amended (33

U.S.C. 1151 et seq.);

(3) Federal and State standards for the use or generation of solid

wastes, toxic substances and hazardous substances, including the

requirements of the Comprehensive Environmental Response, Compensation

and Liability Act, as amended, 42 U.S.C. 9601 et seq., and its

implementing regulations, 40 CFR chapter I, subchapter J, and the

Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and its

implementing regulations, 40 CFR chapter I, subchapter I;

(4) The Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., and

its implementing regulations, 50 CFR chapter IV;

(5) The Archeological Resources Protection Act of 1979, as amended

(16 U.S.C. 470aa et seq.) and its implementing regulations 36 CFR part

296;

(6) The Mineral Leasing Act of 1920, 30 U.S.C. 1981 et seq., the

Mineral Leasing Act of Acquired Lands of 1947, 30 U.S.C. 351 et seq.,

the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701

et seq., and their implementing regulations, 43 CFR chapter II, group

3100; and

(7) Applicable Onshore Oil and Gas Orders and Notices to Lessees and

Operators (NTL's) issued by the United States Department of the

Interior, Bureau of Land Management pursuant to 43 CFR chapter II, part

3160, subpart 3164.

(d) Penalties. If surface disturbing operations are being conducted

that are not authorized by an approved surface use plan of operations or

that violate a term or operating condition of an approved surface use

plan of operations, the person conducting those operations is subject to

the prohibitions and attendant penalties of 36 CFR part 261.

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(e) Inspection. Forest Service officers shall periodically inspect

the area of operations to determine and document whether operations are

being conducted in compliance with the regulations in this subpart, the

stipulations included in the lease at the direction of the Forest

Service, the approved surface use plan of operations, the applicable

Onshore Oil and Gas Order, and applicable Notices to Lessees,

Transferees, and Operators.

Sec. 228.113 Notice of noncompliance.

(a) Issuance. When an authorized Forest officer finds that the

operator is not in compliance with a reclamation or other standard, a

stipulation included in a lease at the direction of the Forest Service,

an approved surface use plan of operation, the regulations in this

subpart, the applicable onshore oil and gas order, or an applicable

notice to lessees, transferees, and operators, the authorized Forest

officer shall issue a notice of noncompliance.

(1) Content. The notice of noncompliance shall include the

following:

(i) Identification of the reclamation requirements or other

standard(s) with which the operator is not in compliance;

(ii) Description of the measures which are required to correct the

noncompliance;

(iii) Specification of a reasonable period of time within which the

noncompliance must be corrected;

(iv) If the noncompliance appears to be material, identification of

the possible consequences of continued noncompliance of the

requirement(s) or standard(s) as described in 30 U.S.C. 226(g);

(v) If the noncompliance appears to be in violation of the

prohibitions set forth in 36 CFR part 261, identification of the

possible consequences of continued noncompliance of the requirement(s)

or standard(s) as described in 36 CFR 261.1b; and

(vi) Notification that the authorized Forest officer remains willing

and desirous of working cooperatively with the operator to resolve or

remedy the noncompliance.

(2) Extension of deadlines. The operator may request an extension of

a deadline specified in a notice of noncompliance if the operator is

unable to come into compliance with the applicable requirement(s) or

standard(s) identified in the notice of noncompliance by the deadline

because of conditions beyond the operator's control. The authorized

Forest officer shall not extend a deadline specified in a notice of

noncompliance unless the operator requested an extension and the

authorized Forest officer finds that there was a condition beyond the

operator's control, that such condition prevented the operator from

complying with the notice of noncompliance by the specified deadline,

and that the extension will not adversely affect the interests of the

United States. Conditions which may be beyond the operator's control

include, but are not limited to, closure of an area in accordance with

36 CFR part 261, subparts B or C, or inaccessibility of an area of

operations due to such conditions as fire, flooding, or snowpack.

(3) Manner of service. The authorized Forest officer shall serve a

notice of noncompliance or a decision on a request for extension of a

deadline specified in a notice upon the operator in person, by certified

mail or by telephone. However, if notice is initially provided in person

or by telephone, the authorized Forest officer shall send the operator

written confirmation of the notice or decision by certified mail.

(b) Failure to come into compliance. If the operator fails to come

into compliance with the applicable requirement(s) or standard(s)

identified in a notice of noncompliance by the deadline specified in the

notice, or an approved extension, the authorized Forest officer shall

decide whether: The noncompliance appears to be material given the

reclamation requirements and other standards applicable to the lease

established by 30 U.S.C. 226(g), the regulations in this subpart, the

stipulations included in a lease at the direction of the Forest Service,

an approved surface use plan of operations, the applicable Onshore Oil

and Gas Order, or an applicable Notice to lessees, transferees, and

operators; the noncompliance is likely to result in danger to public

health or safety or irreparable resource damage; and the

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noncompliance is resulting in an emergency.

(1) Referral to compliance officer. When the operations appear to be

in material noncompliance, the authorized Forest officer shall promptly

refer the matter to the compliance officer. The referral shall be

accompanied by a complete statement of the facts supported by

appropriate exhibits. Apparent material noncompliance includes, but is

not limited to, operating without an approved surface use plan of

operations, conducting operations that have been suspended, failure to

timely complete reclamation in accordance with an approved surface use

plan of operations, failure to maintain an additional bond in the amount

required by the authorized Forest officer during the period of

operation, failure to timely reimburse the Forest Service for the cost

of abating an emergency, and failing to comply with any term included in

a lease, stipulation, or approved surface use plan of operations, the

applicable onshore oil and gas order, or an applicable Notice to

lessees, transferees, and operators, relating to the protection of a

threatened or endangered species.

(2) Suspension of operations. When the noncompliance is likely to

result in danger to public health or safety or in irreparable resource

damage, the authorized Forest officer shall suspend the operations, in

whole or in part.

(i) A suspension of operations shall remain in effect until the

authorized Forest officer determines that the operations are in

compliance with the applicable requirement(s) or standard(s) identified

in the notice of noncompliance.

(ii) The authorized Forest officer shall serve decisions suspending

operations upon the operator in person, by certified mail, or by

telephone. If notice is initially provided in person or by telephone,

the authorized Forest officer shall send the operator written

confirmation of the decision by certified mail.

(iii) The authorized Forest officer shall immediately notify the

appropriate Bureau of Land Management office when an operator has been

given notice to suspend operations.

(3) Abatement of emergencies. When the noncompliance is resulting in

an emergency, the authorized Forest officer may take action as necessary

to abate the emergency. The total cost to the Forest Service of taking

actions to abate an emergency becomes an obligation of the operator.

(i) Emergency situations include, but are not limited to, imminent

dangers to public health or safety or irreparable resource damage.

(ii) The authorized Forest officer shall promptly serve a bill for

such costs upon the operator by certified mail.

Sec. 228.114 Material noncompliance proceedings.

(a) Evaluation of referral. The compliance officer shall promptly

evaluate a referral made by the authorized Forest officer pursuant to

Sec. 228.113(b)(1) of this subpart.

(b) Dismissal of referral. The compliance officer shall dismiss the

referral if the compliance officer determines that there is not adequate

evidence to support a reasonable belief that:

(1) The operator was not in compliance with the applicable

requirement(s) or standard(s) identified in a notice of noncompliance by

the deadline specified in the notice, or an extension approved by the

authorized Forest officer; or

(2) The noncompliance with the applicable requirement(s) or

standard(s) identified in the notice of noncompliance may be material.

(c) Initiation of proceedings. The compliance officer shall initiate

a material noncompliance proceeding if the compliance officer agrees

that there is adequate evidence to support a reasonable belief that an

operator has failed to come into compliance with the applicable

requirement(s) or standard(s) identified in a notice of noncompliance by

the deadline specified in the notice, or extension approved by the

authorized Forest officer, and that the noncompliance may be material.

(1) Notice of proceedings. The compliance officer shall inform the

lessee and operator of the material noncompliance proceedings by

certified mail, return receipt requested.

(2) Content of notice. The notice of the material noncompliance

proceeding shall include the following:

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(i) The specific reclamation requirement(s) or other standard(s) of

which the operator may be in material noncompliance;

(ii) A description of the measures that are required to correct the

violation;

(iii) A statement that if the compliance officer finds that the

operator is in material noncompliance with a reclamation requirement or

other standard applicable to the lease, the Secretary of the Interior

will not be able to issue new leases or approve new transfers of leases

to the operator, any subsidiary or affiliate of the operator, or any

person controlled by or under common control with the operator until the

compliance officer finds that the operator has come into compliance with

such requirement or standard; and

(iv) A recitation of the specific procedures governing the material

noncompliance proceeding set forth in paragraphs (d) through (g) of this

section.

(d) Answer. Within 30 calendar days after receiving the notice of

the proceeding, the operator may submit, in person, in writing, or

through a representative, an answer containing information and argument

in opposition to the proposed material noncompliance finding, including

information that raises a genuine dispute over the material facts. In

that submission, the operator also may:

(1) Request an informal hearing with the compliance officer; and

(2) Identify pending administrative or judicial appeal(s) which are

relevant to the proposed material noncompliance finding and provide

information which shows the relevance of such appeal(s).

(e) Informal hearing. If the operator requests an informal hearing,

it shall be held within 20 calendar days from the date that the

compliance officer receives the operator's request.

(1) The compliance officer may postpone the date of the informal

hearing if the operator requests a postponement in writing.

(2) At the hearing, the operator, appearing personally or through an

attorney or another authorized representative, may informally present

and explain evidence and argument in opposition to the proposed material

noncompliance finding.

(3) A transcript of the informal hearing shall not be required.

(f) Additional procedures as to disputed facts. If the compliance

officer finds that the answer raises a genuine dispute over facts

essential to the proposed material noncompliance finding, the compliance

officer shall so inform the operator by certified mail, return receipt

requested. Within 10 days of receiving this notice, the operator may

request a fact-finding conference on those disputed facts.

(1) The fact-finding conference shall be scheduled within 20

calendar days from the date the compliance officer receives the

operator's request, unless the operator and compliance officer agree

otherwise.

(2) At the fact-finding conference, the operator shall have the

opportunity to appear with counsel, submit documentary evidence, present

witnesses, and confront the person(s) the Forest Service presents.

(3) A transcribed record of the fact-finding conference shall be

made, unless the operator and the compliance officer by mutual agreement

waive the requirement for a transcript. The transcript will be made

available to the operator at cost upon request.

(4) The compliance officer may preside over the fact-finding

conference or designate another authorized Forest officer to preside

over the fact-finding conference.

(5) Following the fact-finding conference, the authorized Forest

officer who presided over the conference shall promptly prepare written

findings of fact based upon the preponderance of the evidence. The

compliance officer may reject findings of fact prepared by another

authorized Forest officer, in whole or in part, if the compliance

officer specifically determines that such findings are arbitrary and

capricious or clearly erroneous.

(g) Dismissal of proceedings. The compliance officer shall dismiss

the material noncompliance proceeding if, before the compliance officer

renders a decision pursuant to paragraph (h) of this section, the

authorized Forest officer who made the referral finds that the operator

has come into compliance

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with the applicable requirements or standards identified in the notice

of proceeding.

(h) Compliance officer's decision. The compliance officer shall base

the decision on the entire record, which shall consist of the authorized

Forest officer's referral and its accompanying statement of facts and

exhibits, information and argument that the operator provided in an

answer, any information and argument that the operator provided in an

informal hearing if one was held, and the findings of fact if a fact-

finding conference was held.

(1) Content. The compliance officer's decision shall state whether

the operator has violated the requirement(s) or standard(s) identified

in the notice of proceeding and, if so, whether that noncompliance is

material given the requirements of 30 U.S.C. 226(g), the stipulations

included in the lease at the direction of the Forest Service, the

regulations in this subpart or an approved surface use plan of

operations, the applicable onshore oil and gas order, or an applicable

notice to lessees, transferees, and operators. If the compliance officer

finds that the operator is in material noncompliance, the decision also

shall:

(i) Describe the measures that are required to correct the

violation;

(ii) Apprise the operator that the Secretary of the Interior is

being notified that the operator has been found to be in material

noncompliance with a reclamation requirement or other standard

applicable to the lease; and

(iii) State that the decision is the final administrative

determination of the Department of Agriculture.

(2) Service. The compliance officer shall serve the decision upon

the operator by certified mail, return receipt requested. If the

operator is found to be in material noncompliance, the compliance

officer also shall immediately send a copy of the decision to the

appropriate Bureau of Land Management office and to the Secretary of the

Interior.

(i) Petition for withdrawal of finding. If an operator who has been

found to be in material noncompliance under the provisions of this

section believes that the operations have subsequently come into

compliance with the applicable requirement(s) or standard(s) identified

in the compliance officer's decision, the operator may submit a written

petition requesting that the material noncompliance finding be

withdrawn. The petition shall be submitted to the authorized Forest

officer who issued the operator the notice of noncompliance under

Sec. 228.113(a) of this subpart and shall include information or

exhibits which shows that the operator has come into compliance with the

requirement(s) or standard(s) identified in the compliance officer's

decision.

(1) Response to petition. Within 30 calendar days after receiving

the operator's petition for withdrawal, the authorized Forest officer

shall submit a written statement to the compliance officer as to whether

the authorized Forest officer agrees that the operator has come into

compliance with the requirement(s) or standard(s) identified in the

compliance officer's decision. If the authorized Forest officer

disagrees with the operator, the written statement shall be accompanied

by a complete statement of the facts supported by appropriate exhibits.

(2) Additional procedures as to disputed material facts. If the

compliance officer finds that the authorized Forest officer's response

raises a genuine dispute over facts material to the decision as to

whether the operator has come into compliance with the requirement(s) or

standard(s) identified in the compliance officer's decision, the

compliance officer shall so notify the operator and authorized Forest

officer by certified mail, return receipt requested. The notice shall

also advise the operator that the fact finding procedures specified in

paragraph (f) of this section apply to the compliance officer's decision

on the petition for withdrawal.

(3) Compliance officer's decision. The compliance officer shall base

the decision on the petition on the entire record, which shall consist

of the operator's petition for withdrawal and its accompanying exhibits,

the authorized Forest officer's response to the petition and, if

applicable, its accompanying statement of facts and exhibits, and if a

fact-finding conference was held, the findings of fact. The compliance

officer shall serve the decision on the operator by certified mail.

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(i) If the compliance officer finds that the operator remains in

violation of requirement(s) or standard(s) identified in the decision

finding that the operator was in material noncompliance, the decision on

the petition for withdrawal shall identify such requirement(s) or

standard(s) and describe the measures that are required to correct the

violation(s).

(ii) If the compliance officer finds that the operator has

subsequently come into compliance with the requirement(s) or standard(s)

identified in the compliance officer's decision finding that the

operator was in material noncompliance, the compliance officer also

shall immediately send a copy of the decision on the petition for

withdrawal to the appropriate Bureau of Land Management office and

notify the Secretary of the Interior that the operator has come into

compliance.

(j) List of operators found to be in material noncompliance. The

Deputy Chief, National Forest System, shall compile and maintain a list

of operators who have been found to be in material noncompliance with

reclamation requirements and other standards as provided in 30 U.S.C.

226(g), the regulations in this subpart, a stipulation included in a

lease at the direction of the Forest Service, or an approved surface use

plan of operations, the applicable onshore oil and gas order, or an

applicable notice to lessees, transferees, and operators, for a lease on

National Forest System lands to which such standards apply. This list

shall be made available to Regional Foresters, Forest Supervisors, and

upon request, members of the public.

Sec. 228.115 Additional notice of decisions.

(a) The authorized Forest officer shall promptly post notices

provided by the Bureau of Land Management of:

(1) Competitive lease sales which the Bureau plans to conduct that

include National Forest System lands;

(2) Substantial modifications in the terms of a lease which the

Bureau proposes to make for leases on National Forest System lands; and

(3) Applications for permits to drill which the Bureau has received

for leaseholds located on National Forest System lands.

(b) The notice shall be posted at the offices of the affected Forest

Supervisor and District Ranger in a prominent location readily

accessible to the public.

(c) The authorized Forest officer shall keep a record of the date(s)

the notice was posted in the offices of the affected Forest Supervisor

and District Ranger.

(d) The posting of notices required by this section are in addition

to the requirements for public notice of decisions provided in

Sec. 228.104(d) (Notice of decision) and Sec. 228.107(c) (Notice of

decision) of this subpart.

Sec. 228.116 Information collection requirements.

(a) Sections containing information requirements. The following

sections of this subpart contain information requirements as defined in

5 CFR part 1320 and have been approved for use by the Office of

Management and Budget:

(1) Section 228.104(a) Requests to Modify, Waive, or Grant

Exceptions to Leasing Stipulations;

(2) Section 228.106 (a), (c), and (d) Submission of Surface Use Plan

of Operations;

(3) Section 228.109(c) Request for Reduction in Reclamation

Liability after Reclamation;

(4) Section 228.111(a) Notice of Temporary Cessation of Operations;

(5) Section 228.113(a)(2) Extension of Deadline in Notice of

Noncompliance; and

(6) Section 228.114 (c) through (i) Material Noncompliance

Proceedings.

(b) OMB control number. The information requirements listed in

paragraph (a) of this section have been assigned OMB Control No. 0596-

0101.

(c) Average estimated burden hours. (1) The average burden hours per

response are estimated to be:

(i) 5 minutes for the information requirements in Sec. 228.104(a) of

this subpart;

(ii) No additional burden hours required to meet the information

requirements in Sec. 228.106 (a), (c), and (d) of this subpart;

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(iii) 10 minutes for the information requirements in Sec. 228.109(c)

of this subpart;

(iv) 10 minutes for the information requirements in Sec. 228.111(a)

of this subpart;

(v) 5 minutes for the information requirements in Sec. 228.113(a)(2)

of this subpart; and

(vi) 2 hours for the information requirements in Sec. 228.114 (c)

through (i) of this subpart.

(2) Send comments regarding the burden estimate or any other aspect

of this collection of information, including suggestions for reducing

this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090,

Washington, DC 20090-6090 and to the Office of Information and

Regulatory Affairs, Office of Management and Budget, Washington, DC

20503.