

Forest Service, USDA

§ 228.66

§ 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 (§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.

§ 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 terminate the contract, and all previous payments will be forfeited without prejudice to any other rights and remedies of the United States. Forfeiture will not result when the purchaser is unable to meet the minimum annual production (volume or value) for reasons beyond the purchaser's control.

(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 §228.51(a)(2) to the authorized officer before operations are begun under the contract.

§ 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) *Termination.* (1) If the contract is terminated by the authorized officer for reasons which are beyond the purchaser's control; or

(2) If the contract is terminated by mutual agreement. This refund provision is not a warranty that a specific quantity of material exists in the sale area.