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# CODE OF FEDERAL REGULATIONS

# Title 36

## Parks, Forests, and Public Property

Parts 200 to 299

Revised as of July 1, 2022

Containing a codification of documents
of general applicability and future effect

As of July 1, 2022

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*Cite this Code:* CFR

*To cite the regulations in this volume use title, part and section number. Thus,* 36 CFR 200.1 *refers to title 36, part 200, section 1.*

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

PAST PROVISIONS OF THE CODE

Provisions of the Code that are no longer in force and effect as of the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on any given date in the past by using the appropriate List of CFR Sections Affected (LSA). For the convenience of the reader, a ''List of CFR Sections Affected'' is published at the end of each CFR volume. For changes to the Code prior to the LSA listings at the end of the volume, consult previous annual editions of the LSA. For changes to the Code prior to 2001, consult the List of CFR Sections Affected compilations, published for 1949-1963, 1964-1972, 1973-1985, and 1986-2000.

''[RESERVED]'' TERMINOLOGY

The term ''[Reserved]'' is used as a place holder within the Code of Federal Regulations. An agency may add regulatory information at a ''[Reserved]'' location at any time. Occasionally ''[Reserved]'' is used editorially to indicate that a portion of the CFR was left vacant and not dropped in error.

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(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Authorities and Rules. A list of CFR titles, chapters, subchapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency's name appears at the top of odd-numbered pages.

For inquiries concerning CFR reference assistance, call 202–741–6000 or write to the Director, Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001 or e-mail *fedreg.info@nara.gov*.

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The eCFR is a regularly updated, unofficial editorial compilation of CFR material and Federal Register amendments, produced by the Office of the Federal Register and the Government Publishing Office. It is available at *www.ecfr.gov*.

OLIVER A. POTTS,
*Director*,
*Office of the Federal Register*
*July 1, 2022*

# THIS TITLE

Title 36—PARKS, FORESTS, AND PUBLIC PROPERTY is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 1–199, parts 200–299, and part 300 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2022.

For this volume, Gabrielle E. Burns was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

# Title 36—Parks, Forests, and Public Property

(This book contains parts 200 to 299)

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*Part*

CHAPTER II—Forest Service, Department of Agriculture ..... 200

ABBREVIATIONS USED IN THIS CHAPTER:
A.O. = *Administrative order*. P.L.O. = *Public Land order*.

# CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE


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# PART 200—ORGANIZATION, FUNCTIONS, AND PROCEDURES

## Subpart A—Organization

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200.2 Field organization.

## Subpart B—Functions and Procedures

200.3 Forest Service functions.
200.4 Administrative issuances.
200.5 Indexes.
200.6 Information available; inspection, copying, and charges.
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200.8 Appeals.
200.12 Land status and title records.

AUTHORITY: 5 U.S.C. 552; 7 U.S.C. 6706; 16 U.S.C. 472, 521, 1603, and 2101 *et seq*.

## Subpart A—Organization

### § 200.1 Central organization.

(a) *Central office*. The national office of the Forest Service, U.S. Department of Agriculture, is located in the Auditors Building, 14th and Independence Avenue, SW. Washington, DC. It consists of the Office of the Chief and Associate Chief, and a Deputy Chief for each of the following five activities: Programs and Legislation, National Forest System, Research, State and Private Forestry, and Administration. All communications should be addressed to the Forest Service, Department of Agriculture, P.O. Box 96090, Washington, DC 20090–6090.

(b) *Chief of the Forest Service*. The Chief of the Forest Service, under the direction of the Secretary of Agriculture, administers the formulation, direction, and execution of Forest Service policies, programs, and activities.

(c) *Deputy Chiefs*. The major activities of the Forest Service at the headquarters level are divided into five Deputy Chief areas with each further divided into staff units. The programs and functions of staff units are directed by staff directors and may be subdivided into groups headed by group leaders. A description of the major activities of each Deputy Chief follows:

(1) *Programs and legislation*. Overall planning of Forest Service programs, policy formulation and analysis, budgeting, legislative development, reporting and liaison, and environmental coordination.

(2) *National Forest System*. Administration of National Forest System lands and management of natural resources within the principle of multiple use and sustained yield. Management includes planning, coordinating, and directing the national resource programs of timber, range, wildlife, recreation, watershed, and mineral areas; and support activities of fire, engineering, lands, aviation, and computer systems. The National Forest System includes:

155 Proclaimed or designated National Forests
20 National Grasslands
51 Purchase Units
8 Land Utilization Projects
20 Research and Experimental Areas
33 Other Areas

The first four classifications listed above are administered as 121 Forest Service Administrative Units, each headed by a Forest Supervisor. National Recreation Areas, National Forest Wildernesses, and Primitive Areas are included in the above land classifications.

(3) *Research*. Plan, coordinate, and direct research programs to learn how man can best use and protect the plant, animal, soil, water, and esthetic resources of nonagricultural rural and exurban lands for his well-being and enjoyment. These programs include research on timber management, forest products and engineering, forest economics and marketing, watersheds, wildlife and fish habitat, range, recreation and other environmental concerns, forest insects and disease, forest fire and atmospheric science. Plans and directs international forestry activities and disseminates forestry research information throughout the world.

(4) *State and private forestry*. Coordinate and provide leadership for intergovernmental resource programs for technical and financial assistance to improve and protect State and privately-owned forest resources and urban and community forestry. Carries out this action through cooperative forestry, area planning and development, cooperative fire protection, forest insect and disease management, cooperative tree planting, and overall

Forest Service participation in rural development and environmental concern, including civil defense and other emergency activities.

(5) *Administration*. Provide support for Forest Service programs through management improvement, fiscal and accounting, administrative services, personnel management, manpower and youth conservation, antipoverty programs, communication and electronics, internal review system, external audits, coordination of civil rights activities, public information, and Servicewide management of systems and computer applications.

[41 FR 24350, June 16, 1976, as amended at 42 FR 32230, June 24, 1977; 43 FR 27190, June 23, 1978; 44 FR 5660, Jan. 29, 1979; 62 FR 33366, June 19, 1997]

### § 200.2 Field organization.

The field organization of the Forest Service consists of regions, stations, and areas as described below:

(a) *Regions of the National Forest System*. For the purpose of managing the lands administered by the Forest Service, the United States is divided into nine geographic regions of the National Forest System. Each region has a headquarters office and is supervised by a Regional Forester who is responsible to the Chief for the activities assigned to that region. Within each region are located national forests and other lands of the Forest Service.

(1) *National Forests*. Each Forest has a headquarters office and is supervised by a Forest Supervisor who is responsible to the Regional Forester. Two or more proclaimed or designated National Forests, or all of the Forests in a State, may be combined into one Forest Service Administrative Unit headed by one Forest Supervisor. Each Forest is divided into Ranger Districts. The Alaska Region is composed of two National Forests without Ranger Districts; with one Forest divided into three areas, each administered by a Forest Supervisor.

(2) *Ranger districts*. Each district may include a portion of a national forest, a national grassland or portion thereof, a national recreation area, a wilderness or primitive area, and other lands administered by the Forest Service. Each district has a headquarters office and is supervised by a District Ranger (or Area Ranger in some cases) who is responsible to the Forest Supervisor.

(b) *Forest and rangeland research coordination*. The field research program is coordinated by six research stations, the national Forest Products Laboratory, and the International Institute of Tropical Forestry. Each has a headquarters office and a Director who is responsible to the Chief for all research activities within a geographical area of the United States or its territories. Scientists are based at Research Work Units with laboratories located in 36 lower States, Hawaii, Alaska, and Puerto Rico. Scientists primarily conduct their work within a given geographical area, but due to the integrated and cooperative nature of the research program, they make work nationwide and internationally.

(c) *State and private forestry cooperation*. Field level cooperation between the Forest Service, States, and the private sector on forestry activities is accomplished by the Northeastern Area State and Private Forestry for the Northeastern States; and by the National Forest Regional Offices in the Southeastern and Western States. The Northeastern Area is supervised by an Area Director who is responsible to the Chief for State and private forestry activities within the Area. Regional Foresters in Regions 1 through 8 and Region 10 are responsible for State and private forestry activities within those regions.

(d) *International Institute of Tropical Forestry*. The Institute is managed by a Director who is the senior Forest Service official in Puerto Rico. The Director is responsible to the Chief for planning and directing research, science and technology exchange, technical assistance to the Commonwealth of Puerto Rico, and international cooperation on natural resources concerning tropical forestry.

(e) *Field addresses*. The addresses of Regional Foresters, Station Directors, and Area Directors are given below. Under each Regional Office address is a list of National Forest Administrative Units by States with locations of Forest Supervisor headquarters. Headquarters locations for Ranger Districts, National Grasslands, and National

Recreation Areas are not listed but may be obtained from Forest Supervisors or Regional Foresters.

NATIONAL FORESTS BY REGION

| State in which forest is located | National forest administration unit | Headquarters location of forest supervisor |
|---|---|---|
| Region 1, Northern Region (Regional Forester, Federal Bldg., P.O. Box 7669, Missoula, MT 59807): | | |
| Idaho | Clearwater | Orofino. |
| | Idaho Panhandle National Forests (Kaniksu-Coeur 'dAlene-St. Joe. | Coeur d'Alene. |
| | Nezperce | Grangeville. |
| Montana | Beaverhead | Dillon. |
| | Bitterroot | Hamilton. |
| | Custer | Billings. |
| | Deerlodge | Butte. |
| | Flathead | Kalispell. |
| | Gallatin | Bozeman. |
| | Helena | Helena. |
| | Kootenai | Libby. |
| | Lewis and Clark | Great Falls. |
| | Lolo | Missoula. |
| Region 2, Rocky Mountain Region (Regional Forester, 740 Simms Street, P. O. Box 25127, Lakewood, CO 80225): | | |
| Colorado | Arapaho-Roosevelt | Fort Collins. |
| | Grand Mesa-Uncompahgre and Gunnison | Delta. |
| | Pike-San Isabel | Pueblo. |
| | San Juan-Rio Grande | Monte Vista. |
| | White River | Glenwood Springs. |
| Nebraska | Nebraska (Samuel R. McKelvie) | Chadron. |
| South Dakota | Black Hills | Custer. |
| Wyoming | Bighorn | Sheridan. |
| | Medicine Bow-Routt | Laramie. |
| | Shoshone | Cody. |
| Region 3, Southwestern Region (Regional Forester, Federal Bldg., 517 Gold Ave. SW., Albuquerque, NM 87102): | | |
| Arizona | Apache-Sitgreaves | Springerville. |
| | Coconino | Flagstaff. |
| | Coronado | Tucson. |
| | Kaibab | Williams. |
| | Prescott | Prescott. |
| | Tonto | Phoenix. |
| New Mexico | Carson | Taos. |
| | Cibola | Albuquerque. |
| | Gila | Silver City. |
| | Lincoln | Alamogordo. |
| | Santa Fe | Santa Fe. |
| Region 4, Intermountain Region (Regional Forester, 324 25th St., Ogden, UT 84401): | | |
| Idaho | Boise | Boise. |
| | Caribou (Cache-Idaho portion) | Pocatello. |
| | Challis | Challis. |
| | Payette | McCall. |
| | Salmon | Salmon. |
| | Sawtooth | Twin Falls. |
| | Targhee | St. Anthony. |
| Nevada | Humboldt | Elko. |
| | Toiyabe, except the Lake Tahoe basin management unit. | Sparks. |
| Utah | Ashley | Vernal. |
| | Dixie | Cedar City. |
| | Fishlake | Richfield. |
| | Manti-La Sal | Price. |
| | Uinta | Provo. |
| | Wasatch (Cache-Utah portion) | Salt Lake City. |
| Wyoming | Bridger-Teton | Jackson. |
| Region 5, Pacific Southwest Region (Regional Forester, 630 Sansome St., San Francisco, CA 94111): | | |
| California | Angeles | Arcadia. |
| | Cleveland | San Diego. |
| | Eldorado, except the Lake Tahoe basin management unit. | Placerville. |

NATIONAL FORESTS BY REGION—Continued

| State in which forest is located | National forest administration unit | Headquarters location of forest supervisor |
|---|---|---|
| | Inyo | Bishop. |
| | Klamath | Yreka. |
| | Lassen | Susanville. |
| | Los Padres | Goleta. |
| | Mendocino | Willows. |
| | Modoc | Alturas. |
| | Plumas | Quincy. |
| | San Bernardino | San Bernardino. |
| | Sequoia | Porterville. |
| | Shasta-Trinity | Redding. |
| | Sierra | Fresno. |
| | Six Rivers | Eureka. |
| | Stanislaus (Calaveras Bigtree) | Sonora. |
| | Tahoe, except the Lake Tahoe basin management unit. | Nevada City. |
| | Lake Tahoe basin management unit (portions of Toiyabe, Eldorado, and Tahoe National Forests). | South Lake Tahoe (headed by an administrator). |
| Region 6, Pacific Northwest Region (Regional Forester, 333 S.W. 1st Avenue, P.O. Box 3623, Portland, OR 97208): | | |
| Oregon | Deschutes | Bend |
| | Fremont | Lakeview. |
| | Malheur | John Day. |
| | Mount Hood | Gresham. |
| | Ochoco | Prineville. |
| | Rogue River | Medford. |
| | Siskiyou | Grants Pass. |
| | Siuslaw | Corvallis. |
| | Umatilla | Pendleton. |
| | Umpqua | Roseburg. |
| | Wallowa-Whitman | Baker. |
| | Willamette | Eugene. |
| | Winema | Klamath Falls. |
| Washington | Colville | Colville. |
| | Gifford Pinchot | Vancouver. |
| | Mount Baker-Snoqualmie | Mountain Terrace. |
| | Okanogan | Okanogan. |
| | Olympic | Olympia. |
| | Wenatchee | Wenatchee. |
| Region 8, Southern Region (Regional Forester, 1720 Peachtree Rd. NW., Atlanta, GA 30367): | | |
| Alabama | National forests in Alabama (William B. Bankhead, Conecuh, Talladega, Tuskegee). | Montgomery. |
| Arkansas | Ouachita | Hot Springs. |
| | Ozark-St. Francis | Russellville. |
| Florida | National forests in Florida (Apalachicola, Ocala, Osceola). | Tallahassee. |
| Georgia | Chattahoochee-Oconee | Gainesville. |
| Kentucky | Daniel Boone | Winchester. |
| Louisiana | Kisatchie | Pineville. |
| Mississippi | National Forests in Mississippi (Bienville, Delta, De Soto, Holly Springs, Homochitto, Tombigbee). | Jackson. |
| North Carolina | National forests in North Carolina (Croatan, Nantahala, Pisgah, Uwharrie). | Asheville. |
| Puerto Rico | Caribbean | Rio Piedras, PR. |
| South Carolina | Francis Marion and Sumter | Columbia. |
| Tennessee | Cherokee | Cleveland. |
| Texas | National forests in Texas (Angelina, Davy Crockett, Sabine, Sam Houston). | Lufkin. |
| Virginia | George Washington-Jefferson | Roanoke. |
| Region 9, Eastern Region (Regional Forester, 310 West Wisconsin Ave., Milwaukee, WI 53203): | | |
| Illinois | Shawnee | Harrisburg. |
| Indiana and Ohio | Wayne-Hoosier | Bedford, IN. |
| Michigan | Hiawatha | Escanaba. |
| | Huron-Manistee | Cadillac. |

NATIONAL FORESTS BY REGION—Continued

| State in which forest is located | National forest administration unit | Headquarters location of forest supervisor |
|---|---|---|
| Minnesota | Ottawa | Ironwood. |
| | Chippewa | Cass Lake. |
| | Superior | Duluth. |
| Missouri | Mark Twain | Rolla. |
| New Hampshire and Maine | White Mountain | Laconia, NH. |
| Pennsylvania | Allegheny | Warren. |
| Vermont | Green Mountain | Rutland. |
| West Virginia | Monongahela | Elkins. |
| Wisconsin | Chequamegon | Park Falls. |
| | Nicolet | Rhinelander. |
| Region 10, Alaska Region (Regional Forester, Federal Office Bldg., P.O. Box 21628, Juneau, AK 99802–1628): | | |
| Alaska | Chugach | Anchorage. |
| | Tongass:. | |
| | Chatham area | Sitka. |
| | Ketchikan area | Ketchikan. |
| | Sitkine area | Petersburg. |

FOREST AND RANGE EXPERIMENT STATIONS, LABORATORIES, AND INSTITUTES NAME OF UNIT AND HEADQUARTERS OF DIRECTOR

North Central Research Station—1995 Folwell Avenue, St. Paul, MN 55108.

Northeastern Research Station—100 Matsonford Road, 5 Radnor Corporate Center, Suite 200, P.O. Box 6775, Radnor, PA 19087–4585.

Pacific Northwest Research Station—333 S.W. 1st Avenue, P.O. Box 3890, Portland, OR 97208–3890.

Pacific Southwest Research Station—800 Buchanan Street, West Building, Albany, CA 94710–0011.

Rocky Mountain Research Station—240 West Prospect Street, Fort Collins, CO 80526–2098.

Southern Research Station—200 Weaver Boulevard, P.O. Box 2680, Asheville, NC 28802.

LABORATORY

Forest Products Laboratory—One Gifford Pinchot Drive, Madison, WI 53705–2398.

INSTITUTE

International Institute of Tropical Forestry—Call Box 25000, UPR Experimental Station Grounds, Rio Piedras, Puerto Rico 00928–2500.

STATE AND PRIVATE FORESTRY AREA OFFICE

Director, Northeastern Area—100 Matsonford Road, P.O. Box 6775, Radnor, PA 19087–4585.

NOTE: In Regions 1 through 8 and 10, State and Private Forestry activities are directed from Regional headquarters.

[41 FR 24350, June 16, 1976, as amended at 42 FR 32230, June 24, 1977; 42 FR 40438, Aug. 10, 1977; 43 FR 27190, June 23, 1978; 44 FR 5660, Jan. 29, 1979; 62 FR 33366, 33367, June 19, 1997]

## Subpart B—Functions and Procedures

### § 200.3 Forest Service functions.

(a) *Legislative authority*. The basic laws authorizing activities of the Forest Service are set forth in the U.S.C. in title 7 (Agriculture), chapters 14, 17, 33, 55, 59, and 61; title 16 (Conservation), chapters 2, 3, 4, 5C, 6, 23, 27, 28, 30, 36, and 37; title 29 (Labor), chapter 17; and title 43 (Public Lands), chapters 22 and 35.

(b) *Work of the Forest Service*. Under delegated authority from the Secretary of Agriculture, the broad responsibilities of the Forest Service are:

(1) *Leadership in forestry*. The Forest Service provides overall leadership in forest and forest-range conservation, development, and use. This involves determination of forestry conditions and requirements, and recommendations of policies and programs needed to keep the Nation's private and public lands fully productive.

(2) *National Forest System administration*. (i) The Forest Service administers and manages the National Forest System lands in accordance with the Multiple-Use Sustained-Yield Act of June 12, 1960 (16 U.S.C. 528–531); the Forest and Rangeland Renewable Resources Planning Act of August 17, 1974 (16 U.S.C. 1600–1614); and the National Forest Management Act of October 22, 1976 (16 U.S.C. 472a, 476, 500, 513–516, 521b; 576b, 1600–1602, 1604, 1606, 1608–1614).

(ii) The National Forest System comprises about 188 million acres of land in the National Forests, National Grasslands, and other areas which have been transferred to the Forest Service for administration. On these public lands:

(A) Forestry methods are applied in growing and harvesting timber,

(B) Forage is scientifically managed for the use of domestic livestock whose numbers are kept in balance with the carrying capacity of the range,

(C) Wildlife habitat and species are managed,

(D) Watersheds are managed to safeguard the water supply and stabilize streamflow,

(E) Recreation resources are managed for public enjoyment and benefit,

(F) Many forms of land and resource use are granted under permit or lease, and

(G) Physical and resource improvements needed to develop, protect, and use all resources are built and maintained.

(3) *Cooperative forestry*. The Forest Service carries out cooperative forestry programs for public benefit through programs initiated by State, county, and other Federal agencies in accordance with the Cooperative Forestry Assistance Act of July 1, 1978 (16 U.S.C. 2101–2111). These programs are directed at the protection, development, and sustained production of all forestry resources, both public and private.

(4) *Forest research*. The Forest Service conducts research on problems involving protection, development, management, renewal, and continuous use of all resources, products, values, and services of forest lands in accordance with the Forest and Rangeland Renewable Resources Research Act of June 30, 1978 (16 U.S.C. 1641–1647). Research is conducted on:

(i) Forest and range management, including the five basic resources of timber, forest soil and water, range forage, wildlife and fish habitat, and forest recreation,

(ii) Forest protection from fire, insects, and disease,

(iii) Forest products and engineering, and

(iv) Forest resource economics including forest survey, forest economics, and forest products marketing.

[44 FR 37505, June 27, 1979]

### § 200.4 Administrative issuances.

(a) The regulations of the Secretary of Agriculture governing the protection and administration of National Forest System lands and other programs of the Forest Service are set forth in Chapter 2 of Title 36 of the Code of Federal Regulations.

(b) Administrative policy, procedure, and guidance to Forest Service employees for the conduct of Forest Service activities are issued as directives, or through correspondence, by the office of the Chief of the Forest Service and by the field officers listed in § 200.2.

(1) Directives are issued through the Forest Service Directive System, which is comprised of the Forest Service Manual and related Forest Service Handbooks. The Directive System codifies the agency's policy, practice, and procedure affecting more than one unit and the delegations of continuing authority and assignment of continuing responsibilities; serves as the primary administrative basis for the internal management and control of all programs; and is the primary source of administrative direction to Forest Service employees.

(2) In contrast to direction issued through the Directive System, guidance issued to one or more organizational units through letters and memoranda relate to decisions or interpretations on specific activities, cases, or incidents or to other matters of agency business, especially those matters of short-term duration or immediate interest.

(c) Forest Service Directive System issuances are published under delegated authority as follows:

(1) The Forest Service Manual and Forest Service Handbook issuances to all Forest Service units are published by the Office of the Chief.

(2) Forest Service Manual and Forest Service Handbook issuances may be supplemented as needed for field office use by a Regional Forester, a Regional

Special Agent in Charge of Law Enforcement and Investigations, a Research Station Director, the International Institute for Tropical Forestry Director, the Area Director, or a Forest Supervisor.

(d) Guidance issued through letters and memoranda must be issued in accordance with signing authorities delegated through issuances to the Forest Service Directive System.

(e) An alphabetical index of the contents of the Forest Service Manual and related Forest Service Handbooks is published in Forest Service Handbook 1109.12, Directive System Handbook. The index contains a listing of all Series, Titles, and Chapters in the Forest Service Manual and a listing of all Forest Service Handbooks in the Directive System.

(f) Forest Service Handbook 6209.11, Records Management Handbook, outlines and indexes the filing system for all correspondence and other records.

(g) Forms and reports used by the agency are listed in, and instructions for their use are issued throughout, the Forest Service Directive System and are collated in Forest Service Handbook 1309.14, Information Requirements Handbook.

[62 FR 33367, June 19, 1997, as amended at 74 FR 19143, Apr. 28, 2009]

### § 200.5 Indexes.

Publication of the indexes described in § 200.4 is deemed both unnecessary and impractical because of the large volume of material involved. However, copies of the indexes are available for public review in the Forest Service headquarters office in Washington, DC, and at field offices listed under § 200.2(d). The Forest Service will provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

[40 FR 12790, Mar. 21, 1975. Redesignated at 62 FR 13540, Mar. 21, 1997]

### § 200.6 Information available; inspection, copying, and charges.

(a) In accordance with 5 U.S.C. 552(a) and 7 CFR 1.2, the Forest Service shall make available for public inspection and copying all published or unpublished directives, forms, records, and final opinions, including concurring or dissenting opinions and orders made in the adjudication of cases. Charges for information requested from the Forest Service are set out in paragraph (d) of this section and vary according to the type of information requested.

(b) Information made available pursuant to paragraph (a) of this section may be obtained at the Office of the Chief, or the office of any Regional Forester, Research Station Director, Area Director, Institute Director, Forest Supervisor, or District Ranger. The addresses of these offices are set forth in §§ 200.1 and 200.2. Forest Service personnel at these offices will assist members of the public seeking Forest Service records. However, Research Station and Institute Directors and District Rangers may not have all volumes of the Forest Service Manual and Handbooks. When the information requested is not available at a given location, the personnel where the request is received will direct the requester to another office where the information may be obtained.

(c) Inspection and copying availability is as follows:

(1) Facilities for inspection and copying are available at the offices listed in §§ 200.1 and 200.2, during established office hours for the particular location, usually 8 a.m. to 5 p.m., Monday through Friday. Copying facilities may not be available at all Forest Service offices.

(2) Requesters for information may make copies of available information without charge if they elect to bring their own copy equipment to the appropriate offices listed in §§ 200.1 and 200.2.

(3) Requesters should make prior arrangements for using agency copying facilities or for bringing in copying equipment and, in the later case, should get advance approval from the office.

(d) Any request for information pursuant to the provisions of the Freedom of Information Act must be submitted in accordance with §§ 200.7 and 200.8. The Forest Service charges a fee for copies of records not generally made available to the public but released pursuant to a FOIA request in accordance with a schedule of fees established by the Department of Agriculture at 7

CFR Part 1, Subpart A, Appendix A. These fees do not apply to information that is generally and routinely made available to the public upon request, such as recreational brochures, pamphlets, maps, and technical guides as well as agency directive issuances. Separate charges for such general information are established in the agency's Directive System (§ 200.4). For example, some pamphlets and small segments of the Forest Service Manual and Handbook may be provided at no cost, but maps of the National Forest System and larger sections of the Manual and Handbook are available for a charge. Current charges are explained at the time the request is made.

[62 FR 13540, Mar. 21, 1997]

### § 200.7 Request for records.

Requests for records and the processing of those records are governed by the rules at 7 CFR 1.6. Agency officials are authorized to receive and act on requests for records as follows:

(a) The Regional Forester, Regional Special Agent in charge, Research Station Director, Area Director, and Institute Director at the field locations and addresses listed in § 200.2; the Director of Law Enforcement and Investigations, other Staff Directors, or other officials whom the Chief may authorize, located in the Washington Office, are authorized to receive requests for such records, to make determinations regarding whether records exist, and to grant or deny requests for records exempt from disclosure under the provisions of 5 U.S.C. 552(b).

(b) Each of the officials listed in paragraph (a) of this section also is authorized to take the following actions:

(1) Extend the 10-day administrative deadline for reply pursuant to 7 CFR 1.14;

(2) Make discretionary releases pursuant to 7 CFR 1.17(b) of records exempt from mandatory disclosure;

(3) Deny records pursuant to 5 U.S.C. 552(b); and

(4) Make determinations regarding the charges of fees pursuant to 7 CFR 1.8(a).

[62 FR 33368, June 19, 1997, as amended at 63 FR 53811, Oct. 7, 1998]

### § 200.8 Appeals.

(a) Appeals from denials of requests submitted under § 200.7 shall be submitted in accordance with U.S. Department of Agriculture rules at 7 CFR part 1, subpart A, and the appendix to subpart A to the Chief, Forest Service, U.S. Department of Agriculture, Auditors Building, 14th and Independence Avenue, S.W., P.O. Box 96090, Washington, DC 20090–6090.

(b) The Chief, or other official to whom such authority is delegated, shall determine whether to grant or deny the appeal and make all necessary determinations relating to an extension of the 20-day administrative deadline for reply, discretionary release of records exempt from mandatory disclosure under 5 U.S.C. 552(b), and charging the appropriate fees, pursuant to U.S. Department of Agriculture rules at 7 CFR part 1, subpart A, and the appendix to subpart A.

(c) The Forest Service Freedom of Information Act/Privacy Act Officer must review all proposed responses to appeals prior to signature.

[63 FR 53812, Oct. 7, 1998, as amended at 63 FR 60049, Nov. 6, 1998]

### § 200.12 Land status and title records.

(a) *Land Status Records System.* The Land Status Records System is the official, permanent repository for all agency realty records and land title documents for National Forest System lands. It includes an automated database which contains an accurate account of: acreage, condition of title, administrative jurisdiction, rights held by the United States, administrative and legal use restrictions, encumbrances, and access rights on land or interests in land in the National Forest System.

(1) *Components.* The system shall include, but is not limited to, the following components:

(i) A current and accurate Land Status Atlas for each National Forest, National Grassland, and other proclaimed or designated administrative unit, which shall graphically portray on maps keyed to a tabular summary the following categories of information:

(A) Jurisdiction of and condition of title to lands administered as part of the National Forest System.

(B) All encumbrances on National Forest System lands.

(C) All partial interests administered by the Forest Service on other lands.

(D) All use restrictions, withdrawals, and special designated areas on National Forest System lands.

(E) The acreage of National Forest System lands, including riparian lands.

(ii) A master Land Status File, from which the agency data for the Atlas is derived and which includes the following:

(A) Discrete title files of each landownership adjustment.

(B) The original authorizing documents establishing or adjusting National Forest System lands and interests therein.

(C) Withdrawals, use restrictions, and special designated areas on National Forest System lands.

(D) Other information as deemed necessary.

(iii) Such reporting systems as are needed to provide title or status reports.

(2) *Display of Information*. Information in the system may be collected and maintained in narrative, graphic, tabular, or other form and may be entered into and maintained in automated systems as well as produced in paper form in accordance with such administrative direction as the Chief of the Forest Service or Regional Foresters may establish.

(b) *Availability*. A Land Status Atlas shall be maintained at each National Forest administrative unit or subunit, such as Ranger Districts or National Recreation Area offices. Each Regional Office shall maintain copies of the Atlas for all National Forests within that Region. Related land title and realty records for each National Forest System unit shall be maintained at the administrative headquarters of that unit. The Land Status Atlas and such title and realty records as are held at an administrative unit shall be available for public inspection.

[56 FR 29181, June 26, 1991, as amended at 59 FR 2987, Jan. 20, 1994]

# PART 211—ADMINISTRATION

## Subpart A—Cooperation

Sec.
211.1–211.2 [Reserved]
211.3 Cooperation with State officers.
211.4 Cooperation for fire prevention and control.
211.5 Emergency fire suppression assistance.
211.6 Cooperation in forest investigations or the protection, management, and improvement of the National Forest System.

## Subpart B [Reserved]

AUTHORITY: 16 U.S.C. 472, 498, 551.

## Subpart A—Cooperation

### §§ 211.1–211.2 [Reserved]

### § 211.3 Cooperation with State officers.

All forest officers will cooperate with State officials, insofar as practicable, to enforce State fire, game, and health laws. They are authorized to accept appointments, without compensation, as deputy State fire wardens, game wardens, and/or health officers whenever in the judgment of the Chief of the Forest Service the performance of the duties required by these offices will not interfere with their duties as Federal forest officers.

[1 FR 1261, Aug. 15, 1936]

### § 211.4 Cooperation for fire prevention and control.

The Forest Service shall, whenever possible, and is hereby authorized to enter into such agreements with private owners of timber, with railroads, and with other industrial concerns operating in or near the national forests as will result in mutual benefit in the prevention and suppression of forest fires: *Provided*, That the service required of each party by such agreements shall be in proportion to the benefits conferred.

[1 FR 1261, Aug. 15, 1936]

### § 211.5 Emergency fire suppression assistance.

(a) *Definitions*. For the purpose of this subpart these definitions apply:

(1) Prescribed fire means a fire burning under a set of specified conditions

which will accomplish certain planned resource management objectives.

(2) Escaped prescribed fire means a prescribed fire which has either exceeded the prescription or has rekindled after it has been declared to be out.

(b) In the absence of a written reciprocal agreement with any fire organization or in situations outside the scope of an agreement, the Forest Service is authorized to render emergency assistance in suppressing fires and in preserving life and property from the threat of fire within the vicinity of Forest Service fire protection facilities under the following conditions:

(1) If a prescribed fire initiated on lands administered by the Forest Service escapes onto lands not administered by the Forest Service, the Forest Service may commit personnel, materials, and equipment without reimbursement or consideration of the fire's continuing threat to National Forest System lands or resources.

(2) When requested, the Forest Service may commit personnel, materials, and equipment on a reimbursable basis on lands not administered by the Forest Service without regard to the fire's threat to National Forest System lands or resources.

[48 FR 44537, Sept. 29, 1983]

### § 211.6 Cooperation in forest investigations or the protection, management, and improvement of the National Forest System.

(a) *Purpose and scope.* Forest Service officers, when engaged in cooperative activities otherwise authorized, may receive monies from cooperators only for cooperative work in forest investigations or for the protection, management, and improvement of the National Forest System and only in accordance with written cooperative agreements. Management of the National Forest System may include such work as planning, analysis, and related studies, as well as resource activities.

(b) *Reimbursements.* Agency expenditures for work undertaken in accordance with this section may be made from Forest Service appropriations available for such work, with subsequent reimbursement from the cooperator, in accordance with established written agreements. Forest Service officers shall issue written bills for collection for cooperator reimbursement payments within the same fiscal year as Forest Service expenditures.

(c) *Bonding.* Each written agreement involving a non-Government cooperator's total contribution of $25,000 or more to the Forest Service on a reimbursable basis, must include a provision requiring a payment bond to guarantee the cooperator's reimbursement payment. Acceptable security for a payment bond includes Department of the Treasury approved corporate sureties, Federal Government obligations, and irrevocable letters of credit. For the purposes of this section, a non-Government cooperator is an entity that is not a member, division, or affiliate of a Federal, State, local government, a federally recognized Indian Tribe (as defined by the Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. 479a]), or other organizations funding a Forest Service agreement with pass through funding from an entity that is a member, division, or affiliate of a Federal, State, local government, or federally recognized Indian Tribe.

(d) *Avoiding conflict of interest.* Forest Service officers shall avoid acceptance of contributions from cooperators when such contributions would reflect unfavorably upon the ability of the Forest Service to carry out its responsibilities and duties. Forest Service officers shall be guided by the provisions of 18 U.S.C. parts 201–209, 5 CFR part 2635, and applicable Department of Agriculture regulations, in determining if a conflict of interest or potential conflict of interest exists in a proposed cooperative effort. Forest Service ethics officials or the designated Department of Agriculture ethics official should be consulted on conflict of interest issues.

[64 FR 60678, Nov. 8, 1999, as amended at 73 FR 62443, Oct. 21, 2008]

## Subpart B [Reserved]

# PART 212—TRAVEL MANAGEMENT

## Subpart A—Administration of the Forest Transportation System

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212.81 Over-snow vehicle use.

## Subpart A—Administration of the Forest Transportation System

AUTHORITY: 16 U.S.C. 551, 23 U.S.C. 205.

### §212.1 Definitions.

For the purpose of this part the following terms, respectively, shall mean:

*Administrative unit*. A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

*Area*. A discrete, specifically delineated space that is smaller, and, except for over-snow vehicle use, in most cases much smaller, than a Ranger District.

*Chief*. The Chief, Forest Service, Department of Agriculture.

*Construction engineering*. All work and expense of setting out, controlling, inspecting, and measuring the construction or reconstruction of a forest transportation facility including:

(1) Construction surveys to establish line and grade for the work, to control the work, and to measure quantities;

(2) Redesigning, adjusting, and changing the plans, specifications, and materials to meet conditions;

(3) Inspecting, directing, and controlling operations for compliance with plans and specifications;

(4) Inspecting, testing, and accepting materials and equipment to be installed in the work; and

(5) Inspecting, measuring, and accepting completed work.

*Designation of over-snow vehicle use*. Designation of a National Forest System road, a National Forest System trail, or an area on National Forest System lands where over-snow vehicle use is allowed pursuant to §212.81.

*Federal airport funds*. Discretionary funds available for airfields in National Forests under section 6(b)(3) of the Act of May 13, 1946 (60 Stat. 173), as amended; 49 U.S.C. 1105(b)(3).

*Forest road and trail funds*. Funds authorized or appropriated for the purpose of carrying out the provisions of section 205 of the Act of August 27, 1958 (72 Stat. 907), as amended; 23 U.S.C. 205.

*Forest road or trail*. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

*Forest transportation atlas*. A display of the system of roads, trails, and airfields of an administrative unit.

*Forest transportation facility*. A forest road or trail or an airfield that is displayed in a forest transportation atlas, including bridges, culverts, parking lots, marine access facilities, safety devices, and other improvements appurtenant to the forest transportation system.

*Forest transportation system*. The system of National Forest System roads,

National Forest System trails, and airfields on National Forest System lands.

*Maintenance.* The upkeep of the entire forest transportation facility including surface and shoulders, parking and side areas, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

*Motor vehicle.* Any vehicle which is self-propelled, other than:

(1) A vehicle operated on rails; and

(2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

*Motor vehicle use map.* A map reflecting designated roads, trails, and areas on an administrative unit or a Ranger District of the National Forest System.

*National Forest System.* As defined in the Forest Rangeland Renewable Resources Planning Act, the ''National Forest System'' includes 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 Tennant Act (50 Stat. 525, 7 U.S.C. 1010–1012), 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.

*National Forest System road.* A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

*National Forest System trail.* A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

*Off-highway vehicle.* Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

*Over-snow vehicle.* A motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow.

*Over-snow vehicle use map.* A map reflecting roads, trails, and areas designated for over-snow vehicle use on an administrative unit or a Ranger District of the National Forest System.

*Preconstruction engineering.* All work and expense of preparing for construction or reconstruction of a forest transportation facility including:

(1) Engineering and economic investigations, studies, and reports;

(2) Reconnaissance surveys;

(3) Preliminary surveys;

(4) Preliminary location surveys;

(5) Soils, foundations, and materials investigations, surveys, and tests;

(6) Preliminary and final designs;

(7) Preliminary and final plans, drawings, specifications, and estimates of quantities and cost;

(8) Final location surveys staked on the ground; and

(9) Rights-of-way surveys, plans, and descriptions.

*Regional forester.* A regional forester of the Forest Service.

*Road.* A motor vehicle route over 50 inches wide, unless identified and managed as a trail.

*Road and trail 10 percent funds.* Funds available from the permanent appropriation ''Roads and Trails for States'' under the Act of March 4, 1913 (37 Stat. 843), as amended; 16 U.S.C. 501.

*Road construction or reconstruction.* Supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.

*Road Decommissioning.* Activities that result in the stabilization and restoration of unneeded roads to a more natural state.

*Temporary road or trail.* A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or trail and that is not included in a forest transportation atlas.

*Trail.* A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.

*Travel management atlas.* An atlas that consists of a forest transportation atlas and a motor vehicle use map or maps.

*Unauthorized road or trail.* A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528, 531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a, *et seq.*, 42 Atty. Gen. Op. No. 7, Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 66 FR 3216, 3217, Jan. 12, 2001; 70 FR 68287, Nov. 9, 2005; 80 FR 4511, Jan. 28, 2015]

### § 212.2 Forest transportation program.

(a) *Travel management atlas.* For each administrative unit of the National Forest System, the responsible official must develop and maintain a travel management atlas, which is to be available to the public at the headquarters of that administrative unit.

(b) *Forest transportation atlas.* A forest transportation atlas may be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit. A forest transportation atlas does not contain inventories of temporary roads, which are tracked by the project or activity authorizing the temporary road. The content and maintenance requirements for a forest transportation atlas are identified in the Forest Service directives system.

(c) *Program of work for the forest transportation system.* A program of work for the forest transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

[62 FR 58654, Oct. 30, 1997, as amended at 66 FR 3216, 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005; 73 FR 74613, Dec. 9, 2008]

### § 212.3 Cooperative work.

(a) Cooperative agreements for all projects which involve financial contributions from cooperators shall be negotiated, approved, and executed in accordance with procedures prescribed by the Chief.

(b) Cooperative funds contributed in advance shall be deposited in the United States Treasury to the credit of the Forest Service Cooperative Fund authorized by the Act of June 30, 1914 (38 Stat. 430), as amended; 16 U.S.C. 498, or the Act of March 3, 1925 (43 Stat. 1132), as amended; 16 U.S.C. 572, which deposits will be made available for expenditure from the appropriation ''Cooperative Work, Forest Service.'' If a State, county or other governmental agency is unable to contribute funds under the Act of March 3, 1925, as amended, in advance but is able to pay its share subsequent to performance of the work, the subsequent payment of such funds will be deposited to the credit of the Forest Service appropriation from which the expenditures were made or to appropriations for similar purposes currently available at the time of deposit.

[25 FR 6360, July 7, 1960. Redesignated at 62 FR 58654, Oct. 30, 1997]

### § 212.4 Construction and maintenance.

(a) Construction and maintenance work on forest transportation facilities with appropriated funds shall be directed to what is necessary and economically justified for protection, administration, development, and multiple-use management of the federally owned lands and resources served.

(b) Preliminary engineering and the construction and maintenance of forest transportation facilities shall be performed by force account or let to contract, unless otherwise approved by the Chief. The contract method shall be employed for roads and trails in accordance with section 205(c) of the Act of August 27, 1958 (72 Stat. 907); 23 U.S.C. 205, and for all other facilities when it is advantageous and in the interest of the Government.

(c) No construction work shall be started by force account or let to contract until all necessary rights of way have been secured, and approved by the Attorney General, if required, and cooperative agreements, if any, approved and executed.

[24 FR 10256, Dec. 18, 1959, as amended at 25 FR 6360, July 7, 1960. Redesignated at 62 FR 58654, Oct. 30, 1997; 66 FR 3216, Jan. 12, 2001]

### § 212.5 Road system management.

(a) *Traffic rules.* Rules set forth under 36 CFR part 261 and this section shall

apply to all National Forest System roads under the jurisdiction of the Forest Service except when in conflict with written agreement.

(1) *General*. Traffic on roads is subject to State traffic laws where applicable except when in conflict with designations established under subpart B of this part or with the rules at 36 CFR part 261.

(2) *Specific*. The following specific traffic rules shall apply unless different rules are established in 36 CFR part 261.

(i) The load, weight, length, height, and width limitations of vehicles shall be in accordance with the laws of the States wherein the road is located. Greater or lesser limits may be imposed and these greater or lesser limits shall be established as provided in 36 CFR part 261.

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR part 261. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, all-terrain vehicles, 4-wheel drive vehicles, off-highway vehicles, and trailers. Types of traffic may include but are not limited to groupings such as commercial hauling, recreation, and administrative.

(iii) Roads, or segments thereof, may be closed to all vehicle use as provided in 36 CFR part 261.

(iv) Additional rules may be imposed as provided in 36 CFR part 261.

(b) Road system—(1) *Identification of road system*. For each national forest, national grassland, experimental forest, and any other units of the National Forest System (§ 212.1), the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

(2) *Identification of unneeded roads*. Responsible officials must review the road system on each National Forest and Grassland and identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails. Decommissioning roads involves restoring roads to a more natural state. Activities used to decommission a road include, but are not limited to, the following: reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to the road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders, scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes, or other methods designed to meet the specific conditions associated with the unneeded road. Forest officials should give priority to decommissioning those unneeded roads that pose the greatest risk to public safety or to environmental degradation.

(c) *Cost recovery on National Forest System roads*. The Chief may determine that a share of the cost of acquisition, construction, reconstruction, improvement, or maintenance of a road, or segment thereof, used or to be used for commercial hauling of non-Federal forests products and other non-Federal products, commodities and materials, should be borne by the owners or haulers thereof. The Chief may condition the permission to use a road, or segment thereof, upon payment to the United States of the proportionate share of the cost and bearing proportionate maintenance as determined to be attributable to the owner's or hauler's use in accordance with § 212.9. This

condition to use roads would apply where the owners or haulers:

(1) Have not shared in the cost of acquisition, construction, reconstruction, or improvements, and

(2) Have not made contributions to pay their proportionate share of the costs.

(d) *Maintenance and reconstruction of National Forest System roads by users*—(1) *Maintenance*. The Chief may require, but not in conflict with an existing permit, easement, contract, or other agreement, the user or users of a road, including purchasers of Government timber and other products, to maintain the roads in a satisfactory condition commensurate with the particular use requirements of each. The maintenance to be borne by each user shall be proportionate to total use and no individual user shall be required to perform or bear the costs of maintenance other than that commensurate with his use.

(2) *Reconstruction*. The Chief may require, but not in conflict with an existing permit, easement, contract, or other agreement, the user or users of a road to reconstruct it when, at the time the use is requested, reconstruction is determined to be necessary to accommodate his use.

(3) *Deposits in lieu of performance*. If the maintenance or reconstruction cannot be so provided or if the Chief determines that maintenance or reconstruction by a user would not be practical, the Chief may require that sufficient funds be deposited by the user to provide his portion of the total maintenance or reconstruction costs. Deposits made to cover maintenance or reconstruction of roads shall be used for the purposes deposited, except that:

(i) Deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates, and

(ii) Unexpended balances upon accomplishment of the purposes for which deposited shall be transferred to miscellaneous receipts or refunded.

(e) *Deposits for making delayed payments to cooperator*. Any fees or other collections received by the Chief under the terms of an agreement or other document providing for delayed payments to the Government's cooperator for use of a road shall be placed in a fund available for making these payments.

[39 FR 27649, July 31, 1974, as amended at 42 FR 2957, Jan. 14, 1977; 43 FR 20007, May 10, 1978; 62 FR 58654, Oct. 30, 1997. Redesignated and amended at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

### §212.6 Ingress and egress.

(a) *Policy in acquiring and granting access*. To assure effective protection, management, and utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent, the Chief shall as promptly as is feasible obtain needed access thereto and shall grant appropriate access across National Forest and other lands and easements administered by the Forest Service to intermingled or adjacent landowners. Construction, reconstruction or maintenance of a road or highway requires written authorization.

(b) *Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service*. Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service shall be permitted ingress and egress over the same and use of existing National Forest System roads and trails in order to reach their homes and to utilize their property: Provided, such ingress and egress or use shall conform to rules and regulations governing the protection and administration of the lands and the roads or trails to be used.

(c) *Others*. Entering upon the National Forests and other lands administered by the Forest Service and use of existing National Forest System roads and trails shall be permitted for all proper and lawful purposes subject to compliance with rules and regulations

governing the lands and the roads or trails to be used.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885; as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a *et seq.;* 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[40 FR 52611, Nov. 11, 1975, as amended at 42 FR 2957, Jan. 14, 1977. Redesignated at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001]

### § 212.7 Access procurement by the United States.

(a) *Existing or proposed forest roads that are or will be part of a transportation system of a State, county, or other local public road authority.* Forest roads that are or will be part of a transportation system of a State, county, or other local public road authority and are on rights-of-way held by a State, county, or other local public road authority may be constructed, reconstructed, improved, or maintained by the Forest Service when there is an appropriate agreement with the State, county, or other local public road authority under 23 U.S.C. 205 and the construction, reconstruction, improvement, or maintenance is essential to provide safe and economical access to National Forest System lands.

(b) *Acquisition of easements and rights of use.* Except as otherwise provided in the regulations of this part, easements for road and trail construction across non-Federal lands and easements or rights of use over non-Federal roads and trails will be acquired in the name of the United States of America and its assigns. The easements or rights of use may be acquired by purchase, condemnation, donation, or as a reciprocal for permits or easements for roads or trails to be constructed or for easements over or permits to use existing roads or trails.

(c) *Methods of compensation for easements and rights of use acquired by the United States.* Compensation in negotiated acquisitions may be:

(1) By payment from appropriated funds;

(2) Pursuant to reservation in the grant of easement to the United States whereby the grantor reserves the right to require haulers of Federal timber or other Federal products over the road conveyed or thereafter constructed by the grantor to make payments to the grantor in accordance with the terms of the reservation;

(3) By granting reciprocal rights; or

(4) By a combination of these methods.

(d) *Cooperative construction and use agreements.* Where areas, partly lands administered by the Forest Service and partly private or other ownership are undeveloped or inadequately developed by roads, the Chief will, to the extent feasible and advantageous to the United States, join in planning, constructing, reconstructing, improving, maintaining, and using an adequate road system on the basis of each party bearing the proportion of the cost attributable to the anticipated benefits as set forth in § 212.9.

(e) *Condemnation.* Where access across non-Federal land or over a non-Federal road or trail cannot be obtained through negotiations with reasonable promptness, condemnation will be undertaken.

(f) *Access over non-Federal land and use of non-Federal roads or trails on a temporary basis.* The Chief may negotiate a temporary agreement for access over non-Federal land and for use of an existing non-Federal road or trail where there is immediate need for temporary access for limited purposes that can be economically met by such procedure, or where the foreseeable need does not justify the expenditures necessary to provide a permanent road or trail.

(g) *Use and control of interests in roads, trails, and easements acquired by the United States.* Interests in roads, trails, and easements acquired by the United States shall be under the control of the United States, subject to approved reservations, limitations and other provisions set forth in the easement, permit, or other indenture. This control by the United States may include restricting or conditioning the use of the interest owned by the United States in the

road, trail, or easement where necessary.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a *et seq.;* 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974; 62 FR 58654, Oct. 30, 1997. Redesignated and amended at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

### § 212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.

(a) *Permission to construct or use roads across lands and assignable easements owned by the United States and administered by the Forest Service.* If a reciprocal benefit is needed by the United States, permission to construct or use a road across lands and across assignable easements owned by the United States and administered by the Forest Service will be conditioned, except as provided in this section, for any applicant who seeks a permit to construct or use a road across the same, upon the grant to the United States of a reciprocal benefit. Such benefit shall bear:

(1) A reasonable relation to the management of lands administered by the Forest Service; and

(2) A value substantially similar to the value of the estate or interest in lands or easements applied for. In those instances where the values of the interests needed by the United States exceed those applied for by the applicant, the additional interests required by the United States will be acquired as provided in § 212.7(b) and (c). Where values needed by the applicant exceed those needed by the United States, the difference in values will be determined under principles set forth below and in §§ 212.5(c) and 212.9. If a reciprocal benefit is not needed by the United States, or the applicant shows good cause why the reciprocal benefit needed by the United States cannot or should not be granted by him, or the applicant declines to grant the reciprocal benefit requested by the United States or if a bona fide emergency exists, permission to construct or use a road across lands owned by the United States may be conditioned for any applicant upon reasonable charges and all other terms and conditions required by the Chief to protect the interests of the United States. Permits for such road construction or use will be non-exclusive and will be conditioned upon compliance with their terms and conditions and with the rules and regulations governing the protection and administration of the lands and those applicable to such roads.

(b) [Reserved]

(c) *Replacement of prior grants.* (1) Upon application to the Chief, an easement under the Act of March 3, 1899 (30 Stat. 1233, 16 U.S.C. 525), shall be replaced by an easement under paragraph (d) of this section.

(2) Upon application to the Chief, an easement shall be granted under paragraph (d) of this section as a replacement for any stipulations for ingress and egress issued under the Act of June 4, 1897 or permit or other document evidencing the applicant's right to use a road: *Provided,* The applicant has met the requirements for obtaining such easement as set forth in paragraph (d) of this section.

(d) *Easements for roads crossing lands or easements administered by the Forest Service.* (1) Applications for permanent or temporary easements for specified periods or otherwise to be granted under the Act of October 13, 1964 (78 Stat. 1039, 16 U.S.C. 533), over lands or easements administered by the Forest Service, or over roads thereon will be approved by the Chief for those applicants who have conveyed or provided appropriate easements over roads, assignable easements and lands owned or controlled by them to the United States of America and its assigns and who have already constructed, or will, as scheduled by agreement, construct their proportionate share of the road or road system of which the segments described in the application are parts. The Chief, after approval of the application and the grant of the easement, will cause the same to be entered in the records of the Forest Service, and delivered to the applicant.

(2) Notwithstanding paragraph (d)(1) of this section, the Chief may grant to the applicant a permanent or temporary easement for specified periods or otherwise upon such exchange of easements or share-cost arrangement or other reasonable consideration as he may deem appropriate.

(3) The Chief may grant to a State or local subdivision thereof; easements for roads over lands or easements administered by the Forest Service and over roads thereon, when the roads thereon or roads to be constructed thereon will serve said lands and are, or will become a part of the road system maintained by such State or local subdivision for general public use: *Provided*, That easements shall not be granted under authority of this act (78 Stat. 1089), 16 U.S.C. 533 which may be granted under the Highway Act (72 Stat. 916, 23 U.S.C. 317), as amended. The easements shall contain such provisions, terms, and conditions as the Chief may determine are necessary to retain and protect the interests needed by the United States.

(4) All instruments affecting permanent interests in land executed pursuant to this paragraph (d) of this section shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from public domain shall be furnished by the Chief to the Secretary of the Interior.

(5)(i) The Chief may revoke any easement granted under the provisions of the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 534):

(A) By consent of the owner of the easement;

(B) By condemnation; or

(C) Upon abandonment after a 5-year period of nonuse by the owner of the easement.

(ii) Before any easement is revoked upon abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, shall be given an appeal in accordance with the provisions of 36 CFR part 214.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a *et seq.;* 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974; 48 FR 28638, June 23, 1983. Redesignated and amended at 62 FR 58654, Oct. 30, 1997; 78 FR 33717, June 5, 2013]

### § 212.9 Principles for sharing use of roads.

The use of roads under arrangements for sharing costs or performance shall be in accordance with the following:

(a) *Road improvement*. Use of a road for commercial hauling, except occasional or minor amounts, will be conditioned upon improvement or supplemental construction of the road to safety and economically serve the contemplated use, unless the Chief determines that the safety and economy of the established and foreseeable use by the United States, its users and cooperators will not be impaired by the use for which application is being made. With the consent of the Chief the applicant may deposit funds in the estimated amount required for the improvements or supplemental construction in lieu of performance. Such funds will be used by the Forest Service to do the planned work. The cost of the improvements or supplemental construction will be taken into account in determining any otherwise required contribution to cover the proportionate share of the cost of road acquisition, construction, reconstruction or improvement attributable to the use.

(b) *Corresponding benefits*. Corresponding benefits which may be accepted by the Chief for sharing road use will be those which bear a reasonable relation to the management of lands administered by the Forest Service. They may be in the form of:

(1) Deposit of funds with the Forest Service for use in paying the cost of road construction, reconstruction, or improvement to be borne by the user;

(2) The grant of a reciprocal right of substantially similar value to the road use sought;

(3) Construction, reconstruction, or improvement by applicant of a road needed for access to and use of lands administered by the Forest Service; or (4) any combination of these.

(c) *Cost determinations for roads cooperatively constructed under agreements.* When roads are constructed under cooperative agreements to meet mutual needs of the United States and others for access, determinations of the shares of costs to be borne by the United States and the cooperating parties will include consideration of:

(1) The standard of road required for the planned hauling;

(2) The share of planned use;

(3) The location and volume of tributary timber owned by each party and expected to be hauled over the road or roads;

(4) The tributary areas owned or controlled by each party;

(5) Expected use by the public; and

(6) Other appropriate considerations.

(d) *Cost recovery by the United States from others.* When roads are used under permit for commercial hauling instead of under cooperative agreement, any cost to be recovered by the United States will be calculated in proportion to the planned use of the road. The road cost used in such calculation will be the amount or estimated amount expended in the acquisition, construction, reconstruction, and improvement of that capacity of the road required to serve the use needs of all parties that are or reasonably can be expected to use the road. The road costs shall not exceed the replacement value of the road. Such road share-cost payments will be through deposits in advance of use unless the user provides a payment bond satisfactory to the Chief guaranteeing that payments will be made promptly upon billing by the Forest Service.

(e) *Cost sharing with a cooperator.* The costs to achieve the agreed upon road or road system may be met by:

(1) Use of appropriated funds;

(2) Construction, reconstruction, or improvement of roads or segments of roads by purchasers of products from lands administered by the Forest Service or other users;

(3) Use of deposits made by cooperator with the Forest Service to cover cooperator's agreed share;

(4) Agreement with cooperator pursuant to which cooperator does more than his agreed share of constructing, reconstructing, or improving a road and recovers costs incurred in excess of his agreed share by charging purchasers of products from lands administered by the Forest Service an equitable amount within the limits and to the total amount specified in the agreement; or

(5) A combination of the aforementioned methods.

(f) *Road maintenance and resurfacing.* Cooperators will share the road maintenance and resurfacing costs under suitable agreements to perform, arrange for performance by others, or by making deposits with the Forest Service which will be used to pay the cost of work necessary to keep such roads in satisfactory condition commensurate with use requirements of each cooperator. No cooperator shall be required to perform or bear such costs other than those occasioned by its individual use. Other users will bear costs in accordance with §212.5(d).

(g) *Interests to be acquired by the United States in roads or easements therefor.* Where the United States is to bear or share the cost of constructing or improving, or acquiring a road system, a road, or a segment thereof, or acquires an easement therefor, the interest acquired will:

(1) Be for perpetual use unless the road use falls within the limited classes where temporary roads or roads for limited periods are acceptable;

(2) Provide adequately for foreseeable management, protection, and utilization needs of lands administered by the Forest Service and intermingled and adjacent private and public lands and for the use and development of the resources upon which communities within or adjacent to the National Forest are dependent; and

(3) not be subject to conditions, reservations, or convenants unrelated to the road use, or which seek or might

tend to direct or limit policies and procedures for management of lands administered by the Forest Service.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a *et seq.;* 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5478, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974. Redesignated and amended at 62 FR 58654, Oct. 30, 1997]

### § 212.10 Maximum economy National Forest System roads.

The Chief may acquire, construct, reconstruct, improve, and maintain National Forest System roads within and near the National Forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof and for utilization of the other resources thereof. Financing of such roads may be accomplished—

(a) By the Chief utilizing appropriated funds,

(b) By requirements on purchasers of National Forest timber and other products, including provisions for amortization of road costs in contracts,

(c) By cooperative financing with other public agencies and with private agencies or persons, or

(d) By a combination of these methods, provided that where roads are to be constructed at a higher standard than the standard—consistent with applicable environmental laws and regulations—that is sufficient for harvesting and removal of National Forest timber and other products covered by a particular sale, the purchaser of the timber and other products shall not be required to bear the part of the cost necessary to meet the higher standard, and the Chief may make such arrangements to achieve this end as may be appropriate.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a *et seq.;* 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5479, Apr. 16, 1965. Redesignated at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

### §§ 212.11–212.20 [Reserved]

### § 212.21 Pacific Crest National Scenic Trail.

The Pacific Crest National Scenic Trail as defined by the National Trails Systems Act, 82 Stat. 919, shall be administered primarily as a footpath and horseback riding trail by the Forest Service in consultation with the Secretary of the Interior. The use of motorized vehicles may be authorized by the Federal Agency administering the segment of trail involved when use of such vehicles is necessary to meet emergencies or to enable landowners or land users to have reasonable access to their lands or timber rights.

(82 Stat. 919 (16 U.S.C. 1241 *et seq.*))

[43 FR 20007, May 10, 1978]

## Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

AUTHORITY: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

SOURCE: 70 FR 68288, Nov. 9, 2005, unless otherwise noted.

### § 212.50 Purpose, scope, and definitions.

(a) *Purpose.* This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36

CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

(b) *Scope.* The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

(c) For definitions of terms used in this subpart, refer to § 212.1 in subpart A of this part.

### § 212.51 Designation of roads, trails, and areas.

(a) *General.* Motor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

(1) Aircraft;

(2) Watercraft;

(3) Over-snow vehicles (see § 212.81);

(4) Limited administrative use by the Forest Service;

(5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(6) Authorized use of any combat or combat support vehicle for national defense purposes;

(7) Law enforcement response to violations of law, including pursuit; and

(8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Motor vehicle use for dispersed camping or big game retrieval.* In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain forest roads or trails where motor vehicle use is allowed, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

[70 FR 68288, Nov. 9, 2005, as amended at 73 FR 74613, Dec. 9, 2008]

### § 212.52 Public involvement.

(a) *General.* The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.

(b) *Absence of public involvement in temporary, emergency closures*—(1) *General.* Nothing in this section shall alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice to provide short-term resource protection or to protect public health and safety.

(2) *Temporary, emergency closures based on a determination of considerable adverse effects.* If the responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area, the responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence. The responsible official shall provide public notice of the closure pursuant to 36 CFR 261.51, including

reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

### § 212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.

The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart.

### § 212.54 Revision of designations.

Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to § 212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in § 212.52, the requirements for coordination with governmental entities in § 212.53, and the criteria in § 212.55, and shall be reflected on a motor vehicle use map pursuant to § 212.56.

### § 212.55 Criteria for designation of roads, trails, and areas.

(a) *General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.* In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.

(b) *Specific criteria for designation of trails and areas.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing:

(1) Damage to soil, watershed, vegetation, and other forest resources;

(2) Harassment of wildlife and significant disruption of wildlife habitats;

(3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and

(4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official shall consider:

(5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.

(c) *Specific criteria for designation of roads.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall consider:

(1) Speed, volume, composition, and distribution of traffic on roads; and

(2) Compatibility of vehicle class with road geometry and road surfacing.

(d) *Rights of access.* In making designations pursuant to this subpart, the responsible official shall recognize:

(1) Valid existing rights; and

(2) The rights of use of National Forest System roads and National Forest System trails under § 212.6(b).

(e) *Wilderness areas and primitive areas.* National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

### § 212.56 Identification of designated roads, trails, and areas.

Designated roads, trails, and areas shall be identified on a motor vehicle use map. Motor vehicle use maps shall be made available to the public at the headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as

soon as practicable, on the website of corresponding administrative units and Ranger Districts. The motor vehicle use maps shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

### § 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

For each administrative unit of the National Forest System, the responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that responsible official, consistent with the applicable land management plan, as appropriate and feasible.

## Subpart C—Over-Snow Vehicle Use

AUTHORITY: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

SOURCE: 70 FR 68290, Nov. 9, 2005, unless otherwise noted.

### § 212.80 Purpose, scope, and definitions.

(a) *Purpose*. This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for over-snow vehicle use. After these roads, trails, and areas are designated, over-snow vehicle use not in accordance with these designations is prohibited by 36 CFR 261.14. Over-snow vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.14.

(b) *Scope*. The Responsible Official may incorporate previous administrative decisions regarding over-snow vehicle use made under other authorities in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for over-snow vehicle use under this subpart.

(c) *Definitions*. For definitions of terms used in this subpart, refer to § 212.1.

[80 FR 4511, Jan. 28, 2015]

### § 212.81 Over-snow vehicle use.

(a) *General*. Over-snow vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by the Responsible Official on administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, of the National Forest System where snowfall is adequate for that use to occur, and, if appropriate, shall be designated by class of vehicle and time of year, provided that the following uses are exempted from these decisions:

(1) Limited administrative use by the Forest Service;

(2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(3) Authorized use of any combat or combat support vehicle for national defense purposes;

(4) Law enforcement response to violations of law, including pursuit; and

(5) Over-snow vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Previous over-snow vehicle decisions*. Public notice with no further public involvement is sufficient if an administrative unit or a Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict over-snow vehicle use to designated routes and areas over the entire administrative unit or Ranger District, or parts of the administrative unit or Ranger District, where snowfall is adequate for OSV use to occur, and no change is proposed to these previous decisions.

(c) *Identification of roads, trails, and areas for over-snow vehicle use*. Designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands for over-snow vehicle use shall be reflected on an over-snow vehicle use map. Over-snow vehicle use maps shall be made available to the public at headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as soon as practicable, on the Web site of the corresponding administrative units

and Ranger Districts. Over-snow vehicle use maps shall specify the classes of vehicles and the time of year for which use is designated, if applicable.

(d) *Decision-making process*. Except as modified in paragraph (b) of this section, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§ 212.52 (public involvement), 212.53 (coordination), 212.54 (revision), 212.55 (designation criteria (including minimization)), and 212.57 (monitoring), shall apply to decisions made under this subpart. In making decisions under this subpart, the Responsible Official shall recognize the provisions concerning rights of access in sections 811(b) and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121(b) and 3170(a), respectively).

[80 FR 4511, Jan. 28, 2015]

# PART 213—ADMINISTRATION OF LANDS UNDER TITLE III OF THE BANKHEAD-JONES FARM TENANT ACT BY THE FOREST SERVICE

Sec.

213.1 Designation, administration, and development of National Grasslands.
213.2 Authority for Chief, Forest Service, to group, define, and name national grasslands.
213.3 Protection, occupancy, use, administration, and exercise of reservations.
213.4 Prior rules and regulations superseded.

AUTHORITY: 50 Stat. 525, as amended; 7 U.S.C. 1010–1012.

## § 213.1 Designation, administration, and development of National Grasslands.

(a) The land utilization projects administered by Department of Agriculture designated in paragraph (e) of this section hereafter shall be named and referred to as *National Grasslands*.

(b) The National Grasslands shall be a part of the National Forest system and permanently held by the Department of Agriculture for administration under the provisions and purposes of title III of the Bankhead-Jones Farm Tenant Act.

(c) The National Grasslands shall be administered under sound and progressive principles of land conservation and multiple use, and to promote development of grassland agriculture and sustained-yield management of the forage, fish and wildlife, timber, water and recreational resources in the areas of which the National Grasslands are a part.

(d) In the administration of the National Grasslands the resources shall be managed so as to maintain and improve soil and vegetative cover, and to demonstrate sound and practical principles of land use for the areas in which they are located. The Chief of the Forest Service shall, to the extent such action is feasible provide that policies for management of the Federally-owned lands exert a favorable influence for securing sound land conservation practices on associated private lands.

(e) National Grasslands in the following States and counties are hereby grouped and designated as indicated:

| State in which grassland is located | National grassland | Counties where located |
|---|---|---|
| California | Butte Valley | Siskiyou. |
| Colorado | Pawnee | Weld. |
| | Comanche | Baca, Los Animas, Otero. |
| Idaho | Curlew | Oneida, Power. |
| Kansas | Cimarron | Morton, Stevens. |
| Nebraska | Oglala | Dawes, Sioux. |
| New Mexico | Kiowa | Colfax, Harding, Mora, Union. |
| North Dakota | Cedar River | Grant, Sioux. |
| | Sheyenne | Ransom, Richland. |
| | Little Missouri | Billings, Golden Valley, McKenzie, Slope. |
| Oklahoma | Rita Blanca | Cimarron. |
| Oklahoma-Texas. | Black Kettle | Roger Mills (Okla.), Hemphill (Tex.). |
| Oregon | Crooked River | Jefferson. |
| South Dakota | Buffalo Gap | Custer, Fall River, Jackson, Pennington. |
| | Grand River | Corson, Perkins, Ziebach. |
| | Fort Pierre | Jones, Lyman, Stanley. |
| Texas | Lyndon B. Johnson | Montague, Wise. |
| | Rita Blanca | Dallas. |
| | Caddo | Fannin. |
| | McClellan Creek | Gray. |
| Wyoming | Thunder Basin | Campbell, Converse, Crook, Niobrara, Weston. |

[25 FR 5845, June 24, 1960, as amended at 27 FR 12217, Dec. 11, 1962; 28 FR 6268, June 19, 1963; 41 FR 38164, Sept. 9, 1976; 56 FR 8280, Feb. 28, 1991]

### §213.2 Authority for Chief, Forest Service, to group, define, and name national grasslands.

The Chief, Forest Service, is authorized to group the national grasslands into administrative units, define, change or modify their boundaries, and to provide such specific designations therefor as he finds necessary and desirable for effective and economical administration thereof and for public and official reference thereto.

[33 FR 12370, Sept. 4, 1968]

### §213.3 Protection, occupancy, use, administration, and exercise of reservations.

(a) The rules and regulations applicable to the national forests as set forth in title 36, Code of Federal Regulations, or as hereafter amended, supplemented, or promulgated, are hereby adopted as the rules and regulations to govern the exercise of reservations in conveyances to the United States and to prevent trespasses on and otherwise regulate the protection, use, occupancy, and administration of the National Grasslands and all other lands administered by the Forest Service under the provisions of title III of the Bankhead-Jones Farm Tenant Act insofar as is practical and consistent with said act: *Provided*, That Forest Service officers may continue under delegated authority to acquire lands, to make exchanges, to grant easements and enter into leases, permits, agreements, contracts and memoranda of understanding involving such lands under such terms and conditions and for such consideration, fees or rentals as authorized by title III of the said Act.

(b) Existing valid rights, reservations easements, leases, permits, agreements, contracts and memoranda of understanding affecting these lands shall continue in full force and effect so long as they remain valid in accordance with the terms thereof.

[27 FR 9217, Sept. 18, 1962]

### §213.4 Prior rules and regulations superseded.

Except as provided in §213.3, the rules and regulations heretofore issued for the land utilization projects are hereby superseded as to all such projects administered by the Forest Service, but not as to such project lands administered by other agencies.

[27 FR 9217, Sept. 18, 1962]

## PART 214—POSTDECISIONAL ADMINISTRATIVE REVIEW PROCESS FOR OCCUPANCY OR USE OF NATIONAL FOREST SYSTEM LANDS AND RESOURCES

Sec.

214.1 Purpose and scope.
214.2 Definitions.
214.3 Parties to an appeal.
214.4 Decisions that are appealable.
214.5 Decisions that are not appealable.
214.6 Notice of an appealable decision.
214.7 Levels of review.
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214.15 Resolution of issues prior to an appeal decision.
214.16 Oral presentation.
214.17 Appeal record.
214.18 Appeal decision.
214.19 Procedures for discretionary review.
214.20 Exhaustion of administrative remedies.
214.21 Information collection requirements.
214.22 Applicability and effective date.

AUTHORITY: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551.

SOURCE: 78 FR 33717, June 5, 2013, unless otherwise noted.

### §214.1 Purpose and scope.

(a) *Purpose*. This part provides a fair and deliberate process by which holders, operators, and solicited applicants may appeal certain written decisions issued by Responsible Officials involving written instruments authorizing the occupancy or use of National Forest System lands and resources.

(b) *Scope*. This part specifies who may appeal, decisions that are appealable and not appealable, the responsibilities of parties to an appeal, and the time periods and procedures that govern the conduct of appeals under this part.

### § 214.2 Definitions.

*Appeal*. A document filed with an Appeal Deciding Officer in which an individual or entity seeks review of a Forest Service decision under this part.

*Appeal Deciding Officer*. The Forest Service line officer who is one organizational level above the Responsible Official or the respective Deputy Forest Supervisor, Deputy Regional Forester, or Associate Deputy Chief with the delegation of authority relevant to the provisions of this part.

*Appeal decision*. The final written decision issued by an Appeal Deciding Officer on an appeal filed under this part which affirms or reverses a Responsible Official's appealable decision in whole or in part, explains the basis for the decision, and provides additional instructions to the parties as necessary.

*Appeal record*. Documentation and other information filed with the Appeal Deciding Officer within the relevant time period by parties to the appeal and upon which review of an appeal is conducted.

*Appellant*. An individual or entity that has filed an appeal under this part.

*Cancellation*. The invalidation, in whole or in part, of a term grazing permit or an instrument for the disposal of mineral materials.

*Discretionary Reviewing Officer*. The U.S. Department of Agriculture (USDA) or Forest Service official authorized to review an appeal decision by an Appeal Deciding Officer or a decision by the Chief under this part.

*Holder*. An individual or entity that holds a valid written authorization.

*Intervenor*. An individual or entity whose request to intervene has been granted by the Appeal Deciding Officer.

*Modification*. A Responsible Official's written revision of the terms and conditions of a written authorization.

*Operator*. An individual or entity conducting or proposing to conduct mineral operations.

*Oral presentation*. An informal meeting conducted by the Appeal Deciding Officer during which parties to an appeal may present information in support of their position.

*Prospectus*. An announcement published by the Forest Service soliciting competitive applications for a written authorization.

*Responsible Official*. The Forest Service line officer who has the delegated authority to make and implement a decision that may be appealed under this part.

*Responsive statement*. The document filed by the Responsible Official with the Appeal Deciding Officer that addresses the issues raised and relief requested in an appeal.

*Revocation*. The cessation, in whole or in part, of a written authorization, other than a grazing permit or an instrument for the disposal of mineral materials, by action of Responsible Official before the end of the specified period of occupancy or use.

*Solicited applicant*. An individual or entity that has submitted a competitive application in response to a prospectus.

*Suspension*. A temporary revocation or cancellation of a written authorization.

*Termination*. The cessation of a written authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in the authorization, which does not require a decision by a Responsible Official to take effect.

*Written authorization*. A term grazing permit, plan of operations, special use authorization, mineral material contract or permit, or other type of written instrument issued by the Forest Service or a lease or permit for leasable minerals issued by the U.S. Department of the Interior that authorizes the occupancy or use of National Forest System lands or resources and specifies the terms and conditions under which the occupancy or use may occur.

### § 214.3 Parties to an appeal.

Parties to an appeal under this part are limited to the holder, operator, or solicited applicants who are directly affected by an appealable decision, intervenors, and the Responsible Official.

### § 214.4 Decisions that are appealable.

To be appealable under this part, a decision must be issued by a Responsible Official in writing and must fall into one of the following categories:

(a) *Livestock grazing*. (1) Modification of a term grazing permit issued under 36 CFR part 222, subpart A. Issuance of annual operating instructions does not constitute a permit modification and is not an appealable decision;

(2) Suspension or cancellation, other than cancellation resulting from the permittee's waiver to the United States, of a term grazing permit issued under 36 CFR part 222, subpart A;

(3) Denial of reauthorization of livestock grazing under a term grazing permit if the holder files an application for a new permit before the existing permit expires; or

(4) Denial of a term grazing permit to a solicited applicant under 36 CFR part 222, subpart C.

(b) *Minerals*. (1) Approval or denial of an initial, modified, or supplemental plan of operations or operating plan; requirement of an increase in bond coverage; requirement of measures to avoid irreparable injury, loss, or damage to surface resources pending modification of a plan of operations or operating plan; or issuance of a notice of noncompliance pursuant to 36 CFR part 228, subpart A or D, or part 292, subpart D, F, or G;

(2) Approval or denial of an operating plan, issuance of a notice of noncompliance, or extension, suspension, or cancellation, other than cancellation by mutual agreement, for or of contracts, permits, or prospecting permits for mineral materials issued under 36 CFR part 228, subpart C;

(3) Approval or denial of a surface use plan of operations, request to supplement a surface use plan of operations, suspension of oil and gas operations, or issuance of a notice of noncompliance pursuant to 36 CFR part 228, subpart E;

(4) Consent or denial of consent to the U.S. Department of the Interior's administration of previously issued leases or permits for leasable minerals other than oil and gas resources;

(5) Suspension or revocation of an operating plan for Federal lands within the Sawtooth National Recreation Area pursuant to 36 CFR part 292, subpart D;

(6) Suspension of locatable mineral operations on National Forest System lands within the Hells Canyon National Recreation Area pursuant to 36 CFR part 292, subpart F;

(7) Suspension of locatable mineral operations on National Forest System lands within the Smith River National Recreation Area or approval of an initial or amended operating plan for exercise of outstanding mineral rights on National Forest System lands within the Smith River National Recreation Area pursuant to 36 CFR part 292, subpart G;

(8) Except as provided in paragraph (7), determinations of the acceptability of an initial or amended operating plan for exercise of outstanding mineral rights on National Forest System lands; or

(9) Determinations of the acceptability of an initial or amended operating plan for exercise of reserved mineral rights located on National Forest System lands.

(c) *Special uses*. (1) Modification, suspension, or revocation of a special use authorization, other than acceptance of an operating plan, including:

(i) A special use authorization issued under 36 CFR part 251, subpart B or D, other than modification, suspension or revocation of a noncommercial group use permit, suspension or revocation of an easement issued pursuant to 36 CFR 251.53(e) or 251.53(l), or revocation with the consent of the holder;

(ii) A special use authorization issued under 36 CFR part 212, subpart A, for ingress and egress to private lands that are intermingled with or adjacent to National Forest System lands;

(iii) A special use authorization issued under 36 CFR part 251, subpart A, that authorizes the exercise of rights reserved in conveyances to the United States;

(iv) A permit and occupancy agreement issued under 36 CFR 213.3 for national grasslands and other lands administered under Title III of the Bankhead-Jones Farm Tenant Act;

(v) A permit issued under 36 CFR 293.13 for access to valid occupancies entirely within a wilderness in the National Forest System.

(vi) A permit issued under the Archaeological Resources Protection Act of 1979 and 36 CFR part 296 for excavation or removal of archaeological resources; and

(vii) A special use authorization governing surface use associated with the exercise of outstanding mineral rights;

(2) Denial of a special use authorization to a solicited applicant based on the process used to select a successful applicant;

(3) Implementation of new land use fees for a special use authorization, other than:

(i) Revision or replacement of a land use fee system or schedule that is implemented through public notice and comment; and

(ii) Annual land use fee adjustments based on an inflation factor that are calculated under an established fee system or schedule in accordance with the terms and conditions of a written authorization;

(4) Assignment of a performance rating that affects reissuance or extension of a special use authorization; or

(5) Denial of renewal of a special use authorization if it specifically provides for renewal and if the holder requests renewal of the authorization before it expires.

(d) *Other land uses*. Denial or revocation of a certification of compliance issued under 36 CFR part 292, subpart C, related to the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area.

(e) *Paleontological resources*. An authorization or permit issued under the Paleontological Resources Preservation Act of 2009 and 36 CFR part 291 for collection of paleontological resources.

[78 FR 33717, June 5, 2013, as amended at 80 FR 21629, Apr. 17, 2015]

### § 214.5 Decisions that are not appealable.

Holders, operators, and solicited applicants may not appeal under this part any decisions issued by a Responsible Official that are not expressly set forth in § 214.4.

### § 214.6 Notice of an appealable decision.

(a) The Responsible Official shall promptly give written notice of decisions subject to appeal under this part to the affected holder, operator, or solicited applicants and to any holder of a similar written authorization who has made a written request to be notified of a specific decision.

(b) If the decision is appealable, the notice must specify the contents of an appeal, the name and mailing address of the Appeal Deciding Officer, and the filing deadline. The notice shall also include a statement indicating the Responsible Official's willingness to meet with the affected holder, operator, or solicited applicants to discuss any issues related to the decision and, where applicable, informing term grazing permit holders of the opportunity to request mediation in accordance with 36 CFR 222.20 through 222.26.

(c) If the decision is not appealable, the Responsible Official must include a statement in the written decision informing the affected holder, operator, or solicited applicants that further administrative review of the decision is not available.

### § 214.7 Levels of review.

(a) *Appeal*. (1) One level of appeal is available for appealable decisions made by District Rangers, Forest or Grassland Supervisors, and Regional Foresters. If a District Ranger is the Responsible Official, the appeal is filed with the Forest or Grassland Supervisor. If a Forest or Grassland Supervisor is the Responsible Official, the appeal is filed with the Regional Forester. If a Regional Forester is the Responsible Official, the appeal is filed with the Chief of the Forest Service.

(2) No appeal is available for decisions made by the Chief.

(b) *Discretionary review*. (1) Appeal decisions issued by Forest or Grassland Supervisors, Regional Foresters, or the Chief are eligible for discretionary review. If a Forest or Grassland Supervisor is the Appeal Deciding Officer, discretionary review is conducted by the Regional Forester. If a Regional Forester is the Appeal Deciding Officer, discretionary review is conducted by the Chief. If the Chief is the Appeal Deciding Officer, discretionary review is conducted by the Under Secretary for Natural Resources and Environment.

(2) Decisions made by the Chief that fall into one of the categories enumerated in 36 CFR 214.4 are eligible for discretionary review by the Under Secretary for Natural Resources and Environment.

**§ 214.8 Appeal content.**

(a) *General requirements for the contents of an appeal.* All appeals must include:

(1) The appellant's name, mailing address, daytime telephone number, and email address, if any;

(2) A brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision;

(3) The title or type and, if applicable, identification number for the written authorization and the date of application for or issuance of the written authorization, if applicable;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the relevant facts underlying the decision being appealed;

(6) A discussion of issues raised by the decision being appealed, including identification of any laws, regulations, or policies that were allegedly violated in reaching the decision being appealed;

(7) A statement as to whether and how the appellant has attempted to resolve the issues under appeal with the Responsible Official and the date and outcome of those efforts;

(8) A statement of the relief sought;

(9) Any documents and other information upon which the appellant relies; and

(10) The appellant's signature and the date.

(b) *Specific requirements for the contents of an appeal.* In addition to the general requirements in § 214.8(a), the following specific requirements must be included in an appeal, where applicable:

(1) A request for an oral presentation under § 214.16;

(2) A request for a stay under § 214.13; and

(3) A request to participate in a state mediation program regarding certain term grazing permit disputes under 36 CFR part 222, subpart B.

**§ 214.9 Filing of an appeal.**

(a) *Timeframe for filing an appeal.* An appeal must be filed with the Appeal Deciding Officer within 45 days of the date of the decision.

(b) *Method of filing.* Appeal documents may be filed in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. Parties to an appeal are responsible for ensuring timely filing of appeal documents.

**§ 214.10 Dismissal of an appeal.**

(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:

(1) The appeal is not filed within the required time period.

(2) The person or entity that filed the appeal is not a holder, an operator, or a solicited applicant of a written authorization that is the subject of the appealable decision.

(3) The decision is not appealable under this part.

(4) The appeal does not meet the content requirements specified in § 214.8(a), provided that an appeal may not be dismissed for failure to include an appraisal report which has not been completed by the filing deadline.

(5) The appellant withdraws the appeal.

(6) The Responsible Official withdraws the written decision that was appealed.

(7) An informal resolution of the dispute is reached pursuant to § 214.15 or a mediated agreement of a term grazing dispute is achieved pursuant to 36 CFR part 222, subpart B.

(8) The requested relief cannot be granted under applicable facts, laws, regulations, or policies.

(b) The Appeal Deciding Officer shall give written notice of the dismissal of an appeal and shall set forth the reasons for dismissal.

**§ 214.11 Intervention.**

(a) *Eligibility to intervene.* To participate as an intervenor in appeals under this part, a party must:

(1) Be a holder, an operator, or a solicited applicant who claims an interest relating to the subject matter of the decision being appealed and is so

situated that disposition of the appeal may impair that interest; and

(2) File a written request to intervene with the Appeal Deciding Officer within 15 days after an appeal has been filed.

(b) *Request to intervene.* A request to intervene must include:

(1) The requester's name, mailing address, daytime telephone number, and email address, if any;

(2) A brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision;

(3) The title or type and, if applicable, identification number for the written authorization and the date of application for or issuance of the written authorization, if applicable;

(4) A description of the requester's interest in the appeal and how disposition of the appeal may impair that interest;

(5) A discussion of the factual and legal allegations in the appeal with which the requester agrees or disagrees;

(6) A description of additional facts and issues that are not raised in the appeal that the requester believes are relevant and should be considered;

(7) A description of the relief sought, particularly as it differs from the relief sought by the appellant;

(8) Where applicable, a response to the appellant's request for a stay of the decision being appealed;

(9) Where applicable, a response to the appellant's request for an oral presentation;

(10) Where applicable, a response to the appellant's request for mediation of a term grazing permit dispute under 36 CFR part 222, subpart B; and

(11) The requester's signature and the date.

(c) *Response to a request to intervene.* The appellant and Responsible Official shall have 5 days from receipt of a request to intervene to file a written response with the Appeal Deciding Officer.

(d) *Intervention decision.* The Appeal Deciding Officer shall have 5 days after the date a response to a request to intervene is due to issue a decision granting or denying the request. The Appeal Deciding Officer's decision shall be in writing and shall briefly explain the basis for granting or denying the request. The Appeal Deciding Officer shall deny a request to intervene or shall withdraw a decision granting intervenor status as moot if the corresponding appeal is dismissed under § 214.10.

### § 214.12 Responsive statement and reply.

(a) *Responsive statement.* The Responsible Official shall prepare a responsive statement addressing the factual and legal allegations in the appeal. The responsive statement and any supporting documentation shall be filed with the Appeal Deciding Officer within 20 days of receipt of the appeal or the unsuccessful conclusion of mediation conducted pursuant to 36 CFR part 222, subpart B, whichever is later.

(b) *Reply.* Within 10 days of receipt of the responsive statement, the appellant and intervenors, if any, may file a reply with the Appeal Deciding Officer addressing the contentions in the responsive statement.

### § 214.13 Stays.

(a) *Implementation.* An appealable decision shall be implemented unless an authorized stay is granted under § 214.13(b) or an automatic stay goes into effect under § 214.13(c).

(b) *Authorized stays.* Except where a stay automatically goes into effect under § 214.13(c), the Appeal Deciding Officer may grant a written request to stay the decision that is the subject of an appeal under this part.

(1) *Stay request.* To obtain a stay, an appellant must include a request for a stay in the appeal pursuant to § 214.8(b)(2) and a statement explaining the need for a stay. The statement must include, at a minimum:

(i) A description of the adverse impact on the appellant if a stay is not granted;

(ii) A description of the adverse impact on National Forest System lands and resources if a stay is not granted; or

(iii) An explanation as to how a meaningful decision on the merits of the appeal could not be achieved if a stay is not granted.

(2) *Stay response*. The Responsible Official may support, oppose, or take no position in the responsive statement regarding the appellant's stay request. Intervenors may support, oppose, or take no position in the intervention request regarding the appellant's stay request.

(3) *Stay decision*. The Appeal Deciding Officer shall issue a decision granting or denying a stay request within 10 days after a responsive statement or an intervention request is filed, whichever is later. The stay decision shall be in writing and shall briefly explain the basis for granting or denying the stay request.

(c) *Automatic stays*. The following decisions are automatically stayed once an appeal is filed by a holder, operator, or solicited applicant:

(1) Decisions to issue a written authorization pursuant to a prospectus;

(2) Decisions to recalculate revenue-based land use fees for a special use authorization pursuant to an audit issued after June 5, 2013; and

(3) Decisions to cancel or suspend a term grazing permit subject to mediation under 36 CFR 222.20 and for which mediation is requested in accordance with that provision.

(d) *Stay duration*. Authorized stays and automatic stays under § 214.13(c)(1) and (c)(2) shall remain in effect until a final administrative decision is issued in the appeal, unless they are modified or lifted in accordance with § 214.13(e). Automatic stays under § 214.13(c)(3) shall remain in effect for the duration of the mediation period as provided in 36 CFR 222.22.

(e) *Modification or lifting of a stay*. The Appeal Deciding Officer or a Discretionary Reviewing Officer may modify or lift an authorized stay based upon a written request by a party to the appeal who demonstrates that the circumstances have changed since the stay was granted and that it is unduly burdensome or unfair to maintain the stay.

### § 214.14 Conduct of an appeal.

(a) *Evidence of timely filing*. The Appeal Deciding Officer shall determine the timeliness of an appeal by the following indicators:

(1) The date of the U.S. Postal Service postmark for an appeal received before the close of the fifth business day after the appeal filing date;

(2) The electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an appeal received before the close of the fifth business day after the appeal filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

(b) *Computation of time*. (1) A time period in this part begins on the first day following the event or action triggering the time period.

(2) All time periods shall be computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, if a time period ends on a Saturday, Sunday, or Federal holiday, the time period is extended to the end of the next Federal business day.

(c) *Extensions of time*—(1) *In general*. Parties to an appeal, Appeal Deciding Officers, and Discretionary Reviewing Officers shall meet the time periods specified in this part, unless an extension of time has been granted under paragraph (c)(3) of this section. Extension requests from parties to an appeal shall be made in writing, shall explain the need for the extension, and shall be transmitted to the Appeal Deciding Officer.

(2) *Time periods that may not be extended*. The following time periods may not be extended:

(i) The time period for filing an appeal;

(ii) The time period to decide whether to conduct discretionary review of an appeal decision or a Chief's decision; and

(iii) The time period to issue a discretionary review decision.

(3) *Time periods that may be extended*. Except as provided in paragraph (c)(2) of this section, all time periods in this part may be extended upon written request by a party to an appeal and a finding of good cause for the extension by the Appeal Deciding Officer. Written requests for extensions of time will be automatically granted by the Appeal Deciding Officer where the parties to an appeal represent that they are working in good faith to resolve the

dispute and that additional time would facilitate negotiation of a mutually agreeable resolution.

(4) *Decision*. The Appeal Deciding Officer shall have 10 days to issue a decision granting or denying the extension request. The decision shall be in writing and shall briefly explain the basis for granting or denying the request.

(5) *Duration*. Ordinarily, extensions that add more than 60 days to the appeal period should not be granted.

(d) *Procedural orders*. The Appeal Deciding Officer may issue procedural orders as necessary for the orderly, expeditious, and fair conduct of an appeal under this part.

(e) *Consolidation of appeals*. (1) The Appeal Deciding Officer may consolidate multiple appeals of the same decision or of similar decisions involving common issues of fact and law and issue one appeal decision.

(2) The Responsible Official may prepare one responsive statement for consolidated appeals.

(f) *Requests for additional information*. The Appeal Deciding Officer may ask parties to an appeal for additional information to clarify appeal issues. If necessary, the Appeal Deciding Officer may extend appeal time periods per paragraph (c)(3) of this section to allow for submission of the additional information and to give the other parties an opportunity to review and comment on it.

(g) *Service of documents*. (1) Parties to an appeal shall send a copy of all documents filed in the appeal to all other parties, including the appellant's sending a copy of the appeal to the Responsible Official, at the same time the original is filed with the Appeal Deciding Officer. All filings in an appeal must be accompanied by a signed and dated certificate of service attesting that all other parties have been served. Prospective intervenors shall send a copy of their request to intervene to all parties to the appeal at the same time the original is filed with the Appeal Deciding Officer. Each party and prospective intervenor is responsible for identifying the parties to the appeal and may contact the Appeal Deciding Officer for assistance regarding their names and addresses. Filings in an appeal shall not be considered by the Appeal Deciding Officer unless they are accompanied by a certificate of service.

(2) All decisions and orders issued by the Appeal Deciding Officer and the Discretionary Reviewing Officer related to the appeal shall be in writing and shall be sent to all parties to the appeal.

(h) *Posting of final decisions*. Once a final appeal decision or discretionary review decision has been issued, its availability shall be posted on the Web site of the national forest or national grassland or region that issued the appealable decision or on the Web site of the Washington Office for Chief's decisions.

(i) *Expenses*. Each party to an appeal shall bear its own expenses, including costs associated with preparing the appeal, participating in an oral presentation, obtaining information regarding the appeal, and retaining professional consultants or counsel.

### § 214.15 Resolution of issues prior to an appeal decision.

(a) The Responsible Official may discuss an appeal with a party or parties to narrow issues, agree on facts, and explore opportunities to resolve one or more of the issues in dispute by means other than issuance of an appeal decision.

(b) The Responsible Official who issued a decision under appeal may withdraw the decision, in whole or in part, during an appeal to resolve one or more issues in dispute. The Responsible Official shall notify the parties to the appeal and the Appeal Deciding Officer of the withdrawal. If the withdrawal of the decision eliminates all the issues in dispute in the appeal, the Appeal Deciding Officer shall dismiss the appeal under § 214.10.

### § 214.16 Oral presentation.

(a) *Purpose*. The purpose of an oral presentation is to provide parties to an appeal with an opportunity to discuss their concerns regarding the appealable decision with the Appeal Deciding Officer.

(b) *Procedure*. Oral presentations are not evidentiary proceedings involving examination and cross-examination of witnesses and are not subject to formal rules of procedure.

(c) *Scope*. Oral presentations shall be conducted in an informal manner and shall be limited to clarifying or elaborating upon information that has already been filed with the Appeal Deciding Officer. New information may be presented only if it could not have been raised earlier in the appeal and if it would be unfair and prejudicial to exclude it.

(d) *Requests*. A request for an oral presentation included in an appeal shall be granted by the Appeal Deciding Officer unless the appeal has been dismissed under § 214.10.

(e) *Availability*. Oral presentations may be conducted during appeal of a decision, but not during discretionary review.

(f) *Scheduling and rules*. The Appeal Deciding Officer shall conduct the oral presentation within 10 days of the date a reply to the responsive statement is due. The Appeal Deciding Officer shall notify the parties of the date, time, and location of the oral presentation and the procedures to be followed.

(g) *Participation*. All parties to an appeal are eligible to participate in the oral presentation. At the discretion of the Appeal Deciding Officer, non-parties may observe the oral presentation, but are not eligible to participate.

(h) *Summaries and transcripts*. A summary of an oral presentation may be included in the appeal record only if it is submitted to the Appeal Deciding Officer by a party to the appeal at the end of the oral presentation. A transcript of an oral presentation prepared by a certified court reporter may be included in the appeal record if the transcript is filed with the Appeal Deciding Officer within 10 days of the date of the oral presentation and if the transcript is paid for by those who requested it.

### § 214.17 Appeal record.

(a) *Location*. The Appeal Deciding Officer shall maintain the appeal record in one location.

(b) *Contents*. The appeal record shall consist of information filed with the Appeal Deciding Officer, including the appealable decision, appeal, intervention request, responsive statement, reply, oral presentation summary or transcript, procedural orders and other rulings, and any correspondence or other documentation related to the appeal as determined by the Appeal Deciding Officer.

(c) *Closing of the record*. (1) The Appeal Deciding Officer shall close the appeal record on:

(i) The day after the date the reply to the responsive statement is due if no oral presentation is conducted;

(ii) The day after the oral presentation is conducted if no transcript of the oral presentation is being prepared; or

(iii) The day after the date a transcript of the oral presentation is due if one is being prepared.

(2) The Appeal Deciding Officer shall notify all parties to the appeal of closing of the record.

(d) *Inspection by the public*. The appeal record is open for public inspection in accordance with the Freedom of Information Act, the Privacy Act, and 7 CFR part 1.

### § 214.18 Appeal decision.

(a) Appeal decisions made by the Appeal Deciding Officer shall be issued within 30 days of the date the appeal record is closed.

(b) The appeal decision shall be based solely on the appeal record and oral presentation, if one is conducted.

(c) The appeal decision shall conform to all applicable laws, regulations, policies, and procedures.

(d) The appeal decision may affirm or reverse the appealable decision, in whole or in part. The appeal decision must specify the basis for affirmation or reversal and may include instructions for further action by the Responsible Official.

(e) Except where a decision to conduct discretionary review has been made and a discretionary review decision has been issued, the appeal decision shall constitute USDA's final administrative decision.

### § 214.19 Procedures for discretionary review.

(a) *Initiation*. (1) One day after issuance of an appeal decision, the Appeal Deciding Officer shall send a copy of the appeal decision, appeal, and appealable decision to the Discretionary

Reviewing Officer to determine whether discretionary review of the appeal decision should be conducted.

(2) One day after issuance of a Chief's decision that is eligible for discretionary review under § 214.7(b)(2), the Chief shall send the decision to the Discretionary Reviewing Officer to determine whether discretionary review should be conducted.

(b) *Criteria for determining whether to conduct discretionary review.* In deciding whether to conduct discretionary review, the Discretionary Reviewing Officer should, at a minimum, consider the degree of controversy surrounding the decision, the potential for litigation, and the extent to which the decision establishes precedent or new policy.

(c) *Time period.* Upon receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the Discretionary Reviewing Officer shall have 30 days to determine whether to conduct discretionary review and may request the appeal record or the record related to the Chief's decision during that time to assist in making that determination. If a request for the record is made, it must be transmitted to the Discretionary Reviewing Officer within 5 days.

(d) *Notification.* The Discretionary Reviewing Officer shall notify the parties and the Appeal Deciding Officer in writing of a decision to conduct discretionary review. The Discretionary Reviewing Officer may notify the parties and the Appeal Deciding Officer of a decision not to conduct discretionary review within 30 days. If the Discretionary Reviewing Officer takes no action within 30 days of receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

(e) *Scope of discretionary review and issuance of a discretionary review decision.* Discretionary review shall be limited to the record. No additional information shall be considered by the Discretionary Reviewing Officer. The Discretionary Reviewing Officer shall have 30 days to issue a discretionary review decision after notification of the parties and Appeal Deciding Officer has occurred pursuant to § 214.19(d). The Discretionary Reviewing Officer's decision shall constitute USDA's final administrative decision. If a discretionary review decision is not issued within 30 days following the notification of the decision to conduct discretionary review, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

### § 214.20 Exhaustion of administrative remedies.

Per 7 U.S.C. 6912(e), judicial review of a decision that is appealable under this part is premature unless the plaintiff has exhausted the administrative remedies under this part.

### § 214.21 Information collection requirements.

The rules of this part governing appeal of decisions relating to occupancy or use of National Forest System lands and resources specify the information that an appellant must provide in an appeal. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. These information collection requirements are assigned Office of Management and Budget Control Number 0596–0231.

### § 214.22 Applicability and effective date.

This part prescribes the procedure for administrative review of appealable decisions and Chief's decisions set forth in § 214.4 issued on or after June 5, 2013.

## PART 215 [RESERVED]

## PART 216—PUBLIC NOTICE AND COMMENT FOR STANDARDS, CRITERIA, AND GUIDANCE APPLICABLE TO FOREST SERVICE PROGRAMS

Sec.

216.1 Purpose and scope.
216.2 Definition.
216.3 Notice and opportunity for public comment.
216.4 Interim directives.

AUTHORITY: 16 U.S.C. 1612(a).

SOURCE: 83 FR 13649, March 30, 2018, unless otherwise noted.

### § 216.1 Purpose and scope.

(a) This part sets forth the process that the Forest Service will use to ensure adequate notice and an opportunity for comment from the public, Tribal, State and local governments, and other Federal agencies with respect to the formulation in Forest Service directives of standards, criteria, and guidelines applicable to Forest Service programs. Nothing in this Part restricts the Forest Service from providing additional public participation opportunities, including public hearings, where appropriate.

(b) This part applies to the formulation in Forest Service directives of standards, criteria, and guidelines applicable to Forest Service programs. This part does not apply to Forest Service directives pertaining to law enforcement and investigations; personnel matters; procurement; administrative support activities such as budget and finance; business operations; and activities undertaken by the Forest Service on behalf of other Federal agencies. To the extent that any other part in this chapter of the Code of Federal Regulations requires greater opportunities for the public to participate with respect to policymaking or the issuance of directives than are required by this part, the other Part shall be controlling.

### § 216.2 Definition.

*Directive* means the contents of the Forest Service Manual and Forest Service Handbooks issued as described at 36 CFR 200.4(c).

[85 FR 2864, Jan. 16, 2020]

### § 216.3 Notice and an opportunity for public comment.

(a) Prior to issuing a final directive subject to this part, the Forest Service shall:

(1) Provide notice to the public of a proposed directive or interim directive and provide an opportunity to submit comments during a comment period of not less than 30 days in accordance with the requirements this section; and,

(2) Review, consider and respond to timely comments received.

(b) Notices required by paragraph (a) of this section shall:

(1) Be published on a schedule for proposed directives and interim directives maintained by the Forest Service in a centralized repository on the Forest Service website.

(2) Provide a physical mailing address and an internet address or similar online resource for submitting comments.

(c) Notices of final directives shall be published on a schedule on the Forest Service website.

[83 FR 13649, March 30, 2018, as amended at 85 FR 2864, Jan. 16, 2020]

### § 216.4 Interim directives.

Upon a finding of good cause that an exigency exists, an interim directive may be effective in advance of providing notice and an opportunity for public comment. As described in § 216.3, opportunity will be given for public comment before the interim directive is made final. The basis for the determination that good cause exists for the issuance of an interim directive shall be published at the time the directive is issued.

## PART 218—PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

### Subpart A—General Provisions

Sec.

218.1 Purpose and scope.
218.2 Definitions.
218.3 Reviewing officer.
218.4 Proposed projects and activities not subject to objection.
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218.6 Computation of time periods.
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**Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under the Healthy Forests Restoration Act**

218.20 Applicability and scope.
218.21 Emergency situations.
218.22 Proposed projects and activities subject to legal notice and opportunity to comment.
218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.
218.24 Notification of opportunity to comment on proposed projects and activities.
218.25 Comments on proposed projects and activities.
218.26 Objection time periods.

**Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act**

218.30 Applicability and scope.
218.31 Authorized hazardous fuel reduction projects subject to objection.
218.32 Objection time periods.

AUTHORITY: Pub. L. 108–148, 117 Stat 1887 (16 U.S.C. 6515 note); Sec. 428, Pub. L. 112–74 125 Stat 1046; Sec. 431, Pub. L. 113–76; Sec. 8006, Pub. L. 113–79.

SOURCE: 78 FR 18497, Mar. 27, 2013, unless otherwise noted.

## Subpart A—General Provisions

### § 218.1 Purpose and scope.

This subpart establishes a predecisional administrative review (hereinafter referred to as ''objection'') process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice, including proposed authorized hazardous fuel reduction projects as defined in the Healthy Forests Restoration Act of 2003 (HFRA). The objection process is the sole means by which administrative review of qualifying projects.

(a) This subpart A provides the general provisions of the objection process, including who may file objections to proposed projects and activities, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

(b) Subpart B of this part includes provisions that are specific to proposed projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice, except those authorized under the HFRA.

(c) Subpart C of this part includes provisions that are specific to proposed hazardous fuel reduction projects authorized under the HFRA.

### § 218.2 Definitions.

The following definitions apply to this part:

*Address*. An individual's or organization's current physical mailing address. An email address alone is not sufficient.

*Authorized hazardous fuel reduction project*. A hazardous fuel reduction project authorized by the Healthy Forests Restoration Act of 2003 (HFRA).

*Decision notice (DN)*. A concise written record of a responsible official's decision when an environmental assessment and a finding of no significant impact (FONSI) have been prepared (36 CFR 220.3). The draft decision notice made available pursuant to § 218.7(b) will include a draft FONSI unless an environmental impact statement is expected to be prepared.

*Entity*. For purposes of eligibility to file an objection (§ 218.5), an entity includes non-governmental organizations, businesses, partnerships, state and local governments, Alaska Native Corporations, and Indian Tribes.

*Environmental assessment (EA)*. A concise public document for which a Federal agency is responsible that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (FONSI), aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9(a)).

*Environmental impact statement (EIS)*. A detailed written statement as required by Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1508.11).

*Forest Service line officer*. The Chief of the Forest Service or a Forest Service official who serves in the direct line of command from the Chief.

*Lead objector*. For an objection submitted with multiple individuals and/or entities listed, the individual or entity identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

*Name*. The first and last name of an individual or the complete name of an entity. An electronic username is insufficient for identification of an individual or entity.

*National Forest System land*. All lands, waters, or interests therein administered by the Forest Service (36 CFR 251.51).

*Newspaper(s) of record*. Those principal newspapers of general circulation annually identified in a list and published in the FEDERAL REGISTER by each regional forester to be used for publishing notices of projects and activities implementing land management plans.

*Objection*. The written document filed with a reviewing officer by an individual or entity seeking predecisional administrative review of a proposed project or activity implementing a land management plan, including proposed HFRA-authorized hazardous fuel reduction projects, and documented with an environmental assessment or environmental impact statement.

*Objection filing period*. The period following publication of the legal notice in the newspaper of record of an environmental assessment and draft Decision Notice, or final environmental impact statement and draft Record of Decision, for a proposed project or activity during which an objection may be filed with the reviewing officer (§218.7(c)(2)(iii) and §218.6(a) and (b)). When the Chief is the responsible official the objection period begins following publication of a notice in the FEDERAL REGISTER (§218.7(c)(2)(iii)). The objection filing period closes at 11:59 p.m. in the time zone of the receiving office on the last day of the filing period (§218.6(a)).

*Objection process*. The procedures established in this subpart for predecisional administrative review of proposed projects or activities implementing land management plans, including proposed HFRA-authorized hazardous fuel reduction projects.

*Objector*. An individual or entity filing an objection who submitted written comments specific to the proposed project or activity during scoping or other opportunity for public comment. The use of the term ''objector'' applies to all persons or entities who meet eligibility requirements associated with the filed objection (§218.5).

*Record of decision (ROD)*. A document signed by a responsible official recording a decision that was preceded by preparation of an environmental impact statement (EIS) (see 40 CFR 1505.2).

*Responsible official*. The Agency employee who has the authority to make and implement a decision on a proposed action subject to this part.

*Specific written comments*. Written comments are those submitted to the responsible official or designee during a designated opportunity for public participation (§218.5(a)) provided for a proposed project. Written comments can include submission of transcriptions or other notes from oral statements or presentation. For the purposes of this rule, specific written comments should be within the scope of the proposed action, have a direct relationship to the proposed action, and must include supporting reasons for the responsible official to consider.

**§218.3 Reviewing officer.**

(a) The reviewing officer is the U.S. Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this part. For project or activity proposals made below the level of the Chief, the reviewing officer is the Forest Service line officer at the next higher administrative level above the responsible official, or the respective Associate Deputy Chief, Deputy Regional Forester, or Deputy Forest Supervisor with the delegation of authority relevant to the provisions of this part. When a project or activity proposal is made by the Chief, the Secretary of Agriculture or Under Secretary, Natural Resources and Environment is the reviewing officer.

(b) The reviewing officer determines procedures to be used for processing objections when the procedures are not

specifically described in this part, including, to the extent practicable, such procedures as needed to be compatible with the administrative review processes of other Federal agencies, when projects are proposed jointly. Such determinations are not subject to further administrative review.

### § 218.4 Proposed projects and activities not subject to objection.

Proposed projects and activities are not subject to objection when no timely, specific written comments regarding the proposed project or activity (see § 218.2) are received during any designated opportunity for public comment (see § 218.5(a)). The responsible official must issue a statement in the Record of Decision or Decision Notice that the project or activity was not subject to objection.

### § 218.5 Who may file an objection.

(a) Individuals and entities as defined in § 218.2 who have submitted timely, specific written comments regarding a proposed project or activity that is subject to these regulations during any designated opportunity for public comment may file an objection. Opportunity for public comment on a draft EIS includes request for comments during scoping, the 40 CFR 1506.10 comment period, or other public involvement opportunity where written comments are requested by the responsible official. Opportunity for public comment on an EA includes during scoping or any other instance where the responsible official seeks written comments.

(b) Federally-recognized Indian Tribes and Alaska Native Corporations are also eligible to file an objection when specific written comments as defined in § 218.2 are provided during Federal-Tribal consultations.

(c) Comments received from an authorized representative(s) of an entity are considered those of the entity only. Individual members of that entity do not meet objection eligibility requirements solely on the basis of membership in an entity. A member or an individual must submit timely, specific written comments independently in order to be eligible to file an objection in an individual capacity.

(d) When an objection lists multiple individuals or entities, each individual or entity must meet the requirements of paragraph (a) of this section. If the objection does not identify a lead objector as required at § 218.8(d)(3), the reviewing officer will delegate the first eligible objector on the list as the lead objector. Individuals or entities listed on an objection that do not meet eligibility requirements will not be considered objectors. Objections from individuals or entities that do not meet the requirements of paragraph (a) of this section will not be accepted and will be documented as such in the objection record.

(e) Federal agencies may not file objections.

(f) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees must not be on official duty nor use Government property or equipment in the preparation or filing of an objection. Further, employees must not use or otherwise incorporate information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)).

### § 218.6 Computation of time periods.

(a) *Computation.* All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day as stated in the legal notice (11:59 p.m. in the time zone of the receiving office for objections filed by electronic means such as email or facsimile).

(b) *Starting date.* The day after publication of the legal notice required by § 218.7(c) is the first day of the objection-filing period.

(c) *Publication date.* The publication date of the legal notice of the EA or final EIS in the newspaper of record or, when the Chief is the responsible official, the FEDERAL REGISTER, is the exclusive means for calculating the time

to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(d) *Extensions*. Time extensions are not permitted except as provided at paragraph (a) of this section, and §218.26(b).

**§218.7 Giving notice of objection process for proposed projects and activities subject to objection.**

(a) In addition to the notification required in paragraph (c) of this section, the responsible official must disclose during scoping and in the EA or EIS that the proposed project or activity is:

(1) A hazardous fuel reduction project as defined by the HFRA, section 101(2), that is subject to subparts A and C of this part, or

(2) A project or activity implementing a land management plan and not authorized under the HFRA, that is subject to subparts A and B of this part.

(b) The responsible official must promptly make available the final EIS or the EA, and a draft Record of Decision (ROD) or draft Decision Notice (DN) and Finding of No Significant Impact (FONSI), to those who have requested the documents or are eligible to file an objection in accordance with §218.5(a).

(c) Upon distribution, legal notice of the opportunity to object to a proposed project or activity must be published in the applicable newspaper of record identified as defined in §218.2 for the National Forest System unit. When the Chief is the responsible official, notice must be published in the FEDERAL REGISTER. The legal notice or FEDERAL REGISTER notice must:

(1) Include the name of the proposed project or activity, a concise description of the draft decision and any proposed land management plan amendments, name and title of the responsible official, name of the forest and/or district on which the proposed project or activity will occur, instructions for obtaining a copy of the final EIS or EA and draft ROD or DN as defined in §218.2, and instructions on how to obtain additional information on the proposed project or activity.

(2) State that the proposed project or activity is subject to the objection process pursuant to 36 CFR part 218; identify whether the special procedures of subpart B or subpart C of this part are applicable; and include the following:

(i) Name and address of the reviewing officer with whom an objection is to be filed. The notice must specify a street, postal, fax, and email address, the acceptable format(s) for objections filed electronically, and the reviewing officer's business hours for those filing hand-delivered objections.

(ii) A statement that objections will be accepted only from those who have previously submitted specific written comments regarding the proposed project during scoping or other designated opportunity for public comment in accordance with §218.5(a). The statement must also specify that issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after designated opportunities.

(iii) A statement that the publication date of the legal notice in the newspaper of record or FEDERAL REGISTER notice is the exclusive means for calculating the time to file an objection (see §§218.26(a) and 218.32(a)), and that those wishing to object should not rely upon dates or timeframe information provided by any other source. A specific date must not be included in the notice.

(iv) A statement that an objection, including attachments, must be filed (regular mail, fax, email, hand-delivery, express delivery, or messenger service) with the appropriate reviewing officer (see §§218.3 and 218.8) within 30 days of the date of publication of the legal notice for the objection process if the proposal is an authorized hazardous fuel reduction project, or within 45 days if the proposal is otherwise a project or activity implementing a land management plan. The statement must also describe the evidence of timely filing in §218.9.

(v) A statement describing the minimum content requirements of an objection (see §218.8(d)) and identify that incorporation of documents by reference is permitted only as provided for at §218.8(b).

(d) Within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the FEDERAL REGISTER, a digital image of the legal notice or FEDERAL REGISTER publication, or the exact text of the notice, must be made available on the Web. Such postings must clearly indicate the date the notice was published in the newspaper of record or FEDERAL REGISTER, and the name of the publication.

(e) Through notice published annually in the FEDERAL REGISTER, each regional forester must advise the public of the newspaper(s) of record utilized for publishing legal notice required by this part.

### § 218.8 Filing an objection.

(a) Objections must be filed with the reviewing officer in writing. All objections are available for public inspection during and after the objection process.

(b) Incorporation of documents by reference is not allowed, except for the following list of items that may be referenced by including date, page, and section of the cited document, along with a description of its content and applicability to the objection. All other documents must be included with the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the proposed project EA or EIS that is subject to objection.

(4) Comments previously provided to the Forest Service by the objector during public involvement opportunities for the proposed project where written comments were requested by the responsible official.

(c) Issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. The burden is on the objector to demonstrate compliance with this requirement for objection issues (see paragraph (d)(6) of this section).

(d) At a minimum, an objection must include the following:

(1) Objector's name and address as defined in § 218.2, with a telephone number, if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) When multiple names are listed on an objection, identification of the lead objector as defined in § 218.2. Verification of the identity of the lead objector must be provided upon request or the reviewing officer will designate a lead objector as provided in § 218.5(d);

(4) The name of the proposed project, the name and title of the responsible official, and the name(s) of the national forest(s) and/or ranger district(s) on which the proposed project will be implemented;

(5) A description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and

(6) A statement that demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment (see paragraph (c) of this section).

### § 218.9 Evidence of timely filing.

(a) It is the objector's responsibility to ensure timely filing of a written objection with the reviewing officer. Timeliness must be determined by the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing period;

(2) The agency's electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing period; or

(4) The official agency date stamp showing receipt of hand delivery.

(b) For emailed objections, the sender should receive an automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of receipt of the objection, it is the sender's responsibility to ensure timely filing by other means.

### § 218.10 Objections set aside from review.

(a) The reviewing officer must set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (see §§ 218.7(c)(2)(v) and 218.9).

(2) The proposed project is not subject to the objection procedures in §§ 218.1, 218.4, 218.20, and 218.31.

(3) The individual or entity did not submit timely and specific written comments regarding the proposed project or activity during scoping or another designated opportunity for public comment (see § 218.5(a)).

(4) Except for issues that arose after the opportunities for comment, none of the issues included in the objection are based on previously submitted specific written comments and the objector has not provided a statement demonstrating a connection between the comments and objection issues (see §§ 218.8(c) and 218.8(d)(6)).

(5) The objection does not provide sufficient information as required by § 218.8(d)(5) and (6) for the reviewing officer to review.

(6) The objector withdraws the objection.

(7) An objector's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided (see § 218.8(d)(1) and (2)).

(8) The objection is illegible for any reason, including submissions in an electronic format different from that specified in the legal notice.

(9) The responsible official cancels the objection process underway to reinitiate the objection procedures at a later date or withdraw the proposed project or activity.

(b) The reviewing officer must give prompt written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented and a copy placed in the objection record.

### § 218.11 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer has the discretion to determine whether adequate time remains in the review period to make a meeting with the objector practical, the appropriate date, duration, agenda, and location for any meeting, and how the meeting will be conducted to facilitate the most beneficial dialogue; e.g., face-to-face office meeting, project site visit, teleconference, video conference, etc. The responsible official should be a participant along with the reviewing officer in any objection resolution meeting. Meetings are not required to be noticed but are open to attendance by the public, and the reviewing officer will determine whether those other than objectors may participate.

(b) *Reviewing officer's response to objections.* (1) A written response must set forth the reasons for the response, but need not be a point-by-point response and may contain instructions to the responsible official, if necessary. In cases involving more than one objection to a proposed project or activity, the reviewing officer may consolidate objections and issue one or more responses.

(2) No further review from any other Forest Service or USDA official of the reviewing officer's written response to an objection is available.

**§ 218.12 Timing of project decision.**

(a) The responsible official may not sign a ROD or DN subject to the provisions of this part until the reviewing officer has responded in writing to all pending objections (see § 218.11(b)(1)).

(b) The responsible official may not sign a ROD or DN subject to the provisions of this part until all concerns and instructions identified by the reviewing officer in the objection response have been addressed.

(c) When no objection is filed within the objection filing period (see §§ 218.26 and 218.32):

(1) The reviewing officer must notify the responsible official.

(2) Approval of the proposed project or activity documented in a ROD in accordance with 40 CFR 1506.10, or in a DN may occur on, but not before, the fifth business day following the end of the objection filing period.

(d) When a proposed project or activity is not subject to objection because no timely, specific written comments regarding the proposal were received during a designated opportunity for public comment (see § 218.4), the approval of a proposed project or activity documented in a ROD must be in accordance with 40 CFR 1506.10 and 36 CFR 220.5(g), and the approval of a proposed project or activity documented in a DN must be made in accordance with 36 CFR 220.7(c) and (d).

**§ 218.13 Secretary's authority.**

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Projects and activities proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

**§ 218.14 Judicial proceedings.**

(a) The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions of their positions and contentions.

(b) Any filing for Federal judicial review of a decisions covered by this subpart is premature and inappropriate unless the plaintiff has exhausted the administrative review process set forth in this part (see 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c)).

**§ 218.15 Information collection requirements.**

The rules of this part specify the information that objectors must provide in an objection to a proposed project (see § 218.8). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–0172.

**§ 218.16 Effective dates.**

(a) *Effective dates for HFRA-authorized projects.* (1) Provisions of this part that are applicable to hazardous fuel reduction projects authorized under the HFRA are in effect as of March 27, 2013 for projects where scoping begins on or after this date.

(2) Hazardous fuel reduction project proposals under the HFRA for which public scoping began prior to March 27, 2013 may use the predecisional objection procedures posted at *http://www.fs.fed.us/objections*.

(3) Hazardous fuel reduction project proposals that are re-scoped with the public or re-issued for notice and comment after March 27, 2013 are subject to this part.

(b) *Effective dates for non-HFRA-authorized projects.* (1) Project proposals with public scoping completed, but that have not had legal notice published. The applicable provisions of this part are in effect as of March 27, 2013 where public scoping was previously initiated for project proposals, but legal notice of the opportunity to comment has not yet been published; unless scoping or other public notification of the project (e.g. Schedule of

Proposed Actions) has clearly indicated the project to be under the former 36 CFR part 215 appeal process.

(2) Project proposals which have legal notice published, but a Decision Notice or Record of Decision has not been signed. If a Decision Notice or Record of Decision is signed within 6 months of March 27, 2013, it will be subject to the 36 CFR part 215 appeal process. If the Decision Notice or Record of Decision is to be signed more than 6 months beyond March 27, 2013, the project proposal will be subject to the requirements of this part. In this case, the responsible official will notify all interested and affected parties who participated during scoping or provided specific written comment regarding the proposed project or activity during the comment period initiated with a legal notice that the project proposal will be subject to the predecisional objection regulations at 36 CFR part 218. All interested and affected parties who provided written comment as defined in § 218.2 during scoping or the comment period will be eligible to participate in the objection process.

(3) Project proposals are subject to the requirements of this part when initial public scoping, re-scoping with the public, or re-issuance of notice and comment begins on or after March 27, 2013.

## Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under Healthy Forests Restoration Act

### § 218.20 Applicability and scope.

This subpart includes provisions that are specific to proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, except those authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A of this part for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

### § 218.21 Emergency situations.

(a) *Authority*. The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation exists as defined in this section.

(b) *Emergency situation definition*. A situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary to achieve one or more of the following: Relief from hazards threatening human health and safety; mitigation of threats to natural resources on NFS or adjacent lands; avoiding a loss of commodity value sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration.

(c) *Determination*. The determination that an emergency situation exists shall be based on an examination of the relevant information. During the consideration by the Chief or Associate Chief, additional information may be requested from the responsible official. The determination that an emergency situation does or does not exist is not subject to administrative review under this part.

(d) *Implementation*. When it is determined that an emergency situation exists with respect to all or part of the proposed project or activity, the proposed action shall not be subject to the predecisional objection process and implementation may proceed as follows:

(1) Immediately after notification (see 36 CFR 220.7(d)) when the decision is documented in a Decision Notice (DN).

(2) Immediately after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2) when the decision is documented in a Record of Decision (ROD).

(e) *Notification*. The responsible official shall identify any emergency situation determination made for a project or activity in the notification of the decision (see 36 CFR 220.5(g) and 220.7(d)).

### § 218.22 Proposed projects and activities subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures of this subpart apply only to:

(a) Proposed projects and activities implementing land management plans for which an environmental assessment (EA) is prepared;

(b) Proposed projects and activities implementing land management plans for which a draft or supplemental environmental impact statement (EIS) is prepared and notice and comment procedures are governed by 40 CFR parts 1500 through 1508;

(c) Proposed amendments to a land management plan that are included as part of a proposed project or activity covered in paragraphs (a) or (b) of this section which are applicable only to that proposed project or activity;

(d) A proposed project or activity for which a supplemental or revised EA or EIS is prepared based on consideration of new information or changed circumstances; and

(e) Proposed research activities to be conducted on National Forest System land for which an EA or EIS is prepared.

### § 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures of this subpart do not apply to:

(a) Any project or activity categorically excluded from documentation in an environmental assessment or environmental impact statement.

(b) Proposed land management plans, plan revisions, and plan amendments that are subject to the objection process set out in 36 CFR part 219, subpart B;

(c) Proposed plan amendments associated with a project or activity where the amendment applies not just to the particular project or activity but to all future projects and activities (see 36 CFR 219.59(b));

(d) Proposed projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500 through 1508 and 36 CFR part 220;

(e) Determinations by the responsible official, after consideration of new information or changed circumstances, that a correction, supplement, or revision of the EA or EIS is not required;

(f) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR part 216); and

(g) Proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act.

[78 FR 18497, Mar. 27, 2013, as amended at 79 FR 44293, July 31, 2014]

### § 218.24 Notification of opportunity to comment on proposed projects and activities.

(a) *Responsible official.* The responsible official shall:

(1) Provide legal notice of the opportunity to comment on a proposed project or activity implementing a land management plan.

(2) Determine the most effective timing and then publish the legal notice of the opportunity to comment as provided for in paragraph (c)(2) of this section.

(3) Promptly provide notice about the proposed project or activity to any individual or entity who has requested it and to those who have participated in planning for that project.

(4) Accept all written comments on the proposed project or activity as provided for in § 218.25(a)(4).

(b) *Content of legal notice.* All legal notices shall include the following:

(1) The title and brief description of the proposed project or activity.

(2) A general description of the proposed project or activity's location with sufficient information to allow the interested public to identify the location.

(3) When applicable, a statement that the responsible official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the proposed project or activity as provided for in § 218.21.

(4) For a proposed project or activity to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (see § 218.25(a)(2)); as newspaper publication

dates may vary, legal notices shall not contain the specific date.

(5) For a proposed project or activity that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the FEDERAL REGISTER (see § 218.25(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(6) A statement that only those who submit timely and specific written comments regarding the proposed project or activity during a public comment period established by the responsible official are eligible to file an objection.

(7) The responsible official's name, title, telephone number, and addresses (street, postal, facsimile, and email) to whom comments are to be submitted and the responsible official's office business hours for those submitting hand-delivered comments (see § 218.25(a)(4)(ii)).

(8) A statement indicating that for objection eligibility each individual or representative from each entity submitting timely and specific written comments regarding the proposed project or activity must either sign the comments or verify identity upon request.

(9) The acceptable format(s) for electronic comments.

(10) Instructions on how to obtain additional information on the proposed project or activity.

(c) *Publication.* (1) Through notice published annually in the FEDERAL REGISTER, each Regional Forester shall advise the public of the newspaper(s) of record used for publishing legal notices required by this part.

(2) Legal notice of the opportunity to comment on a proposed project or activity shall be published in the applicable newspaper of record identified in paragraph (c)(1) of this section for each National Forest System unit. When the Chief is the responsible official, notice shall also be published in the FEDERAL REGISTER. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit written comments on a proposed project or activity to be analyzed and documented in an EA. The publication date of the NOA in the FEDERAL REGISTER is the exclusive means for calculating the time to submit written comments on a proposed project or activity that is analyzed and documented in a draft EIS.

(3) Within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the FEDERAL REGISTER, a digital image of the legal notice or FEDERAL REGISTER publication, or the exact text of the notice, must be made available on the Web. Such postings must clearly indicate the date the notice was published in the newspaper of record or FEDERAL REGISTER, and the name of the publication.

**§ 218.25 Comments on proposed projects and activities.**

(a) *Opportunity to comment.* (1) *Time period for submission of comments*—

(i) Comments on a proposed project or activity to be documented in an environmental assessment shall be accepted for 30 days beginning on the first day after the date of publication of the legal notice.

(ii) Comments on a proposed project or activity to be documented in an environmental impact statement shall be accepted for a minimum of 45 days beginning on the first day after the date of publication in the FEDERAL REGISTER of the notice of availability of the draft EIS.

(iii) *Comments.* It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4) of this section.

(iv) *Extension.* The time period for the opportunity to comment on a proposed project or activity to be documented with an environmental assessment shall not be extended.

(2) *Computation of the comment period.* The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m. in the time zone of the receiving office for comments filed by

electronic means such as email or facsimile).

(3) *Requirements*. To be eligible to submit an objection, individuals and entities must have provided the following during the comment period:

(i) Name and postal address. Email address in addition is recommended but not required.

(ii) Title of the proposed project or activity.

(iii) Specific written comments as defined in § 218.2 regarding the proposed project or activity, along with supporting reasons.

(iv) Signature or other verification of identity upon request and identification of the individual or entity who authored the comment(s). For comments listing multiple entities or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each entity and for each individual in the case of multiple names. A scanned signature or other means of verifying the identity of the individual or entity representative may be used for electronically submitted comments.

(v) Individual members of an entity must submit their own comments to establish personal eligibility; comments received on behalf of an entity are considered as those of the entity only.

(4) Evidence of timely submission. When there is a question about timely submission of comments, timeliness shall be determined as follows:

(i) Written comments must be postmarked by the Postal Service, emailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. in the time zone of the receiving office on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the FEDERAL REGISTER for a draft EIS.

(ii) Hand-delivered comments must be time and date imprinted at the correct responsible official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the FEDERAL REGISTER for a draft EIS.

(iii) For emailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

(b) *Consideration of comments*. (1) The responsible official shall consider all written comments submitted in compliance with paragraph (a) of this section.

(2) All written comments received by the responsible official shall be placed in the project file and shall become a matter of public record.

### § 218.26 Objection time periods.

(a) *Time to file an objection*. Written objections, including any attachments, must be filed with the reviewing officer within 45 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the FEDERAL REGISTER when the Chief is the responsible official (see § 218.7(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection*. The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 45 days following the end of the objection filing period. The reviewing officer has the discretion to extend the time for up to 30 days when he or she determines that additional time is necessary to provide adequate response to objections or to participate in resolution discussions with the objector(s).

## Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

### § 218.30 Applicability and scope.

This subpart includes provisions that are specific to proposed hazardous fuel reduction projects documented with a Record of Decision or Decision Notice,

and authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A of this part for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

### §218.31 Authorized hazardous fuel reduction projects subject to objection.

(a) Only authorized hazardous fuel reduction projects as defined by the HFRA, section 101(2), occurring on National Forest System land that have been analyzed in an EA or EIS are subject to this subpart. Authorized hazardous fuel reduction projects processed under the provisions of the HFRA are not subject to the requirements in subpart B of this part.

(b) When authorized hazardous fuel reduction projects are approved contemporaneously with a plan amendment that applies only to that project, the objection process of this subpart applies to both the plan amendment and the project.

### §218.32 Objection time periods.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 30 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the FEDERAL REGISTER when the Chief is the responsible official (see §218.6(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 30 days following the end of the objection filing period.

# PART 219—PLANNING

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AUTHORITY: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

SOURCE: 77 FR 21260, Apr. 9, 2012, unless otherwise noted.

## Subpart A—National Forest System Land Management Planning

### §219.1 Purpose and applicability.

(a) This subpart sets out the planning requirements for developing, amending, and revising land management plans (also referred to as plans) for units of the National Forest System (NFS), as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) (NFMA). This subpart also sets out the requirements

for plan components and other content in land management plans. This part is applicable to all units of the NFS as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531) (MUSYA), the Forest Service manages the NFS to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches and concepts for the benefit of human communities and natural resources. Land management plans guide sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas.

(c) The purpose of this part is to guide the collaborative and science-based development, amendment, and revision of land management plans that promote the ecological integrity of national forests and grasslands and other administrative units of the NFS. Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services and multiple uses that provide a range of social, economic, and ecological benefits for the present and into the future. These benefits include clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural benefits.

(d) This part does not affect treaty rights or valid existing rights established by statute or legal instruments.

(e) During the planning process, the responsible official shall comply with Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056), Executive Order 13007 of May 24, 1996, Executive Order 13175 of November 6, 2000, laws, and other requirements with respect to disclosing or withholding under the Freedom of Information Act (5 U.S.C. 552) certain information regarding reburial sites or other information that is culturally sensitive to an Indian Tribe or Tribes.

(f) Plans must comply with all applicable laws and regulations, including NFMA, MUSYA, the Clean Air Act, the Clean Water Act, the Wilderness Act, and the Endangered Species Act.

(g) The responsible official shall ensure that the planning process, plan components, and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit.

### § 219.2 Levels of planning and responsible officials.

Forest Service planning occurs at different organizational levels and geographic scales. Planning occurs at three levels—national strategic planning, NFS unit planning, and project or activity planning.

(a) *National strategic planning.* The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service strategic plan required under the Government Performance and Results Modernization Act of 2010 (5 U.S.C. 306; 31 U.S.C. 1115–1125; 31 U.S.C. 9703–9704), which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the NFMA. The strategic plan establishes goals, objectives, performance measures, and strategies for management of the NFS, as well as the other Forest Service mission areas: Research and Development, State and Private Forestry, and International Programs.

(b) *National Forest System unit planning.* (1) NFS unit planning results in the development, amendment, or revision of a land management plan. A land management plan provides a framework for integrated resource management and for guiding project and activity decisionmaking on a national forest, grassland, prairie, or other administrative unit. A plan reflects the unit's expected distinctive roles and contributions to the local area, region, and Nation, and the roles for which the plan area is best suited, considering the Agency's mission, the unit's unique

capabilities, and the resources and management of other lands in the vicinity. Through the adaptive planning cycle set forth in this subpart, a plan can be changed to reflect new information and changing conditions.

(2) A plan does not authorize projects or activities or commit the Forest Service to take action. A plan may constrain the Agency from authorizing or carrying out projects and activities, or the manner in which they may occur. Projects and activities must be consistent with the plan (§219.15). A plan does not regulate uses by the public, but a project or activity decision that regulates a use by the public under 36 CFR Part 261, Subpart B, may be made contemporaneously with the approval of a plan, plan amendment, or plan revision. Plans should not repeat laws, regulations, or program management policies, practices, and procedures that are in the Forest Service Directive System.

(3) The supervisor of the national forest, grassland, prairie, or other comparable administrative unit is the responsible official for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the supervisor, unless a regional forester; the Chief; the Under Secretary, Natural Resources and Environment; or the Secretary acts as the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.

(4) A plan for a unit that contains an experimental area may not be approved without the concurrence of the appropriate research station director with respect to the direction applicable to that area, and a plan amendment applicable to an experimental area may not be approved without the concurrence of the appropriate research station director.

(5) The Chief is responsible for leadership and direction for carrying out the NFS land management planning program under this part. The Chief shall:

(i) Establish planning procedures for this part in the Forest Service Directive System in Forest Service Manual 1920—Land Management Planning and in Forest Service Handbook 1909.12—Land Management Planning Handbook.

(ii) Establish and administer a national oversight process for accountability and consistency of NFS land management planning under this part.

(iii) Establish procedures in the Forest Service Directive System for obtaining inventory data on the various renewable resources, and soil and water.

(c) *Project and activity planning*. The supervisor or district ranger is the responsible official for project and activity decisions, unless a higher-level official acts as the responsible official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as provided in the plan consistency requirements in §219.15, none of the requirements of this part apply to projects or activities.

### §219.3 Role of science in planning.

The responsible official shall use the best available scientific information to inform the planning process required by this subpart for assessment; developing, amending, or revising a plan; and monitoring. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered. The responsible official shall document how the best available scientific information was used to inform the assessment, the plan or amendment decision, and the monitoring program as required in §§219.6(a)(3) and 219.14(a)(3). Such documentation must: Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.

[81 FR 90737, Dec. 15, 2016]

### §219.4 Requirements for public participation.

(a) *Providing opportunities for participation*. The responsible official shall provide opportunities to the public for participating in the assessment process; developing a plan proposal, including the monitoring program; commenting on the proposal and the disclosure of its environmental impacts in

accompanying National Environmental Policy Act (NEPA) documents; and reviewing the results of monitoring information. When developing opportunities for public participation, the responsible official shall take into account the discrete and diverse roles, jurisdictions, responsibilities, and skills of interested and affected parties; the accessibility of the process, opportunities, and information; and the cost, time, and available staffing. The responsible official should be proactive and use contemporary tools, such as the Internet, to engage the public, and should share information in an open way with interested parties. Subject to the notification requirements in § 219.16, the responsible official has the discretion to determine the scope, methods, forum, and timing of those opportunities. The Forest Service retains decisionmaking authority and responsibility for all decisions throughout the process.

(1) *Outreach.* The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities—early and throughout the planning process as required by this part, using collaborative processes where feasible and appropriate. In providing opportunities for engagement, the responsible official shall encourage participation by:

(i) Interested individuals and entities, including those interested at the local, regional, and national levels.

(ii) Youth, low-income populations, and minority populations.

(iii) Private landowners whose lands are in, adjacent to, or otherwise affected by, or whose actions may impact, future management actions in the plan area.

(iv) Federal agencies, States, counties, and local governments, including State fish and wildlife agencies, State foresters and other relevant State agencies. Where appropriate, the responsible official shall encourage States, counties, and other local governments to seek cooperating agency status in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of States, counties, local governments, and other Federal agencies, where practicable and appropriate.

(v) Interested or affected federally recognized Indian Tribes or Alaska Native Corporations. Where appropriate, the responsible official shall encourage federally recognized Tribes to seek cooperating agency status in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of federally recognized Indian Tribes and Alaska Native Corporations, where practicable and appropriate.

(2) *Consultation with federally recognized Indian Tribes and Alaska Native Corporations.* The Department recognizes the Federal Government has certain trust responsibilities and a unique legal relationship with federally recognized Indian Tribes. The responsible official shall honor the government-to-government relationship between federally recognized Indian Tribes and the Federal Government. The responsible official shall provide to federally recognized Indian Tribes and Alaska Native Corporations the opportunity to undertake consultation consistent with Executive Order 13175 of November 6, 2000, and 25 U.S.C. 450 note.

(3) *Native knowledge, indigenous ecological knowledge, and land ethics.* As part of tribal participation and consultation as set forth in paragraphs (a)(1)(v) and (a)(2) of this section, the responsible official shall request information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites.

(b) *Coordination with other public planning efforts.* (1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.

(2) For plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes (43 U.S.C. 1712(b)), Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to

the plan area. The results of this review shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2). The review shall include consideration of:

(i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, as expressed in their plans and policies;

(ii) The compatibility and interrelated impacts of these plans and policies;

(iii) Opportunities for the plan to address the impacts identified or to contribute to joint objectives; and

(iv) Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives.

(3) Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the plan area, nor will the responsible official conform management to meet non-Forest Service objectives or policies.

[77 FR 21260, Apr. 9, 2012, as amended at 77 FR 44144, July 27, 2012]

### §219.5 Planning framework.

(a) Planning for a national forest, grassland, prairie, or other comparable administrative unit of the NFS is an iterative process that includes assessment (§219.6); developing, amending, or revising a plan (§§219.7 and 219.13); and monitoring (§219.12). These three phases of the framework are complementary and may overlap. The intent of this framework is to create a responsive planning process that informs integrated resource management and allows the Forest Service to adapt to changing conditions, including climate change, and improve management based on new information and monitoring.

(1) *Assessment*. Assessments rapidly evaluate existing information about relevant ecological, economic, and social conditions, trends, and sustainability and their relationship to the land management plan within the context of the broader landscape. The responsible official shall consider and evaluate existing and possible future conditions and trends of the plan area, and assess the sustainability of social, economic, and ecological systems within the plan area, in the context of the broader landscape (§219.6).

(2) *Plan development, plan amendment, or plan revision*.

(i) The process for developing or revising a plan includes: Assessment, preliminary identification of the need to change the plan based on the assessment, development of a proposed plan, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.

(ii) The process for amending a plan includes: Preliminary identification of the need to change the plan, development of a proposed amendment, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed amendment, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan amendment. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects.

(3) *Monitoring*. Monitoring is continuous and provides feedback for the planning cycle by testing relevant assumptions, tracking relevant conditions over time, and measuring management effectiveness (§219.12). The monitoring program includes plan-level and broader-scale monitoring. The plan-level monitoring program is informed by the assessment phase; developed during plan development, plan amendment, or plan revision; and implemented after plan decision. The regional forester develops broader-scale monitoring strategies. Biennial monitoring evaluation reports document whether a change to the plan or change to the monitoring program is warranted based on new information, whether a new assessment may be needed, or whether there is no need for change at that time.

(b) *Interdisciplinary team(s).* The responsible official shall establish an interdisciplinary team or teams to prepare assessments; new plans, plan amendments, and plan revisions; and plan monitoring programs.

**§ 219.6 Assessment.**

The responsible official has the discretion to determine the scope, scale, and timing of an assessment described in § 219.5(a)(1), subject to the requirements of this section.

(a) *Process for plan development or revision assessments.* An assessment must be completed for the development of a new plan or for a plan revision. The responsible official shall:

(1) Identify and consider relevant existing information in governmental or non-governmental assessments, plans, monitoring reports, studies, and other sources of relevant information. Such sources of information may include State forest assessments and strategies, the Resources Planning Act assessment, ecoregional assessments, non-governmental reports, State comprehensive outdoor recreation plans, community wildfire protection plans, public transportation plans, State wildlife data and action plans, and relevant Agency or interagency reports, resource plans or assessments. Relevant private information, including relevant land management plans and local knowledge, will be considered if publicly available or voluntarily provided.

(2) Coordinate with or provide opportunities for the regional forester, agency staff from State and Private Forestry and Research and Development, federally recognized Indian Tribes and Alaska Native Corporations, other governmental and non-governmental parties, and the public to provide existing information for the assessment.

(3) Document the assessment in a report available to the public. The report should document information needs relevant to the topics of paragraph (b) of this section. Document in the report how the best available scientific information was used to inform the assessment (§ 219.3). Include the report in the planning record (§ 219.14).

(b) *Content of the assessment for plan development or revision.* In the assessment for plan development or revision, the responsible official shall identify and evaluate existing information relevant to the plan area for the following:

(1) Terrestrial ecosystems, aquatic ecosystems, and watersheds;

(2) Air, soil, and water resources and quality;

(3) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change;

(4) Baseline assessment of carbon stocks;

(5) Threatened, endangered, proposed and candidate species, and potential species of conservation concern present in the plan area;

(6) Social, cultural, and economic conditions;

(7) Benefits people obtain from the NFS planning area (ecosystem services);

(8) Multiple uses and their contributions to local, regional, and national economies;

(9) Recreation settings, opportunities and access, and scenic character;

(10) Renewable and nonrenewable energy and mineral resources;

(11) Infrastructure, such as recreational facilities and transportation and utility corridors;

(12) Areas of tribal importance;

(13) Cultural and historic resources and uses;

(14) Land status and ownership, use, and access patterns; and

(15) Existing designated areas located in the plan area including wilderness and wild and scenic rivers and potential need and opportunity for additional designated areas.

(c) *Plan amendment assessments.* Where the responsible official determines that a new assessment is needed to inform an amendment, the responsible official has the discretion to determine the scope, scale, process, and content for the assessment depending on the topic or topics to be addressed.

[77 FR 21260, Apr. 9, 2012, as amended at 77 FR 44145, July 27, 2012]

**§219.7 New plan development or plan revision.**

(a) *Plan revisions.* A plan revision creates a new plan for the entire plan area, whether the plan revision differs from the prior plan to a small or large extent. A plan must be revised at least every 15 years. But, the responsible official has the discretion to determine at any time that conditions on a plan area have changed significantly such that a plan must be revised (16 U.S.C. 1604(f)(5)).

(b) *New plan development.* New plan development is required for new NFS units. The process for developing a new plan is the same as the process for plan revision.

(c) *Process for plan development or revision.* (1) The process for developing or revising a plan includes: Public notification and participation (§§219.4 and 219.16), assessment (§§219.5 and 219.6), developing a proposed plan, considering the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved (subpart B), and, finally, approving the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.

(2) In developing a proposed new plan or proposed plan revision, the responsible official shall:

(i) Review relevant information from the assessment and monitoring to identify a preliminary need to change the existing plan and to inform the development of plan components and other plan content.

(ii) Consider the goals and objectives of the Forest Service strategic plan (§219.2(a)).

(iii) Identify the presence and consider the importance of various physical, biological, social, cultural, and historic resources on the plan area (§219.6), with respect to the requirements for plan components of §§219.8 through 219.11.

(iv) Consider conditions, trends, and stressors (§219.6), with respect to the requirements for plan components of §§219.8 through 219.11.

(v) Identify and evaluate lands that may be suitable for inclusion in the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation.

(vi) Identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.

(vii) Identify existing designated areas other than the areas identified in paragraphs (c)(2)(v) and (c)(2)(vi) of this section, and determine whether to recommend any additional areas for designation. If the responsible official has the delegated authority to designate a new area or modify an existing area, then the responsible official may designate such area when approving the plan, plan amendment, or plan revision.

(viii) Identify the suitability of areas for the appropriate integration of resource management and uses, with respect to the requirements for plan components of §§219.8 through 219.11, including identifying lands that are not suitable for timber production (§219.11).

(ix) Identify the maximum quantity of timber that may be removed from the plan area (§219.11(d)(6)).

(x) Identify questions and indicators for the plan monitoring program (§219.12).

(xi) Identify potential other content in the plan (paragraph (f) of this section).

(3) The regional forester shall identify the species of conservation concern for the plan area in coordination with the responsible official.

(d) *Management areas or geographic areas.* Every plan must have management areas or geographic areas or both. The plan may identify designated or recommended designated areas as management areas or geographic areas.

(e) *Plan components.* Plan components guide future project and activity decisionmaking. The plan must indicate whether specific plan components apply to the entire plan area, to specific management areas or geographic areas, or to other areas as identified in the plan.

(1) *Required plan components.* Every plan must include the following plan components:

(i) *Desired conditions.* A desired condition is a description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates.

(ii) *Objectives.* An objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Objectives should be based on reasonably foreseeable budgets.

(iii) *Standards.* A standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(iv) *Guidelines.* A guideline is a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met. (§ 219.15(d)(3)). Guidelines are established to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(v) *Suitability of lands.* Specific lands within a plan area will be identified as suitable for various multiple uses or activities based on the desired conditions applicable to those lands. The plan will also identify lands within the plan area as not suitable for uses that are not compatible with desired conditions for those lands. The suitability of lands need not be identified for every use or activity. Suitability identifications may be made after consideration of historic uses and of issues that have arisen in the planning process. Every plan must identify those lands that are not suitable for timber production (§ 219.11).

(2) *Optional plan component: goals.* A plan may include goals as plan components. Goals are broad statements of intent, other than desired conditions, usually related to process or interaction with the public. Goals are expressed in broad, general terms, but do not include completion dates.

(3) *Requirements for the set of plan components.* The set of plan components must meet the requirements set forth in this part for sustainability (§ 219.8), plant and animal diversity (§ 219.9), multiple use (§ 219.10), and timber (§ 219.11).

(f) *Other content in the plan.* (1) *Other required content in the plan.* Every plan must:

(i) Identify watershed(s) that are a priority for maintenance or restoration;

(ii) Describe the plan area's distinctive roles and contributions within the broader landscape;

(iii) Include the monitoring program required by § 219.12; and

(iv) Contain information reflecting proposed and possible actions that may occur on the plan area during the life of the plan, including: the planned timber sale program; timber harvesting levels; and the proportion of probable methods of forest vegetation management practices expected to be used (16 U.S.C. 1604(e)(2) and (f)(2)). Such information is not a commitment to take any action and is not a ''proposal'' as defined by the Council on Environmental Quality regulations for implementing NEPA (40 CFR 1508.23, 42 U.S.C. 4322(2)(C)).

(2) *Optional content in the plan.* A plan may include additional content, such as potential management approaches or strategies and partnership opportunities or coordination activities.

[77 FR 21260, Apr. 9, 2012, as amended at 77 FR 44145, July 27, 2012]

### § 219.8 Sustainability.

A plan developed or revised under this part must provide for social, economic, and ecological sustainability within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

(a) *Ecological sustainability.* (1) *Ecosystem Integrity.* The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account:

(i) Interdependence of terrestrial and aquatic ecosystems in the plan area.

(ii) Contributions of the plan area to ecological conditions within the broader landscape influenced by the plan area.

(iii) Conditions in the broader landscape that may influence the sustainability of resources and ecosystems within the plan area.

(iv) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change.

(v) Wildland fire and opportunities to restore fire adapted ecosystems.

(vi) Opportunities for landscape scale restoration.

(2) *Air, soil, and water*. The plan must include plan components, including standards or guidelines, to maintain or restore:

(i) Air quality.

(ii) Soils and soil productivity, including guidance to reduce soil erosion and sedimentation.

(iii) Water quality.

(iv) Water resources in the plan area, including lakes, streams, and wetlands; ground water; public water supplies; sole source aquifers; source water protection areas; and other sources of drinking water (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability).

(3) *Riparian areas*. (i) The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of riparian areas in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account:

(A) Water temperature and chemical composition;

(B) Blockages (uncharacteristic and characteristic) of water courses;

(C) Deposits of sediment;

(D) Aquatic and terrestrial habitats;

(E) Ecological connectivity;

(F) Restoration needs; and

(G) Floodplain values and risk of flood loss.

(ii) Plans must establish width(s) for riparian management zones around all lakes, perennial and intermittent streams, and open water wetlands, within which the plan components required by paragraph (a)(3)(i) of this section will apply, giving special attention to land and vegetation for approximately 100 feet from the edges of all perennial streams and lakes.

(A) Riparian management zone width(s) may vary based on ecological or geomorphic factors or type of water body; and will apply unless replaced by a site-specific delineation of the riparian area.

(B) Plan components must ensure that no management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment that seriously and adversely affect water conditions or fish habitat shall be permitted within the riparian management zones or the site-specific delineated riparian areas.

(4) *Best management practices for water quality*. The Chief shall establish requirements for national best management practices for water quality in the Forest Service Directive System. Plan components must ensure implementation of these practices.

(b) *Social and economic sustainability*. The plan must include plan components, including standards or guidelines, to guide the plan area's contribution to social and economic sustainability, taking into account:

(1) Social, cultural, and economic conditions relevant to the area influenced by the plan;

(2) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character;

(3) Multiple uses that contribute to local, regional, and national economies in a sustainable manner;

(4) Ecosystem services;

(5) Cultural and historic resources and uses; and

(6) Opportunities to connect people with nature.

[77 FR 21260, Apr. 9, 2012, as amended at 81 FR 90737, Dec. 15, 2016]

**§ 219.9 Diversity of plant and animal communities.**

This section adopts a complementary ecosystem and species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area. Compliance with the ecosystem requirements of paragraph (a) of this section is intended to provide the ecological conditions to both maintain the diversity of plant and animal communities and support the persistence of most native species in the plan area. Compliance with the requirements of paragraph (b) of this section is intended to provide for additional ecological conditions not otherwise provided by compliance with paragraph (a) of this section for individual species as set forth in paragraph (b) of this section. A plan developed or revised under this part must provide for the diversity of plant and animal communities, within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

(a) *Ecosystem plan components.* (1) *Ecosystem integrity.* As required by § 219.8(a), the plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.

(2) *Ecosystem diversity.* The plan must include plan components, including standards or guidelines, to maintain or restore the diversity of ecosystems and habitat types throughout the plan area. In doing so, the plan must include plan components to maintain or restore:

(i) Key characteristics associated with terrestrial and aquatic ecosystem types;

(ii) Rare aquatic and terrestrial plant and animal communities; and

(iii) The diversity of native tree species similar to that existing in the plan area.

(b) *Additional, species-specific plan components.* (1) The responsible official shall determine whether or not the plan components required by paragraph (a) of this section provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area. If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area.

(2) If the responsible official determines that it is beyond the authority of the Forest Service or not within the inherent capability of the plan area to maintain or restore the ecological conditions to maintain a viable population of a species of conservation concern in the plan area, then the responsible official shall:

(i) Document the basis for that determination (§ 219.14(a)); and

(ii) Include plan components, including standards or guidelines, to maintain or restore ecological conditions within the plan area to contribute to maintaining a viable population of the species within its range. In providing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, Tribal, and private land managers having management authority over lands relevant to that population.

(c) *Species of conservation concern.* For purposes of this subpart, a species of conservation concern is a species, other than federally recognized threatened, endangered, proposed, or candidate species, that is known to occur in the plan area and for which the regional forester has determined that the best available scientific information indicates substantial concern about the species' capability to persist over the long-term in the plan area.

[77 FR 21260, Apr. 9, 2012, as amended at 81 FR 90737, Dec. 15, 2016]

**§ 219.10 Multiple use.**

While meeting the requirements of §§ 219.8 and 219.9, a plan developed or revised under this part must provide for ecosystem services and multiple uses, including outdoor recreation, range,

timber, watershed, wildlife, and fish, within Forest Service authority and the inherent capability of the plan area as follows:

(a) *Integrated resource management for multiple use*. The plan must include plan components, including standards or guidelines, for integrated resource management to provide for ecosystem services and multiple uses in the plan area. When developing plan components for integrated resource management, to the extent relevant to the plan area and the public participation process and the requirements of §§ 219.7, 219.8, 219.9, and 219.11, the responsible official shall consider:

(1) Aesthetic values, air quality, cultural and heritage resources, ecosystem services, fish and wildlife species, forage, geologic features, grazing and rangelands, habitat and habitat connectivity, recreation settings and opportunities, riparian areas, scenery, soil, surface and subsurface water quality, timber, trails, vegetation, viewsheds, wilderness, and other relevant resources and uses.

(2) Renewable and nonrenewable energy and mineral resources.

(3) Appropriate placement and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors.

(4) Opportunities to coordinate with neighboring landowners to link open spaces and take into account joint management objectives where feasible and appropriate.

(5) Habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence, and other activities (in collaboration with federally recognized Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments).

(6) Land status and ownership, use, and access patterns relevant to the plan area.

(7) Reasonably foreseeable risks to ecological, social, and economic sustainability.

(8) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of the terrestrial and aquatic ecosystems on the plan area to adapt to change (§ 219.8);

(9) Public water supplies and associated water quality.

(10) Opportunities to connect people with nature.

(b) *Requirements for plan components for a new plan or plan revision*. (1) The plan must include plan components, including standards or guidelines, to provide for:

(i) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character. Recreation opportunities may include nonmotorized, motorized, developed, and dispersed recreation on land, water, and in the air.

(ii) Protection of cultural and historic resources.

(iii) Management of areas of tribal importance.

(iv) Protection of congressionally designated wilderness areas as well as management of areas recommended for wilderness designation to protect and maintain the ecological and social characteristics that provide the basis for their suitability for wilderness designation.

(v) Protection of designated wild and scenic rivers as well as management of rivers found eligible or determined suitable for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system.

(vi) Appropriate management of other designated areas or recommended designated areas in the plan area, including research natural areas.

(2) Other plan components for integrated resource management to provide for multiple use as necessary.

[77 FR 21260, Apr. 9, 2012, as amended at 81 FR 90737, Dec. 15, 2016]

### § 219.11 Timber requirements based on the NFMA.

While meeting the requirements of §§ 219.8 through 219.10, a plan developed or revised under this part must include plan components, including standards or guidelines, and other plan content regarding timber management within

Forest Service authority and the inherent capability of the plan area, as follows:

(a) *Lands not suited for timber production.* (1) The responsible official shall identify lands within the plan area as not suited for timber production if any one of the following factors applies:

(i) Statute, Executive order, or regulation prohibits timber production on the land;

(ii) The Secretary of Agriculture or the Chief has withdrawn the land from timber production;

(iii) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands;

(iv) The technology is not currently available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions;

(v) There is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest; or

(vi) The land is not forest land.

(2) The responsible official shall review lands identified in the plan as not suited for timber production at least once every 10 years, or as otherwise prescribed by law, to determine whether conditions have changed so that they have become suitable for timber production. As a result of this 10-year review, the plan may be amended to identify any such lands as suitable for timber production, if warranted by changed conditions.

(b) *Timber harvest for purposes of timber production.* A plan that identifies lands as suitable for timber production must include plan components, including standards or guidelines, to guide timber harvest for timber production or for other multiple use purposes on such lands.

(c) *Timber harvest for purposes other than timber production.* Except as provided in paragraph (d) of this section, the plan may include plan components to allow for timber harvest for purposes other than timber production throughout the plan area, or portions of the plan area, as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan in order to protect other multiple-use values, and for salvage, sanitation, or public health or safety. Examples of using timber harvest to protect other multiple use values may include improving wildlife or fish habitat, thinning to reduce fire risk, or restoring meadow or savanna ecosystems where trees have invaded.

(d) *Limitations on timber harvest.* Whether timber harvest would be for the purposes of timber production or other purposes, plan components, including standards or guidelines, must ensure the following:

(1) No timber harvest for the purposes of timber production may occur on lands not suited for timber production.

(2) Timber harvest would occur only where soil, slope, or other watershed conditions would not be irreversibly damaged;

(3) Timber harvest would be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

(4) Where plan components will allow clearcutting, seed tree cutting, shelterwood cutting, or other cuts designed to regenerate an even-aged stand of timber, the plan must include standards limiting the maximum size for openings that may be cut in one harvest operation, according to geographic areas, forest types, or other suitable classifications. Except as provided in paragraphs (d)(4)(i) through (iii) of this section, this limit may not exceed 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types.

(i) Plan standards may allow for openings larger than those specified in paragraph (d)(4) of this section to be cut in one harvest operation where the responsible official determines that larger harvest openings are necessary to help achieve desired ecological conditions in the plan area. If so, standards for exceptions shall include the particular conditions under which the

larger size is permitted and must set a maximum size permitted under those conditions.

(ii) Plan components may allow for size limits exceeding those established in paragraphs (d)(4) introductory text and (d)(4)(i) of this section on an individual timber sale basis after 60 days public notice and review by the regional forester.

(iii) The plan maximum size for openings to be cut in one harvest operation shall not apply to the size of openings harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm (16 U.S.C. 1604(g)(3)(F)(iv)).

(5) Timber will be harvested from NFS lands only where such harvest would comply with the resource protections set out in sections 6(g)(3)(E) and (F) of the NFMA (16 U.S.C. 1604(g)(3)(E) and (F)). Some of these requirements are listed in paragraphs (d)(2) to (d)(4) of this section.

(6) The quantity of timber that may be sold from the national forest is limited to an amount equal to or less than that which can be removed from such forest annually in perpetuity on a sustained yield basis. This limit may be measured on a decadal basis.

(i) The plan may provide for departures from this limit as provided by the NFMA when departure would be consistent with the plan's desired conditions and objectives. Exceptions for departure from this limit on the quantity sold may be made only after a public review and comment period of at least 90 days.

(ii) This limit may be based upon increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960. The plan must require that such harvest levels be decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned.

(iii) The Chief must include in the Forest Service Directive System procedures for estimating the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis, and exceptions, consistent with 16 U.S.C. 1611.

(7) The regeneration harvest of even-aged stands of trees is limited to stands that generally have reached the culmination of mean annual increment of growth. This requirement would apply only to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is the primary purpose for the harvest. Plan components may allow for exceptions, set out in 16 U.S.C. 1604(m), only if such harvest is consistent with the other plan components of the land management plan.

[77 FR 21260, Apr. 9, 2012, as amended at 77 FR 44145, July 27, 2012; 78 FR 23492, Apr. 19, 2013; 81 FR 90737, Dec. 15, 2016; 86 FR 68149, Dec. 1, 2021]

### § 219.12 Monitoring.

(a) *Plan monitoring program.* (1) The responsible official shall develop a monitoring program for the plan area and include it in the plan. Monitoring information should enable the responsible official to determine if a change in plan components or other plan content that guide management of resources on the plan area may be needed. The development of the plan monitoring program must be coordinated with the regional forester and Forest Service State and Private Forestry and Research and Development. Responsible officials for two or more administrative units may jointly develop their plan monitoring programs.

(2) The plan monitoring program sets out the plan monitoring questions and associated indicators. Monitoring questions and associated indicators must be designed to inform the management of resources on the plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining the plan's desired conditions or objectives. Questions and indicators should be based on one or more desired conditions, objectives, or other plan components in the plan, but not every plan component needs to have a corresponding monitoring question.

(3) The plan monitoring program should be coordinated and integrated with relevant broader-scale monitoring strategies (paragraph (b) of this section) to ensure that monitoring is complementary and efficient, and that information is gathered at scales appropriate to the monitoring questions.

(4) Subject to the requirements of paragraph (a)(5) of this section, the responsible official has the discretion to set the scope and scale of the plan monitoring program, after considering:

(i) Information needs identified through the planning process as most critical for informed management of resources on the plan area; and

(ii) The financial and technical capabilities of the Agency.

(5) Each plan monitoring program must contain one or more monitoring questions and associated indicators addressing each of the following:

(i) The status of select watershed conditions.

(ii) The status of select ecological conditions including key characteristics of terrestrial and aquatic ecosystems.

(iii) The status of focal species to assess the ecological conditions required under § 219.9.

(iv) The status of a select set of the ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern.

(v) The status of visitor use, visitor satisfaction, and progress toward meeting recreation objectives.

(vi) Measurable changes on the plan area related to climate change and other stressors that may be affecting the plan area.

(vii) Progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities.

(viii) The effects of each management system to determine that they do not substantially and permanently impair the productivity of the land (16 U.S.C. 1604(g)(3)(C)).

(6) A range of monitoring techniques may be used to carry out the monitoring requirements in paragraph (a)(5) of this section.

(7) This section does not apply to projects or activities. Project and activity monitoring may be used to gather information for the plan monitoring program, and information gathered through plan monitoring may be used to inform development of projects or activities. But, the monitoring requirements of this section are not a prerequisite for making a decision to carry out a project or activity.

(b) *Broader-scale monitoring strategies.* (1) The regional forester shall develop a broader-scale monitoring strategy for plan monitoring questions that can best be answered at a geographic scale broader than one plan area.

(2) When developing a monitoring strategy, the regional forester shall coordinate with the relevant responsible officials, Forest Service State and Private Forestry and Research and Development, partners, and the public. Two or more regional foresters may jointly develop broader-scale monitoring strategies.

(3) Each regional forester shall ensure that the broader-scale monitoring strategy is within the financial and technical capabilities of the region and complements other ongoing monitoring efforts.

(4) Projects and activities may be carried out under plans developed, amended, or revised under this part before the regional forester has developed a broader-scale monitoring strategy.

(c) *Timing and process for developing the plan monitoring program and broader-scale strategies.* (1) The responsible official shall develop the plan monitoring program as part of the planning process for a new plan development or plan revision. Where a plan's monitoring program has been developed under the provisions of a prior planning regulation and the unit has not initiated plan revision under this part, the responsible official shall modify the plan monitoring program within 4 years of the effective date of this part, or as soon as practicable, to meet the requirements of this section.

(2) The regional forester shall develop a broader-scale monitoring strategy as soon as practicable.

(3) To the extent practicable, appropriate, and relevant to the monitoring questions in the plan monitoring program, plan monitoring programs and broader-scale strategies must be designed to take into account:

(i) Existing national and regional inventory, monitoring, and research programs of the Agency, including from the NFS, State and Private Forestry, and Research and Development, and of other governmental and non-governmental entities;

(ii) Opportunities to design and carry out multi-party monitoring with other Forest Service units, Federal, State or local government agencies, scientists, partners, and members of the public; and

(iii) Opportunities to design and carry out monitoring with federally recognized Indian Tribes and Alaska Native Corporations.

(d) *Biennial evaluation of the monitoring information*. (1) The responsible official shall conduct a biennial evaluation of new information gathered through the plan monitoring program and relevant information from the broader-scale strategy, and shall issue a written report of the evaluation and make it available to the public.

(i) The first monitoring evaluation for a plan or plan revision developed in accordance with this subpart must be completed no later than 2 years from the effective date of plan decision.

(ii) Where the monitoring program developed under the provisions of a prior planning regulation has been modified to meet the requirements of paragraph (c)(1) of this section, the first monitoring evaluation must be completed no later than 2 years from the date the change takes effect.

(iii) The monitoring evaluation report may be postponed for 1 year in case of exigencies, but notice of the postponement must be provided to the public prior to the date the report is due for that year (§ 219.16(c)(6)).

(2) The monitoring evaluation report must indicate whether or not a change to the plan, management activities, or the monitoring program, or a new assessment, may be warranted based on the new information. The monitoring evaluation report must be used to inform adaptive management of the plan area.

(3) The monitoring evaluation report may be incorporated into other planning documents if the responsible official has initiated a plan revision or relevant amendment.

(4) The monitoring evaluation report is not a decision document representing final Agency action, and is not subject to the objection provisions of subpart B.

### § 219.13 Plan amendment and administrative changes.

(a) *Plan amendment*. A plan may be amended at any time. Plan amendments may be broad or narrow, depending on the need for change, and should be used to keep plans current and help units adapt to new information or changing conditions. The responsible official has the discretion to determine whether and how to amend the plan and to determine the scope and scale of any amendment. Except as provided by paragraph (c) of this section, a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas).

(b) *Amendment requirements*. For every plan amendment, the responsible official shall:

(1) Base an amendment on a preliminary identification of the need to change the plan. The preliminary identification of the need to change the plan may be based on a new assessment; a monitoring report; or other documentation of new information, changed conditions, or changed circumstances. When a plan amendment is made together with, and only applies to, a project or activity decision, the analysis prepared for the project or activity may serve as the documentation for the preliminary identification of the need to change the plan.

(2) Provide opportunities for public participation as required in § 219.4 and public notification as required in § 219.16. The responsible official may combine processes and associated public notifications where appropriate, considering the scope and scale of the

need to change the plan. The responsible official must include information in the initial notice for the amendment (§ 219.16(a)(1)) about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment (§ 219.13(b)(5)).

(3) Amend the plan consistent with Forest Service NEPA procedures. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects. Except for an amendment that applies only to one project or activity, a proposed amendment that may create a significant environmental effect and thus requires preparation of an environmental impact statement is considered a significant change in the plan for the purposes of the NFMA and therefore requires a 90-day comment period for the proposed plan and draft environmental impact statement (§ 219.16(a)(2)), in addition to meeting the requirements of this section.

(4) Follow the applicable format for plan components set out at § 219.7(e) for the plan direction added or modified by the amendment, except that where an amendment to a plan developed or revised under a prior planning regulation would simply modify the area to which existing direction applies, the responsible official may retain the existing formatting for that direction.

(5) Determine which specific substantive requirement(s) within §§ 219.8 through 219.11 are directly related to the plan direction being added, modified, or removed by the amendment and apply such requirement(s) within the scope and scale of the amendment. The responsible official is not required to apply any substantive requirements within §§ 219.8 through 219.11 that are not directly related to the amendment.

(i) The responsible official's determination must be based on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.

(ii) When basing the determination on adverse effects:

(A) The responsible official must determine that a specific substantive requirement is directly related to the amendment when scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse effects associated with that requirement, or when the proposed amendment would substantially lessen protections for a specific resource or use.

(B) If the appropriate NEPA documentation for an amendment is a categorical exclusion or an environmental assessment accompanied by a finding of no significant impact (§ 219.13(b)(3)), there is a rebuttable presumption that the amendment will not have substantial adverse effects.

(6) For an amendment to a plan developed or revised under a prior planning regulation, if species of conservation concern (SCC) have not been identified for the plan area and if scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse impacts to a specific species, or if the proposed amendment would substantially lessen protections for a specific species, the responsible official must determine whether such species is a potential SCC, and if so, apply section § 219.9(b) with respect to that species as if it were an SCC.

(c) *Administrative changes.* An administrative change is any change to a plan that is not a plan amendment or plan revision. Administrative changes include corrections of clerical errors to any part of the plan, conformance of the plan to new statutory or regulatory requirements, or changes to other content in the plan (§ 219.7(f)).

(1) A substantive change to the monitoring program made outside of the process for plan revision or amendment may be made only after notice to the public of the intended change and consideration of public comment (§ 219.16(c)(6)).

(2) All other administrative changes may be made following public notice (§ 219.16(c)(6)).

[77 FR 21260, Apr. 9, 2012, as amended at 81 FR 90738, Dec. 15, 2016]

### § 219.14 Decision document and planning records.

(a) *Decision document approving a new plan, plan amendment, or revision.* The

responsible official shall record approval of a new plan, plan amendment, or revision in a decision document prepared according to Forest Service NEPA procedures (36 CFR part 220). The decision document must include:

(1) The rationale for approval;

(2) A statement of how the plan, plan amendment, or plan revision applies to approved projects and activities (§ 219.15);

(3) The documentation of how the best available scientific information was used to inform planning, the plan components, and other plan content, including the plan monitoring program (§ 219.3);

(4) The concurrence by the appropriate research station director with any part of the plan applicable to any experimental forests or experimental ranges (§ 219.2(b)(4)); and

(5) The effective date of the plan, amendment, or revision.

(b) *Decision document for a new plan or plan revision.* In addition to meeting the requirements of paragraph (a) of this section, the decision document must include an explanation of how the plan components meet the sustainability requirements of § 219.8, the diversity requirements of § 219.9, the multiple use requirements of § 219.10, and the timber requirements of § 219.11.

(c) *Decision document for a plan amendment.* In addition to meeting the requirements of paragraph (a) of this section, the decision document must explain how the responsible official determined:

(1) The scope and scale of the plan amendment; and

(2) Which specific requirements within §§ 219.8 through 219.11 apply to the amendment and how they were applied.

(d) *Planning records.* (1) The responsible official shall keep the following documents readily accessible to the public by posting them online and through other means: assessment reports (§ 219.6); the plan, including the monitoring program; the proposed plan, plan amendment, or plan revision; public notices and environmental documents associated with a plan; plan decision documents; and monitoring evaluation reports (§ 219.12).

(2) The planning record includes documents that support analytical conclusions made and alternatives considered throughout the planning process. The responsible official shall make the planning record available at the office where the plan, plan amendment, or plan revision was developed.

[77 FR 21260, Apr. 9, 2012, as amended at 81 FR 90738, Dec. 15, 2016]

### § 219.15 Project and activity consistency with the plan.

(a) *Application to existing authorizations and approved projects or activities.* Every decision document approving a plan, plan amendment, or plan revision must state whether authorizations of occupancy and use made before the decision document may proceed unchanged. If a plan decision document does not expressly allow such occupancy and use, the permit, contract, and other authorizing instrument for the use and occupancy must be made consistent with the plan, plan amendment, or plan revision as soon as practicable, as provided in paragraph (d) of this section, subject to valid existing rights.

(b) *Application to projects or activities authorized after plan decision.* Projects and activities authorized after approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (d) of this section.

(c) *Resolving inconsistency.* When a proposed project or activity would not be consistent with the applicable plan components, the responsible official shall take one of the following steps, subject to valid existing rights:

(1) Modify the proposed project or activity to make it consistent with the applicable plan components;

(2) Reject the proposal or terminate the project or activity;

(3) Amend the plan so that the project or activity will be consistent with the plan as amended; or

(4) Amend the plan contemporaneously with the approval of the project or activity so that the project or activity will be consistent with the plan as amended. This amendment may be limited to apply only to the project or activity.

(d) *Determining consistency.* Every project and activity must be consistent with the applicable plan components. A

project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:

(1) *Goals, desired conditions, and objectives.* The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives, or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) *Standards.* The project or activity complies with applicable standards.

(3) *Guidelines.* The project or activity:

(i) Complies with applicable guidelines as set out in the plan; or

(ii) Is designed in a way that is as effective in achieving the purpose of the applicable guidelines (§ 219.7(e)(1)(iv)).

(4) *Suitability.* A project or activity would occur in an area:

(i) That the plan identifies as suitable for that type of project or activity; or

(ii) For which the plan is silent with respect to its suitability for that type of project or activity.

(e) *Consistency of resource plans within the planning area with the land management plan.* Any resource plans (for example, travel management plans) developed by the Forest Service that apply to the resources or land areas within the planning area must be consistent with the plan components. Resource plans developed prior to plan decision must be evaluated for consistency with the plan and amended if necessary.

### § 219.16 Public notifications.

The following public notification requirements apply to plan development, amendment, or revision. Notifications may be combined where appropriate.

(a) *When formal public notification is required.* Public notification must be provided as follows:

(1) To initiate the development of a proposed plan, plan amendment, or plan revision;

(2) To invite comments on a proposed plan, plan amendment, or plan revision, and associated environmental analysis. For a new plan, plan amendment, or a plan revision for which a draft environmental impact statement (EIS) is prepared, the comment period is at least 90 days, except for an amendment that applies only to one project or activity. For an amendment that applies only to one project or activity for which a draft EIS is prepared, the comment period is at least 45 days unless a different time period is required by law or regulation or authorized pursuant to 40 CFR 1506.10(d). For an amendment for which a draft EIS is not prepared, the comment period is at least 30 days;

(3) To begin the objection period for a plan, plan amendment, or plan revision before approval (§ 219.52);

(4) To approve a final plan, plan amendment, or plan revision; or

(5) To announce whenever a plan, plan amendment, or plan revision process initiated under the provisions of a previous planning regulation will be conformed to meet the provisions of this part (§ 219.17(b)(3)).

(b) *Project or activity plan amendments.* When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the notification requirements of 36 CFR part 215 or part 218, subpart A, applies instead of this section.

(c) *How public notice is provided.* The responsible official should use contemporary tools to provide notice to the public. At a minimum, all public notifications required by this part must be posted online, and:

(1) When the Chief, the Under Secretary, or the Secretary is the responsible official, notice must be published in the FEDERAL REGISTER.

(2) For a new plan or plan revision, when an official other than the Chief, the Under Secretary, or the Secretary is the responsible official, notice must be published in the FEDERAL REGISTER and the applicable newspaper(s) of record.

(3) When the notice is for the purpose of inviting comments on a proposed plan, plan amendment, or plan revision for which a draft EIS is prepared, the Environmental Protection Agency (EPA) FEDERAL REGISTER notice of availability of a draft EIS shall serve as the required FEDERAL REGISTER notice.

(4) For a plan amendment when an official other than the Chief, the Under Secretary, or the Secretary is the responsible official, and for which a draft EIS is not prepared, notices must be published in the newspaper(s) of record.

(5) If a plan, plan amendment, or plan revision applies to two or more units, notices must be published in the FEDERAL REGISTER and the newspaper(s) of record for the applicable units.

(6) Additional public notice of administrative changes, changes to the monitoring program, opportunities to provide information for assessments, assessment reports, monitoring evaluation reports, or other notices not listed in paragraph (a) of this section may be made in any way the responsible official deems appropriate.

(d) *Content of public notices.* Public notices required by this section except for notices applicable to paragraph (c)(3) of this section, must clearly describe the action subject to notice and the nature and scope of the decisions to be made; identify the responsible official; describe when, where, and how the responsible official will provide opportunities for the public to participate in the planning process; and explain how to obtain additional information.

[77 FR 21260, Apr. 9, 2012, as amended at 81 FR 90739, Dec. 15, 2016]

### § 219.17 Effective dates and transition.

(a) *Effective dates.* (1) A plan or plan revision is effective 30 days after publication of notice of its approval.

(2) Except as provided in paragraph (a)(3) of this section, a plan amendment for which an environmental impact statement (EIS) has been prepared is effective 30 days after publication of notice of its approval; a plan amendment for which an EIS has not been prepared is effective immediately.

(3) A plan amendment that applies to only one specific project or activity is effective on the date the project may be implemented in accordance with administrative review regulations at 36 CFR parts 215 and 218.

(b) *Plan amendment and plan revision transition.* For the purposes of this section, initiation means that the Agency has issued a notice of intent or other notice announcing the beginning of the process to develop a proposed plan, plan amendment, or plan revision.

(1) *Initiating plan development and plan revisions.* Plan development and plan revisions initiated after May 9, 2012 must conform to the requirements of this part.

(2) *Initiating plan amendments.* All plan amendments initiated after May 9, 2012, are subject to the objection process in subpart B of this part. With respect to plans approved or revised under a prior planning regulation, including the transition provisions of the reinstated 2000 rule (36 CFR part 219, published at 36 CFR parts 200 to 299, revised as of July 1, 2010), plan amendments may be initiated under the provisions of the prior planning regulation for 3 years after May 9, 2012, and may be completed and approved under those provisions (except for the optional appeal procedures of the prior planning regulation); or may be initiated, completed, and approved under the requirements of this part. After the 3-year transition period, all plan amendments must be initiated, completed, and approved under the requirements of this part.

(3) *Plan development, plan amendments, or plan revisions initiated before this part.* For plan development, plan amendments, or plan revisions that were initiated before May 9, 2012, the responsible official may complete and approve the plan, plan amendment, or plan revision in conformance with the provisions of the prior planning regulation, including its transition provisions (36 CFR part 219, published at 36 CFR parts 200 to 299, revised as of July 1, 2010), or may conform the plan, plan amendment, or plan revision to the requirements of this part. If the responsible official chooses to complete an ongoing planning process under the provisions of the prior planning regulation, but chooses to allow for an objection rather than an administrative appeal, the objection process in subpart B of this part shall apply. When the responsible official chooses to conform an ongoing planning process to this part, public notice must be made (§ 219.16(a)(5)). An objection process may be chosen only if the public is provided the opportunity to comment on a proposed plan, plan amendment, or

plan revision, and associated environmental analysis.

(c) *Plans developed, amended, or revised under a prior planning regulation.* This part supersedes any prior planning regulation. No obligations remain from any prior planning regulation, except those that are specifically included in a unit's existing plan. Existing plans will remain in effect until revised. This part does not compel a change to any existing plan, except as required in § 219.12(c)(1). None of the requirements of this part apply to projects or activities on units with plans developed or revised under a prior planning rule until the plan is revised under this part, except that projects or activities on such units must comply with the consistency requirement of § 219.15 with respect to any amendments that are developed and approved pursuant to this part.

[77 FR 21260, Apr. 9, 2012, as amended at 77 FR 44145, July 27, 2012]

### § 219.18 Severability.

In the event that any specific provision of this part is deemed by a court to be invalid, the remaining provisions shall remain in effect.

### § 219.19 Definitions.

Definitions of the special terms used in this subpart are set out as follows.

*Alaska Native Corporation.* One of the regional, urban, and village native corporations formed under the Alaska Native Claims Settlement Act of 1971.

*Assessment.* For the purposes of this subpart, an assessment is the identification and evaluation of existing information to support land management planning. Assessments are not decisionmaking documents, but provide current information on select topics relevant to the plan area, in the context of the broader landscape.

*Best management practices for water quality (BMPs).* Methods, measures, or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

*Candidate species.* (1) For U.S. Fish and Wildlife Service candidate species, a species for which the U.S. Fish and Wildlife Service possesses sufficient information on vulnerability and threats to support a proposal to list as endangered or threatened, but for which no proposed rule has yet been published by the U.S. Fish and Wildlife Service.

(2) For National Marine Fisheries Service candidate species, a species that is:

(i) The subject of a petition to list and for which the National Marine Fisheries Service has determined that listing may be warranted, pursuant to section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1533(b)(3)(A)), or

(ii) Not the subject of a petition but for which the National Marine Fisheries Service has announced in the FEDERAL REGISTER the initiation of a status review.

*Collaboration or collaborative process.* A structured manner in which a collection of people with diverse interests share knowledge, ideas, and resources while working together in an inclusive and cooperative manner toward a common purpose. Collaboration, in the context of this part, falls within the full spectrum of public engagement described in the Council on Environmental Quality's publication of October 2007: Collaboration in NEPA—A Handbook for NEPA Practitioners.

*Connectivity.* Ecological conditions that exist at several spatial and temporal scales that provide landscape linkages that permit the exchange of flow, sediments, and nutrients; the daily and seasonal movements of animals within home ranges; the dispersal and genetic interchange between populations; and the long-distance range shifts of species, such as in response to climate change.

*Conservation.* The protection, preservation, management, or restoration of natural environments, ecological communities, and species.

*Conserve.* For purposes of § 219.9, to protect, preserve, manage, or restore natural environments and ecological communities to potentially avoid federally listing of proposed and candidate species.

*Culmination of mean annual increment of growth*. See mean annual increment of growth.

*Designated area*. An area or feature identified and managed to maintain its unique special character or purpose. Some categories of designated areas may be designated only by statute and some categories may be established administratively in the land management planning process or by other administrative processes of the Federal executive branch. Examples of statutorily designated areas are national heritage areas, national recreational areas, national scenic trails, wild and scenic rivers, wilderness areas, and wilderness study areas. Examples of administratively designated areas are experimental forests, research natural areas, scenic byways, botanical areas, and significant caves.

*Disturbance*. Any relatively discrete event in time that disrupts ecosystem, watershed, community, or species population structure and/or function and changes resources, substrate availability, or the physical environment.

*Disturbance regime*. A description of the characteristic types of disturbance on a given landscape; the frequency, severity, and size distribution of these characteristic disturbance types; and their interactions.

*Ecological conditions*. The biological and physical environment that can affect the diversity of plant and animal communities, the persistence of native species, and the productive capacity of ecological systems. Ecological conditions include habitat and other influences on species and the environment. Examples of ecological conditions include the abundance and distribution of aquatic and terrestrial habitats, connectivity, roads and other structural developments, human uses, and invasive species.

*Ecological integrity*. The quality or condition of an ecosystem when its dominant ecological characteristics (for example, composition, structure, function, connectivity, and species composition and diversity) occur within the natural range of variation and can withstand and recover from most perturbations imposed by natural environmental dynamics or human influence.

*Ecological sustainability*. See sustainability.

*Ecological system*. See ecosystem.

*Economic sustainability*. See sustainability.

*Ecosystem*. A spatially explicit, relatively homogeneous unit of the Earth that includes all interacting organisms and elements of the abiotic environment within its boundaries. An ecosystem is commonly described in terms of its:

(1) Composition. The biological elements within the different levels of biological organization, from genes and species to communities and ecosystems.

(2) Structure. The organization and physical arrangement of biological elements such as, snags and down woody debris, vertical and horizontal distribution of vegetation, stream habitat complexity, landscape pattern, and connectivity.

(3) Function. Ecological processes that sustain composition and structure, such as energy flow, nutrient cycling and retention, soil development and retention, predation and herbivory, and natural disturbances such as wind, fire, and floods.

(4) Connectivity. (see connectivity above).

*Ecosystem diversity*. The variety and relative extent of ecosystems.

*Ecosystem services*. Benefits people obtain from ecosystems, including:

(1) *Provisioning services*, such as clean air and fresh water, energy, fuel, forage, fiber, and minerals;

(2) *Regulating services*, such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation;

(3) *Supporting services*, such as pollination, seed dispersal, soil formation, and nutrient cycling; and

(4) *Cultural services*, such as educational, aesthetic, spiritual and cultural heritage values, recreational experiences, and tourism opportunities.

*Environmental assessment (EA)*. See definition in § 219.62.

*Environmental document*. For the purposes of this part: an environmental assessment, environmental impact statement, finding of no significant impact,

categorical exclusion, and notice of intent to prepare an environmental impact statement.

*Environmental impact statement (EIS).* See definition in § 219.62.

*Even-aged stand.* A stand of trees composed of a single age class.

*Federally recognized Indian Tribe.* An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

*Focal species.* A small subset of species whose status permits inference to the integrity of the larger ecological system to which it belongs and provides meaningful information regarding the effectiveness of the plan in maintaining or restoring the ecological conditions to maintain the diversity of plant and animal communities in the plan area. Focal species would be commonly selected on the basis of their functional role in ecosystems.

*Forest land.* Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for nonforest uses. Lands developed for nonforest use include areas for crops, improved pasture, residential or administrative areas, improved roads of any width and adjoining road clearing, and power line clearings of any width.

*Geographic area.* A spatially contiguous land area identified within the planning area. A geographic area may overlap with a management area.

*Inherent capability of the plan area.* The ecological capacity or ecological potential of an area characterized by the interrelationship of its physical elements, its climatic regime, and natural disturbances.

*Integrated resource management.* Multiple use management that recognizes the interdependence of ecological resources and is based on the need for integrated consideration of ecological, social, and economic factors.

*Landscape.* A defined area irrespective of ownership or other artificial boundaries, such as a spatial mosaic of terrestrial and aquatic ecosystems, landforms, and plant communities, repeated in similar form throughout such a defined area.

*Maintain.* In reference to an ecological condition: To keep in existence or continuance of the desired ecological condition in terms of its desired composition, structure, and processes. Depending upon the circumstance, ecological conditions may be maintained by active or passive management or both.

*Management area.* A land area identified within the planning area that has the same set of applicable plan components. A management area does not have to be spatially contiguous.

*Management system.* For purposes of this subpart, a timber management system including even-aged management and uneven-aged management.

*Mean annual increment of growth and culmination of mean annual increment of growth.* Mean annual increment of growth is the total increment of increase of volume of a stand (standing crop plus thinnings) up to a given age divided by that age. Culmination of mean annual increment of growth is the age in the growth cycle of an even-aged stand at which the average annual rate of increase of volume is at a maximum. In land management plans, mean annual increment is expressed in cubic measure and is based on the expected growth of stands, according to intensities and utilization guidelines in the plan.

*Monitoring.* A systematic process of collecting information to evaluate effects of actions or changes in conditions or relationships.

*Multiple use.* The management of all the various renewable surface resources of the NFS so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that

will give the greatest dollar return or the greatest unit output, consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531).

*National Forest System.* See definition in § 219.62.

*Native knowledge.* A way of knowing or understanding the world, including traditional ecological and social knowledge of the environment derived from multiple generations of indigenous peoples' interactions, observations, and experiences with their ecological systems. Native knowledge is place-based and culture-based knowledge in which people learn to live in and adapt to their own environment through interactions, observations, and experiences with their ecological system. This knowledge is generally not solely gained, developed by, or retained by individuals, but is rather accumulated over successive generations and is expressed through oral traditions, ceremonies, stories, dances, songs, art, and other means within a cultural context.

*Native species.* An organism that was historically or is present in a particular ecosystem as a result of natural migratory or evolutionary processes; and not as a result of an accidental or deliberate introduction into that ecosystem. An organism's presence and evolution (adaptation) in an area are determined by climate, soil, and other biotic and abiotic factors.

*Newspaper(s) of record.* See definition in § 219.62.

*Objection.* See definition in § 219.62.

*Online.* See definition in § 219.62.

*Participation.* Activities that include a wide range of public involvement tools and processes, such as collaboration, public meetings, open houses, workshops, and comment periods.

*Persistence.* Continued existence.

*Plan area.* The NFS lands covered by a plan.

*Plan or land management plan.* A document or set of documents that provide management direction for an administrative unit of the NFS developed under the requirements of this part or a prior planning rule.

*Plant and animal community.* A naturally occurring assemblage of plant and animal species living within a defined area or habitat.

*Productivity.* The capacity of NFS lands and their ecological systems to provide the various renewable resources in certain amounts in perpetuity. For the purposes of this subpart, productivity is an ecological term, not an economic term.

*Project.* An organized effort to achieve an outcome on NFS lands identified by location, tasks, outputs, effects, times, and responsibilities for execution.

*Proposed Species.* Any species of fish, wildlife, or plant that is proposed by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service in the FEDERAL REGISTER to be listed under Section 4 of the Endangered Species Act.

*Recovery.* For the purposes of this subpart, and with respect to threatened or endangered species: The improvement in the status of a listed species to the point at which listing as federally endangered or threatened is no longer appropriate.

*Recreation.* See Sustainable recreation.

*Recreation opportunity.* An opportunity to participate in a specific recreation activity in a particular recreation setting to enjoy desired recreation experiences and other benefits that accrue. Recreation opportunities include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air.

*Recreation setting.* The social, managerial, and physical attributes of a place that, when combined, provide a distinct set of recreation opportunities. The Forest Service uses the recreation opportunity spectrum to define recreation settings and categorize them into six distinct classes: primitive, semi-primitive non-motorized, semi-primitive motorized, roaded natural, rural, and urban.

*Responsible official.* See definition in § 219.62.

*Restoration.* The process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and

aquatic ecosystems sustainability, resilience, and health under current and future conditions.

*Restore*. To renew by the process of restoration (see restoration).

*Riparian Areas*. Three-dimensional ecotones of interaction that include terrestrial and aquatic ecosystems that extend down into the groundwater, up above the canopy, outward across the floodplain, up the near-slopes that drain to the water, laterally into the terrestrial ecosystem, and along the water course at variable widths.

*Riparian management zone*. Portions of a watershed where riparian-dependent resources receive primary emphasis, and for which plans include plan components to maintain or restore riparian functions and ecological functions.

*Risk*. A combination of the likelihood that a negative outcome will occur and the severity of the subsequent negative consequences.

*Scenic character*. A combination of the physical, biological, and cultural images that gives an area its scenic identity and contributes to its sense of place. Scenic character provides a frame of reference from which to determine scenic attractiveness and to measure scenic integrity.

*Social sustainability*. See sustainability.

*Sole source aquifer*. Underground water supply designated by the Environmental Protection Agency (EPA) as the ''sole or principle'' source of drinking water for an area as established under section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

*Source water protection areas*. The area delineated by a State or Tribe for a public water system (PWS) or including numerous PWSs, whether the source is ground water or surface water or both, as part of a State or tribal source water assessment and protection program (SWAP) approved by the Environmental Protection Agency under section 1453 of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

*Stressors*. For the purposes of this subpart: Factors that may directly or indirectly degrade or impair ecosystem composition, structure or ecological process in a manner that may impair its ecological integrity, such as an invasive species, loss of connectivity, or the disruption of a natural disturbance regime.

*Sustainability*. The capability to meet the needs of the present generation without compromising the ability of future generations to meet their needs. For purposes of this part, ''ecological sustainability'' refers to the capability of ecosystems to maintain ecological integrity; ''economic sustainability'' refers to the capability of society to produce and consume or otherwise benefit from goods and services including contributions to jobs and market and nonmarket benefits; and ''social sustainability'' refers to the capability of society to support the network of relationships, traditions, culture, and activities that connect people to the land and to one another, and support vibrant communities.

*Sustainable recreation*. The set of recreation settings and opportunities on the National Forest System that is ecologically, economically, and socially sustainable for present and future generations.

*Timber harvest*. The removal of trees for wood fiber use and other multiple-use purposes.

*Timber production*. The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

*Viable population*. A population of a species that continues to persist over the long term with sufficient distribution to be resilient and adaptable to stressors and likely future environments.

*Watershed*. A region or land area drained by a single stream, river, or drainage network; a drainage basin.

*Watershed condition*. The state of a watershed based on physical and biogeochemical characteristics and processes.

*Wild and scenic river*. A river designated by Congress as part of the National Wild and Scenic Rivers System that was established in the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 (note), 1271–1287).

*Wilderness*. Any area of land designated by Congress as part of the National Wilderness Preservation System

that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

[77 FR 21260, Apr. 9, 2012, as amended at 77 FR 44145, July 27, 2012]

## Subpart B—Pre-Decisional Administrative Review Process

### § 219.50 Purpose and scope.

This subpart establishes a pre-decisional administrative review (hereinafter referred to as objection) process for plans, plan amendments, or plan revisions. This process gives an individual or entity an opportunity for an independent Forest Service review and resolution of issues before the approval of a plan, plan amendment, or plan revision. This subpart identifies who may file objections to a plan, plan amendment, or plan revision; the responsibilities of the participants in an objection; and the procedures that apply to the review of the objection.

### § 219.51 Plans, plan amendments, or plan revisions not subject to objection.

(a) A plan, plan amendment, or plan revision is not subject to objection when the responsible official receives no substantive formal comments (§ 219.62) on that proposal during the opportunities for public comment (§ 219.53(a)).

(b) Plans, plan amendments, or plan revisions proposed by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment are not subject to the procedures set forth in this section. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

(c) A plan, plan amendment, or plan revision is not subject to objection under this subpart if another administrative review process is used consistent with § 219.59.

(d) When a plan, plan amendment, or plan revision is not subject to objection under this subpart, the responsible official shall include an explanation with the signed decision document.

### § 219.52 Giving notice of a plan, plan amendment, or plan revision subject to objection before approval.

(a) The responsible official shall disclose during the NEPA scoping process and in the appropriate NEPA documents that the proposed plan, plan amendment, or plan revision is subject to the objection procedures in this subpart. This disclosure is in addition to the public notice that begins the objection filing period, as required at § 219.16. When a responsible official chooses to use the objection process of this subpart for a plan, plan amendment, or plan revision process initiated before the effective date of this rule, notice that the objection process will be used must be given prior to an opportunity to provide substantive formal comment on a proposed plan, plan amendment, or revision and associated environmental analysis.

(b) The responsible official shall make available the public notice for the beginning of the objection period for a plan, plan amendment, or plan revision (§ 219.16(a)(3)) to those who have requested the environmental documents or are eligible to file an objection consistent with § 219.53.

(c) The content of the public notice for the beginning of the objection period for a plan, plan amendment, or plan revision before approval (§ 219.16(a)(3)) must:

(1) Inform the public of the availability of the plan, plan amendment, or plan revision, the appropriate final environmental documents, the draft plan decision document, and any relevant assessment or monitoring evaluation report; the commencement of the objection filing period under 36 CFR part 219 Subpart B; and the process for objecting. The documents in this paragraph will be made available online at the time of public notice.

(2) Include the name of the plan, plan amendment, or plan revision, the name and title of the responsible official, and instructions on how to obtain a copy of the appropriate final environmental documents; the draft plan decision document; and the plan, plan amendment, or plan revision.

(3) Include the name and address of the reviewing officer with whom an objection is to be filed. The notice must

specify a street, postal, fax, and email address; the acceptable format(s) for objections filed electronically; and the reviewing officer's office business hours for those filing hand-delivered objections.

(4) Include a statement that objections will be accepted only from those who have previously submitted substantive formal comments specific to the proposed plan, plan amendment, or plan revision during any opportunity for public comment as provided in subpart A.

(5) Include a statement that the publication date of the public notice in the applicable newspaper of record (or the FEDERAL REGISTER, if the responsible official is the Chief) is the exclusive means for calculating the time to file an objection (§ 219.56).

(6) Include a statement that an objection, including attachments, must be filed with the appropriate reviewing officer (§ 219.62) within 60 days, if an environmental impact statement has been prepared, otherwise within 45 days of the date of publication of the public notice for the objection process.

(7) Include a statement describing the minimum content requirements of an objection (§ 219.54(c)).

### § 219.53 Who may file an objection.

(a) Individuals and entities who have submitted substantive formal comments related to a plan, plan amendment, or plan revision during the opportunities for public comment as provided in subpart A during the planning process for that decision may file an objection. Objections must be based on previously submitted substantive formal comments attributed to the objector unless the objection concerns an issue that arose after the opportunities for formal comment. The burden is on the objector to demonstrate compliance with requirements for objection. Objections that do not meet the requirements of this paragraph may not be accepted; however, objections not accepted must be documented in the planning record.

(b) Formal comments received from an authorized representative(s) of an entity are considered those of the entity only. Individual members of that entity do not meet objection eligibility requirements solely based on membership in an entity. A member or an individual must submit substantive formal comments independently to be eligible to file an objection in an individual capacity.

(c) When an objection lists multiple individuals or entities, each individual or entity must meet the requirements of paragraph (a) of this section. Individuals or entities listed on an objection that do not meet eligibility requirements may not be considered objectors, although an objection must be accepted (if not otherwise set aside for review under § 219.55) if at least one listed individual or entity meets the eligibility requirements.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees may not be on official duty nor use government property or equipment in the preparation or filing of an objection. Further, employees may not include information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)).

### § 219.54 Filing an objection.

(a) All objections must be filed, in writing, with the reviewing officer for the plan. All objections must be open to public inspection during the objection process.

(b) Including documents by reference is not allowed, except for the following list of items that may be referenced by including the name, date, page number (where applicable), and relevant section of the cited document. All other documents or Web links to those documents, or both must be included with the objection, if referenced in the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service Directive System documents and land management plans or other published Forest Service documents.

(3) Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection.

(4) Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

(c) At a minimum, an objection must include the following:

(1) The objector's name and address (§ 219.62), along with a telephone number or email address if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection (§ 219.62). Verification of the identity of the lead objector if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or the parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If applicable, the objector should identify how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy; and

(7) A statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment (§ 219.53(a)).

### § 219.55 Objections set aside from review.

(a) The reviewing officer shall set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (§ 219.56);

(2) The proposed plan, plan amendment, or plan revision is not subject to the objection procedures of this subpart pursuant to §§ 219.51 and 219.59;

(3) The individual or entity did not submit substantive formal comments (§ 219.53) during opportunities for public comment on the proposed decision (§ 219.16(a)(1) and (a)(2));

(4) None of the issues included in the objection is based on previously submitted substantive formal comments unless one or more of those issues arose after the opportunities for formal comment;

(5) The objection does not provide sufficient information as required by § 219.54(c);

(6) The objector withdraws the objection in writing;

(7) The objector's identity is not provided or cannot be determined from the signature (written or electronically scanned), and a reasonable means of contact is not provided (§ 219.54(c)); or

(8) The objection is illegible for any reason and a legible copy cannot easily be obtained.

(b) When an objection includes an issue that is not based on previously submitted substantive formal comments and did not arise after the opportunities for formal comment, that issue will be set aside and not reviewed. Other issues raised in the objection that meet the requirements of this subpart will be reviewed.

(c) The reviewing officer shall give written notice to the objector and the responsible official when an objection or part of an objection is set aside from review and shall state the reasons for not reviewing the objection in whole or part. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented in the planning record.

### § 219.56 Objection time periods and process.

(a) *Time to file an objection.* For a new plan, plan amendment, or plan revision for which an environmental impact statement (EIS) is prepared, written objections, including any attachments, must be filed within 60 days following the publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52). For an amendment for which an EIS is not prepared, the time to file an objection is within 45 days. It

is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays in the time zone of the reviewing officer. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m. for objections filed by electronic means such as email or facsimile machine).

(2) The day after publication of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the first day of the objection filing period.

(3) The publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the exclusive means for calculating the time to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* The objector is responsible for filing the objection in a timely manner. Timeliness must be determined by one of the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing date;

(2) The electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

(d) *Extensions.* Time extensions for filing are not permitted except as provided at paragraph (b)(1) of this section.

(e) *Reviewing officer role and responsibilities.* The reviewing officer is the U.S. Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart. The reviewing officer is a line officer at the next higher administrative level above the responsible official; except that:

(1) For a plan amendment, that next higher-level line officer may delegate the reviewing officer authority and responsibility to a line officer at the same administrative level as the responsible official. Any plan amendment delegation of reviewing officer responsibilities must be made prior to the public notification of an objection filing period (§ 219.52).

(2) For an objection or part of an objection specific to the identification of species of conservation concern, the regional forester who identified the species of conservation concern for the plan area may not be the reviewing officer. The Chief may choose to act as the reviewing officer or may delegate the reviewing officer authority to a line officer at the same administrative level as the regional forester. The reviewing officer for the plan will convey any such objections or parts thereof to the appropriate line officer.

(f) *Notice of objections filed.* Within 10 days after the close of the objection period, the responsible official shall publish a notice of all objections in the applicable newspaper of record and post the notice online.

(g) *Response to objections.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 90 days of the end of the objection-filing period. The reviewing officer has the discretion to extend the time when it is determined to be necessary to provide adequate response to objections or to participate in discussions with the parties. The reviewing officer must notify all parties (lead objectors and interested persons) in writing of any extensions.

### § 219.57 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer must allow other interested persons to participate in such meetings. An interested person must file a request to participate in an objection within 10 days after publication of the notice of objection by the responsible

official (§ 219.56(f)). The responsible official shall be a participant in all meetings involving the reviewing officer, objectors, and interested persons. During meetings with objectors and interested persons, the reviewing officer may choose to use alternative dispute resolution methods to resolve objections. All meetings are open to observation by the public.

(b) *Response to objections.* (1) The reviewing officer must render a written response to the objection(s) within 90 days of the close of the objection-filing period, unless the allowable time is extended as provided at § 219.56(g). A written response must set forth the reasons for the response but need not be a point-by-point response, and may contain instructions to the responsible official. In cases involving more than one objection to a plan, plan amendment, or plan revision, the reviewing officer may consolidate objections and issue one or more responses. The response must be sent to the objecting party(ies) by certified mail, return receipt requested, and posted online.

(2) The reviewing officer's review of and response to the objection(s) is limited to only those issues and concerns submitted in the objection(s).

(3) The response of the reviewing officer will be the final decision of the U.S. Department of Agriculture on the objection.

### § 219.58 Timing of a plan, plan amendment, or plan revision decision.

(a) The responsible official may not issue a decision document concerning a plan, plan amendment, or plan revision subject to the provisions of this subpart until the reviewing officer has responded in writing to all objections.

(b) A decision by the responsible official approving a plan, plan amendment, or plan revision must be consistent with the reviewing officer's response to objections.

(c) When no objection is filed within the allotted filing period, the reviewing officer must notify the responsible official. The responsible official's approval of the plan, plan amendment, or plan revision in a plan decision document consistent with § 219.14, may occur on, but not before, the fifth business day following the end of the objection-filing period.

### § 219.59 Use of other administrative review processes.

(a) Where the Forest Service is a participant in a multi-federal agency effort that would otherwise be subject to objection under this subpart, the responsible official may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the responsible official for the Forest Service must have agreement with the responsible official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort. When such an agreement is reached, the responsible official for the Forest Service shall ensure public notice required in § 219.52 sets forth which administrative review procedure is to be used.

(b) When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this subpart. When a plan amendment applies to all future projects or activities, the objection process established in this subpart applies only to the plan amendment decision; the review process of 36 CFR part 215 or part 218 would apply to the project or activity part of the decision.

### § 219.60 Secretary's authority.

Nothing in this subpart restricts the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of NFS lands.

### § 219.61 Information collection requirements.

This subpart specifies the information that objectors must give in an objection to a plan, plan amendment, or plan revision (§ 219.54(c)). As such, this subpart contains information collection requirements as defined in 5 CFR part 1320 and have been approved by

the Office of Management and Budget and assigned control number 0596–0158.

**§ 219.62 Definitions.**

Definitions of the special terms used in this subpart are set out as follows.

*Address*. An individual's or entity's current mailing address used for postal service or other delivery services. An email address is not sufficient.

*Decision memo*. A concise written record of the responsible official's decision to implement an action that is categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA), where the action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment, and does not give rise to extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

*Environmental assessment (EA)*. A public document that provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact, aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

*Environmental impact statement (EIS)*. A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1508.11; 36 CFR 220).

*Formal comments*. See substantive formal comments.

*Lead objector*. For an objection submitted with multiple individuals, multiple entities, or combination of individuals and entities listed, the individual or entity identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

*Line officer*. A Forest Service official who serves in a direct line of command from the Chief.

*Name*. The first and last name of an individual or the name of an entity. An electronic username is insufficient for identification of an individual or entity.

*National Forest System*. The National Forest System includes national forests, national grasslands, and the National Tallgrass Prairie.

*Newspaper(s) of record*. The newspaper(s) of record is (are) the principal newspaper(s) of general circulation annually identified and published in the FEDERAL REGISTER by each regional forester to be used for publishing notices as required by 36 CFR 215.5. The newspaper(s) of record for projects in a plan area is (are) the newspaper(s) of record for notices related to planning.

*Objection*. The written document filed with a reviewing officer by an individual or entity seeking pre-decisional administrative review of a plan, plan amendment, or plan revision.

*Objection period*. The allotted filing period following publication of a public notice in the applicable newspaper of record (or the FEDERAL REGISTER, if the responsible official is the Chief) of the availability of the appropriate environmental documents and draft decision document, including a plan, plan amendment, or plan revision during which an objection may be filed with the reviewing officer.

*Objection process*. Those procedures established for pre-decisional administrative review of a plan, plan amendment, or plan revision.

*Objector*. An individual or entity who meets the requirements of § 219.53, and files an objection that meets the requirements of §§ 219.54 and 219.56.

*Online*. Refers to the appropriate Forest Service Web site or future electronic equivalent.

*Responsible official*. The official with the authority and responsibility to oversee the planning process and to approve a plan, plan amendment, and plan revision.

*Reviewing officer*. The USDA or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart.

*Substantive formal comments*. Written comments submitted to, or oral comments recorded by, the responsible official or his designee during an opportunity for public participation provided during the planning process (§§ 219.4

and 219.16), and attributed to the individual or entity providing them. Comments are considered substantive when they are within the scope of the proposal, are specific to the proposal, have a direct relationship to the proposal, and include supporting reasons for the responsible official to consider.

## PART 220—NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

Sec.
220.1 Purpose and scope.
220.2 Applicability.
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220.4 General requirements.
220.5 Environmental impact statement and record of decision.
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220.7 Environmental assessment and decision notice.

AUTHORITY: 42 U.S.C. 4321 *et seq.;* E. O. 11514; 40 CFR parts 1500–1508; 7 CFR part 1b.

SOURCE: 73 FR 43093, July 24, 2008, unless otherwise noted.

### § 220.1 Purpose and scope.

(a) *Purpose.* This part establishes Forest Service, U.S. Department of Agriculture (USDA) procedures for compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500 through 1508).

(b) *Scope.* This part supplements and does not lessen the applicability of the CEQ regulations, and is to be used in conjunction with the CEQ regulations and USDA regulations at 7 CFR part 1b.

### § 220.2 Applicability.

This part applies to all organizational elements of the Forest Service. Consistent with 40 CFR 1500.3, no trivial violation of this part shall give rise to any independent cause of action.

### § 220.3 Definitions.

The following definitions supplement, by adding to, the terms defined at 40 CFR parts 1500–1508.

*Adaptive management.* A system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or re-evaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.

*Decision document.* A record of decision, decision notice or decision memo.

*Decision memo.* A concise written record of the responsible official's decision to implement an action categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA).

*Decision notice.* A concise written record of the responsible official's decision when an EA and finding of no significant impact (FONSI) have been prepared.

*Environmentally preferable alternative.* The environmentally preferable alternative is the alternative that will best promote the national environmental policy as expressed in NEPA's section 101 (42 U.S.C. 4321). Ordinarily, the environmentally preferable alternative is that which causes the least harm to the biological and physical environment; it also is the alternative which best protects and preserves historic, cultural, and natural resources. In some situations, there may be more than one environmentally preferable alternative.

*Reasonably foreseeable future actions.* Those Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals. Identified proposals for Forest Service actions are described in § 220.4(a)(1).

*Responsible official.* The Agency employee who has the authority to make and implement a decision on a proposed action.

*Schedule of proposed actions (SOPA).* A Forest Service document that informs the public about those proposed and ongoing Forest Service actions for which a record of decision, decision notice or decision memo would be or has been prepared. The SOPA also identifies a contact for additional information on any proposed actions.

**§ 220.4 General requirements.**

(a) *Proposed actions subject to the NEPA requirements.* As required by 42 U.S.C. 4321 *et seq.*, a Forest Service proposal is subject to the NEPA requirements when all of the following apply:

(1) The Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (*see* 40 CFR 1508.23);

(2) The proposed action is subject to Forest Service control and responsibility (*see* 40 CFR 1508.18);

(3) The proposed action would cause effects on the natural and physical environment and the relationship of people with that environment (*see* 40 CFR 1508.14); and

(4) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)).

(b) *Emergency responses.* When the responsible official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation in accordance with the provisions in §§ 220.5, 220.6, and 220.7 of this part, then the following provisions apply.

(1) The responsible official may take actions necessary to control the immediate impacts of the emergency and are urgently needed to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

(2) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section, and such actions are not likely to have significant environmental impacts, the responsible official shall document that determination in an EA and FONSI prepared in accord with these regulations. If the responsible official finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or an EA and FONSI, the responsible official shall consult with the Washington Office about alternative arrangements for NEPA compliance. The Chief or Associate Chief of the Forest Service may grant emergency alternative arrangements under NEPA for environmental assessments, findings of no significant impact and categorical exclusions (FSM 1950.41a). Consultation with the Washington Office shall be coordinated through the appropriate regional office.

(3) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section and such actions are likely to have significant environmental impacts, then the responsible official shall consult with CEQ, through the appropriate regional office and the Washington Office, about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

(c) *Agency decisionmaking.* For each Forest Service proposal (§ 220.4(a)), the responsible official shall coordinate and integrate NEPA review and relevant environmental documents with agency decisionmaking by:

(1) Completing the environmental document review before making a decision on the proposal;

(2) Considering environmental documents, public and agency comments (if any) on those documents, and agency responses to those comments;

(3) Including environmental documents, comments, and responses in the administrative record;

(4) Considering the alternatives analyzed in environmental document(s) before rendering a decision on the proposal; and

(5) Making a decision encompassed within the range of alternatives analyzed in the environmental documents.

(d) *Schedule of proposed actions (SOPA).* The responsible official shall ensure the SOPA is updated and notify the public of the availability of the SOPA.

(e) *Scoping (40 CFR 1501.7).* (1) Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (§ 220.6).

(2) Scoping shall be carried out in accordance with the requirements of 40 CFR 1501.7. Because the nature and complexity of a proposed action determine the scope and intensity of analysis, no single scoping technique is required or prescribed.

(3) The SOPA shall not to be used as the sole scoping mechanism for a proposed action.

(f) *Cumulative effects considerations of past actions.* Cumulative effects analysis shall be carried out in accordance with 40 CFR 1508.7 and in accordance with ''The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis'' dated June 24, 2005. The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action. Agencies then look for present effects of past actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the agency has identified those present effects of past actions that warrant consideration, the agency assesses the extent that the effects of the proposal for agency action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents an agency assessment of the cumulative effects of the actions considered (including past, present, and reasonable foreseeable future actions) on the affected environment. With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking. (40 CFR 1508.7)

(g) *Classified information.* To the extent practicable, the responsible official shall segregate any information that has been classified pursuant to Executive order or statute. The responsible official shall maintain the confidentiality of such information in a manner required for the information involved. Such information may not be included in any publicly disclosed documents. If such material cannot be reasonably segregated, or if segregation would leave essentially meaningless material, the responsible official must withhold the entire analysis document from the public; however, the responsible official shall otherwise prepare the analysis documentation in accord with applicable regulations. (40 CFR 1507.3(c))

(h) *Incorporation by reference.* Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document. (40 CFR 1502.21)

(i) *Applicants.* The responsible official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for acceptance of their applications. Upon acceptance of an application as provided by 36 CFR 251.54(g) the responsible official shall initiate the NEPA process.

(j) *Determination of NEPA Adequacy (DNA).* (1) An existing environmental analysis prepared pursuant to NEPA and the Council on Environmental Quality regulations may be used in its entirety for a new proposed action if the Responsible Official determines that the existing NEPA analysis adequately assesses the environmental effects of the proposed action and reasonable alternatives. The responsible official must determine and document that each of the following elements is met:

(i) The new proposed action is substantially the same as a previously analyzed proposed action or alternative analyzed in detail in the existing NEPA analysis.

(ii) The range of alternatives analyzed in the existing NEPA document(s) is appropriate with respect to the new proposed action.

(iii) Any new information or circumstances relevant to environmental concerns would not substantially change the analysis in an existing NEPA document(s).

(iv) The environmental effects that would result from implementation of the new proposed action are similar to those analyzed in the existing NEPA document(s).

(2) A DNA for a new proposed action shall be included in the project record for the new proposed action. Proposed actions undergoing a DNA review shall:

(i) Be included on the SOPA;

(ii) Be subject to scoping;

(iii) Be subject to pre-decisional administrative review, if applicable; and

(iv) Include issuance of a new decision document (decision memo, decision notice, or record of decision) when approved.

[73 FR 43093, July 24, 2008, as amended at 85 FR 73630, Nov. 19, 2020]

### § 220.5 Environmental impact statement and record of decision.

(a) *Classes of actions normally requiring environmental impact statements*—(1) *Class 1:* Proposals to carry out or to approve aerial application of chemical pesticides on an operational basis. Examples include but are not limited to:

(i) Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

(ii) Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

(iii) Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

(2) *Class 2:* Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area. Examples include but are not limited to:

(i) Constructing roads and harvesting timber in an inventoried roadless area where the proposed road and harvest units impact a substantial part of the inventoried roadless area.

(ii) Constructing or reconstructing water reservoir facilities in a potential wilderness area where flow regimens may be substantially altered.

(iii) Approving a plan of operations for a mine that would cause considerable surface disturbance in a potential wilderness area.

(b) *Notice of intent.* Normally, a notice of intent to prepare an EIS shall be published in the FEDERAL REGISTER as soon as practicable after deciding that an EIS will be prepared. Where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent may be published at a reasonable time in advance of preparation of the draft statement. A notice must meet the requirements of 40 CFR 1508.22, and in addition, include the following:

(1) Title of the responsible official(s);

(2) Any permits or licenses required to implement the proposed action and the issuing authority;

(3) Lead, joint lead, or cooperating agencies if identified; and

(4) Address(es) to which comments may be sent.

(c) *Withdrawal notice.* A withdrawal notice must be published in the FEDERAL REGISTER if, after publication of the notice of intent or notice of availability, an EIS is no longer necessary. A withdrawal notice must refer to the date and FEDERAL REGISTER page number of the previously published notice(s).

(d) *Environmental impact statement format and content.* The responsible official may use any EIS format and design as long as the statement is in accord with 40 CFR 1502.10.

(e) *Alternative(s).* The EIS shall document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed.

The following procedures are available to the responsible official to develop and analyze alternatives:

(1) The responsible official may modify the proposed action and alternative(s) under consideration prior to issuing a draft EIS. In such cases, the responsible official may consider the incremental changes as alternatives considered. The documentation of these incremental changes to a proposed action or alternatives shall be included or incorporated by reference in accord with 40 CFR 1502.21.

(2) The proposed action and one or more alternatives to the proposed action may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EIS must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official during implementation whether the action is having its intended effect.

(f) *Circulating and filing draft and final environmental impact statements.* (1) The draft and final EISs shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (*see* 40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 ''Filing requirements,'' 40 CFR 1506.10 ''Timing of agency action,'' and 40 CFR 1502.19 ''Circulation of the environmental impact statement'' shall only apply to the last draft and final EIS and not apply to material produced prior to the draft EIS or between the draft and final EIS which are filed with EPA.

(3) When the responsible official determines that an extension of the review period on a draft EIS is appropriate, notice shall be given in the same manner used for inviting comments on the draft.

(g) *Distribution of the record of decision.* The responsible official shall notify interested or affected parties of the availability of the record of decision as soon as practical after signing.

**§ 220.6 Categorical exclusions.**

(a) *General.* A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:

(1) The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or

(2) The proposed action is within a category listed in § 220.6(d) and (e).

(b) *Resource conditions.* (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

(i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;

(ii) Flood plains, wetlands, or municipal watersheds;

(iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;

(iv) Inventoried roadless area or potential wilderness area;

(v) Research natural areas;

(vi) American Indians and Alaska Native religious or cultural sites; and

(vii) Archaeological sites, or historic properties or areas.

(2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

(c) *Scoping.* If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may

have a significant environmental effect, prepare an EIS.

(d) *Categories of actions for which a project or case file and decision memo are not required.* A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:

(1) Orders issued pursuant to 36 CFR part 261—Prohibitions to provide short-term resource protection or to protect public health and safety. Examples include but are not limited to:

(i) Closing a road to protect bighorn sheep during lambing season, and

(ii) Closing an area during a period of extreme fire danger.

(2) Rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. Examples include but are not limited to:

(i) Adjusting special use or recreation fees using an existing formula;

(ii) Proposing a technical or scientific method or procedure for screening effects of emissions on air quality related values in Class I wildernesses;

(iii) Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default;

(iv) Proposing changes in contract terms and conditions or terms and conditions of special use authorizations;

(v) Establishing a servicewide process for responding to offers to exchange land and for agreeing on land values; and

(vi) Establishing procedures for amending or revising forest land and resource management plans.

(3) Repair and maintenance of administrative sites. Examples include but are not limited to:

(i) Mowing lawns at a district office;

(ii) Replacing a roof or storage shed;

(iii) Painting a building; and

(iv) Applying registered pesticides for rodent or vegetation control.

(4) Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:

(i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road;

(ii) Grading a road and clearing the roadside of brush without the use of herbicides;

(iii) Resurfacing a road to its original condition;

(iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and

(v) Surveying, painting, and posting landline boundaries.

(5) Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:

(i) Applying registered herbicides to control poison ivy on infested sites in a campground;

(ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;

(iii) Repaving a parking lot; and

(iv) Applying registered pesticides for rodent or vegetation control.

(6) Acquisition of land or interest in land. Examples include but are not limited to:

(i) Accepting the donation of lands or interests in land to the NFS, and

(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

(7) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include but are not limited to:

(i) Selling or exchanging land pursuant to the Small Tracts Act;

(ii) Exchanging NFS lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices;

(iii) Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity; and

(iv) Exchange of administrative sites involving other than NFS lands.

(8) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide;

(ii) Approving the use of NFS land for apiaries; and

(iii) Approving the gathering of forest products for personal use.

(9) Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) for an existing ski area when such issuance is a purely ministerial action to account for administrative changes, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit. Examples include, but are not limited to:

(i) Issuing a permit to a new owner of ski area improvements within an existing ski area with no changes to the master development plan, including no changes to the facilities or activities for that ski area;

(ii) Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the master development plan, including changes to the facilities or activities; and

(iii) Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the master development plan.

(10) [Reserved]

(11) Issuance of a new special use authorization to replace an existing or expired special use authorization, when such issuance is to account only for administrative changes, such as a change in ownership of authorized improvements or expiration of the current authorization, and where there are no changes to the authorized facilities or increases in the scope or magnitude of authorized activities. The applicant or holder must be in compliance with all the terms and conditions of the existing or expired special use authorization. Subject to the foregoing conditions, examples include but are not limited to:

(i) Issuing a new authorization to replace a powerline facility authorization that is at the end of its term;

(ii) Issuing a new permit to replace an expired permit for a road that continues to be used as access to non-NFS lands; and

(iii) Converting a transitional priority use outfitting and guiding permit to a priority use outfitting and guiding permit.

(12) Issuance of a new authorization or amendment of an existing authorization for recreation special uses that occur on existing roads or trails, in existing facilities, in existing recreation sites, or in areas where such activities are allowed. Subject to the foregoing condition, examples include but are not limited to:

(i) Issuance of an outfitting and guiding permit for mountain biking on NFS trails that are not closed to mountain biking;

(ii) Issuance of a permit to host a competitive motorcycle event;

(iii) Issuance of an outfitting and guiding permit for backcountry skiing;

(iv) Issuance of a permit for a one-time use of existing facilities for other recreational events; and

(v) Issuance of a campground concession permit for an existing campground that has previously been operated by the Forest Service.

(e) *Categories of actions for which a project or case file and decision memo are required.* A supporting record is required and the decision to proceed must be documented in a decision memo for the categories of action in paragraphs (e)(1) through (25) of this section. As a minimum, the project or case file should include any records prepared, such as: The names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo; and a list of the people notified of the decision. If the proposed action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by 36 CFR part 219 satisfies the decision memo requirements of this section.

(1) Construction and reconstruction of trails. Examples include, but are not limited to:

(i) Constructing or reconstructing a trail to a scenic overlook, and

(ii) Reconstructing an existing trail to allow use by handicapped individuals.

(2) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor. Examples include, but are not limited to:

(i) Replacing an underground cable trunk and adding additional phone lines, and

(ii) Reconstructing a power line by replacing poles and wires.

(3) Approval, modification, or continuation of special uses that require less than 20 acres of NFS lands. Subject to the preceding condition, examples include but are not limited to:

(i) Approving the construction of a meteorological sampling site;

(ii) Approving the use of land for a one-time group event;

(iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history;

(iv) Approving the use of land for a utility corridor that crosses a national forest;

(v) Approving the installation of a driveway or other facilities incidental to use of a private residence; and

(vi) Approving new or additional communication facilities, associated improvements, or communication uses at a site already identified as available for these purposes.

(4) [Reserved]

(5) Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides or result in vegetation type conversion. Examples include, but are not limited to:

(i) Planting seedlings of superior trees in a progeny test site to evaluate genetic worth, and

(ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.

(6) Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include, but are not limited to:

(i) Girdling trees to create snags;

(ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand;

(iii) Prescribed burning to control understory hardwoods in stands of southern pine; and

(iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.

(7) Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include, but are not limited to:

(i) Reconstructing a gabion with stone from a nearby source;

(ii) Adding brush to lake fish beds; and

(iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.

(8) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads. Examples include, but are not limited to:

(i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes;

(ii) Gathering geophysical data using shot hole, vibroseis, or surface charge methods;

(iii) Trenching to obtain evidence of mineralization;

(iv) Clearing vegetation for sight paths or from areas used for investigation or support facilities;

(v) Redesigning or rearranging surface facilities within an approved site;

(vi) Approving interim and final site restoration measures; and

(vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of ⅓ mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.

(9) Implementation or modification of minor management practices to improve allotment condition or animal distribution when an allotment management plan is not yet in place. Examples include, but are not limited to:

(i) Rebuilding a fence to improve animal distribution;

(ii) Adding a stock watering facility to an existing water line; and

(iii) Spot seeding native species of grass or applying lime to maintain forage condition.

(10) [Reserved]

(11) Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

(i) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;

(ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(iii) Shall be completed within 3 years following a wildland fire.

(12) Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, and

(ii) Harvest of fire-damaged trees.

(14) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and

(ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

(15) [Reserved]

(16) Land management plans, plan amendments, and plan revisions developed in accordance with 36 CFR part 219 *et seq.* that provide broad guidance and information for project and activity decisionmaking in a NFS unit. Proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments, are outside the scope of this category and shall be considered separately under Forest Service NEPA procedures.

(17) Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following:

(i) One mile of new road construction;

(ii) One mile of road reconstruction;

(iii) Three miles of individual or co-located pipelines and/or utilities disturbance; or

(iv) Four drill sites.

(18) Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but

not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled. Examples include but are not limited to:

(i) Repairing an existing water control structure that is no longer functioning properly with minimal dredging, excavation, or placement of fill, and does not involve releasing hazardous substances;

(ii) Installing a newly-designed structure that replaces an existing culvert to improve aquatic organism passage and prevent resource and property damage where the road or trail maintenance level does not change;

(iii) Removing a culvert and installing a bridge to improve aquatic and/or terrestrial organism passage or prevent resource or property damage where the road or trail maintenance level does not change; and

(iv) Removing a small earthen and rock fill dam with a low hazard potential classification that is no longer needed.

(19) Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes. Examples include but are not limited to:

(i) Removing an unstable debris jam on a river following a flood event and relocating it back in the floodplain and stream channel to restore water flow and local bank stability;

(ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete, culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and

(iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

(20) Activities that restore, rehabilitate, or stabilize lands occupied by roads and trails, including unauthorized roads and trails and National Forest System roads and National Forest System trails, to a more natural condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainage-ways, or other activities that would restore site productivity and reduce environmental impacts. Examples include but are not limited to:

(i) Decommissioning a road to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and culverts to reestablish natural drainage patterns;

(ii) Restoring a trail to a natural state by reestablishing natural drainage patterns, stabilizing slopes, reestablishing vegetation, and installing water bars; and

(iii) Installing boulders, logs, and berms on a road segment to promote naturally regenerated grass, shrub, and tree growth.

(21) Construction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing administrative site, as that term is defined in section 502(1) of Public Law 109–54 (119 Stat. 559; 16 U.S.C. 580d note). Examples include but are not limited to:

(i) Relocating an administrative facility to another existing administrative site;

(ii) Construction, reconstruction, or expansion of an office, a warehouse, a lab, a greenhouse, or a fire-fighting facility;

(iii) Surface or underground installation or decommissioning of water or waste disposal system infrastructure;

(iv) Disposal of an administrative building; and

(v) Construction or reconstruction of communications infrastructure.

(22) Construction, reconstruction, decommissioning, or disposal of buildings, infrastructure, or improvements at an existing recreation site, including infrastructure or improvements that are adjacent or connected to an existing recreation site and provide access or utilities for that site. Recreation sites include but are not limited to campgrounds and camping areas, picnic areas, day use areas, fishing sites, interpretive sites, visitor centers, trailheads, ski areas, and observation sites. Activities within this category are intended to apply to facilities located at recreation sites managed by the Forest Service and those managed by concessioners under a special use authorization. Examples include but are not limited to:

(i) Constructing, reconstructing, or expanding a toilet or shower facility;

(ii) Constructing or reconstructing a fishing pier, wildlife viewing platform, dock, or other constructed feature at a recreation site;

(iii) Installing or reconstructing a water or waste disposal system;

(iv) Constructing or reconstructing campsites;

(v) Disposal of facilities at a recreation site;

(vi) Constructing or reconstructing a boat landing;

(vii) Replacing a chair lift at a ski area;

(viii) Constructing or reconstructing a parking area or trailhead; and

(ix) Reconstructing or expanding a recreation rental cabin.

(23) Road management activities on up to 8 miles of NFS roads and associated parking areas. Activities under this category cannot include construction or realignment. Examples include but are not limited to:

(i) Rehabilitating an NFS road or parking area where management activities go beyond repair and maintenance;

(ii) Shoulder-widening or other safety improvements within the right-of-way for an NFS road; and

(iii) Replacing a bridge along an NFS road.

(24) Construction and realignment of up to 2 miles of NFS roads and associated parking areas. Examples include but are not limited to:

(i) Constructing an NFS road to improve access to a trailhead or parking area;

(ii) Rerouting an NFS road to minimize resource impacts; and

(iii) Improving or upgrading the surface of an NFS road to expand its capacity.

(25) Forest and grassland management activities with a primary purpose of meeting restoration objectives or increasing resilience. Activities to improve ecosystem health, resilience, and other watershed and habitat conditions may not exceed 2,800 acres.

(i) Activities to meet restoration and resilience objectives may include, but are not limited to:

(A) Stream restoration, aquatic organism passage rehabilitation, or erosion control;

(B) Invasive species control and reestablishment of native species;

(C) Prescribed burning;

(D) Reforestation;

(E) Road and/or trail decommissioning (system and non-system);

(F) Pruning;

(G) Vegetation thinning; and

(H) Timber harvesting.

(ii) The following requirements or limitations apply to this category:

(A) Projects shall be developed or refined through a collaborative process that includes multiple interested persons representing diverse interests;

(B) Vegetation thinning or timber harvesting activities shall be designed to achieve ecological restoration objectives, but shall not include salvage harvesting as defined in Agency policy; and

(C) Construction and reconstruction of permanent roads is limited to 0.5 miles. Construction of temporary roads is limited to 2.5 miles, and all temporary roads shall be decommissioned no later than 3 years after the date the project is completed. Projects may include repair and maintenance of NFS roads and trails to prevent or address resource impacts; repair and maintenance of NFS roads and trails is not subject to the above mileage limits.

(f) *Decision memos.* The responsible official shall notify interested or affected parties of the availability of the decision memo as soon as practical after signing. While sections may be combined or rearranged in the interest of clarity and brevity, decision memos must include the following content:

(1) A heading, which must identify:

(i) Title of document: Decision Memo;

(ii) Agency and administrative unit;

(iii) Title of the proposed action; and

(iv) Location of the proposed action, including administrative unit, county, and State.

(2) Decision to be implemented and the reasons for categorically excluding the proposed action including:

(i) The category of the proposed action;

(ii) The rationale for using the category and, if more than one category could have been used, why the specific category was chosen;

(iii) A finding that no extraordinary circumstances exist;

(3) Any interested and affected agencies, organizations, and persons contacted;

(4) Findings required by other laws such as, but not limited to findings of consistency with the forest land and resource management plan as required by the National Forest Management Act; or a public interest determination (36 CFR 254.3(c));

(5) The date when the responsible official intends to implement the decision and any conditions related to implementation;

(6) Whether the decision is subject to review or appeal, the applicable regulations, and when and where to file a request for review or appeal;

(7) Name, address, and phone number of a contact person who can supply further information about the decision; and

(8) The responsible official's signature and date when the decision is made.

[73 FR 43093, July 24, 2008, as amended at 78 FR 56163, Sept. 12, 2013; 85 FR 73631, Nov. 19, 2020]

## § 220.7 Environmental assessment and decision notice.

(a) *Environmental assessment.* An environmental assessment (EA) shall be prepared for proposals as described in § 220.4(a) that are not categorically excluded from documentation (§ 220.6) and for which the need of an EIS has not been determined (§ 220.5). An EA may be prepared in any format useful to facilitate planning, decisionmaking, and public disclosure as long as the requirements of paragraph (b) of this section are met. The EA may incorporate by reference information that is reasonably available to the public.

(b) *An EA must include the following:*

(1) Need for the proposal. The EA must briefly describe the need for the project.

(2) Proposed action and alternative(s). The EA shall briefly describe the proposed action and alternative(s) that meet the need for action. No specific number of alternatives is required or prescribed.

(i) When there are no unresolved conflicts concerning alternative uses of available resources (NEPA, section 102(2)(E)), the EA need only analyze the proposed action and proceed without consideration of additional alternatives.

(ii) The EA may document consideration of a no-action alternative through the effects analysis by contrasting the impacts of the proposed action and any alternative(s) with the current condition and expected future condition if the proposed action were not implemented.

(iii) The description of the proposal and alternative(s) may include a brief description of modifications and incremental design features developed through the analysis process to develop the alternatives considered. The documentation of these incremental changes to a proposed action or alternatives may be incorporated by reference in accord with 40 CFR 1502.21.

(iv) The proposed action and one or more alternatives to the proposed action may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project

implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EA must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official whether the action is having its intended effect.

(3) Environmental Impacts of the Proposed Action and Alternative(s). The EA:

(i) Shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s), to determine whether to prepare either an EIS or a FONSI (40 CFR 1508.9);

(ii) Shall disclose the environmental effects of any adaptive management adjustments;

(iii) Shall describe the impacts of the proposed action and any alternatives in terms of context and intensity as described in the definition of ''significantly'' at 40 CFR 1508.27;

(iv) May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately; and

(v) May incorporate by reference data, inventories, other information and analyses.

(4) Agencies and Persons Consulted.

(c) *Decision notice*. If an EA and FONSI have been prepared, the responsible official must document a decision to proceed with an action in a decision notice unless law or regulation requires another form of decision documentation (40 CFR 1508.13). A decision notice must document the conclusions drawn and the decision(s) made based on the supporting record, including the EA and FONSI. A decision notice must include:

(1) A heading, which identifies the:

(i) Title of document;

(ii) Agency and administrative unit;

(iii) Title of the project; and

(iv) Location of the action, including county and State.

(2) Decision and rationale;

(3) Brief summary of public involvement;

(4) A statement incorporating by reference the EA and FONSI if not combined with the decision notice;

(5) Findings required by other laws and regulations applicable to the decision at the time of decision;

(6) Expected implementation date;

(7) Administrative review or appeal opportunities and, when such opportunities exist, a citation to the applicable regulations and directions on when and where to file a request for review or an appeal;

(8) Contact information, including the name, address, and phone number of a contact person who can supply additional information; and

(9) Responsible Official's signature, and the date the notice is signed.

(d) *Notification*. The responsible official shall notify interested and affected parties of the availability of the EA, FONSI and decision notice, as soon as practicable after the decision notice is signed.

## PART 221—TIMBER MANAGEMENT PLANNING

AUTHORITY: 30 Stat. 34, 44 Stat. 242; 16 U.S.C. 475, 616.

### § 221.3 Disposal of national forest timber according to management plans.

(a) Management plans for national forest timber resources shall be prepared and revised, as needed, for working circles or other practicable units of national forest. Such plans shall:

(1) Be designed to aid in providing a continuous supply of national forest timber for the use and necessities of the citizens of the United States.

(2) Be based on the principle of sustained yield, with due consideration to the condition of the area and the timber stands covered by the plan.

(3) Provide, so far as feasible, an even flow of national forest timber in order to facilitate the stabilization of communities and of opportunities for employment.

(4) Provide for coordination of timber production and harvesting with other uses of national forest land in accordance with the principles of multiple use management.

(5) Establish the allowable cutting rate which is the maximum amount of timber which may be cut from the national forest lands within the unit by years or other periods.

(6) Be approved by the Chief, Forest Service, unless authority for such approval shall be delegated to subordinates by the Chief.

(b) When necessary to promote better utilization of national forest timber or to facilitate protection and management of the national forests, a management plan may include provisions for requirements of purchasers for processing the timber to at least a stated degree within the working circle, or within a stated area, and, when appropriate, by machinery of a stated type; and agreements for cutting in accordance with the plan may so require.

[13 FR 7711, Dec. 14, 1948, as amended at 28 FR 723, Jan. 26, 1963; 34 FR 743, Jan. 17, 1969]

# PART 222—RANGE MANAGEMENT

## Subpart A—Grazing and Livestock Use on the National Forest System

Sec.
222.1 Authority and definitions.
222.2 Management of the range environment.
222.3 Issuance of grazing and livestock use permits.
222.4 Changes in grazing permits.
222.6 Compensation for permittees' interest in authorized permanent improvements.
222.7 Cooperation in management.
222.8 Cooperation in control of estray or unbranded livestock, animal diseases, noxious farm weeds, and use of pesticides.
222.9 Range improvements.
222.10 Range betterment fund.
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AUTHORITY: 7 U.S.C. 1010–1012, 5101–5106; 16 U.S.C. 551, 572, 5801; 31 U.S.C. 9701; 43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR 5985).

## Subpart A—Grazing and Livestock Use on the National Forest System

AUTHORITY: 92 Stat. 1803, as amended (43 U.S.C. 1901), 85 Stat. 649, as amended (16 U.S.C. 1331–1340); sec. 1, 30 Stat. 35, as amended (18 U.S.C. 551); sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011).

EFFECTIVE DATE NOTE: At 87 FR 35103, June 9, 2022, the authority citation to subpart A was revised, effective Aug. 8, 2022. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 92 Stat. 1803, as amended (43 U.S.C. 1901), 85 Stat. 649, as amended (16 U.S.C. 1331–1340); sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011).

SOURCE: 42 FR 56732, Oct. 28, 1977, unless otherwise noted.

### § 222.1 Authority and definitions.

(a) *Authority*. The Chief, Forest Service, shall develop, administer and protect the range resources and permit

and regulate the grazing use of all kinds and classes of livestock on all National Forest System lands and on other lands under Forest Service control. He may redelegate this authority.

(b) *Definitions.* (1) An *allotment* is a designated area of land available for livestock grazing.

(2) An *allotment management plan* is a document that specifies the program of action designated to reach a given set of objectives. It is prepared in consultation with the permittee(s) involved and:

(i) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained yield, economic, and other needs and objectives as determined for the lands, involved; and

(ii) Describes the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(iii) Contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief, Forest Service, consistent with applicable law.

(3) *Base property* is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit.

(4) *Cancel* means action taken to permanently invalidate a term grazing permit in whole or in part.

(5) A *grazing permit* is any document authorizing livestock to use National Forest System or other lands under Forest Service control for the purpose of livestock production including:

(i) *Temporary grazing permits* for grazing livestock temporarily and without priority for reissuance.

(ii) *Term permits* for up to 10 years with priority for renewal at the end of the term.

(6) *Land subject to commercial livestock grazing* means National Forest System lands within established allotments.

(7) *Lands within National Forest in the 16 contiguous western States* means lands designated as National Forest within the boundaries of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming (National Grasslands are excluded).

(8) *Livestock* means animals of any kind kept or raised for use or pleasure.

(9) *Livestock use permit* means a permit issued for not to exceed one year where the primary use is for other than grazing livestock.

(10) *Modify* means to revise the terms and conditions of an issued permit.

(11) *National Forest System lands,* are the National Forests, National Grasslands, Land Utilization Projects, and other Federal lands for which the Forest Service has administrative jurisdiction.

(12) *On-and-off grazing permits* are permits with specific provisions on range only part of which is National Forest System lands or other lands under Forest Service control.

(13) *On-the-ground expenditure* means payment of direct project costs of implementing an improvement or development, such as survey and design, equipment, labor and material (or contract) costs, and on-the-ground supervision.

(14) *Other lands under Forest Service control* are non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.

(15) *Private land grazing permits* are permits issued to persons who control grazing lands adjacent to National Forest System lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.

(16) *Permittee* means any person who has been issued a grazing permit.

(17) *Permitted livestock* is livestock authorized by a written permit.

(18) *Person* means any individual, partnership, corporation, association, organization, or other private entity, but does not include Government Agencies.

(19) *Range betterment* means rehabilitation, protection and improvement of National Forest System lands to arrest range deterioration and improve forage conditions, fish and wildlife habitat, watershed protection, and livestock production.

(20) *Range betterment fund* means the fund established by title IV, section 401(b)(1), of the Federal Land Policy and Management Act of 1976. This consists of 50 percent of all monies received by the United States as fees for grazing livestock on the National Forests in the 16 contiguous western States.

(21) *Range Improvement* means any activity or program designed to improve production of forage and includes facilities or treatments constructed or installed for the purpose of improving the range resource or the management of livestock and includes the following types:

(i) *Non-structural* which are practices and treatments undertaken to improve range not involving construction of improvements.

(ii) *Structural* which are improvements requiring construction or installation undertaken to improve the range or to facilitate management or to control distribution and movement of livestock.

(A) *Permanent* which are range improvements installed or constructed and become a part of the land such as: dams, ponds, pipelines, wells, fences, trails, seeding, etc.

(B) *Temporary* which are short-lived or portable improvements that can be removed such as: troughs, pumps and electric fences, including improvements at authorized places of habitation such as line camps.

(22) *Suspend* means temporary withholding of a term grazing permit privilege, in whole or in part.

(23) *Term period* means the period for which term permits are issued, the maximum of which is 10 years.

(24) *Transportation livestock* is livestock used as pack and saddle stock for travel on the National Forest System.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, *et seq.*); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

EFFECTIVE DATE NOTE: At 87 FR 35103, June 9, 2022, § 222.1 was amended by revising paragraph (b), effective Aug. 8, 2022. For the convenience of the user, the revised text is set forth as follows:

**§ 222.1 Authority and definitions.**

* * * * *

(b) *Definitions.*

*Allotment* means a designated area of land available for livestock grazing.

*Allotment management plan* means a document that specifies the program of action designated to reach a given set of objectives. It is prepared in consultation with the permittee(s) involved and:

(i) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained yield, economic, and other needs, and objectives as determined for the lands, involved; and

(ii) Describes the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(iii) Contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief, Forest Service, consistent with applicable law.

*Base property* means land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit.

*Cancel* means action taken to permanently invalidate a term grazing permit in whole or in part.

*Grazing permit* means any document authorizing livestock to use National Forest System or other lands under Forest Service control for the purpose of livestock production including:

(i) Temporary grazing permits for grazing livestock temporarily and without priority for reissuance.

(ii) Term permits for up to 10 years with priority for renewal at the end of the term.

*Land subject to commercial livestock grazing* means National Forest System lands within established allotments.

*Lands within the National Forest in the 16 contiguous western States* means lands designated as National Forest within the boundaries of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming (National Grasslands are excluded).

*Livestock* means animals of any kind kept or raised for use or pleasure.

*Livestock use permit* means a permit issued for not to exceed one year where the primary use is for other than grazing livestock.

*Modify* means to revise the terms and conditions of an issued permit.

*National Forest System lands* means the National Forests, National Grasslands, Land Utilization Projects, and other Federal lands for which the Forest Service has administrative jurisdiction.

*Non-permittee* means a person who owns or controls livestock and does not have a grazing permit to graze livestock on National Forest System lands.

*On-and-off grazing permits* means permits with specific provisions on range, only part of which is National Forest System lands or other lands under Forest Service control.

*On-the-ground expenditure* means payment of direct project costs of implementing an improvement or development, such as survey and design, equipment, labor, and material (or contract) costs, and on-the-ground supervision.

*Other lands under Forest Service control* means non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.

*Permittee* means any person who has been issued a grazing permit.

*Permitted livestock* means livestock authorized by a written permit.

*Person* means any individual, partnership, corporation, association, organization, or other private entity, but does not include Government Agencies.

*Private land grazing permits* means permits issued to persons who control grazing lands adjacent to National Forest System lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.

*Range betterment* means rehabilitation, protection, and improvement of National Forest System lands to arrest range deterioration and improve forage conditions, fish and wildlife habitat, watershed protection, and livestock production.

*Range betterment fund* means the fund established by title IV, section 401(b)(1), of the Federal Land Policy and Management Act of 1976. This consists of 50 percent of all monies received by the United States as fees for grazing livestock on the National Forests in the 16 contiguous western States.

*Range improvement* means any activity or program designed to improve production of forage and includes facilities or treatments constructed or installed for the purpose of improving the range resource or the management of livestock and includes the following types:

(i) Non-structural which are practices and treatments undertaken to improve range not involving construction of improvements.

(ii) Structural which are improvements requiring construction or installation undertaken to improve the range or to facilitate management or to control distribution and movement of livestock.

(A) Permanent means range improvements installed or constructed and become a part of the land such as: dams, ponds, pipelines, wells, fences, trails, seeding, etc.

(B) Temporary means short-lived or portable improvements that can be removed such as: troughs, pumps and electric fences, including improvements at authorized places of habitation such as line camps.

*Suspend* means temporary withholding of a term grazing permit privilege, in whole or in part.

*Term period* means the period for which term permits are issued, the maximum of which is 10 years.

*Transportation livestock* means livestock used as pack and saddle stock for travel on the National Forest System.

### § 222.2 Management of the range environment.

(a) Allotments will be designated on the National Forest System and on other lands under Forest Service control where the land is available for grazing. Associated private and other public lands should, but only with the consent of the landowner, lessee, or agency, be considered in such designations to form logical range management units.

(b) Each allotment will be analyzed and with careful and considered consultation and cooperation with the affected permittees, landowners, and grazing advisory boards involved, as well as the State having land within the area covered, and an allotment management plan developed. The plan will then be approved and implemented. The analysis and plan will be updated as needed.

(c) Forage producing National Forest System lands will be managed for livestock grazing and the allotment management plans will be prepared consistent with land management plans.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, *et seq.*); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61346, Oct. 25, 1979; 46 FR 42449, Aug. 21, 1981]

### § 222.3 Issuance of grazing and livestock use permits.

(a) Unless otherwise specified by the Chief, Forest Service, all grazing and

livestock use on National Forest System lands and on other lands under Forest Service control must be authorized by a grazing or livestock use permit.

(b) Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources.

(c) The Chief, Forest Service, is authorized to issue permits for livestock grazing and other use by livestock of the National Forest System and on other lands under Forest Service control as follows:

(1) Grazing permits with priority for renewal may be issued as follows: On National Forests in the 16 contiguous western States 10-year term permits will be issued unless the land is pending disposal, or will be devoted to other uses prior to the end of ten years, or it will be in the best interest of sound land management to specify a shorter term. On National Forest System lands other than National Forests in the 16 contiguous western States, the permit term shall be for periods of 10 years or less. Term grazing permits for periods of 10 years or less in the form of grazing agreements may be issued to cooperative grazing associations or similar organizations incorporated or otherwise established pursuant to State law. Such an agreement will make National Forest System lands and improvements available to the association for grazing in accordance with provisions of the grazing agreement and Forest Service policies. Term permits authorized in this paragraph may be in the form of private land or on-and-off grazing permits where the person is qualified to hold such permits under provisions the Chief may require. Permits issued under this paragraph are subject to the following:

(i) Except as provided for by the Chief, Forest Service, paid term permits will be issued to persons who own livestock to be grazed and such base property as may be required, provided the land is determined to be available for grazing purposes by the Chief, Forest Service, and the capacity exists to graze specified numbers of animals.

(ii) A term permit holder has first priority for receipt of a new permit at the end of the term period provided he has fully complied with the terms and conditions of the expiring permit.

(iii) In order to update terms and conditions, term permits may be cancelled at the end of the calendar year of the midyear of the decade (1985, 1995, etc.), provided they are reissued to the existing permit holder for a new term of 10 years.

(iv) New term permits may be issued to the purchaser of a permittee's permitted livestock and/or base property, provided the permittee waives his term permit to the United States and provided the purchaser is otherwise eligible and qualified.

(v) If the permittee chooses to dispose of all or part of his base property or permitted livestock (not under approved nonuse) but does not choose to waive his term permit, the Forest Supervisor will give written notice that he no longer is qualified to hold a permit, provided he is given up to one year to reestablish his qualifications before cancellation action is final.

(vi) The Chief, Forest Service, shall prescribe provisions and requirements under which term permits will be issued, renewed, and administered, including:

(A) The amount and character of base property and livestock the permit holder shall be required to own.

(B) Specifying the period of the year the base property shall be capable of supporting permitted livestock.

(C) Acquisition of base property and/or permitted livestock.

(D) Conditions for the approval of nonuse of permit for specified periods.

(E) Upper and special limits governing the total number of livestock for which a person is entitled to hold a permit.

(F) Conditions whereby waiver of grazing privileges may be confirmed and new applicants recognized.

(2) Permits with no priority for reissuance, subject to terms and conditions as the Chief, Forest Service, may prescribe, are authorized as follows:

(i) Temporary grazing permits for periods not to exceed one year, and on a charge basis, may be issued:

(A) To allow for use of range while a term grazing permit is held in suspension.

(B) To use forage created by unusually favorable climatic conditions.

(C) To use the forage available when the permit of the normal user's livestock is in nonuse status for reasons of personal convenience.

(D) To allow a person to continue to graze livestock for the remainder of the grazing season where base property has been sold, the permit waived, and a new term permit issued.

(E) To allow grazing use in the event of drought or other emergency of National or Regional scope where such use would not result in permanent resource damage.

(ii) Livestock use permits for not to exceed one year may be issued under terms and conditions prescribed by the Chief, Forest Service, as follows:

(A) Paid permits for transportation livestock to persons engaged in commercial packing, dude ranching, or other commercial enterprises which involve transportation livestock including mining, ranching, and logging, activities.

(B) Paid or free permits for research purposes and administrative studies.

(C) Paid or free permits to trail livestock across National Forest System lands.

(D) Free permits to persons who reside on ranch or agricultural lands within or contiguous to National Forest System lands for not to exceed 10 head of livestock owned or kept and whose products are consumed or whose services are used directly by the family of the resident, and who distinctly need such National Forest System lands to support such animals.

(E) Free permits to campers and travelers for the livestock actually used during the period of occupancy. This may be authorized without written permit.

(F) Paid or free permits for horses, mules, or burros to persons who clearly need National Forest System land to support the management of permitted livestock.

(G) Free permits for horses, mules, or burros to cooperators who clearly need National Forest System land to support research, administration or other work being conducted. This may be authorized without written permit.

(H) Paid permits to holders of grazing permits for breeding animals used to service livestock permitted to graze on lands administered by the Forest Service.

(I) Paid permits or cooperative agreements entered into as a management tool to manipulate revegetation on a given parcel of land.

[42 FR 56732, Oct. 28, 1977, as amended at 43 FR 27532, June 26, 1978; 44 FR 61345, Oct. 25, 1979; 46 FR 42449, Aug. 21, 1981]

### § 222.4 Changes in grazing permits.

(a) The Chief, Forest Service, is authorized to cancel, modify, or suspend grazing and livestock use permits in whole or in part as follows:

(1) Cancel permits where lands grazed under the permit are to be devoted to another public purpose including disposal. In these cases, except in an emergency, no permit shall be cancelled without two years' prior notification.

(2) Cancel the permit in the event the permittee:

(i) Refuses to accept modification of the terms and conditions of an existing permit.

(ii) Refuses or fails to comply with eligibility or qualification requirements.

(iii) Waives his permit back to the United States.

(iv) Fails to restock the allotted range after full extent of approved personal convenience non-use has been exhausted.

(v) Fails to pay grazing fees within established time limits.

(3) Cancel or suspend the permit if the permittee fails to pay grazing fees within established time limit.

(4) Cancel or suspend the permit if the permittee does not comply with provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based.

(5) Cancel or suspend the permit if the permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto.

(6) Cancel or suspend the permit if the permit holder is convicted for failing to comply with Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit.

(7) Modify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs.

(8) Modify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request. One year's notice will be given of such modification, except in cases of emergency.

(b) Association permits or grazing agreements may be canceled for noncompliance with title VI of the Civil Rights Act of 1964 and Department of Agriculture regulation promulgated thereunder.

[42 FR 56732, Oct. 28, 1977, as amended at 46 FR 42449, Aug. 21, 1981]

### § 222.6 Compensation for permittees' interest in authorized permanent improvements.

(a) Whenever a term permit for grazing livestock on National Forest land in the 16 contiguous western States is canceled in whole or in part to devote the lands covered by the permit to another public purpose, including disposal, the permittee shall receive from the United States a reasonable compensation for the adjusted value of his interest in authorized permanent improvements placed or constructed by him on the lands covered by the canceled permit. The adjusted value is to be determined by the Chief, Forest Service. Compensation received shall not exceed the fair market value of the terminated portion of the permittee's interest therein.

(b) In the event a permittee waives his grazing permit in connection with sale of his base property or permitted livestock, he is not entitled to compensation.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, *et seq.*); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

### § 222.7 Cooperation in management.

(a) *Cooperation with local livestock associations*—(1) *Authority*. The Chief, Forest Service, is authorized to recognize, cooperate with, and assist local livestock associations in the management of the livestock and range resources on a single range allotment, associated groups of allotments, or other association-controlled lands on which the members' livestock are permitted to graze.

(2) *Purposes*. These associations will provide the means for the members to:

(i) Manage their permitted livestock and the range resources.

(ii) Meet jointly with Forest officers to discuss and formulate programs for management of their livestock and the range resources.

(iii) Express their wishes through their designated officers or committees.

(iv) Share costs for handling of livestock, construction and maintenance of range improvements or other accepted programs deemed needed for proper management of the permitted livestock and range resources.

(v) Formulate association special rules needed to ensure proper resource management.

(3) *Requirements for recognition*. The requirements for receiving recognition by the Forest Supervisor are:

(i) The members of the association must constitute a majority of the grazing permittees on the range allotment or allotments involved.

(ii) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.

(iii) The officers other than the Secretary and Treasurer must be grazing permittees on the range allotment or allotments involved.

(iv) The association's activities must be governed by a constitution and bylaws acceptable to the Forest Supervisor and approved by him.

(4) *Withdrawing recognition*. The Forest Supervisor may withdraw his recognition of the association whenever:

(i) The majority of the grazing permittees request that the association be dissolved.

(ii) The association becomes inactive, and does not meet in annual or special meetings during a consecutive 2-year period.

(b) *Cooperation with national, State, and county livestock organizations*. The policies and programs of national, State, and county livestock organizations give direction to, and reflect in, the practices of their members. Good working relationships with these groups is conducive to the betterment of range management on both public and private lands. The Chief, Forest Service, will endeavor to establish and maintain close working relationships with National livestock organizations who have an interest in the administration of National Forest System lands, and direct Forest officers to work cooperatively with State and county livestock organizations having similar interests.

(c) *Interagency cooperation*. The Chief, Forest Service, will cooperate with other Federal agencies which have interest in improving range management on public and private lands.

(d) *Cooperation with others*. The Chief, Forest Service, will cooperate with other agencies, institutions, organizations, and individuals who have interest in improvement of range management on public and private lands.

### § 222.8 Cooperation in control of estray or unbranded livestock, animal diseases, noxious farm weeds, and use of pesticides.

(a) Insofar as it involves National Forest System lands and other lands under Forest Service control or the livestock which graze thereupon, the Chief, Forest Service, will cooperate with:

(1) State, county, and Federal agencies in the application and enforcement of all laws and regulations relating to livestock diseases, sanitation and noxious farm weeds.

(2) The Animal and Plant Health Inspection Service and other Federal or State agencies and institutions in surveillance of pesticides spray programs; and

(3) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock to the extent it does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971.

(b) The Chief, Forest Service, will cooperate with county or other local weed control districts in analyzing noxious farm weed problems and developing control programs in areas of which the National Forests and National Grasslands are a part.

(85 Stat. 649 (16 U.S.C. 1331–1340))

### § 222.9 Range improvements.

(a) The Chief, Forest Service, is authorized to install and maintain structural and nonstructural range improvements needed to manage the range resource on National Forest System lands and other lands controlled by the Forest Service.

(b) Such improvements may be constructed or installed and maintained, or work performed by individuals, organizations or agencies other than the Forest Service subject to the following:

(1) All improvements must be authorized by cooperative agreement or memorandum of understanding, the provisions of which become a part of the grazing permit(s).

(2) Title to permanent structural range improvements shall rest in the United States.

(3) Title to temporary structural range improvements may be retained by the Cooperator where no part of the cost for the improvement is borne by the United States.

(4) Title to nonstructural range improvements shall vest in the United States.

(5) Range improvement work performed by a cooperator or permittee on National Forest System lands shall not confer the exclusive right to use the improvement or the land influenced.

(c) A user of the range resource on National Forest System lands and

other lands under Forest Service control may be required by the Chief, Forest Service, to maintain improvements to specified standards.

(d) Grazing fees or the number of animal months charged shall not be adjusted to compensate permittees for range improvement work performed on National Forest System lands: Provided, That, in accordance with section 32(c), title III, Bankhead-Jones Farm Tenant Act, the cost to grazing users in complying with requirements of a grazing permit or agreement may be considered in determining the annual grazing fee on National Grasslands or land utilization projects if it has not been used in establishing the grazing base value.

### § 222.10 Range betterment fund.

In addition to range development which is accomplished through funds from the rangeland management budget line item and the Granger-Thye Act, and deposited and nondeposited cooperative funds, range development may also be accomplished through use of the range betterment fund as follows:

(a) On National Forest land within the 16 contiguous western States, the Chief, Forest Service, shall implement range improvement programs where necessary to arrest range deterioration and improve forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. One-half of the available funds will be expended on the National Forest where derived. The remaining one-half of the fund will be allocated for range rehabilitation, protection and improvements on National Forest lands within the Forest Service Regions where they were derived. During the planning process there will be consultation with grazing permittees who will be affected by the range rehabilitation, protection and improvements, and other interested persons or organizations.

(b) Range betterment funds shall be utilized only for on-the-ground expenditure for range land betterment, including, but not limited to, seeding and reseeding, fence construction, water development, weed and other plant control, and fish and wildlife habitat enhancement within allotments.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, *et seq.*); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

### § 222.11 Grazing advisory boards.

(a) *Establishment.* Persons holding term permits to graze livestock on National Forest System lands with headquarters, office in the 16 contiguous western States having jurisdiction over more than 500,000 acres of land subject to commercial livestock grazing may petition the Forest Supervisor for establishment of a statutory grazing advisory board in accordance with provisions of the Federal Land Policy and Management Act of 1976.

(1) Upon being properly petitioned by a simple majority (more than 50 percent) of term grazing permittees under the jurisdiction of such headquarters office, the Secretary shall establish and maintain at least one grazing advisory board.

(2) The Chief, Forest Service, shall determine the number of such boards, the area to be covered, and the number of advisers on each board.

(3) Processing Petitions. Upon receiving a proper petition from the grazing permittees, the Forest Supervisor will request the Chief, Forest Service, through the Regional Forester, to initiate action to establish grazing advisory boards in accordance with regulations of the Secretary of Agriculture. Grazing advisory boards will comply with the provisions of the Federal Advisory Committee Act.

(b) *Membership.* Grazing advisory boards established under this authority shall consist of members who are National Forest System term permittees under the jurisdiction of a National Forest headquarters office in the 16 contiguous western States, provided board members shall be elected by term grazing permittees in the area covered by the board.

(c) *Elections.* The Forest Supervisor of the headquarters office shall prescribe

and oversee the manner in which permittees are nominated and board members are elected. Nominations will be made by petition with all term grazing permittees under the jurisdiction of such headquarters office being eligible for membership on the board. All members of the board will be elected by secret ballot with each term grazing permittee in the area covered by the board being qualified to vote. No person shall be denied the opportunity to serve as a grazing advisory board member because of race, color, sex, religion, or national origin. No board member shall concurrently serve on another USDA advisory committee. The Forest Supervisor shall determine and announce the results of the election of the members of the board and shall recognize the duly elected board as representing National Forest System term grazing permittees in the areas for which it is established. Board members will be elected to terms not to exceed 2 years.

(d) *Charter and bylaws.* (1) The Forest Supervisor will prepare a charter to be filed with the Department and the Congress as required by Section 9(c) of the Federal Advisory Committee Act.

(2) A duly recognized grazing advisory board may, with the concurrence of a majority of its members and the Forest Supervisor, adopt bylaws to govern its proceedings.

(e) *Function.* The function of grazing advisory boards will be to offer advice and make recommendations concerning the development of allotment management plans and the utilization of range betterment funds.

(f) *Meetings.* The Forest Supervisor shall call at least one meeting of each board annually, and call additional meetings as needed to meet the needs of the permittees and the Forest Service. Each meeting shall be conducted in accordance with an agenda approved by the Forest Supervisor and in the presence of a Forest officer.

(g) *Termination.* (1) Grazing advisory boards established under the Federal Land Policy and Management Act of 1976 shall continue until December 31, 1985, unless terminated earlier.

(2) The Forest Supervisor may withdraw recognition of any board whenever:

(i) A majority of the term grazing permittees for the area which the board represents requests that the board be dissolved.

(ii) The board becomes inactive and does not meet at least once each calendar year.

(86 Stat. 770 (5 U.S.C., App. 1); sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, *et seq.*); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 43 FR 27532, June 26, 1978; 44 FR 61345, Oct. 25, 1979]

## Subpart B—Mediation of Term Grazing Permit Disputes

AUTHORITY: 7 U.S.C. 5101–5106; 16 U.S.C. 472, 551.

SOURCE: 78 FR 33723, June 5, 2013, unless otherwise noted.

### § 222.20 Decisions subject to mediation.

The holder of a term grazing permit issued in a State with a mediation program certified by the U.S. Department of Agriculture may request mediation of a dispute relating to a decision to suspend or cancel the permit as authorized by 36 CFR 222.4(a)(2)(i), (ii), (iv), and (v) and (a)(3) through (6). Any request for mediation must be included in an appeal of the decision to suspend or cancel the permit filed in accordance with 36 CFR part 214.

### § 222.21 Parties.

Only the following may be parties to mediation of a term grazing permit dispute:

(a) A mediator authorized to mediate under a State mediation program certified by the U.S. Department of Agriculture;

(b) The Chief, Forest Service, or other Forest Service employee who made the decision being mediated or his or her designee;

(c) The holder whose term grazing permit is the subject of the decision and who has requested mediation in an appeal filed in accordance with the procedures at 36 CFR part 214;

(d) That holder's creditors, if applicable; and

(e) Legal counsel, if retained. The Forest Service will have legal representation in the mediation only if the holder has legal representation in the mediation.

### § 222.22 Stay of appeal.

If an appellant requests mediation of a decision subject to mediation under § 222.20 in an appeal filed under 36 CFR part 214, the Appeal Deciding Officer shall immediately notify all parties to the appeal that all appeal deadlines are automatically stayed for 45 days to allow for mediation. If a mediated agreement is not reached in 45 days, the Appeal Deciding Officer may extend the automatic stay for another 15 days if there is a reasonable possibility that a mediated agreement can be achieved within that timeframe. If an agreement is not achieved at the end of the 45- or 60-day mediation process, the Appeal Deciding Officer shall immediately notify all parties to the appeal that mediation was unsuccessful, that the stay has expired, and that the time periods and procedures applicable to an appeal under 36 CFR part 214 are reinstated.

### § 222.23 Confidentiality.

Mediation sessions and dispute resolution communications as defined in 5 U.S.C. 571(5) shall be confidential. Any mediation agreement signed by a Forest Service official and the holder of a term grazing permit is subject to public disclosure.

### § 222.24 Records.

Notes taken or factual material shared during mediation sessions shall not be included in the appeal record prepared in accordance with the procedures at 36 CFR part 214.

### § 222.25 Costs.

The Forest Service shall cover only those costs incurred by its own employees in mediation sessions.

### § 222.26 Ex parte communications.

The Chief of the Forest Service or other Forest Service employee who made the decision being mediated, or his or her designee, shall not discuss mediation with the Appeal Deciding Officer, except to request an extension of time or to communicate the results of mediation.

## Subpart C—Grazing Fees

AUTHORITY: 16 U.S.C. 551; 31 U.S.C. 9701; 43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR 5985).

### § 222.50 General procedures.

(a) Fees shall be charged for all livestock grazing or livestock use of National Forest system lands, or other lands under Forest Service control. An exception is livestock authorized free of charge under provisions of § 222.3(c)(2)(ii) (B) through (G).

(b) Guiding establishment of fees are the law and general governmental policy as established by Bureau of the Budget (now, Office of Management and Budget) Circular A–25 of September 23, 1959, which directs that a fair market value be obtained for all services and resources provided the public through establishment of a system of reasonable fee charges, and that the users be afford equitable treatment. This policy precludes a monetary consideration in the fee structure for any permit value that may be capitalized into the permit holder's private ranching operation.

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and occupancy of range by one animal, except for sheep or goats. A full head month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.

(d) No additional charge will be made for the privilege of lambing upon National Forest System lands, or other lands under Forest Service control.

(e) Transportation livestock may be charged for at a special rate, and at a minimum established for such use. Fees for horses, mules, or burros associated with management of permitted

livestock on an allotment, or for research purposes and administrative studies, and authorized on a charge basis, are determined under provisions of paragraph (b) of this section.

(f) The fees for trailing livestock across National Forest System lands will conform with the rates established for other livestock. Where practicable, fees for trailing permitted livestock will be covered in the regular grazing fee and the crossing period covered in the regular grazing period.

(g) All fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use unless otherwise authorized by the Chief, Forest Service.

(h) Unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. The base will be adjusted annually by the same indexes used to adjust the regular fee. This rate will also apply to excess number of livestock grazing by permittees; to livestock grazed outside the permitted grazing season; or to livestock grazed under an unvalidated permit.

(i) Refunds or credits may be allowed under justifiable conditions and circumstances as the Chief, Forest Service, may specify.

(j) The fee year for the purpose of charging grazing fees will be March 1 through the following February.

(k) The data year for the purpose of collecting beef cattle price data for computing indexes will be November 1 through the following October and apply to the following fee year.

[44 FR 24843, Apr. 27, 1979, as amended at 46 FR 42450, Aug. 21, 1981; 53 FR 2984, Feb. 2, 1988]

EFFECTIVE DATE NOTE: At 87 FR 35104, June 9, 2022, § 222.50 was amended by revising paragraph (h), effective Aug. 8, 2022. For the convenience of the user, the revised text is set forth as follows:

**§ 222.50 General procedures.**

* * * * *

(h) The excess and unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. This rate is charged for unauthorized forage or forage in excess of authorized use and is separate from any penalties that may be assessed for a violation of a prohibition issued under 36 CFR part 261 or from an administrative permit action. This rate will apply to, but not be limited to, the following circumstances: excess number of livestock grazed; livestock grazed outside the permitted grazing season; livestock grazed in areas not authorized under a grazing permit and a bill for collection; or livestock grazed without a permit. Per paragraph (a) of this section, a grazing fee shall be charged for each head month of livestock grazing or use. This includes any excess or unauthorized grazing use. The authorized officer may then waive monetary fees for excess or unauthorized grazing use only when all three of the following conditions are met:

(1) The excess or unauthorized use was a result of unforeseen or uncontrollable circumstances on behalf of the permittee or non-permittee, and the livestock associated with such use were removed by the permittee or non-permittee within the timeframe required by the authorized officer;

(2) The forage consumed by the excess or unauthorized use is not significant; and

(3) National Forest System lands have not been damaged significantly by the excess or unauthorized use.

* * * * *

**§ 222.51 National Forests in 16 Western States.**

(a) Grazing fees are established on lands designated National Forests and Land Utilization Projects in the 16 contiguous Western States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. (National Grasslands are excluded, see § 222.52.)

(b) Notwithstanding the provisions of § 222.50, paragraph (b), the calculated grazing fee for 1988 and subsequent grazing fee years represents the economic value of the use of the land to the user and is the product of multiplying the base fair market value of $1.23 by the result of the annual Forage Value Index, added to the sum of the Beef Cattle Price Index minus the Prices Paid Index and divided by 100;

provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per head per month. The indexes used in this formula are as follows:

(1) Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per head month and multiplied by 100;

(2) Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) for November through October (computed by the National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100; and

(3) Prices Paid Index means the following selected components from the National Agricultural Statistics Service ''Annual National Index of Prices Paid by Farmers for Goods and Services'' adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States:

1. Fuels and Energy (14.5);
2. Farm and Motor Supplies (12.0);
3. Autos and Trucks (4.5);
4. Tractors and Self-Propelled Machinery (4.5);
5. Other Machinery (12.0);
6. Building and Fencing Materials (14.5);
7. Interest (6.0);
8. Farm Wage Rates (14.0);
9. Farm Services (18.0).

[44 FR 24843, Apr. 27, 1979, as amended at 53 FR 2984, Feb. 2, 1988]

### § 222.52 National Grasslands.

Grazing fees for National Grasslands will be established under concepts and principles similar to those in § 222.51(b).

[44 FR 24843, Apr. 27, 1979]

### § 222.53 Grazing fees in the East—noncompetitive procedures.

(a) *Scope.* Except as provided in § 222.54 of this subpart, the fee charged for commercial livestock grazing use and occupancy on National Forest System (NFS) lands in the States of New York, Missouri, Vermont, West Virginia, and in the Southern Region shall be determined through noncompetitive, fair market value procedures. These rules do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas. Grazing permits under the noncompetitive fee method in the East are subject to the rules governing grazing permit administration in Subpart A of this part.

(b) *Applicability.* The rules of this section apply to the establishment of grazing fees for existing permittees in the Eastern and Southern Regions on National Forest System lands, including grazing associations in New York and Missouri as of March 1, 1990, to any livestock on-and-off permits defined in Subpart A of this part; and to any allotments advertised for competitive bidding which were not bid on (§ 222.54(h)). Noncompetitive permits vacated or terminated by an existing permittee and any new allotments created after the effective date of this rule shall be offered on a competitive bid basis as specified in § 222.54 of this subpart. As provided in subpart A of this part, holders of term permits have first priority for receipt of a new permit.

(c) *Fee System.* The grazing fee charged under this section shall be based on fair market value, as determined by: Using comparable private grazing lease rates, adjusted for the difference in the costs of grazing comparable private leased lands and National Forest System lands, or by reference to prevailing prices in competitive markets for other Federal or State leased grazing lands that are the same or substantially similar to grazing lands offered or administered by the Forest Service in the East with comparability adjustments as appropriate. Comparable grazing lease rates shall be adjusted for the difference between the total costs of operating on leased grazing lands and the total costs (other

than grazing fee costs) of operating on National Forest System lands.

(1) *Establishing Base Grazing Value.* (i) The Chief of the Forest Service, or an authorized officer to whom such authority has been delegated, shall determine an estimated base market value of grazing use and occupancy on National Forest System lands in the Eastern States for the following designated subregions:

(A) Corn Belt (Illinois, Indiana, Missouri, and Ohio);

(B) Lake States (Michigan, Minnesota, and Wisconsin);

(C) Northeast (Maine, New Hampshire, New York, Pennsylvania, and Vermont);

(D) Appalachia (Kentucky, North Carolina, Tennessee, Virginia, and West Virginia);

(E) Southeast/Delta (Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Texas); and

(F) Florida.

(ii) The Chief or authorized officer shall revise or update estimated market values of grazing use and occupancy, as necessary to respond to significant changes in the agricultural economy in the East, and to ensure that fees represent fair market value.

(iii) The Chief, or an authorized officer to whom authority has been delegated, where sufficient market data exist, may establish the base grazing value for grazing allotments using comparable, local lease rates for private grazing lands.

(2) *Annual Adjustment of Base Grazing Value.* To maintain currency with the private grazing lease market, the respective base grazing value(s) established for grazing permits under this section shall be annually adjusted through a hay price index, by respective subregion. The hay price index means the weighted average selling price of ''other baled hay,'' computed by the National Agricultural Statistics Service of the U.S. Department of Agriculture, by designated State and subregion. This index shall be based on 3–year average hay prices and annually reflect the percentage change in the cost of alternative livestock feed.

(3) *Computation of Annual Grazing Fee*—(i) *Annual Fee Basis.* The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index, less the value of any agency required range improvements.

(ii) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan and allotment management plan. These improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habitat, or outdoor recreation values. Maintenance of range improvements specified in allotment management planning documents or the grazing permit, and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

(4) *Implementation.* The grazing fee formula provided by this section shall be used to calculate fees for the 1990 grazing fee year. Where implementation would raise fees, the increase shall be phased in over a 5–year period. Full fair market value will be reached in 5 years, beginning in 1990.

[55 FR 2650, Jan. 26, 1990]

### § 222.54 Grazing fees in the East—competitive bidding.

(a) *General Procedures*—(1) *Applicability.* The rules of this section apply to grazing fees for any allotment established or vacated on National Forest System lands in the Eastern or Southern Regions, as of February 26, 1990 as well as to grazing fees for existing allotments for such lands that have already been established under competitive procedures as of the date of this rule. Permits offered for competitive

bidding in the East are subject to the rules governing grazing permit administration in subpart A of this part. The rules of this section do not apply to negotiated livestock use permits or permits with on-and-off grazing provisions as authorized in subpart A of this part. Holders of term permits have first priority for receipt of a new term grazing permit in accordance with subpart A of this part. These rules also do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas.

(2) *Allowable Bidders*. Bids for grazing permits shall be accepted from individuals, partnerships, grazing associations (formed after February 26, 1990), joint ventures, corporations, and organizations.

(b) *Establishment of Minimum Bid Price*. Authorized officers shall establish a minimum bid price for each available allotment as described in § 222.53 of this subpart.

(c) *Prospectus*. (1) At such time as allotments are vacated, as new allotments are established, or as existing competitively bid permits expire, the authorized officer shall prepare and advertise a prospectus for those allotments on which grazing will be permitted.

(2) The prospectus shall include the terms and conditions of occupancy and use under the grazing permit to be issued, as well as document existing improvements and their condition. The prospectus shall also disclose the following:

(i) Estimated market value of the forage per head month of grazing use;

(ii) The minimum bid price the agency will accept;

(iii) Any required range improvements; and

(iv) The minimum qualifications that applicants must meet to be eligible for a permit.

(3) Copies of the applicable grazing permit, allotment management planning documents and allotment maintenance requirements, and the latest annual permittee instructions shall be made available to all prospective bidders upon request.

(d) *Submission of bid*. Each applicant shall submit an application for the grazing permit, along with a sealed bid for the grazing fee, and a bid deposit of 10 percent of the total amount of the bid.

(e) *Qualifications and Deposit Refunds*. Upon opening applicants bids, the authorized officer shall determine whether each bidder meets the qualifications to hold a permit as set forth in Subpart A of this part; and shall refund the deposit to any applicant who is not qualified or who does not offer the high bid.

(f) *Permit Issuance*. The authorized officer shall issue the grazing permit to the qualified high bidder, except as provided in paragraphs (f)(1) and (2) of this section. The successful bidder receives the privilege of obtaining or renewing a grazing permit and is billed for the occupancy offered and forage sold.

(1) *Priority for Reissuance*. On allotments where a current permit is expiring and competition has been held on a new grazing permit, the current grazing permittee shall have priority for retaining the permit. Accordingly, an applicant who holds the permit on the allotment under bid, who has a satisfactory record of performance under that permit, and who is not the higher bidder for the future grazing privileges in the specified allotment shall be offered the opportunity to match the high bid and thereby retain the permit. Should there be more than one existing permittee in the allotment under bid, each shall be offered the option of meeting the high bid; if only one current permittee opts to meet the high bid, the remaining allowable grazing use, if any, shall be awarded to the initial high bidder.

(2) *Identical Bids*. In cases of identical bids, the selection of the successful applicant shall be made through a drawing.

(g) *Computation of Successful Bidder's Annual Fee*—(1) *Annual Fee Basis*. The highest bid received shall establish the base grazing value in the initial year of the grazing permit for each allotment offered. The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index for the relevant subregion as described in § 222.53(c)(1), and (c)(3), less the value of any agency required range improvements. This hay price index shall be based on 3-year average hay prices and

annually reflect the percent change in the cost of alternative livestock feed.

(2) *Grazing Fee Credits for Range Improvements*. Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan and allotment management plan. These improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habitat, or outdoor recreation values. Maintenance of range improvements specified in allotment management planning documents or the grazing permit, and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

(h) *No Bids Received*. If qualified sealed bids are not received, the authorized officer reserves the right to conduct an oral auction using the minimum bid price established under paragraph (b) of this section or to establish grazing fees through noncompetitive grazing fee procedures specified in § 222.53 of this subpart.

[55 FR 2651, Jan. 26, 1990]

## Subpart D—Management of Wild Free-Roaming Horses and Burros

AUTHORITY: 7 U.S.C. 1011; 16 U.S.C. 551, 1331–1340; 43 U.S.C. 1901 note.

SOURCE: 45 FR 24135, Apr. 9, 1980, unless otherwise noted. Redesignated at 78 FR 33723, June 5, 2013

### § 222.60 Authority and definitions.

(a) *Authority*. The Chief, Forest Service, shall protect, manage, and control wild free-roaming horses and burros on lands of the National Forest System and shall maintain vigilance for the welfare of wild free-roaming horses and burros that wander or migrate from the National Forest System. If these animals also use lands administered by the Bureau of Land Management as a part of their habitat, the Chief, Forest Service, shall cooperate to the fullest extent with the Department of the Interior through the Bureau of Land Management in administering the animals.

(b) *Definitions*. (1) *Act* means the Act of December 15, 1971 (85 Stat. 649, as amended, 16 U.S.C. 1331–1340).

(2) *Captured animal* means a wild free-roaming horse or burro taken and held in the custody of an authorized officer, his delegate, or agent. This term does not apply to an animal after it is placed in private custody through a Private Maintenance and Care agreement.

(3) *Excess animals* means wild free-roaming horses and burros which have been removed by authorized personnel pursuant to applicable law or which must be removed from an area in order to preserve and maintain a thriving natural ecological balance in coordination with other resources and activities.

(4) *Herd* means one or more stallions and their mares, or jacks and their jennies.

(5) *Humane treatment* means kind and merciful treatment, without causing unnecessary stress or suffering to the animal.

(6) *Inhumane treatment* means causing physical stress to an animal through any harmful action or omission that is not compatible with standard animal husbandry practices; causing or allowing an animal to suffer from a lack of necessary food, water, or shelter; using any equipment, apparatus, or technique during transportation, domestication, or handling that causes undue injury to an animal; or failing to treat or care for a sick or injured animal.

(7) *Lame* means a wild free-roaming horse or burro with malfunctioning muscles, ligaments or limbs that impair freedom of movement.

(8) *Malicious harassment* means any intentional act demonstrating deliberate disregard for the well-being of

wild free-roaming horses and burros and which creates a likelihood of injury or is detrimental to normal behavior pattern of wild free-roaming horses or burros including feeding, watering, resting, and breeding. Such acts include, but are not limited to, unauthorized chasing, pursuing, herding, roping, or attempting to gather wild free-roaming horses or burros. It does not apply to activities conducted by or on behalf of the Forest Service or the Bureau of Land Management in implementation or performance of duties and responsibilities under the Act.

(9) *National Advisory Board* means the Advisory Board as established jointly by the Secretary of Agriculture and the Secretary of the Interior under the provisions of the Act.

(10) *National Forest System* includes the National Forests, National Grasslands, and other Federal lands for which the Forest Service has administrative jurisdiction.

(11) *Old* means a wild free-roaming horse or burro characterized by inability to fend for itself because of age, physical deterioration, suffering or closeness to death.

(12) *Sick* means a wild free-roaming horse or burro with failing health, infirmness, or disease from which there is little chance of recovery.

(13) *Wild free-roaming horses and burros* mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat, but does not include any horse or burro introduced onto the National Forest System on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership. Unbranded, claimed horses and burros for which the claim is found to be erroneous, are also considered as wild and free-roaming if they meet the criteria above.

(14) *Wild-horse and burro range* means an area of National Forest System specifically so designated by the Chief, Forest Service, from wild horse and burro territory, for the purpose of sustaining an existing herd or herds of wild free-roaming horses and burros, provided the range does not exceed known territorial limits and is devoted principally, but not necessarily exclusively, to the welfare of the wild horses and burros, in keeping with the multiple-use management concept for the National Forest System.

(15) *Wild horse and burro territory* means lands of the National Forest System which are identified by the Chief, Forest Service, as lands which were territorial habitat of wild free-roaming horses and/or burros at the time of the passage of the Act.

### § 222.61 Administration of wild free-roaming horses and burros and their environment.

(a) The Chief, Forest Service, shall:

(1) Administer wild free-roaming horses and burros and their progeny on the National Forest System in the areas where they now occur (wild horse and burro territory) to maintain a thriving ecological balance considering them an integral component of the multiple use resources, and regulating their population and accompanying need for forage and habitat in correlation with uses recognized under the Multiple-Use Sustained Yield Act of 1960 (70 Stat. 215; 16 U.S.C. 528–531);

(2) Provide direct administration for the welfare of wild free-roaming horses and burros that are located on the National Forest System by use of the Forest Service organization rather than by the granting of leases and permits for maintenance of these animals to individuals and organizations;

(3) Establish wild horse and burro territories in accordance with the Act and continue recognition of such territories where it is determined that horses and/or burros will be recognized as part of the natural system, and designate areas within these territories as a specific wild horse and burro range in those situations where he determines such designation as especially fitting to meet the purposes of the Act and the Multiple Use Sustained-Yield Act, after consultation with the appropriate State agencies where such range is proposed and with the National Advisory Board;

(4) Analyze each wild horse or burro territory and, based on the analysis, develop and implement a management plan, which analysis and plans will be

updated, whenever needed, as determined by conditions on each territory;

(5) Maintain a current inventory of wild free-roaming horses and burros on each territory to determine whether and where excess animals exists;

(6) Based on paragraphs (a) (4) and (5) of this section, determine appropriate management levels, whether action should be taken to remove excess animals and what actions are appropriate to achieve the removal or destruction of excess animals; and

(7) In making determinations cited in this section, the authorized officer shall consult with the U.S. Fish and Wildlife Service, wildlife agencies in the State, individuals and organizations independent of Federal or State Government recommended by the National Academy of Sciences, and any other individual or organizations determined to have scientific expertise or special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to range management.

### § 222.62 Ownership claims.

(a) Any person claiming ownership under State branding and estray laws of branded or unbranded horses or burros within a wild horse or burro territory or range on the National Forest System where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership with supporting evidence were required to be filed during a claiming period which expired November 15, 1973. Unauthorized privately owned horses or burros entering the National Forest System after November 15, 1973, which become intermingled with wild horses or burros, may be claimed by filing an application with the District Ranger. All authorizations to gather claimed animals shall be in writing in accordance with instructions as the Chief, Forest Service, may prescribe. After such public notice as an authorized officer deems appropriate to inform interested parties, gathering operations may be authorized. The authorization shall provide that the gathering or roundup be consistent with regulations, and will (1) establish a specific reasonable period of time to allow the gathering of claimed animals and (2) stipulate other conditions, including visual observation by Forest Service personnel deemed necessary to ensure humane treatment of associated wild free-roaming horses and burros and to protect other resources involved.

(b) Prior to removal of claimed animals which have been captured from the National Forest System, claimants shall substantiate their claim of ownership in accordance with whatever criteria are cooperatively agreed to between the Forest Service and the State agency administering the State estray laws. In the absence of an agreement, ownership claims shall be substantiated in accordance with State law and subject to approval of the Forest Service.

### § 222.63 Removal of other horses and burros.

Horses and burros not within the definition in § 222.20(b)(13) which are introduced onto Wild Horse and Burro Territories or ranges after December 15, 1971, by accident, negligence, or willful disregard of private ownership, and which do not become intermingled with wild free-roaming horses or burros shall be considered as unauthorized livestock and treated in accordance with provisions in 36 CFR 261.7 and 262.10.

[61 FR 35959, July 9, 1996]

### § 222.64 Use of helicopters, fixed-wing aircraft and motor vehicles.

The Chief, Forest Service, is authorized to use helicopters, fixed-wing aircraft, and motor vehicles in a manner that will ensure humane treatment of wild free-roaming horses and burros as provided by the following paragraphs:

(a) Prior to using helicopters in capture operations and/or using motor vehicles for the purpose of transporting captured animals, a public meeting will be held in the proximity of the territory where the capture operation is proposed.

(b) Helicopters may be used in all phases of the administration of the Act including, but not limited to, inventory, observation, surveillance, and

capture operations. In capture operations, helicopters may be used to locate the animals involved to assist ground crews in moving the animals and for related purposes, such as, to transport personnel and equipment. The condition of the animals shall be continuously observed by the authorized officer and, should signs of harmful stress be noted, the source of stress shall be removed so as to allow recovery. Helicopters may be used in roundups or other capture operations subject to the following procedures.

(1) Helicopters shall be used in such a manner that bands or herds will tend to remain together.

(2) Horses or burros will not be moved at a rate which exceeds limitations set by the authorized officer who shall consider terrain, weather, distance to be traveled, and condition of the animals.

(3) Helicopters shall be used to observe the presence of dangerous areas and may be used to move animals away from hazards during capture operations.

(4) During capture operations, animals shall be moved in such a way as to prevent harmful stress or injury.

(5) The authorized officer shall supervise all helicopter uses as follows:

(i) Have means to communicate with the pilot and be able to direct the use of the helicopter; and

(ii) Be able to observe effects of the use of the helicopters on the well-being of the animals.

(c) Fixed-wing aircraft may be used for inventory, observation, and surveillance purposes necessary in administering the Act. Such use shall be consistent with the Act of September 8, 1959, as amended (18 U.S.C. 41 *et seq.*). Fixed-wing aircraft shall not be used in connection with capture operations except as support vehicles.

(d) Motor vehicles may be used in the administration of the Act except that such vehicles shall not be used for driving or chasing wild horses or burros in capture operations. Motor vehicles may also be used for the purpose of transporting captured animals subject to the following humane procedures.

(1) Such transportation shall comply with appropriate State and Federal laws and regulations applicable to humane transportation of horses and burros.

(2) Vehicles shall be inspected by an authorized officer prior to use to ensure vehicles are in good repair and of adequate rate capacity.

(3) Vehicles shall be carefully operated to ensure that captured animals are transported without undue risk or injury.

(4) Where necessary and practical, animals shall be sorted as to age, temperament, sex, size, and condition so as to limit, to the extent possible, injury due to fighting and trampling.

(5) The authorizing officer shall consider the condition of the animals, weather conditions, type of vehicle, and distance to be traveled when planning for transportation of captured animals.

(6) Unless otherwise approved by the authorized officer, the transportation of wild free-roaming horses and burros shall be limited in sequence, to a maximum of 24 hours in transit followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

### § 222.65 Protection of wild free-roaming horses and burros when they are upon other than the National Forest System or public lands.

Individual animals and herds of wild free-roaming horses and burros will be under the protection of the Chief, Forest Service, even though they may thereafter move to lands of other ownership or jurisdiction as a part of their annual territorial habitat pattern or for other reasons. The Chief will exercise surveillance of these animals through the use of cooperative agreements and as otherwise authorized by law and act immediately through appropriate administrative or criminal and civil judicial procedures to provide them the protective measures of the Act at any time he has cause to believe its provisions are being violated.

### § 222.66 Removal of wild free-roaming horses and burros from private lands.

Owners of land upon which wild free-roaming horses and burros have strayed from the National Forest System may request their removal by calling the nearest office of either the Forest Service or Federal Marshall.

**§ 222.67 Maintenance of wild free-roaming horses and burros on privately-owned lands.**

Owners of land who wish to maintain wild free-roaming horses and burros which have strayed onto their lands from the National Forest System may do so by notifying the nearest office of the Forest Service in a timely fashion and providing such information on a continuing basis as the Chief, Forest Service, may require. Such owners shall protect the wild free-roaming horses and burros on their lands. They may not, in so maintaining these animals, impede their return to National Forest System lands unless authorized by agreement with the Forest Service.

**§ 222.68 Agreements.**

The Chief, Forest Service, may enter into agreements as he deems necessary to further the protection, management, and control of wild free-roaming horses and burros.

**§ 222.69 Relocation and disposal of animals.**

(a) The Chief, Forest Service, shall, when he determines over-population of wild horses and burros exists and removal is required, take immediate necessary action to remove excess animals from that particular territory. Such action shall be taken until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from deterioration associated with over-population.

(b) No person except an authorized Forest Service officer or his agent shall destroy, remove, or relocate any wild free-roaming horse or burro located on the National Forest System.

(c) Wild horses and burros shall be relocated or removed in the following order of priority:

(1) In the most humane manner possible, sick, lame, or old animals shall be destroyed;

(2) Relocate animals to other National Forest System lands which were identified as 1971 wild horse or burro territory, providing suitable habitat exists and relocation of animals will not jeopardize vegetation condition;

(3) Relocate animals to other federally-owned lands which were identified as 1971 wild horse or burro occupied lands, providing suitable habitat exists and relocation of animals will not jeopardize vegetation condition and animals are requested by the appropriate land manager having jurisdiction;

(4) Place animals under private maintenance and care agreements where there is an adoption demand by qualified individuals, groups, or Government agency, and for which there is assurance of humane treatment and care, provided not more than four animals are placed under private maintenance and care agreements per year to any individual, organization, or government agency unless there is a determination expressed otherwise in writing, by an authorized Forest Service Officer; and

(5) Excess animals, for which an adoption demand by qualified applicants does not exist, shall be destroyed in the most humane manner possible, and if several methods are equally humane, select the most cost efficient.

(d) Where excess animals have been placed under private maintenance and care agreements after December 15, 1971, as provided for in paragraph (c)(4) of this section, and animals have been provided humane conditions, treatment, and care, for a period of one year, the Chief, Forest Service, may grant title to not more than four animals per year to each individual, organization, or government agency.

(e) The applicants must make written application for title and/or adoption, must be of legal age in the State in which they reside, and must pay fees for adoption and transportation as follows:

(1) The application must be accompanied by a nonrefundable advance payment of $25 by guaranteed remittance. If custody of a wild, free-roaming horse or burro is granted by the authorized Forest Service officer, the advance payment shall be applied against the adoption fee required to be paid at the time the maintenance and care agreement § 222.29(c)(4) is executed.

(2) The Forest Service shall charge an adoption fee of $125 for each horse and $75 for each burro, except that there shall be no adoption fee for an unweaned offspring under 6 months of age accompanying its mother.

(3) Any transportation costs incurred for the transportation of the animal(s) to the point of pickup must be paid before an approved individual, group, or government agency takes custody of the animal(s).

(f) Humane conditions, treatment, and care must have been provided for no less that one year preceding the filing of the application for title. The conveyance of title shall include a written statement by an authorized officer attesting that the animal is in good condition.

[45 FR 24135, Apr. 9, 1980, as amended at 46 FR 42450, Aug. 21, 1981; 48 FR 25188, June 6, 1983]

### § 222.70 Disposal of carcasses.

Carcasses of animals that have lost their status as wild free-roaming horses or burros may be disposed of in any customary manner acceptable under applicable State sanitary statutes including disposal through a rendering plant.

### § 222.71 Loss of status.

Wild free-roaming horses and burros or their remains shall lose their status under the 1971 Wild Horses and Burros Act.

(a) Upon passage of title pursuant to § 222.29 (d) and (e).

(b) Upon transfer to private maintenance and care pursuant to § 222.29(c)(4) and die of natural causes before passage of title;

(c) Upon destruction by an authorized Forest officer pursuant to § 222.29(c)(5).

(d) Upon death by natural causes or accident on the National Forest System or on private lands where maintained thereon pursuant to § 222.27 and disposal is authorized by a Forest officer; and

(e) Upon destruction or death for purposes of or incident to the program authorized in § 222.20(a).

### § 222.72 Use of non-Forest Service personnel.

The Chief, Forest Service, may authorize the use of non-Forest Service personnel to assist in specific situations of short duration.

### § 222.73 Management coordination.

All management activities by the Chief, Forest Service, shall be carried out in consultation with the appropriate agencies of the State involved. The expert advice of qualified scientists in the fields of biology and ecology shall also be sought in administering wild free-roaming horses and burros. The advice and suggestions of agencies, qualified scientists, and other qualified interest groups shall be made available to the National Advisory Board for their use and consideration. Actions taken in connection with private ownership claims shall be coordinated to the fullest extent possible with the State agency responsible for livestock estray law administration.

### § 222.74 National Advisory Board.

The Chief, Forest Service, shall appoint a representative to attend meetings of the National Advisory Board for Wild Free-Roaming Horses and Burros and to function as prescribed by the Memorandum of Agreement between the Department of the Interior and the Department of Agriculture and the Joint Charter issued by the Secretary of the Interior and the Secretary of Agriculture. Policies and guidelines relative to proposals for the establishment of ranges, adjustments in number, relocation and disposal of animals, and other matters relating generally to the protection, management, and control of wild free-roaming horses and burros shall be presented to the National Advisory Board for recommendations.

### § 222.75 Studies.

The Chief, Forest Service, is authorized and directed to undertake those studies of the habits and habitat of wild free-roaming horses and burros that he may deem necessary. In doing so, he shall consult with the appropriate agencies of the State(s) involved and the National Academy of Sciences.

### § 222.76 Arrest.

Any employee designated by the Chief, Forest Service, shall have the power to arrest without warrant, any person committing in the presence of the employee a violation of the Act and

to take such person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so designated shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act.

# PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER, SPECIAL FOREST PRODUCTS, AND FOREST BOTANICAL PRODUCTS

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SOURCE: 42 FR 28252, June 2, 1977, unless otherwise noted. Redesignated at 49 FR 2760, Jan. 23, 1984.

## Subpart A—General Provisions

### § 223.1 Authority to sell timber.

Trees, portions of trees, and other forest products on National Forest System lands may be sold for the purpose of achieving the policies set forth in the Multiple-Use Sustained-Yield Act of 1960, as amended (74 Stat. 215; 16 U.S.C. 528–531), and the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (88 Stat. 476; as amended, 16 U.S.C. 1600–1614), and the Program thereunder.

### § 223.2 Disposal of timber for administrative use.

Trees, portions of trees, or other forest products in any amount on National Forest System lands may be disposed of for administrative use, by sale or without charge, as may be most advantageous to the United States, subject to the maximum cut fixed in accordance with established policies for management of the National Forests. Such administrative use shall be limited to the following conditions and purposes:

(a) For construction, maintenance or repair of roads, bridges, trails, telephone lines, fences, recreation areas or other improvements of value for the protection or the administration of Federal lands.

(b) For fuel in Federal camps, buildings and recreation areas.

(c) For research and demonstration projects.

(d) For use in disaster relief work conducted by public agencies.

(e) For disposal when removal is desirable to protect or enhance multiple-use values in a particular area.

### § 223.3 Sale of seized material.

Seized material (trees, portions of trees or other forest products cut in trespass from National Forest System lands) may be sold to the highest bidder under specific authorization from the Regional Forester. If advertisement is impractical, sales of material with an appraised value of less than $10,000 will be made on informal bids.

### § 223.4 Exchange of trees or portions of trees.

Trees or portions of trees may be exchanged for land under laws authorizing the exchange of National Forest timber. Cutting of exchange timber must comply with the purposes cited in § 223.1.

(42 Stat. 465, 16 U.S.C 485; 43 Stat. 1215, 16 U.S.C. 516)

### § 223.5 Scope of free use granted to individuals.

(a) Free use may be granted to individuals for firewood for personal use, except that such use may be limited to bona fide settlers, miners, residents

and prospectors living within or immediately adjacent to the National Forest when the available supply is insufficient to meet the total demand. Free use may be granted to such bona fide settlers, miners, residents and prospectors for minerals, for fencing, building, mining, prospecting and domestic purposes.

(Sec. 1, 30 Stat. 35, as amended; 16 U.S.C. 477, 551)

(b) Free use will be granted individuals primarily to aid in the protection and silvicultural improvement of the forests. Except in unusual cases, the material will be restricted to dead, insect-infested, or diseased timber, logging debris, and thinnings. Other material may be granted in unusual cases where its refusal would cause unwarranted hardship. Where limited supply or other conditions justify such action, the free use of green material may be refused.

### § 223.6 Cutting and removal of timber in free-use areas.

Supervisors may designate portions or all of a National Forest as free-use areas where such action is compatible with land management plans and shall give public notice of their action. Within such free-use areas, any dead timber or any green timber previously marked or designated by forest officers may be cut and removed for personal use for domestic purposes. Cutting and removal of timber in free-use areas shall be in accordance with such rules as may be prescribed by the district ranger to prevent fires, minimize damage to uncut trees and other resources, and to avoid confusion among users.

[42 FR 28252, June 2, 1977, as amended at 44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2760, Jan. 23, 1984]

### § 223.7 Permission for free use of timber outside free-use areas.

Similar material may be cut outside of a free-use area without permit in cases of emergency, but the person taking such material shall promptly notify the district ranger. Small quantities of material needed by transients while in the forest may also be taken without permit; subject to such rules as may be prescribed pursuant to § 261.70. In all other cases permits will be required for green material.

### § 223.8 Delegations of authority to approve free use by individuals.

(a) Forest officers whom the supervisor may designate are authorized to grant free use of timber to individuals up to $200 in value in any one fiscal year. Supervisors may grant permits for material not exceeding $5,000 in value. Regional Foresters may approve permits for larger amounts, and in times of emergency may delegate authority to supervisors for not over $10,000 in value. Prior review by the Chief of the Forest Service will be given if the amount involved exceeds $10,000 in value.

(b) Regional Foresters may authorize supervisors to permit the removal of specific classes of material without scaling or measurement.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2760, Jan. 23, 1984, as amended at 71 FR 525, Jan. 4, 2006]

### § 223.9 Free use to owners of certain mining claims.

Free use will be granted to an owner of a mining claim located subsequent to July 23, 1955, or of a mining claim which is otherwise subject to Section 4 of the Act of July 23, 1955 (69 Stat. 367), if at any time said claim owner requires more timber for his mining operations, in connection with that claim, than is available on that claim because of Forest Service timber disposal therefrom subsequent to location of that claim. He will be granted, free of charge, timber from the nearest National Forest land which is ready for harvesting under the applicable management plan, substantially equivalent in kind and quantity to that estimated by the Forest Service to have been cut under Forest Service authorization from the claim subsequent to its location, Forest officers may be delegated authority to grant amounts of timber not in excess of those which these officers are authorized to sell in commercial sales.

(Sec. 4, 69 Stat. 368, 16 U.S.C. 612)

### § 223.10 Free use to Alaskan settlers, miners, residents, and prospectors.

Bona fide settlers, miners, residents, and prospectors for minerals in Alaska may take free of charge green or dried timber from the National Forests in Alaska for personal use but not for sale. Permits will be required for green saw timber. Other material may be taken without permit. The amount of material granted to any one person in 1 year shall not exceed 10,000 board feet of saw timber and 25 cords of wood, or an equivalent volume in other forms. Persons obtaining materials shall, on demand, forward to the supervisor a statement of the quantity taken and the location from which it was removed.

(Sec. 1, 30 Stat. 35, 16 U.S.C. 477)

### § 223.11 Free use to other Federal agencies.

(a) National Forest timber will be granted free of charge to other branches of the Federal Government when authorized by law. Permits may be approved by forest officers for amounts not greater than they are otherwise authorized to sell.

(b) Permits for timber issued hereunder shall be in accordance with the conditions prescribed in § 223.30. The permittee may be required to report to the supervisor the amount of timber, by species, actually cut or may be required to furnish scalers for work under the direction of the forest officers in charge or, if authorized, to provide funds for the employment by the Forest Service of scalers to scale or measure the timber cut. The permittee may be required to dispose of the slash as cutting proceeds, or to employee people to work under the direction of a forest officer in disposing of the slash, or, if authorized, to provide funds for the employment of people for slash disposal under the direction of a forest officer.

(38 Stat. 1100, as amended; 16 U.S.C. 492)

### § 223.12 Permission to cut, damage, or destroy trees without advertisement.

Permission may be granted to cut, damage, or destroy trees, portions of trees, or other forest products on National Forest System lands without advertisement when necessary for the occupancy of a right-of-way or other authorized use of National Forest System land. Payment for timber of merchantable size and quality will be required at its appraised value, but at not less than applicable minimum prices established by Regional Foresters, and payment will be required for young growth timber below merchantable size at its damage appraisal value. Payment will not be required:

(a) For timber necessarily killed or cut in connection with land uses which are of substantial benefit to the National Forests;

(b) For timber necessarily killed or cut and used by the permittee which would have been granted free under other applicable regulations; or

(c) For timber which will be cut by the permittee which the Forest Service retains for sale in log or other product form.

(Sec. 1, 30 Stat. 35, as amended, 16 U.S.C. 551)

### § 223.13 Compliance.

Forest officers authorizing free use shall ensure that such use is in compliance with applicable land management plans and is conducted in a manner which protects National Forest System resource values.

(92 Stat. 1301, Pub. L. 95–465)

### § 223.14 Where timber may be cut.

(a) The cutting of trees, portions of trees or other forest products may be authorized on any National Forest System lands, except for:

(1) Timber reserved by a grantor of land, during the life of such reservation.

(2) Timber reserved from cutting under other regulations.

(3) Timber on unpatented mining claims located prior to July 23, 1955, unless the claimant has executed a waiver pursuant to section 6 of the Act of July 23, 1955 (69 Stat. 367), or unless pursuant to a proceeding under Section 5 of that Act, the claimant has failed to file a verified statement or has failed to establish the validity and effectiveness of his asserted rights.

(4) Timber on lands identified in land management plans as not suited for

timber production, except that salvage sales or sales necessitated to protect other multiple-use values may be made.

(b) The cutting of timber on mining claims shall be conducted in such manner as not to endanger or materially interfere with prospecting, mining or processing operations.

(c) Timber on an unpatented claim to which the United States does not otherwise have disposal rights may be disposed of with the written consent of the claimant, or, in emergencies without the consent of the claimant.

(d) Timber on an unpatented claim may be cut by the claimant only for the actual development of the claim or for uses consistent with the purposes for which the claim was entered. Any severance or removal of timber, other than severance or removal to provide clearance, shall be in accordance with plan of operations required by Part 252 of this chapter, and with sound principles of forest management.

(e) With prior approval by the Regional Forester, timber on lands under option by the United States or on offered lands included in an approved land exchange agreement may be sold. Before the sale is made, a cooperative agreement must be made with the owner of the land authorizing the Forest Service to conduct the sale and providing for return of stumpage receipts to the owner if title to the land is not accepted by the United States.

(f) With prior approval by the Regional Forester, cutting of exchange timber described in § 223.4 may be authorized in advance of the acceptance of title to the non-Federal land offered in exchange.

### § 223.15 Provision of trees, portions of trees, or forest products to Indian tribes for traditional and cultural purposes.

(a) Pursuant to section 8105 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651) [hereinafter the ''2008 Farm Bill''], Regional Foresters or designated Forest Officers may, at their discretion, provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes provided that:

(1) The trees, portions of trees, or forest products are provided to tribal officials on behalf of an Indian tribe for traditional and cultural purposes; and

(2) The trees, portions of trees, or forest products will not be used for commercial purposes.

(b) The following definitions apply to this section:

*Indian tribe.* The term ''Indian tribe'' means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

*Traditional and cultural purpose.* The term ''traditional and cultural purpose,'' with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

*Tribal officials:* The term ''tribal officials'' means elected or duly appointed officials of Indian tribal governments.

(c) Requests for trees, portions of trees, or forest products made under this section must be submitted to the local Forest Service District Ranger's Office(s) in writing. Requests may be made:

(1) Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or

(2) By providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.

(d) Requests for trees, portions of trees, and forest products made under this section must be directed to the appropriate Forest Service District Ranger(s)' Office from which the items are being requested. Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer and, if necessary, describe how the request fits a traditional and cultural purpose. When an Indian tribe requests forest products located on two or more National Forests, authorized tribal officials should

notify each of the affected Forest Service District Ranger's Offices of the requests made on other forests.

(e) Agency Line Officers and managers (who have been authorized by name through official Forest Service correspondence) are authorized to provide trees, portions of trees, and forest products under this section subject to the following limitations:

(1) District Rangers and Forest Officers may provide material not exceeding $25,000 in value in any one fiscal year to an Indian tribe;

(2) Forest Supervisors may provide material not exceeding $50,000 in value in any one fiscal year to an Indian tribe;

(3) Regional Foresters may provide material not exceeding $100,000 in value in any one fiscal year to an Indian tribe; and

(4) The Chief of the Forest Service may provide material exceeding $100,000 in value to an Indian tribe.

(f) A request for trees, portions of trees, or forest products under this section may be conditioned or denied for reasons including, but not limited to the following:

(1) Protecting public health and safety;

(2) Preventing interference with Forest Service and/or commercial operations;

(3) Complying with Federal and State laws and regulations;

(4) Ensuring sustainability; or

(5) Otherwise protecting National Forest System land and resources.

(g) All decisions made under this section must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, all other applicable laws and regulations, and are subject to tribal treaty and other reserved rights and the savings provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. 3057(b)).

[81 FR 65896, Sept. 26, 2016]

## Subpart B—Timber Sale Contracts

CONTRACT CONDITIONS AND PROVISIONS

### § 223.30 Consistency with plans, environmental standards, and other management requirements.

The approving officer will insure that each timber sale contract, permit or other authorized form of National Forest timber disposal is consistent with applicable land and resource management plans and environmental quality standards and includes, as appropriate, requirements for:

(a) Fire protection and suppression;

(b) Protection of residual timber;

(c) Regeneration of timber as may be made necessary by harvesting operations;

(d) Minimizing increases in soil erosion;

(e) Providing favorable conditions of water flow and quality;

(f) Utilization of the timber resource to provide for the optimum practical use of the wood material as may be obtained with available technology, considering opportunities to promote more efficient wood utilization, regional conditions and species characteristics;

(g) Reduction of the likelihood of loss to destructive agencies; and

(h) Minimizing adverse effects on, or providing protection for and enhancing other National Forest resources, uses and improvements.

### § 223.31 Duration of contracts.

Sale contracts shall not exceed 10 years in duration, unless there is a finding by the Chief, Forest Service, that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result.

### § 223.32 Timber sale operating plan.

Sale contracts with a term of 2 years or more shall provide for the filing of an operating plan as soon as practicable after execution of the contract, such plan shall be a part of the contract. The plan of operation shall be general in nature, outlining the expected timing and order of sale development, including such major operations as road construction, felling and

removal of timber, distribution of timber, and contractual requirements for erosion prevention and slash disposal. The plan of operation and revisions thereto shall be subject to concurrence by the Forest Service.

### § 223.33 Redetermination of stumpage rates and deposits.

Sale contracts exceeding 7 years in duration, and those of shorter duration to the extent found desirable by the approving officer, will provide for the redetermination of rates for stumpage and for required deposits at intervals of not more than 5 years, exclusive of any period allowed for the construction of improvements.

### § 223.34 Advance payment.

Sale contracts shall provide that timber and forest products be paid for in advance of cutting, unless the contract authorizes the purchaser to furnish a payment guarantee satisfactory to the Forest Service. Advance payments found to be in excess of amounts due the United States shall be refunded to the current holder of the contract or to successors in interest. (90 Stat. 2959; 16 U.S.C. 472a.)

[43 FR 38008, Aug. 25, 1978. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.35 Performance bond.

Timber sale contracts may require the purchaser to furnish a performance bond for satisfactory compliance with its terms.

### § 223.36 Volume determination.

(a) Timber sale contracts may provide for volume determination by scaling, measuring, weighing, or counting the logs or other products, or by measuring the trees before cutting. If the contract or permit provides for the determination of volume by tree measurement and the timber has been paid for, the marking or otherwise designating of the tree authorizes cutting and removal. Otherwise no timber cut under any contract shall be removed from the place designated until it has been scaled, measured or counted as provided in the timber sale contract, unless such removal is specifically authorized in the contract.

(b) National Forest timber sold on board foot scale shall be scaled by the Scribner Decimal C Log Rule, or if the advertisement and contract or permit so state, by the International ¼-inch log rule or by the International ¼-inch Decimal log rule. National Forest timber may also be sold by the cubic volume rule or by cords, each as used by the Forest Service.

### § 223.37 Revegetation of temporary roads.

Timber sale contracts, permits and other documents authorizing the cutting or removal of timber or forest products shall require the purchaser to treat temporary roads constructed or used thereunder so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

### § 223.38 Standards for road design and construction.

Road construction authorized under timber sale contracts, permits and other documents authorizing the cutting or removal of timber or forest products shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources. If the sale contract provides for road design standards in excess of those needed for the harvest and removal of timber from that sale, including measures to protect adjacent resource values, provision shall be made in the contract for compensating the purchaser for the additional costs, unless the purchaser elects Government construction under section 14(i) of the National Forest Management Act of 1976.

### § 223.39 [Reserved]

### § 223.40 Cancellation for environmental protection or inconsistency with plans.

Timber sale contracts, permits, and other such instruments, authorizing

the harvesting of trees or other forest products, with terms of longer than 2 years, shall provide for cancellation in order to prevent serious environmental damage or when they are significantly inconsistent with land management plans adopted or revised in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended. Such provision shall provide for reasonable compensation to the purchaser for unrecovered costs incurred under the contract and for the difference between the current contract value and the average value of comparable National Forest timber sold during the preceding 6-month period.

### § 223.41 Payment when purchaser elects government road construction.

Each contract having a provision for construction of specified roads with total estimated construction costs of $50,000 or more shall include a provision to ensure that if the purchaser elects government road construction, the purchaser shall pay, in addition to the price paid for the timber or other forest products, an amount equal to the estimated cost of the roads.

[71 FR 11510, Mar. 8, 2006]

### § 223.42 Transfer of effective purchaser credits.

The Forest Service may permit transfer of unused effective purchaser credit earned after December 16, 1975, from one timber sale account to another timber sale account of the same purchaser within the same National Forest, provided the sale contracts provide procedures for the use of purchaser credit. Approval for transfer shall not be granted for amounts needed to satisfy unfulfilled payment obligations or claims for damages due the United States. Purchaser credit transferred under this paragraph is subject to such additional restrictions as may be necessary for its orderly use.

(Pub. L. 94–154, 89 Stat. 823 (16 U.S.C. 535)

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.43 Limitation on amounts of transferred purchaser credit.

(a) The amount of purchaser credit which may be transferred into a given sale shall be limited to the difference between remaining current contract value and the total of:

(1) Remaining base rate value needs,

(2) Salvage sale fund needs plus sale area improvement needs in excess of base rate value needs, and

(3) Total purchaser credit limit on the given sale.

(b) This calculation shall be made as of the date of sale award for sales made on or after January 1, 1978. For sales made prior to January 1, 1978, the calculation shall be made as of December 31, 1977, except that if the amount actually transferred in as of December 31, 1977, exceeds the calculated limit, the actual transfers as of that date shall be the established limit. Purchaser credit earned on a sale and subsequently transferred out may be replaced without regard to the transfer in limit. Sale area improvement needs shall be based on the original sale area betterment plan or revisions thereto approved prior to July 1, 1976. Salvage sale fund needs shall be based on the original salvage sale fund plan.

(Pub. L. 94–154, 89 Stat. 823 (16 U.S.C. 535)

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.44 Collection rights on contracts involved in transfer of purchase credit.

To assure protection of the United States in connection with the implementation of this regulation, contract provisions shall not prevent the Forest Service from carrying out collection rights, authorized by the Federal Claims Collection Act of 1966 (80 Stat. 309), between contracts involved in the transfer of purchaser credit. Such claims against the contract receiving the transferred purchaser credit shall be limited to the amount transferred.

(Pub. L. 94–154, 89 Stat. 823 (16 U.S.C. 535)

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.45 Definitions applicable to transfer of purchaser credit.

As used in §§ 223.42 and 223.43, the term *Purchaser* includes any single individual, corporation, company, firm, partnership, joint venture, or other business entity or the successor in interest of any of the foregoing business entities having timber sale contracts on the same National Forest. The term *National Forest* shall be considered as a unit of the National Forest System, regardless of how it was established, which maintains a separate identity with respect to the distribution of receipts earned thereon to the States and counties. The term *Effective Purchaser Credit* means unused purchaser credit which does not exceed current contract value minus base rate value. The term *base rate value* is the sum of the products of base rates and estimated remaining unscaled (unreported on tree measurement contracts) volumes by species of timber included in a timber sale contract.

(Pub. L. 94–154, 89 Stat. 823 (16 U.S.C. 535)

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.46 Adjustment of contract termination date.

Timber sale contracts may provide for adjustment of the termination date to provide additional time to compensate for delays in road construction and timber removal due to those causes beyond the purchaser's control, which may include but are not limited to acts of God, acts of the public enemy, acts of the Government, labor disputes, fires, insurrections or floods.

### § 223.47 Date of completion of permanent road construction.

(a) The date of completion of permanent road construction obligations as set forth in the Notice of Sale shall be incorporated into the timber sale contract.

(b) This date is applicable to construction by both the Forest Service and the timber purchaser.

(c) The date is not applicable to roads not needed by the purchaser for timber removal.

(d) The date for completion may be revised, if additional time is needed, under guidelines provided by the Chief, Forest Service, including but not limited to (1) default of contractors or (2) design changes, physical changes, or catastrophic damages which necessitate modification of specified road construction work.

(e) If Forest Service failure to perform results in delay in road completion, the termination date shall be adjusted in accordance with the contract term adjustment provisions of the timber sale contract. If there is substantial delay in performance by the Forest Service, the contract shall provide that rates of payment may be redetermined, at the request of the purchaser, in accordance with guidelines established by the Chief, Forest Service.

(f) If the purchaser retains responsibility for road construction, the date of completion for permanent roads may be modified to conform to the approved plan of operation.

### § 223.48 Restrictions on export and substitution of unprocessed timber.

(a) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States and Alaska, awarded before August 20, 1990, shall include provisions implementing the Secretary's timber export and substitution regulations at subpart D of this part in effect prior to that data. Such contracts shall also require purchasers to:

(1) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale including a description of unprocessed timber which is sold, exchanged or otherwise disposed of to another person and a description of the relationship with the other person;

(2) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

(3) Maintain records of all such transactions involving unprocessed timber and to make such records available for inspection and verification by the Forest Service for up to three (3) years after the sale is terminated.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.)*.

(c) The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0021.

[56 FR 65842, Dec. 19, 1991]

**§ 223.49 Downpayments.**

(a) For the purposes of this section, the terms listed in this paragraph shall have the following meaning:

(1) *Total bid value* is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume listed in the contract.

(2) *Bid premium* is the amount in excess of the advertised value that a purchaser bids for timber offered.

(3) *Lump sum timber sales* are premeasured sales where the entire value of the sale is paid in one payment at time of release for cutting.

(4) *Affiliate*. Concerns or individuals are affiliates if directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(b) Timber sale contracts shall include provisions that require purchasers to make a downpayment in cash at the time a timber sale contract is executed, except that a downpayment is not required for stewardship contracts unless the contracting officer determines that a downpayment is needed to ensure the government's financial security.

(c) The minimum downpayment shall be equivalent to 10 percent of the total advertised value of each sale, plus 20 percent of the bid premium, except in those geographic areas where the Chief of the Forest Service determines that it is necessary to increase the amount of the downpayment in order to deter speculation. The amount of the downpayment shall be redetermined when contract rates for timber are redetermined under the terms of the contract for environmental modification; catastrophic damage; market change; or an emergency rate redetermination. For the purpose of recalculating the minimum downpayment, total advertised value shall be replaced with total redetermined value.

(d) A purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until:

(1) On scaled sales, stumpage value representing 25 percent of the total bid value of the sale has been charged and paid for, or the estimated value of unscaled timber is equal to or less than the amount of the downpayment; or

(2) On tree measurement sales, stumpage value representing 25 percent of the total bid value of the sale is shown on the timber sale statement of account to have been cut, removed, and paid for, or the estimated value of timber remaining to be cut, removed and paid for as shown on the timber sale statement of account is equal to or less than the amount of the downpayment. On lump sum sales, the downpayment amount may be applied to payment for release of the single payment unit.

(e) A purchaser or any affiliate of that purchaser awarded a Forest Service timber sale contract must meet the additional downpayment requirements of paragraph (g) of this section under the following circumstances:

(1) The purchaser or its affiliate after September 29, 1988, has failed to perform in accordance with the terms of a Forest Service or Bureau of Land Management timber sale contract and is notified by a Contracting Officer that a contract has expired uncompleted or is terminated for cause; and

(2) The estimated value of the unscaled timber on scaled sales, or the estimated value of the timber outstanding on tree measurement sales, included in those terminated or expired contracts exceeds $100,000; and

(3) Unpaid damages claimed by the Government remain outstanding prior to award of the new sale at issue and corrective action has not been taken to avoid future deficient performance.

(f) A subsequent final determination by the Contracting Officer or by a court of competent jurisdiction that a contract was improperly classified under the criteria in paragraph (e) of this section will result in the refund or credit of any unobligated portion of the amount of downpayment exceeding that required by paragraphs (c) and (d) of this section and the limitations of paragraph (h) of this section on application of downpayment shall no longer apply.

(g) Notwithstanding the provisions of paragraphs (c) and (d) of this section, a purchaser meeting the criteria of paragraph (e) of this section must make a minimum downpayment equal to 20 percent of the total advertised value of that sale, plus 40 percent of the total bid premium. This higher downpayment requirement applies throughout the National Forest System, except in those areas where the Chief of the Forest Service determines, before advertisement of the sale, that another downpayment rate is necessary to achieve the management objectives of the National Forest System. The amount of the downpayment shall be redetermined in accordance with this paragraph when contract rates for timber are redetermined under the terms of the contract for environmental modification; catastrophic damage; market change; or an emergency rate redetermination. For the purpose of redetermining the downpayment, total advertised value shall be replaced with total redetermined value.

(h) A purchaser subject to the additional downpayment requirements of paragraph (g) of this section cannot apply the amount deposited as a downpayment to other uses until:

(1) On scaled sales, the estimated value of the unscaled timber is equal to or less than the amount of the downpayment; or

(2) On tree measurement sales, the estimated value remaining to be cut and removed as shown on the timber sale statement of account is equal to or less than the amount of the downpayment.

(i) For the purpose of releasing funds deposited as downpayment by a purchaser subject to paragraph (f) of this section, the Forest Service shall compute the estimated value of timber as follows:

(1) On scaled sales, the estimated value of the unscaled timber is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been scaled of that species.

(2) On tree measurement sales, the estimated value of the timber outstanding (*i.e.*, not shown on the timber sale statement of account as cut and removed) is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been shown on the timber sale statement to have been cut and removed of the species. The current contract rate for each species is that specified in the Forest Service timber sale contract.

(j) In order to deter speculation, the Chief of the Forest Service may increase the period for retention of the downpayment and/or preclude temporary reduction of the downpayment under paragraphs (k)(2) and (k)(3) of this section for future contracts subject to such criteria as the Chief may adopt after giving the public notice and opportunity to comment.

(k) The Forest Service may temporarily reduce the downpayment when a purchaser's scheduled operations are delayed, interrupted, or extended for 30 or more consecutive days for any of the following reasons:

(1) Forest Service requests or orders purchaser to delay or interrupt operations for reasons other than breach;

(2) A contract term addition pursuant to purchaser shifting operations to a sale designated by the Forest Service as in urgent need of harvesting; or

(3) An extension of the contract term authorized upon a determination of substantial overriding public interest, including a market-related contract term addition, or an urgent removal contract term extension under 36 CFR 223.53.

(l) When purchaser is not cutting or removing timber under contract during a qualifying period of delay, interruption, or extension listed in paragraph (k) of this section, the downpayment may be reduced to $1000 or 2 percent of the downpayment amount stated in the contract, whichever is greater. The purchaser must restore the downpayment to the full amount stated in the contract within 15 days from receipt of the bill for collection and written notice from the contracting officer that the basis for temporarily reducing the downpayment no longer exists. Purchaser shall not cut or remove timber on a contract where the downpayment has been temporarily reduced until the downpayment amount stated in the contract is fully restored.

[74 FR 40743, Aug. 13, 2009]

### § 223.50 Periodic payments.

(a) For the purposes of this section, the following terms have the meaning given:

(1) *Total contract value* is the product of the estimated volume of the sale multiplied by the rates bid by the purchaser. Total contract value excludes required deposits and is determined at bid date.

(2) *Current contract value* is the sum of the products of the current contract rates and, in a scaled sale, estimated remaining unscaled volume or, in a tree measurement sale, the estimated remaining quantities by species of included timber meeting utilization standards.

(3) *Normal operating season* is the period so specified in a timber sale contract.

(4) *Periodic payment(s)* is/are amount(s) specified in a timber sale contract that a purchaser must pay by the periodic payment determination date(s) unless reduced by amounts paid as stumpage for volume removed.

(5) *A periodic payment determination date* is a date specified in a timber sale contract upon which the Forest Service will compare the payments made by the timber sale purchaser for timber charges (stumpage), exclusive of required deposits, with the periodic payment amount required as of that date in the contract.

(b) Except for lump sum sales, each timber sale contract of more than one full normal operating season shall provide for periodic payments. The number of periodic payments required will be dependent upon the number of normal operating seasons within the contract, but shall not exceed two such payments during the course of the contract. Periodic payments must be made by the periodic payment determination date, except that the amount of the periodic payment shall be reduced to the extent that timber has been removed and paid for by the periodic payment determination date. Should the payment fall due on a date other than normal billing dates, the contract shall provide that the payment date will be extended to coincide with the next timber sale statement of account billing date.

(1) At a minimum, each such contract shall require an initial periodic payment at the midpoint between the specified road completion date and the termination date. If there is no road construction requirement, payment shall be due at the midpoint between award date and the termination date.

(2) Contracts exceeding 2 full operating seasons shall require an additional periodic payment to be due no later than the midpoint of the last normal operating season or 12 months from the initial periodic payment whichever date is first.

(3) Notwithstanding this paragraph (b), periodic payments are not required for stewardship contracts unless the contracting officer determines that periodic payments are needed to ensure the Government's financial security.

(c) Each timber sale contract shall require the initial periodic payment to equal 35 percent of the total contract value or 50 percent of the bid premium, whichever is greater. The amount of this periodic payment will be reduced if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value.

(d) Where an additional periodic payment is required by the timber sale contract, this payment will equal 75 percent of the total contract value. The amount of this periodic payment will be reduced if the payment would

result in the purchaser's credit balance for timber charges exceeding the current contract value.

(e) Dates for determining future periodic payments shall be adjusted as follows:

(1) When contract term adjustments are granted under § 223.46,

(2) When market-related contract term additions are granted under § 223.52,

(3) When urgent removal extensions are granted under § 223.53, or

(4) When extensions in the substantial overriding public interest are granted under § 223.115(b). Periodic payment determination dates shall not be adjusted when a contract term extension is granted under the general authority of § 223.115(a).

(f) The amount of any periodic payment(s) not yet reached shall be revised when rates are redetermined under the contract. The revised periodic payment amounts shall be based on a recalculated total contract value using the same procedures described in (c) and (d) of this section. The recalculated total contract value is the current contract value following the rate redetermination plus:

(1) The total value of timber scaled prior to establishing redetermined rates in a scaled sale; or

(2) The total value of timber shown on the timber sale statement of account as having been cut, removed and paid for.

[56 FR 36104, July 31, 1991, as amended at 56 FR 55822, Oct. 30, 1991; 67 FR 70169, Nov. 21, 2002; 74 FR 40744, Aug. 13, 2009]

### § 223.51 Bid monitoring.

Each Regional Forester shall monitor bidding patterns on timber sales to determine if speculative bidding is occurring or if Purchasers are bidding in such a way that they would be unable to perform their obligations under the timber sale contract. A Regional Forester shall propose to the Chief changes in service wide timber sale procedures, as they appear necessary, to discourage speculative bidding.

[50 FR 41500, Oct. 11, 1985]

### § 223.52 Market-related contract term additions.

(a) *Contract provision.* (1) Except as provided in paragraph (a)(3) of this section, each timber sale contract exceeding 1 year in length shall contain a provision for the addition of time to the contract term, under the following conditions:

(i) The Chief of the Forest Service has determined that adverse wood products market conditions have resulted in a drastic reduction in wood product prices applicable to the sale; and

(ii) The purchaser makes a written request for additional time to perform the contract.

(2) The contract term addition provision of the contract must specify the index to be applied to each sale. The Forest Supervisor shall determine and select from paragraph (b) of this section, the index to be used for each sale based on the species and product characteristics, by volume, being harvested on the sale. The index specified shall represent more than one-half of the advertised volume. If none of the indices in paragraph (b) of this section represent more than one-half of the advertised volume, the index specified shall represent the species product combination representing the highest percentage of volume for which there is an index. When the Forest Supervisor determines that the species and potential product characteristics are such that more than one index could be used, the prospectus will state that the Contracting Officer may, upon the purchaser's written request, select an alternative index from paragraph (b) of this section, and may modify the contract by mutual agreement, at time of contract execution, to include an alternative index that the Contracting Officer has determined represents the highest percentage of products the purchaser intends to produce or have produced from the sale. Purchasers seeking a change of index at time of award must substantiate the need for an alternative index by providing the Contracting Officer with a written request that includes a list of products by volume the purchaser intends to produce or expects will be produced from the

timber on that sale. In the event a mutual agreement to modify a contract to include an alternative index is not reached at time of contract execution, the index specified in the sample contract shall apply.

(3) A market-related contract term addition provision shall not be included in contracts where the primary management objective requires prompt removal of the timber, such as, timber is subject to rapid deterioration, timber is in a wildland-urban interface area, or hazard trees adjacent to developed sites.

(b) *Determination of drastic wood product price reductions.* (1) The Forest Service shall monitor and use Producer Price Indices, as prepared by the Department of Labor, Bureau of Labor Statistics (BLS), adjusted to a constant dollar base, to determine if market-related contract term additions are warranted.

(i) The Forest Service shall monitor and use only the following indices:

| BLS producer price index | Index series | Index code |
|---|---|---|
| Hardwood Lumber | Commodity | 0812 |
| Softwood Lumber | Commodity | 0811 |
| Wood Chips | Industry | 3211135 |

(ii) Preliminary index values will be revised when final index values become available, however, determination of a qualifying quarter will not be revised when final index values become available.

(2) For PPI index codes 0811 and 0812, the Chief of the Forest Service shall determine that a drastic reduction in wood prices has occurred when, for any 2 or more consecutive qualifying quarters, the applicable adjusted price index is less than 88.5 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter, following the contract award date, where the applicable adjusted index is more than 11.5 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. For PPI index code 3211135, the Chief of the Forest Service shall determine that a drastic reduction in wood prices has occurred when, for any 2 or more consecutive qualifying quarters, the adjusted price index is less than 85 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter, following the contract award date, where the adjusted index is more than 15 percent below the average of such index for the 4 highest of the previous eight calendar quarters. Qualifying quarter determinations will be made using the Producer Price Indices for the months of March, June, September, and December.

(3) A determination, made pursuant to paragraph (b)(2) of this section, that a drastic reduction in wood product prices has occurred, shall constitute a finding that the substantial overriding public interest justifies the contract term addition.

(c) *Granting market-related contract term additions.* When the Chief of the Forest Service determines, pursuant to this section, that a drastic reduction in wood product prices has occurred, the Forest Service is to notify affected timber sale purchasers. For any contract which has been awarded and has not been terminated, the Forest Service, upon a purchaser's written request, will add 1 year to the contract's terms, except as provided in paragraphs (c)(1) through (4) of this section. This 1-year addition includes time outside of the normal operating season.

(1) Additional contract time may not be granted for those portions of the contract:

(i) With a required completion date;

(ii) Where the Forest Service determines that the timber is in need of urgent removal;

(iii) Where timber deterioration or resource damage may result from delay; or

(iv) Where included timber is designated by diameter and delay may change the treatment as a result of trees growing into or out of the specified diameter range(s).

(2) For each additional consecutive quarter in which a contract qualifies for market-related contract term addition, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract, except that no single 3-month addition

shall extend the term of a contract by more than 1 year.

(3) No more than 3 years shall be added to a contract's term by market-related contract term addition unless the following conditions are met:

(i) The sale was awarded after December 31, 2006;

(ii) A drastic reduction in wood product prices occurred in at least ten of twelve consecutive quarters during the contract term, but not including the quarter in which the contract was awarded; and

(4) For each qualifying quarter meeting the criteria in paragraph (c)(3)(ii) of this section, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract, except no single 3-month addition shall extend the term of a contract by more than 1 year.

(5) In no event shall a revised contract term exceed 10 years as a result of market-related contract term addition.

(d) *Recalculation of periodic payments.* Where a contract is lengthened as a result of market conditions, any subsequent periodic payment dates shall be delayed 1 month for each month added to the contract's term.

[63 FR 24114, May 1, 1998, as amended at 70 FR 37269, June 29, 2005; 71 FR 3411, Jan. 23, 2006; 73 FR 65551, Nov. 4, 2008]

### § 223.53 Urgent removal contract extensions.

(a) *Finding.* There is substantial, overriding public interest in extending National Forest System timber sale contracts for undamaged (green) timber not requiring expeditious removal in order to facilitate the rapid harvest of catastrophically damaged timber requiring expeditious removal on private or other non-National Forest System lands. Such an extension may be granted when a specific catastrophic event beyond the control of the landowner occurs on non-National Forest System lands that poses a threat to general forest health, public safety, and property. Catastrophic events include, but are not limited to, severe wildfire, wind, floods, insects and disease infestation, and drought.

(b) *Regional Forester determination.* If the Regional Forester determines that adequate cause for urgent removal extensions exists, Contracting Officers may extend National Forest System timber sale contracts, up to a maximum of 1 year, for the estimated amount of time required to harvest and process the damaged timber on non-National Forest System lands. Contracting Officers may grant urgent removal extensions only when the Regional Forester verifies in writing that:

(1) A specific catastrophe occurred for which urgent removal extensions should be granted;

(2) The manufacturing facilities or logging equipment capacity available to purchasers are insufficient to provide for both the rapid harvest of damaged non-National Forest System timber in need of expeditious removal and the continued harvest of undamaged (green) timber under contract with the Forest Service; and

(3) Failure to harvest the damaged non-National Forest System timber promptly could result in the following:

(i) Pose a threat to public safety,

(ii) Create a threat of an insect or disease epidemic to National Forest System or other lands or resources, or

(iii) Significant private or other public resource loss.

(c) *Purchaser request.* To obtain an urgent removal extension on a National Forest System timber sale contract, a purchaser must make a written request to the Contracting Officer, which includes the following:

(1) An explanation of why the harvest of undamaged (green) National Forest System timber within the term of the existing National Forest System contract(s) will prevent or otherwise impede the removal of damaged non-National Forest System timber in need of expeditious removal; and

(2) Documentation that the manufacturing facilities or logging equipment capacity available to a purchaser would be insufficient to provide for both the rapid salvage of damaged non-National Forest System timber in need of expeditious removal and continued harvest of undamaged (green) National Forest System timber under contract with the Forest Service.

(d) *Contracting Officer determination.* To grant an urgent removal extension, the timber sale Contracting Officer must verify the following:

(1) That it is likely that the undamaged (green) timber from National Forest System land would be delivered to the same manufacturing facilities as are needed to process the damaged non-National Forest System timber or the National Forest System timber sale contract would require the use of the same logging equipment as is needed to remove the damaged non-National Forest System timber from the area affected by the catastrophe;

(2) That extension of the National Forest System contract will not be injurious to the United States and will protect, to the extent possible, the health of the National Forest System lands, including:

(i) That urgent removal extension does not adversely affect other resource management objectives to be implemented by the National Forest System timber sale being extended; and

(ii) That the National Forest System timber sale contract to be extended is not a sale containing damaged, dead, or dying timber subject to rapid deterioration.

(3) That the purchaser has not been granted a previous urgent removal extension on the same National Forest System timber sale contract based on the current catastrophic event. Subsequent urgent removal extensions may be granted if there are subsequent Regional Forester determinations on other catastrophic events.

(4) That the revised National Forest System timber sale contract term will not exceed 10 years from the date the National Forest System contract was awarded; and

(5) That the purchaser is not in breach of the National Forest System contract, and all work items, payments, and deposits are current.

(e) *Execution of contract extension.* An urgent removal extension of a National Forest System timber sale contract is executed through a mutual agreement contract modification pursuant to § 223.112, which must include specific contract provisions. An agreement to modify a contract must identify the specific provision(s) of the contract being modified and must include the requirement that purchasers make cash payment to cover the costs of remarking timber on the sale area or reestablishing cutting unit boundaries if the Contracting Officer determines such work is necessary.

(f) *Information collection.* The information required of a purchaser to request an extension of an National Forest System timber sale contract, as outlined in paragraph (c) of this section, to facilitate expeditious removal of timber from non-National Forest System lands constitutes an information collection requirement as defined in 5 CFR Part 1320 and has been assigned Office of Management and Budget control number 0596–0167.

[67 FR 70169, Nov. 21, 2002, as amended at 69 FR 33, Jan. 2, 2004]

APPRAISAL AND PRICING

### § 223.60 Determining fair market value.

The objective of Forest Service timber appraisals is to determine fair market value. Fair market value is estimated by such methods as are authorized by the Chief, Forest Service, through issuance of agency directives (36 CFR 200.4). Valid methods to determine fair market value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. Pertinent factors affecting market value also considered include, but are not limited to, prices paid and valuations established for comparable timber, selling value of products produced, estimated operating costs, operating difficulties, and quality of timber. Considerations and valuations may recognize and adjust for factors which are not normal market influences.

[61 FR 5685, Feb. 14, 1996]

### § 223.61 Establishing minimum stumpage rates.

The Chief, Forest Service, shall establish minimum stumpage rates, i.e., ''base rates,'' for species and products on individual National Forests, or groups of National Forests. Timber shall be sold for appraised value or

minimum stumpage rates, whichever is higher. No timber may be sold or cut under timber sale contracts for less than minimum stumpage rates except to provide for the removal of insect-infested, diseased, dead or distressed timber or in accordance with contract provisions specifically providing for catastrophically-affected timber and incidental amounts of material not meeting utilization standards of the timber sale contract. For any timber sale offering where deposits are to be required for reforestation under the Act of June 9, 1930, as amended (46 Stat. 527; 16 U.S.C. 576–576b) which exceed the value of the established minimum stumpage rates, the minimum rates may be increased by the approving officer as necessary to the amount of such required reforestation deposits and a minimum deposit to the Treasury. Minimum rates in timber sale contracts will not be set higher than established minimum rates for purposes other than assuring adequate funds for reforestation.

### § 223.62 Timber purchaser road construction credit.

Appraisal may also establish stumpage value as if unconstructed roads or other developments needed by the purchaser for removal of the timber were in place. When timber is appraised and sold on such basis, *purchaser credit* for road construction, not to exceed the estimated construction cost of such roads or other developments specified in the timber sale contract, shall, when such construction is accomplished by purchaser, be deducted from stumpage payments made by or due from purchaser under the timber sale contract for other than minimum stumpage rates and required deposits for slash disposal and road maintenance. As used in this section *estimated construction costs* means the total cost of constructing all permanent roads specified in the timber sale contract, estimated as if construction is to be accomplished by an independent contractor who is not the timber purchaser. In determining the purchaser credit amount applicable against timber payments, the estimated construction cost may be reduced for the effect of differences in applicable wage rates.

### § 223.63 Advertised rates.

Timber shall be advertised for sale at its appraised value. The road construction cost used to develop appraised value means the total estimated cost of constructing all permanent roads specified in the timber sale contract, estimated as if construction is to be accomplished by the timber purchaser. The advertised rates shall be not less than minimum stumpage rates, except that sales of insect-infested, diseased, dead, or distressed timber may be sold at less than minimum rates when harvest of such timber is necessary to protect or improve the forest or prevent waste of usable wood fiber.

[71 FR 11510, Mar. 8, 2006]

### § 223.64 Appraisal on a lump-sum value or rate per unit of measure basis.

Timber may be appraised and sold at a lump-sum value or at a rate per unit of measure which rate may be adjusted during the period of the contract and as therein specified in accordance with formulas or other equivalent specifications for the following reasons:

(a) Variations in lumber or other product value indices between the price index base specified in the contract and the price index actually experienced during the cutting of the timber;

(b) Variance between advertised rates and rates redetermined by appraisal at dates specified in the contract;

(c) Variance between redetermined rates and rates appropriate for changes in costs or selling values subsequent to the rate redetermination which reduce conversion value to less than such redetermined rates; and

(d) Substantial loss of value due to physical deterioration of green timber or other physical damage to the sale area or access to the timber.

### § 223.65 Appraisal of timber for land exchange; right-of-way, or other authorized use.

The value of timber in land exchange or the value of timber required to be cut for occupancy of a right-of-way or other authorized use of National Forest System land for which payment will be

made is to be determined by the appraisal methods in § 223.60 of this part.

[61 FR 48625, Sept. 16, 1996]

### § 223.66 [Reserved]

ADVERTISEMENT AND BIDS

### § 223.80 When advertisement is required.

Except as otherwise provided in this part each sale in which the appraised value of the timber or other forest products exceeds $10,000 will be made only after advertisement for a period of 30 days or, if in the opinion of the officer authorizing the sale, the quantity, value or other conditions justify, a longer period; and any sale of smaller appraised value will be advertised or informal bids solicited from potential purchasers if, in the judgment of the officer authorizing the sale, such action is deemed advisable.

### § 223.81 Shorter advertising periods in emergencies.

In emergency situations where prompt removal of timber included in a sale is essential to avoid deterioration or to minimize the likelihood of the spread of insects, the approving officer may authorize shortening the formal advertising period to not less than 7 days. In other emergency situations, or for timber sold under 36 CFR 223.2 the Regional Forester or Chief may authorize shortening the formal advertising period to not less than 7 days.

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.82 Contents of advertisement.

(a) A timber sale advertisement shall include the following information:

(1) The location and estimated quantities of timber or other forest products offered for sale.

(2) The time and place at which sealed bids will be opened in public or at which sealed bids will be opened in public followed by an oral auction.

(3) A provision asserting the agency's right to reject any and all bids.

(4) The place where complete information on the offering may be obtained.

(5) Notice that a prospectus is available to the public and to interested potential bidders.

(b) For each timber sale which includes specified road construction with total estimated construction costs of $50,000 or more, the advertisement shall also include:

(1) The total estimated construction cost of the permanent roads.

(2) A statement extending to small business concerns qualified for preferential bidding on timber sales, under the Small Business Act, as amended, and the regulations issued thereunder, the option to elect, when submitting a bid, to have all permanent roads constructed by the Forest Service.

(3) Notice that the prospectus referred to in paragraph (a)(5) of this section contains additional information concerning the options to have all permanent roads constructed by the Forest Service.

(c) When timber or other forest products are offered for preferential bidding in accordance with the Small Business Act, as amended, the advertisement shall state that the offering is set-aside for competitive bidding by small business concerns.

[50 FR 32696, Aug. 14, 1985, as amended at 71 FR 523, Jan. 4, 2006; 71 FR 11510, Mar. 8, 2006]

### § 223.83 Contents of prospectus.

(a) A timber sale prospectus shall specify, as a minimum:

(1) The minimum acceptable stumpage or other unit prices and the amount or rate of any additional required deposits.

(2) The amount of bid guarantee which must accompany each bid.

(3) The amount of cash deposit or down payment to be made promptly by the successful bidder.

(4) The location and area of the sale, including harvest acreage.

(5) The estimated volumes, quality, size or age class of timber.

(6) A description of special logging requirements for the sale.

(7) The status of marking at time of advertisement.

(8) The method of bidding which will be used.

(9) The contract form to be used.

(10) The estimated deposits for reforestation and stand improvement work.

(11) The contract termination date and normal operating period.

(12) The date and amount of periodic payments which are to be made.

(13) The discount of payment rates for early harvest, if appropriate.

(14) The amount of performance bond required.

(15) The road standards for specified roads to be constructed.

(16) The estimated road construction cost and the estimated public works construction cost.

(17) For deficit sales:

(i) An estimate of the difference between fair market value and advertised value, that is, the amount by which the advertised value exceeds the appraised value.

(ii) The amount of Forest Service funds or materials to be used to offset the deficit.

(18) Status of financial assistance available to small business purchasers.

(19) Notification of preferential award to small business firms and certification requirements for set-aside sales.

(20) Notification of log export and substitution restrictions.

(21) Notification of Equal Employment Opportunity compliance review requirements.

(22) General or special information concerning the sale which are deemed appropriate to furnish sufficient information to prospective purchasers to warrant further investigation.

(b) For each advertisement which extends to small concerns the option to have all permanent roads constructed by the Forest Service, the prospectus shall also include:

(1) The road standards applicable to construction of permanent roads or a reference to the source of such information.

(2) The date of final completion for all permanent roads.

(3) A statement explaining how the Forest Service intends to perform road construction by force account or contract, if the high bidder elects Forest Service construction.

(4) The maximum period for which timber sale contract award will be delayed while the Forest Service seeks a satisfactory construction bid. The period stated shall not exceed 120 days unless the Regional Forester approves a longer period.

[50 FR 32696, Aug. 14, 1985, as amended at 71 FR 523, Jan. 4, 2006; 71 FR 11510, Mar. 8, 2006]

### § 223.84 Small business bid form provisions on sales with specified road construction.

For each sale described in § 223.82(b), the bid form must include provision for a small business concern:

(a) To elect road construction by the Forest Service and where such election is made;

(b) To certify as to small business status, and

(c) To indicate knowledge—

(1) Of the road construction completion date,

(2) That the Forest Service expects to contract for road construction with a third party,

(3) That the timber sale contract will not be awarded unless a satisfactory road construction bid is received or, if the Forest Service fails to receive such a bid within a maximum period stated in the advertisement, the bidder agrees to perform road construction,

(4) That the Forest Service may extend the maximum award delay time by the amount of time needed to confirm the bidder's size status or by any time in excess of 40 days from timber sale bid opening needed to begin solicitation of construction bids, and

(5) That if the Forest Service extends the maximum award delay period because solicitation of the road contract is delayed, the bidder may withdraw his bid without penalty.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984. Redesignated and amended at 50 FR 32696, Aug. 14, 1985]

### § 223.85 Noncompetitive sale of timber.

(a) Forest officers may sell, within their authorization, without further advertisement, at not less than appraised value, any timber previously advertised for competitive bids but not sold because of lack of bids and any timber on uncut areas included in a contract which has been terminated by abandonment, cancellation, contract period expiration, or otherwise if such timber would have been cut under the contract. This authority shall not be

utilized if there is evidence of competitive interest in the product.

(b) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), are defined to include the potential harm to natural resources, including fish and wildlife, and related circumstances arising as a result of the award or release of timber sale contracts pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246). Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, for timber sale contracts that have been or will be awarded or released pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246), the Secretary of Agriculture may allow forest officers to, without advertisement, modify those timber sale contracts by substituting timber from outside the sale area specified in the contract for timber within the timber sale contract area.

(c) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), includes those conditions under which contracts for the sale or exchange of timber or other forest products must be suspended, modified, or terminated under the terms of such contracts to prevent environmental degradation or resource damage, or as the result of administrative appeals, litigation, or court orders. Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, when such extraordinary conditions exist on sales not addressed in paragraph (b) of this section, the Secretary of Agriculture may allow forest officers to, without advertisement, modify those contracts by substituting timber or other forest products from outside the contract area specified in the contract for timber or forest products within the area specified in the contract. When such extraordinary conditions exist, the Forest Service and the purchaser shall make good faith efforts to identify replacement timber or forest products of similar volume, quality, value, access, and topography. When replacement timber or forest products agreeable to both parties is identified, the contract will be modified to reflect the changes associated with the substitution, including a rate redetermination. Concurrently, both parties will sign an agreement waiving any future claims for damages associated with the deleted timber or forest products, except those specifically provided for under the contract up to the time of the modification. If the Forest Service and the purchaser cannot reach agreement on satisfactory replacement timber or forest products, or the proper value of such material, either party may opt to end the search. Replacement timber or forest products must come from the same National Forest as the original contract. The term National Forest in this paragraph refers to an administrative unit headed by a single Forest Supervisor. Only timber or forest products for which a decision authorizing its harvest has been made and for which any applicable appeals or objection process has been completed may be considered for replacement pursuant to this paragraph. The value of replacement timber or forest products may not exceed the value of the material it is replacing by more than $10,000, as determined by standard Forest Service appraisal methods.

[61 FR 14621, Apr. 3, 1996, as amended at 71 FR 34826, June 16, 2006; 72 FR 59190, Oct. 19, 2007]

### § 223.86 Bid restriction on resale of noncompleted contract.

(a) Except as otherwise provided in this section, no bid will be considered in the resale of timber remaining from any uncompleted timber sale contract from any person, or from an affiliate of such person, who failed to complete the original contract:

(1) Because of termination for purchaser's branch or; or

(2) Through failure to cut designated timber on portions of the sale area by the termination date, unless acceptance of such bid is determined to be in the public interest.

(b) The no bid restriction in the preceding paragraph:

(1) Shall only apply when 50 percent or more of the timber included in the resale is timber remaining from the uncompleted contract and the resale is advertised within 3 years of the date the uncompleted contract terminated;

(2) When imposed because of failure to cut designated timber on portions of the sale area by the termination date,

shall not apply to resales of timber for which the original contract was awarded prior to April 30, 1972, unless the contract is extended thereafter; and

(3) Shall not apply to:

(i) Resales of timber within a sustained yield unit unless competition may be invited under the policy statement for the unit,

(ii) Resales of timber on contract which would ordinarily have been awarded prior to April 30, 1972, if award was delayed through no fault of the purchaser, and

(iii) Resales of timber on contracts not extended because of environmental considerations.

(c) Where a third-party agreement has been approved in accordance with § 223.114; the original purchaser shall not be affected by this section unless such purchaser is an affiliate of the third party.

(d) As used in this section, *person* includes any individual, corporation, company, association, firm, partnership, society, joint stock company, or other business entity or the successor in interest of any of the foregoing business entities. A person is an *affiliate* when either directly or indirectly:

(1) A person controls or has the power to control the other, or

(2) A third person or persons control or has the power to control both.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984 and 50 FR 32696, Aug. 14, 1985]

### § 223.87 Requirements of bidders concerning exports.

In order to have a bid considered responsive for a sale of timber from National Forest System lands, each bidder must certify that the bidder is eligible to purchase timber from National Forest System lands consistent with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations at 36 CFR part 223, and that the bidder's timber purchase and export activities are in compliance with the timber export and substitution provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations at 36 CFR part 223.

[60 FR 46920, Sept. 8, 1995]

### § 223.88 Bidding methods.

(a) Competitive sales of National Forest timber shall be offered through either sealed or oral auction bidding. The method chosen for each sale will:

(1) Insure open and fair competition,

(2) Insure that the Federal Government receives not less than fair market value for the public resource,

(3) Consider the economic stability of communities whose economies are dependent upon National Forest timber, and

(4) Be consistent with the objectives of the National Forest Management Act of 1976, as amended, and other Federal Statutes.

(b) As a prerequisite to participation in an oral auction, bidders shall submit a written sealed bid at least equal to the minimum acceptable bid prices specified in the prospectus. No price subsequently bid at oral auction shall be accepted if it is less than the written sealed bid.

(c) The Chief, Forest Service, shall specify the use of sealed bids or a mix of bidding methods in areas where he has reasonable belief that collusive bidding may be occurring or where he determines that less than normal competitive bidding is occurring.

(d) Sealed bids shall be used for sales within Federal Sustained Yield Units, except where the policy statement for the Unit restricts purchasers of timber within the Unit from buying National Forest timber outside the Unit and the Chief determines that oral bidding will protect individual communities within the Unit.

(e) The Chief, Forest Service, may authorize departures from the requirements of paragraphs (c) and (d) of this section when he determines that departures are necessary to protect the public interest.

(f) The Chief, Forest Service, may authorize the testing and evaluation of alternative bidding methods for National Forest timber.

[43 FR 21882, May 22, 1978. Redesignated at 49 FR 2761, Jan. 23, 1984. Further redesignated and amended at 50 FR 32696, Aug. 14, 1985]

### § 223.89 Relation to other bidders.

Any bidder or applicant for a sale may be required to furnish a statement

of his relation to other bidders or operators, including, if desired by the supervisor or Regional Forester, a certified statement of stockholders or members of the firm, and the holders of bonds, notes or other evidences of indebtedness, so far as known, so that the statement will show the extent of the interest of each in the bidder or applicant.

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984 and 50 FR 32696, Aug. 14, 1985]

AWARD OF CONTRACTS

**§ 223.100 Award to highest bidder.**

The sale of advertised timber shall be awarded to the responsible bidder submitting the highest bid that conforms to the conditions of the sale as stated in the prospectus unless:

(a) Determination is made to reject all bids.

(b) Two or more bidders, all of whom meet the requirements, submit equal bids which are the highest bids, in which case award may be by the drawing of lots. Equal bids from parties having direct or indirect common control or association in logging, processing or marketing may be consolidated to the extent deemed necessary by the awarding officer in order to give to any others who have bid the same amount an equitable opportunity in the drawing of lots.

(c) The highest bidder is notoriously or habitually careless with fire.

(d) Monopoly, injurious to the public welfare, would result from the control of large amounts of public or of public and private timber.

(e) The high bidder has elected Forest Service road construction in response to an advertisement extending such an option, the Forest Service cannot perform the construction and in response to solicitation has not received a satisfactory bid for such construction within the period stated in the prospectus and the high timber sale bidder is unwilling to perform the construction.

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984, and amended at 50 FR 32696, Aug. 14, 1985; 53 FR 33132, Aug. 30, 1988]

**§ 223.101 Determination of purchaser responsibility.**

(a) A Contracting Officer shall not award a timber sale contract unless that officer makes an affirmative determination of purchaser responsibility. In the absence of information clearly indicating that the prospective purchaser is responsible, the Contracting Officer shall conclude that the prospective purchaser does not qualify as a responsible purchaser.

(b) To determine a purchaser to be responsible, a Contracting Officer must find that:

(1) The purchaser has adequate financial resources to perform the contract or the ability to obtain them;

(2) The purchaser is able to perform the contract within the contract term taking into consideration all existing commercial and governmental business commitments;

(3) The purchaser has a satisfactory performance record on timber sale contracts. A prospective purchaser that is or recently has been seriously deficient in contract performance shall be presumed not to be responsible, unless the Contracting Officer determines that the circumstances were beyond the purchaser's control and were not created through improper actions by the purchaser or affiliate, or that the purchaser has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably under a contract is strong evidence that a purchaser is not a responsible contractor. The Contracting Officer shall consider the number of contracts involved and extent of deficiency of each in making this evaluation;

(4) The purchaser has a satisfactory record of integrity and business ethics;

(5) The purchaser has or is able to obtain equipment and supplies suitable for logging the timber and for meeting the resource protection provisions of the contract;

(6) The purchaser is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(c) If the prospective purchaser is a small business concern and the Contracting Officer determines that the

purchaser does not qualify as a responsible purchaser on an otherwise acceptable bid, the Contracting Officer shall refer the matter to the Small Business Administration which will decide whether or not to issue a Certificate of Competency.

(d) Affiliated concerns, as defined in § 223.49(a)(5) of this subpart are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the Contracting Officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective purchaser's responsibility.

[53 FR 33132, Aug. 30, 1988]

### § 223.102 Procedures when sale is not awarded to highest bidder.

If the highest bid is not accepted and the sale is still deemed desirable, all bids may be rejected and the timber readvertised; or, if the highest bidder cannot meet the requirements under which the timber was advertised or the withholding of award to him is based on one or more of paragraphs (c), (d), and (e) of § 223.100, award at the highest price bid may be offered to the next highest qualified bidder or to the other qualified bidders in order of their bids until the award is accepted by one or refused by all of the qualified bidders.

(92 Stat. 1301, Pub. L. 95–465)

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984, and 53 FR 33132, Aug. 30, 1988]

### § 223.103 Award of small business set-aside sales.

If timber is advertised as set aside for competitive bidding by small business concerns, award will be made to the highest bidder who qualifies as a small business concern and who has not been determined by the Small Business Administration to be ineligible for preferential award of set-aside sales. If there are no qualified small business bidders any readvertisement shall be without restriction on the size of bidders.

(92 Stat. 1301, Pub. L. 95–465)

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984, and 53 FR 33132, Aug. 30, 1988]

## CONTRACT ADMINISTRATION

### § 223.110 Delegation to regional forester.

The Chief, Forest Service, after approval of conditions of sale, may authorize Regional Foresters formally to execute timber sale contracts and related papers in sales exceeding the volume which the Regional Forester has been authorized to sell.

### § 223.111 Administration of contracts in designated disaster areas.

This section is to implement the provisions of section 242 (a), (b), and (c) of the Disaster Relief Act of 1970 (84 Stat. 1956) which relate to contracts for the sale of National Forest timber in connection with areas damaged by major disaster as designated by the President pursuant to the Act.

(a) Where an existing contract for the sale of National Forest timber does not provide relief from major physical change not due to purchaser's negligence prior to approval of construction of any section of specified road or other specified development facility and, as a result of a major disaster in a designated area a major physical change results in additional construction work by the purchaser in connection with such a road or facility, the United States shall bear such increased construction cost if, as determined by the Chief, Forest Service, the estimated cost is—

(1) More than $1,000 for sales under 1 million board feet, or

(2) More than $1 per thousand board feet for sales of 1 to 3 million board feet, or

(3) More than $3,000 for sales over 3 million board feet.

(b) Where the Chief, Forest Service, determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement in paragraph

(a) of this section, he may allow cancellation of the contract notwithstanding provisions therein or in § 223.116.

(c) The Chief, Forest Service, is authorized to reduce to 7 days the minimum time to advertise the sale of National Forest timber whenever he determines that—

(1) The sale of such timber will assist in the construction of any area of a State damaged by a major disaster,

(2) The sale of such timber will assist in sustaining the economy of such area, or

(3) The sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) Any request for relief under paragraph (a) or (b) of this section shall be made in writing to the Forest Supervisor having administrative responsibility for the land involved.

(Sec. 242 (a), (b), and (c), 84 Stat. 1756, 42 U.S.C. 4461)

### § 223.112 Modification of contracts.

(a) Timber sale contracts may be modified only when the modification will apply to unexecuted portions of the contract and will not be injurious to the United States. Modifications may be made by the officer approving the sale, by his successor, or by his superior, except as provided in § 223.110.

(b) Timber sale contracts awarded after October 1, 1995, that have been suspended for more than 90 days, during the normal operating season, at no fault of the purchaser, because of administrative appeals or litigation, that did not include contract provisions for rate redeterminations may be modified at the request of the timber sale purchaser to include a rate redetermination for the remaining unharvested volume to reflect significant decreases in market value during the period of delay. Rates in effect at the time of the suspension will be redetermined in accordance with the standard Forest Service methods in effect 45 days prior to the rate redetermination.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2760, Jan. 23, 1984, as amended at 69 FR 18814, Apr. 9, 2004]

### § 223.113 Modification of contracts to prevent environmental damage or to conform to forest plans.

Timber sale contract, permits, and other such instruments may be modified to prevent environmental damage or to make them consistent with amendments or revisions of land and resource management plans adopted subsequent to award or issuance of a timber sale contract, permit, or other such instrument. Compensation to the purchaser, if any, for modifications to a contract shall be made in accordance with provisions set forth in the timber sale contract. When determining compensation under a contract, timber payment rates shall be redetermined in accordance with appraisal methods in § 223.60 of this subpart.

[61 FR 64816, Dec. 9, 1996]

### § 223.114 Acquisition by third party.

No agreement permitting a third party to acquire the rights of a purchaser under a timber sale contract may be recognized and approved by the Forest Service except in writing, signed by the officer approving the sale, his successor, or superior officer. Such approval shall not relieve the purchaser of his responsibilities or liabilities under the timber sale contract and may be given only if—

(a) The third party is acceptable to the Forest Service as a purchaser of timber under the conditions and requirements then in effect for similar timber sales and assumes in writing all of the obligations to the Forest Service under the terms of the timber sale contract as to the uncompleted portion thereof, or

(b) The rights are acquired in trust as security and subject to such conditions as may be necessary for the protection of the public interests.

### § 223.115 Contract extensions.

The term of any contract or permit shall not be extended unless the approving officer finds:

(a) That the purchaser has diligently performed in accordance with contract provisions and an approved plan of operation; or

(b) That the substantial overriding public interest justifies the extension.

**§ 223.116 Cancellation.**

(a) Timber sale contracts and permits may be canceled:

(1) For serious or continued violation of their terms.

(2) Upon application, or with the consent of the purchaser, when such action is of advantage to the United States or not prejudicial to its interests.

(3) Upon application of the purchaser if the value of the timber remaining to be cut is diminished materially because of catastrophic damage caused by forces beyond the control of the purchaser resulting in (i) physical change in the sale area or access to it, or (ii) damage to timber remaining to be cut.

(4) For conviction of violation of criminal statutes or, following final agency or judicial determination, of violation of civil standards, orders, permits, or others regulations for the protection of environmental quality issued by a Federal agency, State agency, or political subdivision thereof, in the conduct of operations thereunder, on National Forest System land, unless compliance with such laws or regulations would preclude performance of other contractual requirements.

(5) Upon determination by the Chief, Forest Service, that operations thereunder would result in serious environmental degradation or resource damage and with reasonable compensation to the purchaser for unrecovered costs incurred under the contract and the difference between the current contract value and the average value of comparable National Forest timber sold during the preceding 6-month period.

(b) Cancellation will be by the Chief, Forest Service. Authority to cancel contracts under paragraph (a)(1) through (4) of this section may be delegated to Regional Foresters for sales within their authorization. All contract cancellations under paragraph (a)(5) of this section shall be by the Chief, Forest Service, whose decision shall be the final agency decision.

[42 FR 28252, June 2, 1977, as amended at 48 FR 23819, May 27, 1983. Redesignated at 49 FR 2761, Jan. 23, 1984]

**§ 223.117 Administration of cooperative or Federal sustained yield units.**

With respect to sustained yield units established pursuant to the provisions of the Act of March 29, 1944 (58 Stat. 132; 16 U.S.C. 583–583l), the Chief, Forest Service, with authority to delegate to other officers and employees of the Forest Service:

(a) Shall provide that National Forest timber in any sustained yield unit shall be available in sufficient amounts to meet the needs of bona fide farmers, settlers, miners, residents and prospectors for minerals for personal and domestic use as provided by law and by regulation.

(b) May offer for sale to cooperators, without competition but at not less than appraised value, timber on National Forest lands within an approved cooperative sustained yield unit; or, if the approved sustained yield unit consists entirely of federally owned or administered forest land and if necessary for the maintenance of a stable community or communities, may offer National Forest timber for sale to responsible operators within such community or communities, at not less than appraised value but without competition or with competition restricted to responsible operators who will manufacture the timber to at least a stated degree within the community or communities to be maintained. Each such sale which involves more than $500 in stumpage value may be made only after notice has been given in advance by such means as may be deemed effective in informing the public of the proposed action, including in any event, publication, once weekly for four consecutive weeks and with additional insertions if needed, in one or more newspapers of general circulation in the vicinity of the place where the timber is located, of a notice of the proposed sale stating at least:

(1) The location, estimated quantity and appraised value of the timber to be cut;

(2) The name and address of the proposed purchaser or those of the operators among whom bidding is to be restricted;

(3) The time and place of a public advisory hearing on the proposed sale, to

be held not earlier than 30 days after the first publication of said notice, if requested by the State or county where the timber is located or by any other person deemed to have a reasonable interest in the proposed sale or in its terms; and

(4) The title and address of the officer of the Forest Service to whom any request for such hearing should be made.

Such requests need be considered only if received at the place designated in the notice not later than 15 days after the first publication of such notice. If a public advisory hearing is to be held, notice of it shall be published in the same newspaper or newspapers as the original notice, stating the place where it will be held and the time, which shall not be earlier than 10 days after the first publication of the said notice of hearing, and shall appear once each week, but not for more than four successive weeks in any event, until the date set for the hearing. Any such hearing shall be conducted by the Chief or by any officer designated by him as his representative, except that if the amount of the proposed sale is not in excess of that which the Regional Forester has been authorized to sell without prior approval of the Chief the hearing may be held by the Regional Forester concerned or by his representative and decision may be by the Regional Forester. At any such hearing, opportunity shall be given to those having a reasonable interest to make oral statements or to file written statements discussing the advantages and disadvantages of the proposed sale; and the officer holding the hearing may, in his discretion, permit the filing of such statements within a reasonable period after the close of the hearing to become part of the record for consideration before a decision is made.

(c) Shall keep available for public inspection,

(1) During the life of any sustained yield unit, the minutes or other record of the hearing held on the establishment thereof, and the determination of action taken following the hearing including any modification of the proposals as submitted at the hearing; and

(2) During the life of any cooperative agreement for coordinated management the similar record of the hearings and actions determined upon; and

(3) During the life of any sustained yield unit the similar record of any public hearing which may be held on a sale made without competition or with restricted competition and the action determined upon. Such records of any case may be kept in any office of the Forest Service designated by the Chief as being suitable and convenient of access for probably interested persons.

(d) Shall make provision, in any contract for the purchase of timber without competition or with restricted competition, if that contract is of more than 7 years' duration and in his discretion in any case of shorter duration, for the redetermination of rates for stumpage and for required deposits to be paid by the purchasers, such redetermination to be effective at intervals or dates stated in the contract; but the sum of such redetermined rates for stumpage and sale area betterment shall not be less than the base rates in the published notice of the proposed sale.

(e) May modify and revise existing cooperative agreements entered into under said act after taking appropriate action.

### § 223.118 Appeal process for small business timber sale set-aside program share recomputation decisions.

(a) *Decisions subject to appeal.* The rules of this section govern appeal of recomputation decisions related to structural, special, or market changes or the scheduled 5-year recomputations of the small business share of National Forest System timber sales. Certain decisions related to recomputation of shares, such as structural change and carryover volume, may require two decisions, one to determine that a recomputation is needed and the other to recompute the shares. Decisions made both at the earlier stage as well as the later stage are appealable.

(b) *Manner of giving notice*—(1) *Predecisional notice and comment.* The Responsible Official shall provide qualifying timber sale purchasers, as defined in paragraph (c)(1) of this section, 30 days for predecisional review and comment on any draft decision to

reallocate shares, including the data used in making the proposed recomputation decision.

(2) *Notice of decision*. Upon close of the 30-day predecisional review period, the Responsible Official shall consider any comments received. Within 15 days of the end of the comment period, the Responsible Official shall make a decision on the small business shares and shall give prompt written notice to all parties on the national forest timber sale bidders list for the affected area. The notice of decision must identify the name of the Appeal Deciding Officer, the address, the date by which an appeal must be filed, and a source for obtaining the appeal procedures information.

(c) *Who may appeal or file written comments as an interested party*. (1) Only timber sale purchasers, or their representatives, who are affected by recomputations of the small business share of timber sales as described in paragraph (a) of this section and who have submitted predecisional comments pursuant to paragraph (b)(1) of this section, may appeal recomputation decisions under this section or may file written comments as an interested party.

(2) Interested parties are defined as the Small Business Administration and those timber sale purchasers, or their representatives, who are affected by recomputations of the small business share of timber sales as described in paragraph (a) of this section and who have individually, or through an association to which they belong, submitted predecisional comments pursuant to paragraph (b)(1) of this section.

(i) A timber sale purchaser may submit comments on an appeal as an interested party if an association to which the purchaser belongs filed predecisional comment but later decides not to appeal or not to file comments as an interested party.

(ii) A timber sale purchaser, who is a member of an association that appeals a decision, may not file a separate appeal unless that purchaser filed separate predecisional comment under paragraph (b)(1).

(3) Interested parties who submit written comments on an appeal filed by another party may not continue an appeal if the appellant withdraws the appeal.

(d) *Level of appeal*. Only one level of review is available for appeal of decisions pertaining to recomputations under the Small Business Timber Sale Set-aside Program. The Appeal Deciding Officer is the official one level above the level of the Responsible Official who made the recomputation of shares decision. The Responsible Official is normally the Forest Supervisor; thus, the Appeal Deciding Officer is normally the Regional Forester. However, when the Regional Forester makes recomputation decisions, the Appeal Deciding Officer is the Chief or such officer at the National headquarters level as the Chief may designate.

(e) *Filing procedures*. In order to file an appeal under this section, an appellant must file a notice of appeal, as specified in the notice of decision, with the Appeal Deciding Officer within 20 days of the date on the notice of the decision. This date must be specified in the notice of decision given pursuant to paragraph (b)(2) of this section. Written comments filed by an interested party in response to an appeal must be filed within 15 days after the close of the appeal filing period.

(f) *Content of notice of appeal*. (1) It is the responsibility of the appellant to provide sufficient narrative evidence and argument to show why a recomputation decision by the Responsible Official should be reversed or changed.

(2) An appellant must include the following information in a notice of appeal:

(i) The appellant's name, mailing address, and daytime telephone number;

(ii) The title or type of recomputation decision involved, the date of the decision, and the name of the Responsible Official;

(iii) A brief description and date of the decision being appealed:

(iv) A statement of how the appellant is adversely affected by the decision being appealed;

(v) A statement of the facts in dispute regarding the issue(s) raised by the appeal;

(vi) If relevant, any specific references to any law, regulation, or policy that the appellant believes to have

been violated and the basis for such an allegation;

(vii) A statement as to whether and how the appellant has tried to resolve with the Responsible Official the issue(s) being appealed, including evidence of submission of written comments at the predecisional stage as provided by paragraph (a) of this section, the date of any discussion, and the outcome of that meeting or contact; and

(viii) A statement of the relief the appellant seeks.

(g) *Time periods and timeliness.* (1) All time periods applicable to this section will begin on the first day following a decision or action related to the appeal.

(2) Time periods applicable to this section are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is automatically extended to the end of the next Federal working day.

(3) It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of questions, legible postmarks on a mailed appeal or the time and date imprint on a facsimile appeal will be considered evidence of timely filing. Where postmarks or facsimile imprints are illegible, the Appeal Deciding Officer shall rule on the timeliness of the notice of appeal.

(4) The time period for filing a notice of appeal is not extendable.

(h) *Dismissal without decision.* The Appeal Deciding Officer shall dismiss an appeal and close the record without a decision in any of the following circumstances:

(1) The appellant is not on the timber sale bidders list for the area affected by the recomputation decision;

(2) The appellant's notice of appeal is not filed within the required time period;

(3) The appellant's notice of appeal does not contain responses required by paragraphs (f)(2)(i) through (f)(2)(viii) of this section; or

(4) The appellant did not submit written comments on the proposed decision of the new recomputed shares as described in paragraph (c) of this section.

(i) *Appeal record.* The appeal record consists of the written decision being appealed, any predecisional comments received, any written comments submitted by interested parties, any other supporting data used to make the decision, the notice of appeal, and, if prepared, a responsive statement by the Responsible Official which addresses the issues raised in the notice of appeal. The Responsible Official must forward the record to the Appeal Deciding Officer within 7 days of the date the notice of appeal is received. A copy of the appeal record must be sent to the appellant at the same time.

(j) *Appeal decision*—(1) *Responsive statement for appeal decision.* The Appeal Deciding Officer may request the Responsible Official to prepare a responsive statement. However, if the information in the files clearly demonstrates the rationale for the Responsible Official's decision, then a responsive statement addressing the points of the appeal is not necessary.

(2) *Appeal issue clarification.* For clarification of issues raised in the appeal, the Appeal Deciding Officer may request additional information from either the Responsible Official, the appellant, or an interested party who has submitted comments on the appeal. At the discretion of the Appeal Deciding Officer, an appellant or interested party may be invited to discuss data relevant to the appeal. Information provided to clarify issues or facts in the appeal must be based upon information previously documented in the file or appeal. Any information provided as a result of the Appeal Deciding Officer's request for more information must be made available to all parties, that is, to the Responsible Official, the appellant, and interested parties who have submitted comments on the appeal. All parties will have 5 days after the Appeal Deciding Officer receives the additional information to review and comment on the information, and the appeal decision period will be extended 5 additional days.

(3) *Issuance of final decision.* The Appeal Deciding Officer shall review the decision and appeal record and issue a written appeal decision to the parties

within 30 days of the close of the appeal period except that this period must be extended to 35 days when additional information is requested by the Appeal Deciding Officer. The Appeal Officer may affirm or reverse the Responsible Official's decision, in whole or in part. There is no extension of the time period for rendering an appeal decision.

(k) *Implementation of decisions during pendency of appeal.* Recomputation of shares arising from a scheduled 5-year recomputation are effective on April 1 following the end of the 5-year period being considered. If an appeal that may affect the shares for the next 5-year period is not resolved by the April 1 date, the share decision announced by the Responsible Official must be implemented. If an appeal decision results in a change in the shares, the revised total share of the Small Business Timber Sale Set-aside Program must be accomplished during the remaining portion of the 5-year period.

(l) *Timber sale set-aside policy changes.* Timber purchasers shall receive an opportunity, in accordance with all applicable laws and regulations, to review and comment on significant changes in the Small Business Timber Sale Set-aside Program or policy prior to adoption and implementation.

(m) *Information collection requirements.* The provisions of paragraph (f) of this section specify the information that appellants must provide when appealing decisions pertaining to recomputation of shares. As such, these rules contain information requirements as defined in 5 CFR Part 1320. These information requirements have been approved by the Office of Management and Budget and assigned control number 0596–0141.

[64 FR 411, Jan. 5, 1999]

## Subpart C—Suspension and Debarment of Timber Purchasers

SOURCE: 52 FR 43329, Nov. 12, 1987, unless otherwise noted.

### § 223.130 Scope.

(a) This subpart prescribes policies and procedures governing the debarment and suspension of purchasers of National Forest System timber. This subpart further prescribes policies and procedures governing those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*).

(b) It provides for the listing of debarred and suspended purchasers.

(c) It sets forth the causes and procedures for debarment and suspension and for determining the scope, duration, and treatment to be accorded to purchasers listed as debarred or suspended.

[52 FR 43329, Nov. 12, 1987, as amended at 60 FR 46921, Sept. 8, 1995]

### § 223.131 Applicability.

These regulations apply to purchasers of National Forest System timber as well as to those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). These regulations do not apply to Forest Service procurement contracts which are governed by regulations at 41 CFR 4–1.6.

[60 FR 46921, Sept. 8, 1995]

### § 223.132 Policy.

(a) The Forest Service shall solicit and consider timber sale bids from and award contracts only to responsible business concerns and individuals. Debarment and suspension by the Forest Service are discretionary actions that, taken in accordance with these regulations, are appropriate means to effectuate this policy.

(b) Debarment and suspension shall be imposed only for the causes and in accordance with the procedures set forth in this subpart. The serious nature of debarment and suspension requires that these actions be imposed only in the public interest, for the Government's protection, and not for the purpose of punishment.

(c) Debarment and suspension actions taken under this subpart shall be based on the administrative record, including any submissions and argument made by the purchaser or named affiliate in accordance with this subpart, and shall be limited in scope and duration to that necessary to protect the Government's interest.

**§ 223.133 Definitions.**

As used in this subpart, the following terms shall have the meanings set forth below:

*Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

*Affiliates* are business concerns or persons, whose relationship entails the following:

(a) Either party directly or indirectly controls or has the power to control the other; or

(b) A third party directly or indirectly controls or has the power to control both. In determining whether affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, common facilities, and contractual relationships. Further guidelines to be used in determining affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

*Civil judgment* means a judgment or finding of a civil offense by any court of competent jurisdiction.

*Control* means the power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of an individual or business concern, whether through ownership of voting securities, through one or more intermediary individuals or business concerns, or otherwise.

*Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

*Debarment* means action taken by a debarring official under §§ 223.136 through 223.140 to exclude a purchaser from Forest Service timber sale contracts for a reasonable, specified period of time. A purchaser so excluded is ''debarred.'' Debarment pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.* means action taken by a debarring official under §§ 223.136–223.140 to exclude persons from entering into any contract for the purchase of unprocessed timber originating from Federal lands and from taking delivery of unprocessed Federal timber purchased by another party for the period of debarment.

*Debarring official* means the Chief of the Forest Service or the Deputy Chief, National Forest System, or the Associate Deputy Chief, Resources Divisions, National Forest System.

*Federal lands* means, for the purposes of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), lands that are owned by the United States, but does not include any lands the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual,

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(c) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

*Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

*Legal proceedings* means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

*Notice* means a written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, or agent for service of process. In the case of an organization, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer.

*Person* means any individual, partnership, corporation, association, or other legal entity, and includes any subsidiary, subcontractor, parent company, and business affiliates.

*Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Purchaser* means any person, who:

(a) Submits bids for, is awarded, or reasonably may be expected to submit bids for or be awarded, a Forest Service timber sale contract;

(b) Conducts business with the Forest Service as an agent or representative of another timber sale purchaser; or

(c) For the purposes of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act), any person who violates the Act or any regulation or contract issued under the Act, or any person who may reasonably be expected to enter into a contract to purchase or receive delivery of unprocessed Federal timber in violation of the Act or its implementing regulations.

*Suspending official* means the Chief of the Forest Service or the Deputy Chief, National Forest System or the Associate Deputy Chief, Resources Divisions, National Forest System.

*Suspension* means action taken by a suspending official under §§ 223.141 through 223.145 to immediately exclude a purchaser from bidding on or purchasing National Forest System timber for a temporary period of time pending completion of an investigation and such legal or debarment proceedings as may ensue; a purchaser so excluded is *suspended*.

[52 FR 43329, Nov. 12, 1987, as amended at 60 FR 46921, Sept. 8, 1995]

### § 223.134 List of debarred and suspended purchasers.

(a) The Deputy Chief, National Forest System, shall compile and maintain a current list of National Forest System timber purchasers and affiliates who are debarred, suspended, or proposed for debarment. This list shall be distributed to all Regional Foresters and Forest Supervisors, the General Services Administration, the General Accounting Office, the Bureau of Land Management and other Federal agencies requesting said list.

(b) The Forest Service list shall contain the following information:

(1) The purchaser's name and address, and the name and address of any affiliate of the purchaser included pursuant to §§ 223.140(a) or § 223.145.

(2) The cause(s) for the action (see §§ 223.137 and 223.142).

(3) Any limitations to or deviations from the normal effect of debarment or suspension.

(4) The effective date of the action and, in the case of debarment, the expiration date.

(5) The name and telephone number of the point of contact in the Forest Service regarding the action.

### § 223.135 Effect of listing.

(a) Except as otherwise provided in paragraph (b) of this section, purchasers debarred or suspended in accordance with this subpart shall be excluded from bidding on or award of Forest Service timber sale contracts. The Forest Service shall not knowingly solicit or consider bids from, award contracts to, approve a third party agreement with, or renew or otherwise extend, except pursuant to the terms of a contract term adjustment, an existing timber sale contract with these purchasers, unless the Chief of the Forest Service or authorized representative determines, in writing, that there is a compelling reason for such action.

(b) In addition to the provisions of paragraph (a) of this section, persons debarred pursuant to § 223.137(g) shall be prohibited from entering into any contract to purchase unprocessed timber from Federal lands and shall also be precluded from taking delivery of Federal timber purchased by another person for the period of debarment.

[60 FR 46921, Sept. 8, 1995]

### § 223.136 Debarment.

(a) *General*. In accordance with the procedures in § 223.138, the debarring official may in the public interest, debar a purchaser for any of the causes listed in § 223.137. However, the existence of a cause for debarment does not necessarily require that the purchaser be debarred. In making any debarment decision, the debarring official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

(b) *Effect of proposed debarment*. (1) Upon issuance of a notice of proposed debarment by the debarring official and until the final debarment decision is rendered, the Forest Service shall not solicit or consider bids from, award contracts to, approve a third party agreement with, renew or otherwise extend, except pursuant to the terms of a

contract term adjustment, any contract with that purchaser. The Chief of the Forest Service or authorized representative may waive this exclusion upon a written determination identifying compelling reasons to continue doing business with that purchaser pending completion of debarment proceedings.

(2) In addition to paragraph (b)(1) of this section, issuance of a notice of proposed debarment under § 223.137(g) shall preclude such person from entering into any contract to purchase unprocessed timber originating from Federal lands, and from taking delivery of unprocessed Federal timber from any other party who purchased such timber.

[52 FR 43329, Nov. 12, 1987, as amended at 60 FR 46921, Sept. 8, 1995]

### § 223.137 Causes for debarment.

The debarring official may debar a purchaser for any of the following causes:

(a) Conviction of or civil judgment for:

(1) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;

(2) Fraud, a criminal offense, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.

(3) Any other offense indicating a lack of business integrity or honesty that seriously and directly affects the present responsibility of the purchaser.

(b) A purchaser's debarment from the purchase of timber by another Federal agency which sells timber.

(c) Cutting and/or removal of more than incidental volumes of timber not designated for the purchaser's cutting from a national forest.

(d) Substantial violation of the terms of one or more Forest Service timber sale contracts so serious as to justify debarment, such as:

(1) Willful failure to perform in accordance with contract; or

(2) A history of failure to perform contract terms; or of unsatisfactory performance of contract terms.

(e) Among actions the Forest Service regards as so serious as to justify debarment under paragraph (d) of this section are willful violation or repeated failure to perform National Forest System timber sale contract provisions relating to the following:

(1) Fire suppression, fire prevention, and the disposal of slash;

(2) Protection of soil, water, wildlife, range, cultural, and timber resources and protection of improvements when such failure causes significant environmental, resource, or improvements damage;

(3) Removal of designated timber when such failure causes substantial product deterioration or conditions favorable to insect epidemics;

(4) Observance of restrictions on exportation of timber;

(5) Observance of restrictions on the disposal of timber from small business set-aside sales;

(6) Providing access to the Forest Service upon its request to purchaser's books and accounts;

(7) Payment of monies due under terms of a Forest Service timber sale contract, including payment of damages relating to failure to cut designated timber by the contract termination date;

(8) Performance of contract by the contract termination date.

(f) Any other cause so serious or compelling that if affects the present responsibility of a purchaser of Government timber.

(g) Violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) or any regulation or contract issued under the Act.

[52 FR 43329, Nov. 12, 1987, as amended at 60 FR 46921, Sept. 8, 1995]

### § 223.138 Procedures for debarment.

(a) *Investigation and referral.* Information which may be sufficient cause for debarment of a timber sale purchaser and affiliates shall be reported to the Forest Service Debarring Official. Generally, such information should be referred through the Forest Supervisor and the Regional Forester. The referral shall be accompanied by a complete

statement of the facts supported by appropriate exhibits and a recommendation for action. Where the statement of facts indicates a possible criminal offense, except possible antitrust violations, the debarring official shall notify the Office of Inspector General, USDA. Where the statement of facts indicates a possible antitrust violation, the debarring official shall notify the Antitrust Division, Department of Justice.

(b) *Decisionmaking process*—(1) *Notice of proposal to debar*. The debarring official shall initiate debarment by advising the purchaser and any specifically named affiliate, by certified mail, return receipt requested. The notice document shall include the following information:

(i) That debarment is being considered.

(ii) The reasons for the proposed debarment in terms sufficient to put the recipient on notice of the conduct or transaction(s) upon which it is based.

(iii) The cause(s) relied upon under § 223.137 for proposing debarment.

(iv) The specific procedures governing debarment decisionmaking in § 223.138 (b)(1) through (b)(8).

(v) The effect of the issuance of the notice of proposed debarment pending a final debarment decision (see § 223.136(b)).

(vi) The potential effect of a debarment.

(2) *Submission in opposition*. Within 30 calendar days after receipt of the notice of proposed debarment, the respondent my submit, in person, in writing, or through a representative, information and argument in opposition to and/or in mitigation of the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.

(3) *Informal hearing*. Pursuant to paragraph (b)(2) of this section, a respondent may request an informal hearing with the debarring official. The informal hearing shall be held within 20 calendar days from the date the request is received. The debarring official may postpone the date of the hearing if the respondent requests a postponement in writing. At the hearing, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration or effects of proposed debarment or debarment. A transcript of the informal hearing shall not be required.

(4) *Additional proceedings as to disputed material facts*. In actions not based upon a conviction or civil judgment, if the debarring official finds that and gives notice that the submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) may request a fact-finding conference on those disputed material facts. Such a conference shall be held within 20 calendar days from the date the request is received unless mutually agreed otherwise. The fact-finding conference shall conform with the following requirements:

(i) At least 10 days before the fact-finding conference, the debarring official shall send the respondent a copy of all documents in the administrative record as of the date of transmittal and not objected to by the Department of Justice.

(ii) At the conference, the respondent shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents.

(iii) A transcribed record of any additional proceedings shall be made available at cost to the respondent upon request, unless the respondent and the Forest Service, by mutual agreement, waive the requirement for a transcript.

(5) *Debarring official's decision*—(i) *No additional proceedings necessary*. In actions based upon a conviction or civil judgement or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the purchaser or any specifically named affiliate. The decision shall be made within 30 working days after receipt of any information and argument submitted, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, the debarring official shall promptly prepare written findings of fact. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the purchaser or any specifically named affiliate and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(6) *Standard of evidence.* In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence. In any action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(7) *Notice of debarring official's decision.* (i) The purchaser and any affiliates involved shall be given prompt notice of the debarring official's decision by certified mail, return receipt requested. If the debarring official decides to impose debarment, the notice shall:

(A) Refer to the notice of proposed debarment:

(B) Specify the reasons for debarment;

(C) State the period of debarment, including effective dates (see § 223.139); and

(D) Specify any limitations on the terms of the debarment.

(ii) The debarring official shall also promptly notify Regional Foresters and Forest Supervisors of the decision.

[52 FR 43329, Nov. 12, 1987, as amended at 72 FR 31438, June 7, 2007]

**§ 223.139 Period of debarment.**

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s):

(1) The debarring official shall consider any suspension period or period since issuance of the notice of proposed debarment in determining the debarment period.

(2) Generally, a debarment for those causes listed at § 223.137 (a)–(f) of this subpart should not exceed three (3) years, except as otherwise provided by law.

(3) A debarment for the causes listed at § 223.137(g) shall not exceed five (5) years.

(b) The debarring official may extend the debarment for those causes listed at § 223.137 (a)–(f) of this subpart for an additional period if that official determines that an extension is necessary to protect the Government's interest. However:

(1) A debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based;

(2) If debarment for an additional period is necessary, the debarring official shall initiate and follow the procedures in § 223.138 to extend the debarment.

(c) The debarring official may consider terminating the debarment or reducing the period or extent of debarment, upon the purchaser's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

(d) The debarring official shall make final disposition of a reconsideration request under paragraph (c) of this section in writing within 30 working days of receipt of the reconsideration request and supporting documentation, unless the debarring official extends this period for good cause. The notice

of the decision shall set forth the reasons for granting or denying the request.

[52 FR 43329, Nov. 12, 1987, as amended at 60 FR 46921, Sept. 8, 1995]

### § 223.140 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a purchaser constitutes debarment of all divisions or other organizational elements of the purchaser, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or classes of sales.

(2) The debarring official may extend a debarment decision to include any affiliates of the purchaser, if they are—

(i) Specifically named and

(ii) Given written notice of the proposed debarment and provided an opportunity to respond (see § 223.138(b)).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a purchaser may be imputed to a purchaser when the conduct occurred in connection with the individual's performance of duties for or on behalf of the purchaser, or with the purchaser's knowledge, approval, or acquiescence. The purchaser's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) The fraudulent, criminal, or other seriously improper conduct of a purchaser may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the purchaser who participated in, knew of, or has reason to know of the purchaser's conduct.

(3) The fraudulent, criminal, or other seriously improper conduct of one purchaser participating in a joint venture or similar arrangement may be imputed to other participating purchasers if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of those purchasers. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

### § 223.141 Suspension.

(a) The suspending official may, in the public interest, suspend a purchaser on the basis of adequate evidence for any of the causes in § 223.142, using the procedures in § 223.143. However, the existence of a cause for suspension does not necessarily require that the purchaser be suspended. In making any suspension decision, the suspending official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

(b) Suspension is a serious action to be imposed, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration shall be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated and what inferences can reasonably be drawn as a result. This assessment shall include an examination of basic documents such as contracts, bids, awards, inspection reports, and correspondence, as appropriate.

### § 223.142 Causes for suspension.

(a) The suspending official may suspend a purchaser suspected, upon adequate evidence, of the following:

(1) Commission of:

(i) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;

(ii) Fraud, a criminal offense, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain; or performing a public contract or subcontract; or

(iii) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a purchase of Government timber.

(2) Indictment for any of the causes listed in paragraph (a) of this section constitutes adequate evidence for suspension.

(3) A purchaser's suspension from the purchaser of timber by another Federal agency which sells timber.

(b) The suspending official may, upon adequate evidence, also suspend a purchaser for any other cause so serious or compelling that it affects the present responsibility or a purchaser of Government timber.

**§ 223.143 Procedures for suspension.**

(a) *Investigation and referral.* Information which may be sufficient cause for suspension under § 223.142 shall be reported to the Forest Service Suspending Official. Generally, such information should be referred through the Forest Supervisor and the Regional Forester. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits and a recommendation for action. Where the statement of facts indicates a possible criminal offense, except possible antitrust violations, the suspending official shall notify the Office of Inspector General, USDA. Where the statement of facts indicates a possible antitrust violation, the suspending official shall notify the Antitrust Division, Department of Justice.

(b) *Decisionmaking process*—(1) *Notice of suspension.* When a purchaser and any specifically named affiliates are suspended, the suspending official shall so advise the purchaser and any specifically named affiliate immediately by certified mail, return receipt requested. Such notice shall specify:

(i) That they have been suspended as of the date of the notice;

(ii) That the suspension is based on an indictment or other adequate evidence that the purchaser has committed irregularities,

(A) Of a serious nature in business dealings with the Government, or

(B) Seriously reflecting on the propriety of further Government dealings with the recipient;

(iii) Any such irregularities shall be described in terms sufficient to place the recipient on notice without disclosing the Government's evidence;

(iv) That the suspension is for a temporary period of time pending the completion of an investigation and such legal proceedings as may ensue;

(v) The cause(s) relied upon under § 223.142 for imposing suspension;

(vi) The effect of the suspension (see § 223.135);

(vii) The specific procedures governing suspension decisionmaking in § 223.143 (b)(1) through (b)(6).

(2) *Submission in opposition.* Within 30 calendar days after receipt of the notice of suspension, the purchaser or any specifically named affiliate may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts.

(3) *Informal hearing.* Pursuant to paragraph (b)(2) of this section, respondent may request an informal hearing with the suspending official. The informal hearing shall be held within 20 calendar days from the date the request is received. The suspending official may postpone the date of the hearing if the respondent requests a postponement in writing. At the hearing, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for suspension do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration or effects of suspension. A transcript of the informal hearing shall not be required.

(4) *Additional proceedings as to disputed material facts.* (i) If the suspending official finds that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents, unless—

(A) The action is based on an indictment; or

(B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) If appropriate, the respondent may request a fact-finding conference on disputed material facts. Such a conference shall be held within 20 calendar days from the date the request is received unless mutually agreed otherwise. The fact-finding conference shall

conform with the following requirements:

(A) At least 10 days before the fact-finding conference, the suspending official shall send the respondent a copy of all documents in the administrative record as of the date of transmittal and not objected to by the Department of Justice.

(B) At the conference, the respondent shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents.

(iii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent upon request, unless the respondent and the Forest Service, by mutual agreement, waive the requirement for a transcript.

(5) *Suspending official's decision.* The suspending official may modify or terminate the suspension or leave it in force for the same reasons as for terminating or reducing the period or extent of debarment (see § 223.139(c)). The decision shall be made in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions based on an indictment, in which the respondent's submission does not raise a genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submissions and argument made by the respondent. The decision shall be made within 30 working days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be promptly prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made only after the conclusion of any proceedings with respect to disputed facts.

(6) *Notice of suspending official's decision.* The purchaser and any affiliates involved shall be given prompt written notice of the suspending officer's decision to continue or not continue the suspension by certified mail, return receipt requested.

### § 223.144 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings unless sooner terminated by the suspending official or as provided in paragraph (b) of this section.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of any suspension, at least 30 days before the 12-month period expires, to give the Department an opportunity to request an extension.

### § 223.145 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see § 223.140), except that the procedures in § 223.143 shall be used in imposing suspension.

## Subpart D—Timber Export and Substitution Restrictions

### § 223.159 Scope and applicability.

The rules of this subpart apply to all timber sale contracts awarded before August 20, 1990, the date of enactment

of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). The rules at § 223.162 shall remain in effect for all contracts awarded on or after August 20, 1990, until September 8, 1995. Contracts awarded on or after August 20, 1990 are subject to the rules of subpart F of this part, unless otherwise noted. Contracts awarded on or after September 8, 1995 are governed in full by subpart F.

[60 FR 46922, Sept. 8, 1995]

**§ 223.160 Definitions.**

The following definitions apply to the provisions of this section:

(a) *Export* means either direct or indirect export to a foreign country and occurs on the date that a person enters into a contract or other binding transaction for the export of unprocessed timber or, if that date cannot be established, when unprocessed timber is found in an export yard or pond, bundled or otherwise prepared for shipment, or aboard an ocean-going vessel. An *export yard or pond* is an area where sorting and/or bundling of logs for shipment outside the United States is accomplished. Unprocessed timber, whether from National Forest System or private lands, is exported directly when exported by the National Forest timber purchaser. Timber is exported indirectly when export occurs as a result of a sale to another person or as a consequence of any subsequent transaction.

(b) *Historic level* means the average annual volume of unprocessed timber purchased or exported in calendar years 1971, 1972, and 1973.

(c) *Private lands* mean lands held or owned by a private person. *Nonprivate lands* include, but are not limited to, lands held or owned by the United States, a State or political subdivision thereof, or any other public agency, or lands held in trust by the United States for Indians.

(d) *Substitution* means the purchase of unprocessed timber from National Forest System lands to be used as replacement for unprocessed timber from private lands which is exported by the purchaser. Substitution occurs when (1) a person increases purchases of National Forest timber in any Calendar year more than 10 percent above their historic level and in the same calendar year exports unprocessed timber from private land in the tributary area; or (2) a person increases exports of unprocessed timber from private land in any tributary area more than 10 percent above their historic level in any calendar year while they have National Forest timber under contract.

(e) *Tributary area* means the geographic area from which unprocessed timber is delivered to a specific processing facility or complex. A tributary area is expanded when timber outside an established tributary area is hauled to the processing facility or complex.

(f) *Unprocessed timber, except western red cedar in the contiguous 48 States,* means trees or portions of trees having a net scale content not less than 33⅓ percent of the gross volume, or the minimum piece specification set forth in the timber sale contract, in material meeting the peeler and sawmill log grade requirements published in the January 1, 1980—Official Log Scaling and Grading Rules used by Log Scaling and Grading Bureaus on the West Coast; cants to be subsequently remanufactured exceeding 8¾ inches in thickness; cants of any thickness reassembled into logs; and split or round bolts, except for aspen, or other roundwood not processed to standards and specifications suitable for end-product use. Unprocessed timber shall not mean pulp (utility) grade logs and Douglas-fir special cull logs or timber processed into the following:

(1) Lumber and construction timbers, regardless of size, sawn on four sides;

(2) Chips, pulp, and pulp products;

(3) Green veneer and plywood;

(4) Poles, posts, or piling cut or treated for use as such;

(5) Cants cut for remanufacture, 8¾ inches in thickness or less;

(6) Aspen bolts, not exceeding 4 feet in length.

(g) *Unprocessed western red cedar timber in the contiguous 48 States* means trees or portions of trees of that species which have not been processed into—

(1) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better;

(2) Chips, pulp, and pulp products;

(3) Veneer and plywood;

(4) Poles, posts, or piling cut or treated with preservatives for use as such and not intended to be further processed; or

(5) Shakes and shingles; provided that lumber from private lands manufactured to the standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau and manufactured lumber authorized to be exported under license by the Department of Commerce shall be considered processed.

(h) *Person* means an individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, or other affiliate. Business entities are considered affiliates for the entire calendar year when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person during any part of the calendar year.

(i) *Purchase* occurs when a person is awarded a contract to cut National Forest timber or through the approval of a third party agreement by the Forest Service.

(j) *Purchaser* means a person that has purchased a National Forest timber sale.

(Sec. 14, Pub. L. 95–588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96–126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94–373; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551))

[45 FR 80528, Dec. 5, 1980, as amended at 46 FR 2611, Jan. 12, 1981; 46 FR 22581, Apr. 20, 1981; 47 FR 746, Jan. 7, 1982. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.161 [Reserved]

### § 223.162 Limitations on timber harvested from all other states.

Unprocessed timber from National Forest System lands west of the 100th Meridian in the contiguous 48 States may not:

(a) Be exported from the United States;

(b) Be used in substitution for unprocessed timber from private lands which is exported by the purchaser; or

(c) Be sold, traded, exchanged, or otherwise given to any person who does not agree to manufacture it to meet the processing requirements of this section and/or require such a processing agreement in any subsequent resale or other transaction. This limitation on export or substitution does not apply to species of timber previously found to be surplus to domestic needs or to any additional species, grades, or quantities of timber which may be found by the Secretary to be surplus to domestic needs.

(Sec. 14, Pub. L. 95–588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96–126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94–373; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551))

[45 FR 80528, Dec. 5, 1980, as amended at 46 FR 2611, Jan. 12, 1981; 47 FR 746, Jan. 7, 1982. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.163 [Reserved]

### § 223.164 Penalty for falsification.

For false certification of documents relating to export or substitution and/or other violations of export and substitution requirements by the purchaser of timber from National Forest System lands, the Forest Service may cancel the subject contract, debar the involved person or persons from bidding on National Forest timber, or initiate other action as may be provided by law or regulation.

(Sec. 14, Pub. L. 94–588, 90 Stat. 2958, as amended (16 U.S.C. 472a); Sec. 301, Pub. L. 96–126, 93 Stat. 979; Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); Sec. 301, 90 Stat. 1063, Pub. L. 94–373; Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); (44 U.S.C. 3506))

[45 FR 80528, Dec. 5, 1980. Redesignated at 49 FR 2761, Jan. 23, 1984, and amended at 51 FR 40316, Nov. 6, 1986]

## Subpart E [Reserved]

## Subpart F—The Forest Resources Conservation and Shortage Relief Act of 1990 Program

SOURCE: 60 FR 46922, Sept. 8, 1995, unless otherwise noted.

**§ 223.185 Scope and applicability.**

This subpart implements provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) that became effective upon enactment or as otherwise specified in the Act. As of September 8, 1995, this subpart applies to unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States that requires domestic processing. Except as provided later in this paragraph, this subpart applies to all unprocessed timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States acquired from timber sale contracts awarded on or after August 20, 1990. The rules regarding substitution at § 223.162 of subpart D apply to unprocessed timber acquired from timber sale contracts awarded between August 20, 1990, and September 8, 1995, as provided in § 490(a)(2)(A) of the Act. The rules regarding reporting the acquisition and disposition of unprocessed Federal timber at § 223.193 of this subpart apply to all transfers of unprocessed Federal timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States regardless of timber sale contract award date.

**§ 223.186 Definitions.**

The following definitions apply to the provisions of this subpart:

*Acquire* means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction. The term ''acquisition'' means the act of acquiring. The terms ''acquire'' and ''purchase'' are synonymous and are used interchangeably.

*Act* means the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, 104 Stat. 714–726; 16 U.S.C. 620–620j).

*Area of operations* refers to the geographic area within which logs from any origin have neither been exported nor transported to an area where export occurs. The area of operations will be determined for individual Forest Service Administrative Units or groups of Administrative Units by the Regional Foresters of Regions 1, 2, 3, and 4 on an as-needed basis, and used as part of the criteria for evaluating requests to waive the identifying and marking requirements for unprocessed Federal logs.

*Cants* or *Flitches* are synonymous, and mean trees or portions of trees, sawn on one or more sides, intended for remanufacture into other products elsewhere.

*Civil penalties:*

*Willful disregard* means a person knew or showed reckless disregard for the matter of whether the person's conduct is prohibited by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.* with regard to the prohibition against exporting unprocessed Federal timber (including causing unprocessed timber to be exported).

*Willfully* means a person knew or showed reckless disregard for the matter of whether the person's conduct is prohibited by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. *et seq.*, or regulations issued under the Act, even though such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

*Disregard* means to ignore, overlook, or fail to observe any provision of the Act or a regulation issued under this Act, even though such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

*Should have known* means committing an act that a reasonable person in the timber industry would have known violates a provision of the Act or regulations issued under the Act, even though the violation may not have caused the export of unprocessed Federal timber in violation of the Act.

*Each violation* refers to any violation under the Act or its implementing regulations with regard to a single act, which includes but is not limited to a single marking (or lack thereof) on a single log, the export of a single log, or a single entry on a document.

*Export* means transporting, or causing to be transported, either directly or through another party, unprocessed timber to a foreign country. Export occurs:

(1) On the date that a person enters into an agreement to sell, trade, exchange or otherwise convey such timber to a person for delivery to a foreign country;

(2) When unprocessed timber is placed in an export facility in preparation (sorting, bundling, container loading etc.) for shipment outside the United States; or,

(3) When unprocessed timber is placed on board an ocean-going vessel, rail car, or other conveyance destined for a foreign country.

*Federal lands* means lands that are owned by the United States west of the 100th meridian in the contiguous 48 States, but do not include any land the title to which is;

(1) Held in trust by the United States for the benefit of any Indian tribe or individual;

(2) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(3) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

*Finished products* means products from trees, portions of trees or other roundwood products processed to standards and specifications intended for end product use.

*Fiscal year* means the Federal fiscal year beginning October 1, and ending the following September 30.

*Gross value* means the total value a person received from the transfer of unprocessed Federal timber involved in a violation, before production, delivery, agent fees, overhead, or other costs are removed.

*Hammer brand* refers to an identifying mark or brand composed of numbers, letters, characters, or a combination of numbers, letters, or characters permanently attached to a hammer, or other similar striking tool. The hammer brand must make a legible imprint of the brand in the end of a log when struck.

*Highway yellow paint* refers to an oil base or equivalent yellow paint of lasting quality comparable to the yellow paint used to mark highways.

*Log* refers to an unprocessed portion of a tree that is transported to a manufacturing facility or other location for processing, transferring to another person, or exporting. ''Logs'' is synonymous with ''timber''.

*Manufacturing facility* means a permanently located processing plant used to convert unprocessed timber into products.

*Non-manufacturer* means a person who does not own or operate a manufacturing facility.

*Person* means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, and business affiliates. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties control or have the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships.

*Private lands* means lands, located west of the 100th meridian in the contiguous 48 States held or owned by a person. Such term does not include Federal lands or public lands, or any land the title to which is;

(1) Held in trust by the United States for the benefit of any Indian tribe or individual;

(2) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(3) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

*Processed* means timber processed into products listed in § 223.187 of these regulations.

*Purchase* has the same meaning as *acquire*. The terms are used interchangeably.

*Same geographic and economic area* means the land within the boundaries of an approved sourcing area.

*Sourcing area* means the geographic area approved by the Secretary which

includes a person's timber manufacturing facility and the private and Federal lands from which the person acquires or intends to acquire unprocessed timber to supply such manufacturing facility; a sourcing area must be geographically and economically separate from any area from which that person harvests for export any unprocessed timber originating from private lands.

*Substitution* occurs when:

(1) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or

(2) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and, during the preceding 24-month period, exported unprocessed timber originating from private lands; or

(3) A person exports or sells for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract; or

(4) A person purchases, directly or indirectly, unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

*Transaction* means an arrangement involving the transfer of unprocessed timber.

*Transaction statement* is a signed copy of one of the transaction reporting forms in 36 CFR 223.193 and 223.194.

*Transfer* means to pass title, sell, trade, exchange, or otherwise convey unprocessed timber to another person.

*Unprocessed timber* means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use and intended for remanufacture. Unprocessed timber does not include products intended for remanufacture that meet the criteria listed in § 223.187(a)(2) or (3). For the purposes of reporting and identifying under §§ 223.193, 223.194 and 223.195, unprocessed timber also means timber products listed in § 223.187 of these regulations, and other timber products including house logs that are part of a structure kit, that are indistinguishable from other unprocessed timber.

**§ 223.187 Determinations of unprocessed timber.**

(a) *All species except western red cedar*. Unprocessed timber, as defined in § 223.186 of this Subpart, does not include timber processed into any one of the following:

(1) Lumber or construction timbers, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture. To determine whether such lumber or construction timbers meet this grade and intended use standard, the shipper of record must have in its possession for each shipment or order, and available for inspection upon the request of the Forest Service:

(i) A legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard; and,

(ii) A statement by the manufacturer certifying under the penalties provided in section 492 of the Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the products in the shipment or order are intended to be used as shipped, are manufactured into products, or processed into pulp, and are not to be manufactured into other products. The certification statements shall be made in accordance with paragraph (b) of this section. The certification statements in paragraph (b) of

this section are not required if the lumber or construction timbers described in paragraph (a)(1) of this section or the pulpwood bolts described in paragraph (a)(8) of this section otherwise may be exported without regard to an intent to remanufacture or process into pulp. For instance, because the timber originates from private land from which timber may be exported.

(2) Lumber, construction timbers, or cants for remanufacture, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (30.5 cm) thick. To determine whether such lumber, timbers, or cants meet this grading standard, the shipper of record must have in its possession for each shipment or order and available for inspection, upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard.

(3) Lumber, construction timbers, or cants for remanufacture, except western red cedar, that do not meet the grades referred to in paragraph (a)(2) of this section and are sawn on 4 sides, with wane less than ¼ of any face, not exceeding 8¾ inches (22.2 cm) thick.

(4) Chips, pulp, or pulp products.

(5) Veneer or plywood.

(6) Poles, posts, or piling cut or treated with preservatives for use as such.

(7) Shakes or shingles.

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp. Shippers of record of such pulpwood bolts must have in their possession, and available for inspection upon request of the Forest Service, in accordance with paragraph (b) of this section, a manufacturer's certificate that such bolts are intended for processing into pulp.

(9) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of logs into chips.

(b) *Export product certifications.* (1) Manufacturers of lumber or construction timbers described in paragraph (a)(1) of this section and pulpwood bolts described in paragraph (a)(8) of this section, shall certify to the following statements:

(2) *Lumber or construction timbers;* ''I certify that the products in the shipment identified by my shipping order number ____ dated ____, are manufactured in accordance with the attached order from (*buyer*) of (*address*), numbered ____ and dated ____, are intended to be used as shipped and are not to be remanufactured into other products. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violations.''

(3) *Pulpwood bolts.* ''I certify that the pulpwood bolts in the shipment identified by my shipping order number ____ dated ____, are manufactured in accordance with the attached order from (*buyer*) of (*address*), numbered ____ and dated ____, are intended to be processed into pulp and are not to be remanufactured into other products. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violations.''

(4) *Signatory procedures.* Certificates shall be on company letterhead, and signed by the person manufacturing the shipment. In the case of a corporation, the certificates must be signed by a person authorized, in writing, by the

Chief Executive Officer pursuant to 36 CFR 223.187(b)(4), to sign the certificates in 36 CFR 223.187(b) on behalf of the corporation.

(5) *Chief Executive Officer Authorization*. The authorization by the Chief Executive Officer shall be on company letterhead, shall be notarized, and shall read as follows:

''I authorize ___ to sign the certificates in 36 CFR 223.187(b) on behalf of (*name of corporation*). I make this authorization with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber originating from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

(6) Exporters of other timber products originating from Federal lands not specifically listed in § 223.187 which may develop export markets in the future may also require similar certification statements. Such statements will be provided by the Forest Service.

(c) *Western red cedar*. Unprocessed western red cedar timber does not include manufactured lumber authorized for export under license by the Department of Commerce, and lumber from private lands processed to standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau, or timber processed into any of the following products:

(1) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better, with a maximum cross section of 2,000 square centimeters (310 square inches) for any individual piece of processed western red cedar, regardless of grade. To determine whether such lumber meets these established standards, grades and size restrictions, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. Export restrictions governing western red cedar timber harvested from Federal, State or other public lands are found in 7(i) of the Export Administration Act of 1979 as amended (50 U.S.C. appendix 2406(i)), and implementing regulations at 15 CFR 777.7.

(2) Chips, pulp, and pulp products;

(3) Veneer and plywood;

(4) Poles, posts, pilings cut or treated with preservatives for use as such and not intended to be further processed; and

(5) Shakes and shingles.

(d) *Finished Products*. Shippers of record of products manufactured from unprocessed western red cedar originating from Federal lands, acquired by the manufacturer under the exemption from the prohibition against indirect substitution at § 223.189(e)(1), must have in their possession for each shipment a certificate from the manufacturer that such products are *finished products* as defined in § 223.186 of this subpart. The certification statement shall read as follows:

(1) ''I certify that the products in the shipment identified by my shipping order number ___, dated ___, are manufactured in accordance with the attached order from __ (buyer) __ of ___ (address) ___, numbered __ and dated ___, are intended for end product use. I understand that only western red cedar products that are *finished products* are exempt from the prohibition against indirect substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620b(b)(1)) and its implementing regulations. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully acknowledge and understand that to acquire western red cedar under the indirect substitution exemption in 16 U.S.C. 620b(b)(1) for purposes other than domestic processing into finished products will be a violation of this Act, its implementing regulations, and the False Statements Act (18

U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.''

(2) *Signatory procedures.* Certificates shall be on company letterhead, and signed by the person manufacturing the shipment. In the case of a corporation, the certificate must be signed by a person authorized, in writing, by the Chief Executive Officer, pursuant to 36 CFR 223.187(d)(3), to sign the certificate in 36 CFR 223.187(d)(1) on behalf of the corporation.

(3) *Chief Executive Officer Authorization.* The authorization by the Chief Executive Officer shall be on company letterhead, shall be notarized, and shall read as follows:

''I authorize ____ to sign the certificate in 36 CFR 223.187(d)(1) on behalf of (name of corporation). I make this authorization with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber originating from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

### § 223.188 Prohibitions against exporting unprocessed Federal timber.

No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States. This prohibition does not apply to specific quantities of grades and species of such unprocessed Federal timber that the Secretary of Agriculture determines to be surplus to domestic manufacturing needs.

### § 223.189 Prohibitions against substitution.

(a) *Direct substitution prohibition.* Except as otherwise provided by this section:

(1) No person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if:

(i) Such person acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or

(ii) Such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(2) No person may export or sell for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract.

(3) No person may purchase unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

(4) The prohibitions in paragraphs (a)(1)–(3) of this section shall not apply to specific quantities of grades and species of unprocessed timber which the Secretary of Agriculture has determined to be surplus to domestic manufacturing needs.

(b) *Exemptions.* (1) Pursuant to section 490(c) of the Act (16 U.S.C. 620b), all persons who applied for a sourcing area by December 20, 1990, in accordance with § 223.190 of this subpart, were exempt from the prohibitions against substitution, in accordance with § 223.189(a)(1) of this subpart, until such time that the approving official approved or disapproved the application.

(2) Pursuant to Section 490(a) of the Act (16 U.S.C. 620b), an exemption to

the prohibition in § 223.189(a)(1)(B) of this subpart is provided to:

(i) A person with a historic export quota who submitted a certification in accordance with § 223.189 (c) and (d) of this subpart; and

(ii) A non-manufacturer who submitted a certification in accordance with § 223.192 of this subpart.

(3) Pursuant to § 490(c) of the Act (16 U.S.C. 620b), the prohibitions against direct substitution in § 223.189(a) (1) and (2) of this subpart do not apply to a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, received a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months, in accordance with § 223.189 (f) and (g) of this subpart.

(c) *Historic export quota exemption.* The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands, within the preceding 24-month period, shall not apply to a person with a historic export quota approved by the Secretary and who has been exporting unprocessed private timber in accordance with the log export and substitution regulations of the Secretary of Agriculture at 36 CFR part 223, subpart D, in effect before August 20, 1990, if:

(1) That person certified in writing to the Regional Forester of the Region administering the historic export quota, on or before November 20, 1990, that the person would cease exporting unprocessed timber originating from private lands on or before February 20, 1991, and

(2) The exporting ceased in accordance with such certification.

(d) *Application for historic export quota exemption.* To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber based on an approved historic export quota described in paragraph (c) of this section, a person must have applied in writing to the applicable Regional Forester on or before November 20, 1990. The certificate must have been notarized. The application was required to be on company letterhead and must have included:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

"I have purchased, under an historic export quota approved by the Secretary of Agriculture, unprocessed timber originating from Federal lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months in direct substitution for exported unprocessed timber originating from private lands. I desire to purchase directly from a Department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from lands west of the 100th meridian in the 48 contiguous States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided from such violation."

(3) The certification must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer.

(e) *Indirect substitution prohibition.* No person may purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited by paragraph (a) of this section from purchasing such timber directly from a

Department or agency of the United States, pursuant to § 490(b) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). The prohibition in this paragraph does not apply to the following:

(1) To the acquisition of western red cedar, which is domestically processed into finished products.

(2) To a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months in accordance with § 223.189 (f) and (g) of this subpart.

(3) To the limited amount of unprocessed National Forest System timber within Washington State that is exempt from the prohibition against indirect substitution, pursuant to § 223.203.

(f) *Waiver within a sourcing area.* The prohibitions in § 223.189(a) (1) and (2) against direct and indirect acquisition of unprocessed timber originating from Federal lands do not apply if:

(1) A person acquires such timber from within an approved sourcing area located west of the 100th meridian in the 48 contiguous States;

(2) Has not exported unprocessed timber originating from private lands located within the approved sourcing area during the preceding 24 months;

(3) Does not export such private timber from within the approved sourcing area during the period the sourcing area is in effect; and

(4) Does not export such private timber during any calendar year in the same geographic and economic area that unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States is under contract or in possession, if the sourcing area is no longer in effect, pursuant to the definition of substitution in 36 CFR 223.186.

(5) The appropriate Regional Forester could waive, in writing, the prohibition against export within the preceding 24-month period for any person who certified in writing, on or before November 20, 1990, that on or before February 20, 1991, that person would cease exporting unprocessed timber originating from private lands within the approved sourcing area for a period of not less than three (3) years. Signatories of this certificate who received an approved sourcing area, like all holders of sourcing areas, are subject to the prohibition against exporting unprocessed timber originating from private lands within the sourcing area boundaries, pursuant to this paragraph.

(g) *Application for waiver within a sourcing area.* To obtain a waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber described in paragraph (f) of this section, a person must have submitted a request for waiver, in writing, to the Regional Forester of the region in which the manufacturing facility being sourced is located, which must have been received by the Regional Forester on or before November 20, 1990, and which must have been signed by the person making such request or, in the case of a corporation, by its Chief Executive Officer. The request for waiver must be notarized and, in the case of a corporation, with its corporate seal affixed. The request shall be on company letterhead with its corporate seal affixed and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the waiver request, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification statement which reads as follows:

"I have engaged in exporting of unprocessed timber originating from private land located within the sourcing area for which I am applying. I desire to purchase directly from a department or agency of the United States unprocessed timber originating from Federal lands located within the desired sourcing area. I hereby request waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the forest Resources

Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from within the desired sourcing area by February 20, 1991, and will not resume such exporting for a period of not less than three (3) years. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of Section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

**§ 223.190 Sourcing area application procedures.**

(a) Subject to the restrictions described in § 223.189 of this subpart and, except as provided in paragraph (b) of this section, a person who owns or operates a manufacturing facility and who exports unprocessed timber originating from private lands may apply for a sourcing area in accordance with the procedures of this section. However, an owner/operator of a manufacturing facility who exports unprocessed timber originating from Federal lands may not possess or acquire unprocessed timber originating from Federal lands unless the acquisition is within an approved sourcing area. A person who intends to acquire or become affiliated with a manufacturing facility that processes Federal timber and who is an exporter may apply for a sourcing area. Written proof of the intent to acquire or affiliate must be included in the sourcing area application, signed by the applicant and the person or, in the case of a corporation, the Chief Executive Officer, whose company the applicant intends to acquire or affiliate with. This certification must be on letterhead and must be notarized. A sourcing area application that the Secretary determines would be approved will be granted tentative approval pending final notification by the applicant of acquisition of or affiliation with the manufacturing facility. The tentative approval of the sourcing area will lapse unless the acquisition or affiliation occurs within 30 days of the tentative approval of the sourcing area. A sourcing area is not valid until final approval of the sourcing area. The direct substitution prohibition did not apply to a person who applied for a sourcing area on or before December 20, 1990. A request for modification of an existing sourcing area shall trigger a review pursuant to the procedures and restrictions in § 223.191(e).

(b) As provided in the Act, a person who has requested an exemption or waiver of the prohibition against export within the preceding 24-month period, pursuant to § 223.189 of this subpart, must have applied for the desired sourcing area on or before December 20, 1990.

(c) *Applications.* Sourcing area applications shall include:

(1) A map of sufficient scale and detail to clearly show:

(i) The applicant's desired sourcing area boundary. This boundary will include both the private and Federal lands from which the applicant intends to acquire unprocessed timber for sourcing its manufacturing facilities;

(ii) The location of the timber manufacturing facilities owned or operated by the applicant within the proposed sourcing area where the person intends to process timber originating from Federal land;

(iii) The location of private lands within and outside the desired sourcing area where the person has, within the 24 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported, sold, traded, exchanged, or otherwise conveyed to another person for the purpose of exporting such timber;

(2) A list of other persons with timber manufacturing facilities located within the same general vicinity as the applicant's facilities;

(3) Any other information the applicant may believe is appropriate to support approval of the requested sourcing area; and

(4) A statement signed by the person certifying under the penalties provided in Section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the information provided in support of the application is true, complete, and accurate to the best of the applicant's knowledge. The statement shall read as follows:

''I certify under penalties of 16 U.S.C. 620d and 18 U.S.C. 1001, that the information provided in support of this application, is true, complete, and accurate to the best of my knowledge concerning my timber purchasing and export patterns. I certify that the information provided concerning my timber purchasing and export patterns fully and accurately reflects, to the best of my knowledge, the boundaries of the sourcing area for which I am applying. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I certify that I have not exported unprocessed timber originating from private lands within the boundaries of the sourcing area that is the subject of this application in the previous 24 months. I fully understand that, if this application is approved, exporting unprocessed private timber originating from within the approved sourcing area will be a violation of this Act (16 U.S.C. 620, *et seq.*) its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

(d) *Confidential information.* Applications are not considered confidential. However, if a person does submit confidential information as part of an application, the information should be marked confidential. Information so marked will be afforded the rights and protection provided under the Freedom of Information Act.

(e) *Where to submit the application.* A sourcing area applicant shall send the application to the Office of Administrative Law Judges and shall, simultaneously, send a copy of the sourcing area application to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of its Federal timber. The sourcing area applicant must also send a complete copy of the application to each agency concerned. The lead agency shall make the decision in consultation with, and upon cosignature of, the other agencies concerned.

(f) *Signatory procedures.* Sourcing area applications must be signed by the person making the request, or in the case of a corporation, by its Chief Executive Officer, and must be notarized. The application shall be on company letterhead.

(g) The sourcing area application and review process will be conducted pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), found at 7 CFR part 1, subpart M.

(h) A final decision on a sourcing area application or a formal sourcing area review will be issued within four (4) months of the receipt of the application or initiation of the review.

(i) The following criteria must be met for sourcing area approval:

(1) The Administrative Law Judge, or, on appeal, the Judicial Officer must find that the proposed sourcing area is geographically and economically separate from any area that the applicant harvests or expects to harvest for export any unprocessed timber originating from private lands. In making such a finding, the Administrative Law Judge, or, on appeal, the Judicial Officer shall consider the timber purchasing patterns of the applicant on private and Federal lands equally with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns.

(2) The ''same local vicinity'' will normally be manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but may include more distant communities if manufacturing facilities in those communities depend on the same source of timber and have similar purchasing patterns.

(3) The relative similarity of purchasing patterns of other mills shall be determined by considering the location and similarity of unprocessed timber being acquired by those facilities.

(4) Lines defining the geographic area shall be based on major natural and cultural features, including, but not limited to, prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines.

(j) *Comments*. Persons may submit comments on sourcing area applications pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), found at 7 CFR part 1, subpart M. Persons submitting a comment must certify at the end of the comment, but before the signature, to the following: ''I certify that the information provided by me is true and accurate, to the best of my knowledge, and I understand that failure to provide true and accurate information could be violation of the False Statements Act (18 U.S.C. 1001).''

(k) Transporting or causing to be transported unprocessed private timber from outside of a sourcing area into a sourcing area by the holder of the sourcing area is prohibited as a violation of the sourcing area boundary. Such violation will cause a review of the sourcing area, and could subject the sourcing area holder to the penalties and remedies for violations of the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.*, and its implementing regulations.

(l) A person with an approved sourcing area may relinquish the sourcing area at any time provided the person certifies to the following:

''I am relinquishing the approved sourcing area, described in the Secretary's determination in FSAA ___ on ___, 19__. I understand that I may not export unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during the fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in my possession or under contract, pursuant to the prohibition against substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (''Act'') and its implementing regulations. I also understand that I may not purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States, pursuant to the prohibitions against substitution in the Act and its implementing regulations. I make this certification with full knowledge and understanding of the Act and its implementing regulations and do fully understand that exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during a fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in possession or under contract, or purchasing unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States is a violation of the substitution provisions of the Act and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

The certificate must be signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must be on company letterhead; and must be notarized.

(m) A sourcing area is in effect until it is relinquished by the sourcing area holder, or is disapproved upon review of the sourcing area.

**§ 223.191 Sourcing area disapproval and review procedures.**

(a) Notwithstanding any other provision of law, an applicant whose sourcing area application was submitted by December 20, 1990, and was disapproved could either phase out of purchasing Federal timber or phase out of exporting unprocessed timber originating from private lands within the sourcing area that would have been approved, as follows:

(1) *Phase-out of Federal timber purchasing*. The applicant could purchase, in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the disapproved sourcing area, in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the 5 full fiscal years immediately prior to the date of submission of the application. In the 6-month period immediately following the 9-month period, such person could purchase not more than 25 percent of such annual average, after which time the prohibitions against direct substitution, set forth in § 223.189 of this subpart, shall apply; or

(2) *Phase-out of private timber exporting*. The applicant could continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in paragraph (a) of this section, if the following requirements were met:

(i) The applicant certified to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, as follows:

(A) An applicant that has exported unprocessed timber originating from private lands from the geographic area that would have been approved provided a signed certification that reads as follows:

''I have engaged in the exporting of unprocessed private timber originating from private lands located within the geographic area the approving official would have approved as a sourcing area for my manufacturing facility. I desire to continue purchasing unprocessed Federal timber from within such area. I hereby certify that I will cease all exporting of unprocessed timber from private lands located within the area that would have been approved by [the applicant shall insert date 15 months from date of receipt of the disapproval decision]. I agree to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area involved in the certification, for a period of three (3) years beginning on the date of receipt of the disapproval notification, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and do fully understand that failure to cease such exporting as certified will be a violation of the Act and may subject me to the penalties and remedies for such violation. Further, I fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001). I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief.'';

or,

(B) An applicant who has not exported unprocessed timber originating from private lands from the geographic area that the Secretary would have approved provided a signed certification that reads as follows:

''I have not exported timber originating from private lands within both the sourcing area that the Secretary would have approved and the disapproved sourcing area in the past 24 months, pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), and I am accepting the area that the Secretary would have approved as my sourcing area. I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief.''

(ii) Each certification statement set forth in paragraph (a)(2)(i) of this section must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must have been on company letterhead; must have been notarized; and must have had a corporate seal attached.

(iii) The person signing such certification set forth in paragraph (a)(2)(i)(A) of this section must have provided to the Regional Forester the annual volume of timber exported by that person during the five (5) full fiscal years immediately preceding submission of the application, originating from private lands in the geographic area for which the application would have been approved.

(iv) When the applicant submitted the certificate, the area the Secretary would have approved, as shown on the sourcing area map provided by the Secretary, became an approved sourcing area. If the certificate was not submitted, the sourcing area that would have been approved did not become an approved sourcing area.

(3) The phase-out of Federal timber purchasing and the phase-out of private timber exporting procedures provided by paragraphs (a)(1) and (a)(2) of this section do not apply to persons submitting sourcing area applications after December 20, 1990, or to persons requesting review of disapproved sourcing areas.

(b) *Limits on purchases and exports*. (1) During the 15-month period following disapproval of a sourcing area, a person who elects to phase-out of private timber exporting as described in paragraph (a)(2) of this section, may not:

(i) Purchase more than 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the person's disapproved sourcing area during the five (5) full fiscal years immediately prior to submission of the application; and,

(ii) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years immediately prior to submission of the application.

(2) At the conclusion of the 15-month export phase-out period, the prohibition against exporting private timber originating from within the area shall be in full force and effect as long as the sourcing area remains approved, pursuant to this subpart F of this part 223.

(c) *Presentation of map to applicant whose sourcing area is disapproved.* The area determined by the deciding official that would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the application.

(d) *Effect of prior certification to cease exporting.* An applicant's previous certification to cease exporting beginning February 20, 1991, for a period of three (3) years from within the disapproved sourcing area pursuant to paragraphs (f) and (g) in § 223.189 of this subpart shall remain in full force and effect for persons with approved and disapproved sourcing areas.

(e) *Review process and frequency.* (1) Approved sourcing areas shall be reviewed not less often than every five (5) years. A tentative date for a review shall be included in the Administrative Law Judge's, or, on appeal, the Judicial Officer's determination or stated in writing by the Regional Forester following the determination. At least 60 days prior to the tentative review date, the Regional Forester or other such reviewing official shall notify the person holding the sourcing area of the pending review, publish notice of such review in newspapers of general circulation within the sourcing area, and invite comments, to be received no later than 30 days from the date of the notice, from all interested persons, including the person holding the sourcing area. For 10 working days following the comment period, any person submitting a written comment and the person with the sourcing area may review the comments. If there is disagreement among the persons who submitted written comments regarding the proper sourcing area, the reviewing official shall convene an informal meeting convenient to the persons that all interested persons may attend. If an agreement cannot be reached among the persons, formal administrative adjudication shall occur. The Administrative Law Judge, or, on appeal, the Judicial Officer shall, on the record and after opportunity for a hearing, approve or disapprove the sourcing area being reviewed, pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), found at 7 CFR part 1, subpart M.

(2) Disapproved sourcing areas shall be reviewed using the process described in paragraph (e)(1) of this section upon resubmission of an application, provided the applicant has accepted the area the Secretary would have approved as a sourcing area pursuant to paragraph (a)(2) of this section.

(3) The Department reserves the right to schedule a review, at the request of the Forest Service or the person holding the sourcing area, at any time prior to the scheduled tentative review date, with 60 days notice.

(4) Sourcing areas being reviewed shall continue in full force and effect pending the final review determination.

(f) *Reporting and record keeping procedures.* The reporting and record keeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0115.

**§ 223.192 Procedures for a non-manufacturer.**

(a) Persons who do not own or operate a manufacturing facility (non-manufacturer) are not eligible to apply for or be granted a sourcing area.

(b) The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands within the preceding 24-month period shall not apply, if the person certified in writing to the Regional Forester of the region(s) in which the person purchases National Forest System timber by November 20, 1990, that the person would cease exporting unprocessed timber originating from private lands by February 20, 1991, for a period of three (3) years, and the exporting did cease in accordance with such certification.

(c) To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber described in § 223.189 (a) and (b) of this subpart, a person must have applied in writing to the applicable Regional Forester on or before November 20, 1990. The application was required to be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must have included:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

''I have engaged in the exporting of unprocessed timber originating from private lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from west of the 100th meridian in the contiguous 48 States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

(3) The certification must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer. The certificate must have been notarized.

**§ 223.193 Procedures for reporting acquisition and disposition of unprocessed Federal timber.**

(a) *Annual report.* Each person who directly or indirectly acquires or possesses unprocessed timber originating from National Forest System lands located west of the 100th meridian in the 48 contiguous States shall submit an annual report on a form provided by the Forest Service on the acquisition and disposition of such timber. Such report shall be on a calendar year basis and shall be sent to the Regional Forester, or other official to whom such authority is delegated, who administers the National Forest System lands from which the majority of timber originated, not later than March 1 of each year, beginning March 1, 1997. The form shall include:

(1) A summary for the calendar year listing, by company, from whom the timber was acquired; the date of acquisition; the origin of National Forest System timber acquired; the sale name; the contract number(s); brand registration number(s) of brands registered by a state or agency or a pictorial representation of sale brand(s) if brands not registered by a state or agency; to whom the timber was sold, transferred or otherwise conveyed to another person; and the date of disposal;

(2) An accounting by origin, in net board feet Scribner or cubic feet, of the volume of National Forest System timber acquired, the volume domestically

processed by the purchaser or affiliates, and the volume sold or transferred for domestic processing;

(3) The volume by species of National Forest System surplus species timber acquired and exported or sold for export;

(4) The volume (MBF Net Scribner or cubic) of the unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States that was exported, and

(5) A certificate stating that:

(i) The certifier has read and understands the form;

(ii) The certifier is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act;

(iii) The information supplied is a true, accurate, current, and complete statement of the receipt and disposition of unprocessed timber originating from National Forest System lands to the best of the certifier's knowledge;

(iv) The certifier agrees to retain a copy of the form and records of all transactions involving unprocessed Federal timber and to make such records available for inspection upon request of an authorized official of the United States for three (3) years from the date of disposal by manufacture or transfer; and

(v) The certifier acknowledges that failure to report completely and accurately the receipt and disposition of timber will subject the certifier to the penalties and remedies in the Act and the penalties in the False Statements Act (18 U.S.C. 1001).

(6) The information provided is presumed to be not confidential, unless specifically marked confidential, in which case confidentiality will be evaluated under applicable laws.

(b) *Transfer of unprocessed National Forest System timber*. Each person who transfers to another person unprocessed timber originating from National Forest System lands shall undertake the following:

(1) Before completing such transfer, provide to such other person a written notice of origin, species, estimated volume or actual volume if the transfer is based on log scale volume, from whom acquired, sale name, contract number, and log brand of unprocessed National Forest System timber being transferred on a form provided by the Forest Service;

(2) Before completing such transfer, certify that the information supplied is a true, accurate, current, and complete statement to the best of his or her knowledge. As part of the certification, the certifier shall:

(i) Agree to send a signed copy of the form required in paragraph (b)(1) of this section within 10 calendar days of such transfer, which shall include all notices, acknowledgments, and agreements, required by this section, to the appropriate Regional Forester who administers the National Forest System lands from which this timber originates, or other official to whom such authority is delegated, and to retain a copy for the certifier's records;

(ii) Acknowledge that the transfer of unprocessed Federal timber to a person for export or to a person who may not purchase timber directly from the Federal government is a violation of the Act;

(iii) Agree to obtain full completed notice of origin form from the transferee;

(iv) Agree to retain records of all transactions involving unprocessed Federal timber for a period of three (3) years from the date of transfer and to make all records involving log transactions available to an appropriate Federal official upon request. Records include all forms and certificates required by these regulations;

(v) Acknowledge that failure to report completely and accurately the receipt and disposition and/or transfer of unprocessed National Forest System timber will subject the certifier to the penalties and remedies in the Act (16 U.S.C. 620, *et seq.*) and the penalties in the False Statements Act (18 U.S.C. 1001); and

(vi) Certify that he or she has read and understands the form.

(3) Before completing such transfer, obtain from the person acquiring such timber on the same form provided by the Forest Service.

(i) An agreement to retain for a period of three (3) years from date of transfer the records of all sales, exchanges, or other disposition of such

timber, and make such records available for inspection upon the request of an authorized official of the United States;

(ii) An agreement to allow Federal officials access to log storage and processing facilities for the purpose of monitoring compliance with the Act and implementing regulations;

(iii) An agreement to maintain and/or replace all brands and paint identifying the Federal origin of each piece of unprocessed Federal timber as described in § 223.195;

(iv) An agreement to submit, by March 1, the annual report required in § 223.193(a);

(v) An agreement to submit a completed notice of origin form for the Federal timber received and to receive an agreement to comply with the Act and regulations in such form if the person transfers any or all of the timber listed in the document;

(vi) An acknowledgment of the prohibition against acquiring unprocessed Federal timber from a person who is prohibited by the Act from purchasing the timber directly from the United States;

(vii) An acknowledgment of the prohibitions against exporting unprocessed Federal timber and against acquiring such timber in substitution for unprocessed private timber west of the 100th meridian in the contiguous 48 States;

(viii) A declaration of its business size and manufacturing classification, as defined under the Small Business Administration Regulations at 13 CFR part 121; and

(ix) A certificate stating that the certifier has read and understands the form; is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act; has been notified that some or all of the unprocessed timber included in this transfer is subject to export and substitution restrictions; supplied information is a true, accurate, current, and complete statement of the receipt and disposition of the unprocessed timber originating from National Forest System lands to the best of the certifier's knowledge; and acknowledges that failure to report completely and accurately the transfer of unprocessed Federal timber will subject the certifier to the penalties and remedies in the Act (16 U.S.C. 620, *et seq.*) and the penalties in the False Statements Act (18 U.S.C. 1001). The information provided is presumed to be not confidential, unless specifically marked confidential, in which case confidentiality will be evaluated under applicable laws.

(4) Except as otherwise provided by law, a person who transfers unprocessed Federal timber to another person and meets all notice, certification, acknowledgment, reporting and record keeping requirements contained in this section shall be relieved from further liability for such timber pursuant to the Act.

### § 223.194 Procedures for reporting the acquisition and disposition of unprocessed private timber.

(a) *Notice of domestic processing requirement.* Each person who acquires unprocessed timber originating from Federal lands located west of the 100th meridian in the 48 contiguous States, and who also possesses or acquires unprocessed timber from private lands located west of the 100th meridian in the 48 contiguous States that requires domestic processing, including unprocessed timber originating within an approved sourcing area, and in turn sells, trades or otherwise conveys such unprocessed private timber to another person, must include a statement notifying the person acquiring the unprocessed private timber that such private timber must be domestically processed. Unprocessed timber originating from private lands located outside of a sourcing area may be transferred by the holder of the sourcing area, or by persons acquiring such unprocessed timber who are eligible to export such timber, without including such a statement.

(b) The notification statement, pursuant to paragraph (a) of this section, shall accompany each transaction involving unprocessed private timber that requires domestic processing. The statement shall be on a form provided by the Forest Service or a legible copy of such form.

(1) On such form, described in paragraph (b) of this section, the person transferring the timber shall:

(i) Give notice to the person receiving the unprocessed private timber that exporting that timber would violate the Act and its implementing regulations;

(ii) Give notice to the person receiving the unprocessed private timber that the timber has been identified for domestic manufacturing by a spot of highway yellow paint on each log end that must be retained on the timber;

(iii) Agree to send a signed copy of the transaction statement to the Regional Forester within 10 calendar days of the transaction;

(iv) Agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber for a period of three (3) years from the date of disposal by manufacturing or transfer and to make such records available for inspection upon the request of an authorized official of the United States;

(v) Acknowledge that failure to completely and accurately report and identify unprocessed timber is a violation of the Act, and regulations issued under the Act, and the False Statements Act (18 U.S.C. 1001); and

(vi) Certify that the form has been read and understood.

(2) On such form, described in paragraph (b), the person acquiring the timber shall:

(i) Acknowledge receipt of the notice of requirement to domestically process timber originating from private land;

(ii) Certify that a statement pursuant to paragraph (b)(1) will be included in any subsequent transaction documents;

(iii) Agree to maintain yellow paint markings on each log end until the timber is domestically processed or transferred;

(iv) Agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber for a period of three (3) years from the date of disposal by manufacturing or transfer and to make such records available for inspection upon the request of an authorized official of the United States;

(v) Agree to send a signed copy of the transaction statement to the Regional Forester within 10 calendar days of the transaction;

(vi) Agree to allow authorized officials access to log storage and processing facilities for the purpose of monitoring compliance with the Act and its implementing regulations;

(vii) Acknowledge that failure to comply with the domestic manufacturing requirements for unprocessed timber or failure to notify subsequent persons of this requirement may subject the certifier to the civil penalties and administrative remedies provided in the Act and regulations issued under the Act;

(viii) Acknowledge that failure to completely and accurately report and identify unprocessed timber is a violation of the Act, and regulations issued under the Act, and the False Statements Act (18 U.S.C. 1001); and

(ix) Certify that the form has been read and understood.

(c) Except as otherwise provided by law, a person who transfers unprocessed private timber to another person and meets all notice, certification, acknowledgement, distribution, reporting and record keeping requirements contained in this section shall be relieved from further liability for such timber with regard to the export and substitution restrictions pursuant to the Act.

### § 223.195 Procedures for identifying and marking unprocessed timber.

(a) *Highway yellow paint*. The use of highway yellow paint on unprocessed logs west of the 100th meridian in the contiguous 48 States shall be reserved for identifying logs requiring domestic manufacturing.

(b) *Preserving identification*. All identifying marks placed on an unprocessed log to identify the National Forest System origin of that log and/or to identify the log as requiring domestic processing shall be retained on the log until the log is domestically processed. If the identifying marks are lost, removed, or become unreadable, they shall be replaced. If the log is cut into two or more segments, each segment shall be identified in the same manner as the original log.

(1) A generic log hammer brand, known as a ''catch brand'', used to identify ownership, may be used to replace lost, removed, unreadable or otherwise missing brands where such use

is authorized by the Regional Forester and approved by the Contracting Officer. Use of such a catch brand on a log or log segment will signify Federal origin.

(2) The requirement to preserve identification of log pieces shall not apply to logs cut into two or more segments as a part of the mill in-feed process immediately before processing. Log segments that are returned to or placed in storage must be marked on both ends with yellow paint.

(c) *National Forest System logs.* Except as otherwise provided in this subsection, all unprocessed logs originating from National Forest System timber sales west of the 100th meridian in the contiguous 48 States shall, before being removed from the timber sale area, be marked on each end as follows:

(1) Painted on each end with a spot of highway yellow paint not less than three square inches in size; and,

(2) Branded on each end with a hammer brand approved for use by the Forest Supervisor of the National Forest from which the logs originate. The brand pattern may not be used to mark logs from any other source for a period of 24 months after all logs have been removed from the sale area and until such brand pattern is released in writing by the Forest Supervisor.

(d) *Private logs.* All unprocessed logs originating from private lands west of the 100th meridian in the contiguous 48 States that require domestic manufacturing pursuant to § 223.194 of this subpart, shall be painted on each end with a spot of highway yellow paint not less than three (3) square inches in size before removal from the harvest area. If private logs are acquired by a person who may not export such logs, the logs must be marked by the person acquiring the logs at the time of the acquisition.

(e) *Waiver of painting requirements.* The log painting requirements pursuant to paragraphs (c)(1) and (d) of this section may be waived if the Chief of the Forest Service determines that alternate methods for identifying logs required to be domestically processed are equal to or better than the procedures required herein.

(f) *Waiver of branding requirements.* Regional Foresters may waive the branding requirements pursuant to paragraph (c)(2) of this section as follows:

(1) *Regions 1, 2, 3, and 4.* On an individual timber sale basis, all or a portion of the branding requirements pursuant to paragraph (c)(2) of this section may be waived, if:

(i) Unprocessed logs from any origin are not known to have been exported by any person from the person's area of operations within the previous 5; years.

(ii) The person certifies as follows:

"I hereby request waiver of the requirements to brand each end of individual logs originating from the ____ timber sale, Forest Service contract number ____ pursuant to 36 CFR 223.195. I certify that I have not exported or sold for export unprocessed timber from private lands within my area of operations in five years. I certify that I understand, that if granted, the waiver applies only to unprocessed logs being processed within my area of operations. I certify that any unprocessed logs to which this waiver applies that are transferred, or sold for transfer, outside my area of operations will be branded on both ends in full compliance with 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirement of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations at 36 CFR part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.";

and,

(iii) The person otherwise complies with the regulations relating to transfers of logs between persons.

(iv) If the Regional Forester determines that unprocessed logs from my origin are being exported, or are known to have been exported within the previous 5 years, by any person from the person's area of operations, the Regional Forester shall revoke the waiver.

(2) *Regions 5 and 6.* On an individual timber sale basis, the branding requirement pursuant to paragraph (c)(2) of this section may be waived for logs ten (10) inches or less in diameter inside bark on the large end may be waived if:

(i) One end of each log is branded;

(ii) The person certifies as follows:

"I hereby request waiver of the requirement to brand each end of individual logs ten (10) inches or less in diameter inside bark on the large end, originating from the ____ timber sale, U.S. contract number ____ pursuant to 36 CFR 223.195. I certify that I understand, if granted, that the waiver applies only to unprocessed logs being processed at ____, and further certify that any and all unprocessed logs to which waiver would apply that are transferred, or sold for transfer, will be branded on both ends in full compliance 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990; 16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations at 36 CFR Part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.";

and,

(iii) The purchaser otherwise complies with the regulations relating to transfers of logs between persons.

(iv) If the Regional Forester determines that logs ten (10) inches or less in diameter inside bark on the large end are being exported in the Region, the Regional Forester shall revoke the waiver.

(3) The Chief of the Forest Service may authorize the testing of alternative methods of branding for consideration in future amendment of these regulations. Such alternative methods and logs marked under those methods shall be closely monitored.

### § 223.196 Civil penalties for violation.

(a) *Exporting Federal timber*. If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person, with willful disregard for the prohibition in the Act exporting unprocessed Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of the Act, the Secretary may assess against such person a civil penalty of not more than $500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(b) *Other violations*. If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person has violated any provision of the Act, or any regulation issued under the Act relating to National Forest System lands, even though that the violation may not have caused the export of unprocessed Federal timber in violation of such Act, the Secretary may:

(1) Assess against such person a civil penalty of not more than $500,000, if the Secretary determines that the person committed such violation willfully;

(2) Assess against such person a civil penalty of not more than $75,000 for each violation, if the Secretary determines that the person committed such violation in disregard of such provision or regulation; or

(3) Assess against such person a civil penalty of not more than $50,000 for each violation, if the Secretary determines that the person should have known that the action constituted a violation.

(c) *Penalties not exclusive and judicial review*. A penalty assessed under paragraph (a) or (b) of this section shall not be exclusive of any other penalty provided by law, and shall be subject to review in an appropriate United States district court.

### § 223.197 Civil penalty assessment procedures.

Adjudicatory procedures for hearing alleged violations of this Act and its implementing regulations and assessing penalties shall be conducted under the rules of practice governing formal adjudicatory proceedings instituted by the Secretary. Such procedures are found at 7 CFR 1.130, *et seq.*

### § 223.198 Administrative remedies.

In addition to possible debarment action provided under subpart C of this part, the Chief of the Forest Service, or other official to whom such authority is delegated, may cancel any timber sale contract entered into with a person found to have violated the Act or regulations issued under the Act. Such a finding shall constitute a serious violation of contract terms pursuant to § 223.116(a)(1) of this part.

**§ 223.199 Procedures for cooperating with other agencies.**

The Regional Foresters may enter into agreements to cooperate with the Department of the Interior, the Department of Defense, and other Federal, State and local agencies for monitoring, surveillance and enforcing the Act.

**§ 223.200 Determinations of surplus species.**

(a) Determinations that specific quantities of grades and species are surplus to domestic manufacturing needs and withdrawals of such determinations shall be made in accordance with title 5, United States Code, section 553.

(b) Review of a determination shall be made at least once in every 3-year period. Notice of such review shall be published in the FEDERAL REGISTER. The public shall have no less than 30 days to submit comments on the review.

(c) Alaska yellow cedar and Port Orford cedar, which the Secretary of Agriculture found to be surplus to domestic processing needs pursuant to 36 CFR 223.163, the rules in effect before August 20, 1990, shall continue in that status until new determinations are published.

**§ 223.201 Limitations on unprocessed timber harvested in Alaska.**

Unprocessed timber from National Forest System lands in Alaska may not be exported from the United States or shipped to other States without prior approval of the Regional Forester. This requirement is necessary to ensure the development and continued existence of adequate wood processing capacity in Alaska for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities. In determining whether consent will be given for the export of timber, consideration will be given to, among other things, whether such export will:

(a) Permit more complete utilization on areas being logged primarily for local manufacture,

(b) Prevent loss or serious deterioration of logs unsalable locally because of an unforeseen loss of market,

(c) Permit the salvage of timber damaged by wind, insects, fire or other catastrophe,

(d) Bring into use a minor species of little importance to local industrial development, or

(e) Provide material required to meet urgent and unusual needs of the Nation. (16 U.S.C. 472a; 16 U.S.C. 551; 16 U.S.C. 616)

**§ 223.202 Information requirements.**

(a) The procedures in §§ 223.189 and 223.192, and some of the procedures in § 223.190 were approved by the Office of Management and Budget (OMB) and assigned Control Number 0596–0114 upon issuance of the interim rule. Control Number 0596–0114 has been reapproved by OMB for use through May 31, 1997. OMB approved the information collection requirements in §§ 223.191 and 223.203 for use through August 31, 1995, and assigned them Control Number 0596–0115. OMB approved the information collection requirements in §§ 223.48 and 223.87 for use through March 31, 1997 and assigned them Control Number 0596–0021; the information collection requirements in §§ 223.48 and 223.87 have been revised. OMB Control Numbers 0596–0114, 0596–0115, and 0596–0021 have been consolidated under OMB Control Number 0596–0114.

(b) The application and reporting procedures in §§ 223.187, 223.193, 223.194, 223.195, and some of the procedures in § 223.190 of this final rule contain new record keeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget (OMB) has approved these requirements, and assigned them Control Number 0596–0114.

**§ 223.203 Indirect substitution exception for National Forest System timber from within Washington State.**

(a) *Exception limits.* A limited amount of unprocessed National Forest System timber originating from within Washington State could have been acquired by a person otherwise covered by the prohibition against indirect substitution, pursuant to § 490(b) of the Act and § 223.189(e) of this subpart.

(1) The amount of such unprocessed timber was limited to whichever is less:

(i) The higher of the applicant's actual purchase receipts for unprocessed timber originating from National Forest System lands within Washington State or the Department's records, during fiscal years 1988, 1989, and 1990, divided by 3; or

(ii) 15 million board feet.

(2) Such limit shall not exceed such person's proportionate share of 50 million board feet.

(b) *Application, review and approval process*. To obtain a share of the 50 million board feet exempted from the prohibition against indirect substitution in section 490(b) of the Act, a person must have submitted an application. Applications were required to include at least the following:

(1) The amount of volume exception being requested, in thousand board feet (MBF);

(2) A signed certification that reads as follows:

''I certify that, except for an approved share of unprocessed Federal timber, in accordance with 36 CFR 223.203, the prohibition contained in section 490(b) of the Act (16 U.S.C. 620b) applies to me. I have exported unprocessed timber originating from private lands from west of the 100th meridian in the 48 contiguous States and have acquired unprocessed timber from National Forest System lands located within Washington State in 1988, 1989 and/or 1990. I certify that the information provided in support of this application is a true, accurate, current and complete statement, to the best of my knowledge and belief. I agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber from Federal lands within the area involved in this application for a period of 3 years beginning on the date the application is approved, and to make such records available for inspection upon the request of the Regional Forester or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Act and do fully understand that if this application is approved, the amount of exception granted under this approval may not be exceeded in any one fiscal year, and do fully understand that if such exception is exceeded I will be in violation of the Act (16 U.S.C. 620, *et seq.*), and I may be subject to the penalties and remedies provided for such violation. Further, I do fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).'';

and

(3) The application listed under this section must have been signed by the person making such application or, in the case of a corporation, by its Chief Executive Officer. The application must have been on the company's letterhead and must have been notarized.

(4) The application made under this section must have been mailed to the Regional Forester in Portland, Oregon, no later than January 8, 1992. Applicants were notified of the approving official's decision by letter. If approved, the amount of the exception becomes effective upon publication in the FEDERAL REGISTER.

(5) Prospective applicants could review Department records upon request prior to the deadline for submitting applications. An applicant could voluntarily submit information documenting the amount of purchases of unprocessed timber originating from National Forest System lands within Washington State. The Department then determined which amount is higher, verified by either the Department's records or the applicant's records. The Department then determined the applicant's portion of the 50 million board feet by determining the lesser of the amount verified by the records or 15 million board feet. Applicants could submit the information documenting the amount of purchases in the following manner:

(i) Actual receipts for purchasing unprocessed timber from National Forest System lands within Washington State; or

(ii) A statement by a certified public accountant of:

(A) A summary by fiscal year for 1988, 1989 and 1990 of the applicant's acquisitions of timber originating from National Forest System lands in the State of Washington, listing total volume for each of the three fiscal years; and

(B) The average volume for the three fiscal years. The volumes to be reported were the harvest volumes, except in the case of open sales. Advertised volumes had to be reported for open sales.

(C) The certified public accountant must have certified to the following:

''I certify that under the penalties and remedies provided in § 492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of [applicant's company's name] National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990.''

(D) The certified public accountant's statement and certification must have been on the accountant's company letterhead, must have been notarized, and must have accompanied the applicant's application.

(c) *Selling and trading rights*. The purchase limit right obtained under this rule may be sold, traded, or otherwise exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights:

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) *Information collection*. The application procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0114.

(e) *Persons with approved shares*. The application period for shares of the indirect substitution exception for acquiring unprocessed timber originating from National Forest Systems lands within the State of Washington closed on January 8, 1992. Persons with approved shares are responsible for monitoring and controlling their acquisitions of National Forest System timber originating from within the State of Washington to assure approved share amounts are not exceeded in any Federal fiscal year. Unused portions of annual shares may not be ''banked'' for use in future fiscal years. The acquisition of such National Forest System timber must be reported to the Forest Service in accordance with § 223.193 of this subpart. The following shares are approved as of September 8, 1995:

(1) Cavenham Forest Industries, Portland, OR, 1,048,000 board feet.

(2) Weyerhauser, Tacoma, WA, 15,000,000 board feet.

## Subpart G—Special Forest Products

EFFECTIVE DATE NOTE: At 73 FR 79386, Dec. 29, 2008, subpart G was added, effective Jan. 28, 2009. At 74 FR 5107, Jan. 29, 2009, the amendment was delayed until Mar. 30, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was further delayed until May 29, 2009. At 74 FR 26091, June 1, 2009, the amendment was further delayed indefinitely.

### § 223.215 Applicability.

The regulations contained in this subpart govern the disposal of special forest products from National Forest System lands through sale and free use. Pursuant to the Department of the Interior and Related Agencies Appropriations Act of 2000 (Pub. L. 106–113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (sec. 339 of Title III of H.R. 3423)), as amended in 2004 by Section 335 of Public Law 108–108, special forest products that are also forest botanical products shall be sold, or offered for free use, subject to the requirements of subpart H of this part, until termination of the forest botanical pilot program. A commercial sale of special forest products shall be governed by a contract, permit, or other authorizing instrument. Free use above the incidental-use harvest level shall be conducted under a permit, unless otherwise provided.

### § 223.216 Special Forest Products definitions.

As used in this subpart:

*Person:* Any individual, partnership, corporation, association, Tribe, or other legal entity.

*Special forest products:* Products collected from National Forest System lands that include, but are not limited to, bark, berries, boughs, bryophytes, bulbs, burls, Christmas trees, cones,

ferns, firewood, forbs, fungi (including mushrooms), grasses, mosses, nuts, pine straw, roots, sedges, seeds, transplants, tree sap, wildflowers, fence material, mine props, posts and poles, shingle and shake bolts, and rails. Special forest products do not include sawtimber, pulpwood, non-sawlog material removed in log form, cull logs, small roundwood, house logs, telephone poles, derrick poles, minerals, animals, animal parts, insects, worms, rocks, water, and soil.

**§ 223.217 Authority to dispose of special forest products.**

The Forest Service has authority to dispose of special forest products located on National Forest System lands pursuant to the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528–531); the National Forest Management Act of 1976, as amended (16 U.S.C. 472a *et seq.*); and, the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600–1614).

**§ 223.218 Consistency with plans, environmental standards, and other management requirements.**

The disposal of special forest products from National Forest System lands shall be consistent with applicable land management plans. Each contract, permit, or other authorizing instrument shall include, as appropriate, provisions requiring the person or user to:

(a) Provide fire protection and suppression;

(b) Protect natural resources;

(c) Regenerate harvested species after harvesting operations;

(d) Minimize soil erosion;

(e) Maintain favorable conditions of water flow and quality;

(f) Minimize adverse effects on, protect, or enhance other national forest resources, uses, and improvements; and

(g) Deposit voucher specimens with a curator of a nationally recognized herbarium in North America as identified in the *Index Herbariorum* when the permit, contract, or other authorizing instrument allows bioprospecting.

**§ 223.219 Sustainable harvest of special forest products.**

(a) *Sustainable harvest levels.* Prior to offering a special forest product for sale or free use, the responsible forest officer must determine the product's sustainable harvest level. A special forest product's sustainable harvest level is the total quantity of the product that can be harvested annually in perpetuity on a sustained yield basis. Responsible forest officers shall not authorize harvest or free use of special forest products in an amount exceeding known sustainable harvest levels. In determining a sustainable harvest level, the responsible forest officer may consider harvest levels of the product for the previous three years, if such information is available. Responsible forest officers may consider factors such as year-to-year and site-to-site variability, climate, weather change, geographic scale, and scientific data available prior to making their sustainability determination and establishing monitoring time frames consistent with paragraph (c) of this section. Responsible forest officers will consult with Tribes, to the extent appropriate, to determine sustainable harvest levels based on historical information. In addition, responsible forest officers may consult with other appropriate parties to determine sustainable harvest levels based on historical information.

(b) *Harvest of protected species.* The sale or free use of special forest products listed or proposed for listing as endangered or threatened under the Endangered Species Act is prohibited, except as authorized by the U.S. Fish and Wildlife Service. Moreover, regional guidelines will identify when the sale or free use of any special forest product listed on the Regional Forester's sensitive plant list, species of concern list, species of interest list, or protected under the Convention on International Trade in Endangered Species may be authorized.

(c) *Monitoring of established harvest levels.* At least once every three fiscal years, or as otherwise established by the Regional Forester, the Forest Service shall monitor the effects of harvesting on the sustainability of special forest products. Such monitoring may include, but is not limited to, on-site

examination of the product, including both harvested and non-harvested areas, and a review of past and projected harvest levels to the extent such information is available.

(d) *Revision of harvest levels.* The sustainable harvest level for a special forest product may be increased or decreased, as appropriate, based on monitoring.

### § 223.220 Quantity determination.

Sale contracts, permits, or other authorizing instruments may provide for determining the quantity of special forest products by scaling, measuring, weighing, counting, or other reliable means.

APPRAISAL AND PRICING

### § 223.221 Establishing minimum rates.

The Chief of the Forest Service shall establish minimum rates for the sale of special forest products or groups of special forest products. Products must be sold for appraised value or minimum rates, whichever is higher. No products may be sold or harvested for less than minimum rates except to provide for the removal of insect infested, diseased, dead or distressed products.

### § 223.222 Appraisal.

The Chief of the Forest Service shall determine the appraised value of special forest products. Valid methods to determine appraised value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. Special forest products must be sold at minimum rates or appraised value, whichever is higher.

CONTRACT AND PERMIT CONDITIONS AND PROVISIONS

### § 223.223 Advance payment.

Contracts, permits, or other authorizing instruments for the sale of special forest products shall require advance payment, unless the contract, permit, or instrument authorizes the person to furnish a payment guarantee satisfactory to the Forest Service. Advance payments found to be in excess of amounts due the United States shall be refunded to the person or their successor in interest, subject to the requirements of the Debt Collection Improvement Act.

### § 223.224 Performance bonds and security.

A contract, permit, or other authorizing instrument for the sale of special forest products may require the person to furnish a performance bond or other security for satisfactory compliance with its terms.

### § 223.225 Term.

The term of any contract, permit, or other authorizing instrument for the sale of special forest products shall not exceed 10 years, unless the Secretary of Agriculture finds that better utilization of the various forest resources consistent with the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528–531) will result. Any such finding by the Secretary of Agriculture shall be made in writing.

### § 223.226 Term adjustments for force majeure delay.

Contracts or other authorizing instruments for the sale of special forest products, excluding permits, may contain a provision allowing the term to be extended if circumstances beyond the person's reasonable control delay performance. In determining whether such an extension is appropriate, responsible forest officers shall consider the value of the products or species, the length and type of authorizing instrument, the need for early/accelerated harvest, and any other appropriate factors. Circumstances beyond a person's reasonable control may include, but are not limited to, acts of God, acts of the public enemy, acts of the Government, labor disputes, fires, insurrections, and floods. The responsible forest officer may grant such an extension upon finding:

(a) Circumstances beyond the person's reasonable control delayed performance; and

(b) The person has diligently performed in accordance with the contract or other authorizing instrument.

ADVERTISEMENT AND BIDS

**§ 223.227 Sale advertisement.**

(a) The Forest Service shall advertise any special forest products sales with an appraised value equal to or greater than $10,000 for at least 30 days, except as provided in paragraph (c) of this section.

(b) When the sale's appraised value is less than $10,000, the Forest Service may sell the products without advertisement; however, if there is competitive interest in a sale valued at less than $10,000, the Forest Service shall advertise the sale for no less than 7 days.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Forest Service may, at its discretion, sell any special forest products without advertisement, or advertise a special forest products sale for a period less than 30 days if:

(1) Deterioration of a special forest product threatens its value; or

(2) The products were previously advertised for competitive bidding and no satisfactory bids were received; or

(3) The products are remaining from expired, cancelled, or abandoned contracts, permits, or other authorizing instruments.

**§ 223.228 Contents of advertisement.**

The Forest Service shall include the following information in an advertisement for the sale of special forest products:

(a) The location and estimated quantities of special forest products offered for sale;

(b) The time and place at which sealed bids will be opened in public;

(c) A provision asserting the Agency's right to reject any and all bids;

(d) The place where complete information on the offering may be obtained; and

(e) Notice that a prospectus is available to the public and to interested potential bidders.

**§ 223.229 Contents of prospectus.**

The prospectus for the sale of special forest products shall include the following:

(a) The minimum acceptable value or unit price for a product and the amount or rate of any deposits required in addition to the unit price of a product;

(b) The amount of the bid guarantee that must accompany each bid;

(c) The amount of the deposit or downpayment the successful bidder must make and the time-frame for making such deposit or downpayment;

(d) The location and area of the sale, including acreage;

(e) The estimated volumes, quality, size, or other appropriate measure for the special forest products;

(f) A description of any special harvest and removal requirements for the sale;

(g) The method of bidding that the Forest Service will employ; sealed bid or sealed bid followed by oral auction;

(h) The type of contract, permit, or other authorizing instrument to be used for the sale;

(i) The termination date and normal operating season, if any, of the contract, permit, or other authorizing instrument;

(j) The amount of performance bond required; and

(k) Such additional information about the sale as the Forest Service deems appropriate in order to encourage bidders to perform on-site investigations.

**§ 223.230 Bid restriction on resale of incomplete contracts, permits, or other instruments.**

In any resale of special forest products remaining from a previous sale, the Forest Service shall not consider a bid submitted by a person who failed to complete or defaulted the original contract, permit, or other instrument authorizing the sale, or from any affiliate of such person, except when such consideration serves the public interest.

**§ 223.231 Bidding methods.**

The Contracting Officer or designated forest officer shall offer advertised sales of special forest products through sealed bid or sealed bid followed by oral auction. The method selected shall:

(a) Ensure open and fair competition;

(b) Ensure that the Federal Government receives minimum rates or appraised value, whichever is higher;

(c) Be consistent with the National Forest Management Act and other applicable federal laws;

(d) Require, as a prerequisite to participation in an oral auction, that a bidder submit a written sealed bid at least equal to the minimum acceptable bid price(s) specified in the prospectus. The Forest Service shall not accept a bid at oral auction that is less than the bidder's initial sealed bid; and

(e) Specify the use of sealed bids or a mix of bidding methods in the affected area where there is a reasonable belief that collusive and/or abnormal bidding practices may be occurring.

### § 223.232 Disclosure of relation to other bidders.

The Forest Service may require any prospective bidder for special forest products to disclose its relationship with other potential bidders or operators. Such disclosure may include a certified statement listing:

(a) Stockholders or members of the bidder's firm;

(c) Officers;

(d) Members of the board of directors; or

(e) Holders of bonds, notes, or other types of debt.

## AWARD OF CONTRACTS, PERMITS, OR OTHER AUTHORIZING INSTRUMENTS

### § 223.233 Award to highest bidder.

(a) The Forest Service shall award contracts, permits, or other authorizing instruments for advertised sales as follows:

(1) The Forest Service will award a special forest products sale to the responsible bidder that submits the highest bid that conforms to the sale conditions in the prospectus.

(2) If the highest bidder cannot meet the conditions for the sale, as specified in the prospectus, the Forest Service may:

(i) Reject all bids and reoffer the sale, or

(ii) Offer the award at the high bid level to the next highest qualified bidder until the award is accepted or refused by all of the conforming bidders.

(iii) In the event of a tie between two or more responsible high bidders submitting conforming bids, the Forest Service shall award the sale by drawing of lots.

(iv) If no bids meet the specified conditions in the sale's prospectus, or if there are other irregularities in the bidding process, the Forest Service may reject all bids, and, at its discretion, reoffer the sale.

(b) [Reserved]

### § 223.234 Determination of responsibility.

(a) A Contracting Officer shall not award a contract, permit, or other instrument authorizing the sale of special forest products to a declared high bidder unless that officer makes an affirmative determination that the person is responsible. In the absence of information clearly establishing that the declared high bidder is responsible, the Contracting Officer shall conclude that the declared high bidder is not responsible.

(b) In order to make an affirmative determination of responsibility, the Contracting Officer must find that:

(1) The declared high bidder has adequate financial resources to perform the contract, permit, or other authorizing instrument, or the ability to obtain such resources;

(2) The declared high bidder is able to complete the contract, permit, or other authorizing instrument within the relevant term, taking into consideration the declared high bidder's other existing commercial and governmental obligations;

(3) The declared high bidder has a satisfactory record of integrity and business ethics;

(4) The declared high bidder has or is able to obtain equipment and supplies suitable for harvesting the special forest product(s) and for meeting applicable resource protection requirements;

(5) The declared high bidder is otherwise qualified and eligible to receive an award of a contract, permit, or other authorizing instrument under all applicable laws and regulations;

(6) The declared high bidder has a satisfactory performance record on contracts, permits, and other agreements with the U.S. Government. Failure to apply sufficient diligence and perseverance to perform a contract, permit, or other instrument is strong

evidence that a declared high bidder is not responsible. A declared high bidder that is, or has been deficient in performance shall be deemed not responsible, unless the declared high bidder demonstrates that the deficiency arose from circumstances beyond their reasonable control.

(c) Affiliated concerns, as defined in 36 CFR 223.49(a)(5), are normally considered separate entities in determining whether the declared high bidder that is to perform the contract meets the applicable standards for responsibility. However, the responsible Forest Officer shall consider an affiliate's past performance and integrity when they may adversely affect the responsibility of the declared high bidder.

**§ 223.235 Unilateral delay, suspension, or modification of contracts, permits, or other instruments authorizing the sale of special forest products.**

(a) *Reasons for delay, suspension or modification.* The Forest Service may unilaterally delay, suspend, or modify any contract, permit, or instrument authorizing the sale or free use of special forest products for any of the following reasons:

(1) To prevent actual or potential harm to the environment, including without limitation, harm to land, water, air, habitat, plants, animals, cave resources, or cultural resources;

(2) To ensure consistency with land management plans or other management documents;

(3) To conduct environmental analyses, including, without limitation, consultation under the Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq;*

(4) Existing or threatened litigation that might affect or involve a person's harvest of special forest products; or

(5) For any reasons or other conditions set forth in the contract, permit, or other authorizing instrument governing the sale.

(b) *Compensation.* (1) The Forest Service may compensate a person for the unilateral delay, suspension or modification of a contract, permit, or other authorizing instrument in accordance with the applicable provisions set forth in such document or, in the absence of such provisions, in accordance with applicable Forest Service methods and procedures in effect when a claim for compensation is submitted, giving due consideration to the cause, duration, and financial impact of the delay, suspension or modification.

(2) A person submitting a claim must comply with claim provisions in the governing contract, permit, or other authorizing instrument, or, in the absence of such provisions, must submit a written claim for compensation accompanied by supporting documentation that fully substantiates the claim.

(c) *Authority to unilaterally delay, suspend or modify.* The Contracting Officer administering the sale or a responsible superior officer may delay, suspend, or modify the contract, permit, or other authorizing instrument by issuing instructions to a person to delay, suspend, or modify operations. Such instructions to delay, suspend or modify shall be issued to a person in writing, except when exigent circumstances warrant oral communication, in which case the officer shall promptly follow-up in writing.

**§ 223.236 Unilateral termination.**

(a) *Reasons for Unilateral Termination.* The Forest Service may unilaterally terminate a contract, permit, or other instrument authorizing the sale or free use of special forest products for any of the following reasons:

(1) Any of the reasons provided in § 223.235(a);

(2) Material breach or continued violation of the contract, permit or other authorizing instrument;

(3) Violation of any Federal or State laws or regulations related to:

(i) Obtaining, attempting to obtain, selling, trading, or processing special forest products;

(ii) Obtaining, attempting to obtain, or performing a public contract or subcontract;

(iii) Harming or damaging public lands or protected species; or

(iv) Business integrity, honesty, or responsibility.

(b) *Compensation.* (1) The Forest Service may compensate a person for the unilateral termination of a contract, permit, or other authorizing instrument in accordance with the applicable

provisions set forth in such document or, in the absence of such provisions, in accordance with applicable Forest Service methods and procedures in effect when a claim for compensation is submitted, giving due consideration to the cause, duration, and financial impact of the termination.

(2) A person submitting a claim must comply with claim provisions in the governing contract, permit, or other authorizing instrument, or, in the absence of such provisions, must submit a written claim for compensation accompanied by supporting documentation that fully substantiates the claim.

(3) No compensation shall be provided if the unilateral termination is due in whole or in part to the reasons set forth at § 223.236(a)(2) or (3).

(c) *Authority to unilaterally terminate.* The Chief, or the Chief's designee, has the authority to unilaterally terminate a contract, permit, or other instrument authorizing the sale or free use of special forest products. Any such termination shall be issued in writing, except when exigent circumstances warrant oral communication, in which case a written communication shall follow promptly.

### § 223.237 Request for delay, suspension, modification, or termination.

(a) *Request.* A person authorized to harvest special forest products may request delay, suspension, modification, or termination of their contract, permit, or other authorizing instrument pursuant to the provisions set forth in the contract, permit, or instrument, if any, or for another reasonable cause, including without limitation, catastrophic damage to the product or substantially changed market conditions. Any such request must be submitted in writing and include a detailed explanation of all relevant circumstances supporting the request.

(b) *Response.* The Forest Service shall respond to any request for delay, suspension, modification, or termination in accordance with applicable provisions in the contract, permit, or other authorizing instrument, or, in the absence of such provisions, respond in a manner that is reasonable in light of the request's circumstances. The Forest Service may deny any request, in whole or in part, in accordance with the provisions of the relevant contract, permit, or instrument, or, in the absence of such provisions, at the Agency's discretion.

(c) *Authority.* The Contracting Officer administering a sale or a superior officer has the authority to deny or grant any request by a person authorized to harvest special forest products to delay, modify, suspend, or terminate a contract, permit, or other authorizing instrument. The Forest Service's response to a request for delay, modification, suspension, or termination shall be issued in writing, except when exigent circumstances warrant oral communication, in which case a written communication shall follow promptly.

### § 223.238 Free use authorization to U.S. Army and Navy.

Subject to delegations of authority by the Chief, Regional Foresters may approve the harvest of special forest products by the U.S. Army and Navy for the purposes identified at 16 U.S.C. 492.

### § 223.239 Free use by individuals.

(a) *Free use.* A person may harvest a special forest product from National Forest System lands free of charge for personal, non-commercial use up to the amount or quantity authorized by a designated Forest Service officer, a Forest Supervisor, or a Regional Forester, as delegated at 36 CFR 223.8.

(b) *Free use without a permit up to the incidental use harvest level.* No permit is required for the free use of a special forest product at or below that product's incidental-use harvest level, which shall be determined at the discretion of the regional forester or a subordinate officer. The incidental use harvest level covers small amounts of special forest products, such as cones, mushrooms, berries, acorns, black walnuts, or medicinal roots. Any free use of a special forest product that does not have an incidental-use harvest level is subject to this section's permit requirements.

(c) *Free-use permit requirement.* No person seeking free use of a special forest product, except one identified in § 223.239(e), may harvest a special forest product above the product's incidental-

use harvest level without submitting an application to a forest officer and obtaining a free-use permit, unless the permit requirement has been waived for a specific special forest product in a designated free-use area.

(d) *Contents of the permit*. The permit shall indicate the type, amount, and/or value of the product to be harvested, the permit's duration, and shall contain other restrictions and requirements as appropriate.

(e) *Free use without a permit for members of Tribes with treaty or other reserved rights related to special forest products*. A member of a Tribe with treaty or other reserved rights related to special forest products retains his/her ability to harvest such products in full accordance with existing rights, including free-use harvest without obtaining a free-use permit, as specified in treaty or other reserved rights.

(f) *Free use without a permit upon the request of the governing body of a Tribe*. At the Agency's discretion, responsible forest officers may, upon the request of an authorized representative of the governing body of a Tribe, issue a permit that would not otherwise be required under paragraph (e) of this section to a Tribe with treaty or other reserved rights related to special forest products for the free use of a specified quantity of special forest products. That Tribe may then allocate specified quantities of the special forest product(s) to individual Tribal members, up to the maximum amount specified in the Tribal free-use permit. Any Tribe issued such a permit must provide the Forest Service with information related to the permitted harvest, upon request.

(g) *Free-use restrictions*. A Forest Officer may set conditions on the free-use harvest of a special forest product or deny the free use of a special forest product. Reasons for denying free-use access or setting conditions on free use, except as specified in § 223.240, may include, but are not limited to:

(1) Ensuring public safety;

(2) Preventing interference with Forest Service and/or commercial operations;

(3) Ensuring the sustainability of a special forest product; or

(4) Otherwise protecting National Forest System land.

(h) *Unilateral termination of a free-use permit*. The responsible forest officer, or any superior officer, may terminate a free use permit without compensation at any time for reasons including, but not limited to, resource protection, weather factors, fire season, road access, conflicts with other users, or permit violations.

(i) *Subsistence in Alaska*. This section does not affect subsistence uses implemented under Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3126).

### § 223.240 Tribes and treaty and other reserved rights.

Tribes with treaty or other reserved rights related to special forest products retain their ability to harvest special forest products in full accordance with existing rights. However, consistent with all applicable rights, Regional Foresters may set conditions on Tribes with treaty or other reserved rights related to special forest products to protect the sustainability of special forest products or to otherwise protect National Forest System land. Regional Foresters may only prohibit Tribes with treaty or other reserved rights related to special forest products from harvesting a special forest product to protect public health and safety or to ensure sustainable harvest levels. Regional Foresters will provide a Tribe with treaty or other reserved rights related to special forest products that is prohibited from harvesting a special forest product with written documentation supporting the decision.

### § 223.241 Disposal of seized special forest products.

The Forest Service may dispose of seized special forest products that have been illegally obtained from National Forest System lands by sale or free use. Any sale of such products shall be conducted in accordance with the requirements of this subpart; however, no seized special forest products shall be sold to the person who collected them illegally. The Forest Service shall not dispose of a seized product by sale or free use if that product is:

(a) Listed or proposed for listing as threatened or endangered under the Endangered Species Act;

(b) Identified as prohibited for sale or trade under the Convention on Internal Trade in Endangered Species; or

(c) Listed on the Regional Forester's sensitive plant list, species of concern list, or species of interest list.

### § 223.242 Supplemental guidance, Memorandum of Agreements and Memorandums of Understanding.

Consistent with subparts G and H of this part, regional foresters may issue supplemental guidance and approve Memorandums of Agreement and Memorandums of Understanding to promote local collaboration, issue resolution, and local implementation of these regulations. Existing Memorandums of Agreement and Memorandums of Understanding related to forest products must be made consistent with subparts G and H within 24 months from December 29, 2008 or those agreements will terminate.

## Subpart H—Forest Botanical Products

EFFECTIVE DATE NOTE: At 73 FR 79386, Dec. 29, 2008, subpart H was added, effective Jan. 28, 2009. At 74 FR 5107, Jan. 29, 2009, the amendment was delayed until Mar. 30, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was further delayed until May 29, 2009. At 74 FR 26091, June 1, 2009, the amendment was further delayed indefinitely.

### § 223.275 Establishment of a pilot program.

This subpart governs the Forest Service's pilot program for the disposal of forest botanical products, as authorized by the Department of the Interior and Related Agencies Appropriations Act of 2000, (Pub. L. 106–113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (enacting into law sec. 339 of Title III of H.R. 3423)), as amended in 2004 by Section 335 of Public Law 108–108. The pilot program shall be in effect through September 30, 2009, unless extended or made permanent by Congress.

### § 223.276 Applicability.

This subpart applies to the sale and free use of forest botanical products, as defined in § 223.277, from National Forest System lands, until September 30, 2009, unless the pilot program is extended or made permanent by Congress. The Forest Service shall dispose of forest botanical products in accordance with the procedures set forth in 36 CFR part 223 Subpart G, subject to the requirements of this subpart.

### § 223.277 Forest botanical products definition.

As used in this subpart, the following term shall mean:

*Forest botanical products are:* Naturally occurring special forest products, including, but not limited to, bark, berries, boughs, bryophytes, bulbs, burls, cones, ferns, fungi (including mushrooms), forbs, grasses, mosses, nuts, pine straw, roots, sedges, seeds, shrubs, transplants, tree sap, and wildflowers. Forest botanical products are not animals, animal parts, Christmas trees, fence material, firewood, insects, mine props, minerals, posts and poles, rails, rocks, shingle and shake bolts, water, worms, and soil.

### § 223.278 Sale of forest botanical products and collection of fees.

The responsible Forest Officer shall ensure that the sale price of any forest botanical product includes a portion of the product's fair market value and a portion of the costs incurred by the Department of Agriculture associated with granting, modifying, or monitoring the authorization for harvest of forest botanical products, including the costs of any environmental or other analysis. The fair market value of forest botanical products shall be equal to the appraised value determined in accordance with § 223.222. The sum of the portions of fair market value and costs making up the sale price must be greater than or equal to the forest botanical product's fair market value. All other aspects related to the sale of forest botanical products shall be governed under 36 CFR part 223 Subpart G.

### § 223.279 Personal use.

(a) *Personal use.* A person may harvest forest botanical products from National Forest Systems lands free of charge for personal, non-commercial

use up to the personal-use harvest level.

(b) *Personal use harvest level.* In conjunction with determining sustainable harvest levels under § 223.219, the responsible Forest Officer shall determine personal-use harvest levels for specific forest botanical products, which shall be equal to the amount or quantity authorized for free use under § 223.239(a).

(c) *Personal-use permit requirement.* A person seeking personal use of a forest botanical product must comply with the free-use permitting requirements of § 223.239.

### § 223.280 Waiver of fees and/or fair market value.

The Forest Service waives the collection of fees otherwise required pursuant to § 223.278 of this subpart as follows:

(a) For all federally-recognized Tribes seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in § 223.240 of subpart G; and

(b) For Tribes with treaty or other reserved rights seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes in accordance with such treaty or other reserved rights. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in § 223.240 of subpart G; and

(c) When a Regional Forester or Forest Supervisor, having proper authorization from the Chief, makes a written determination that:

(1) The harvest of a specified forest botanical product will facilitate non-commercial scientific research such as species propagation or sustainability: or

(2) A forest botanical product is salvage because other management activities will destroy or damage the product.

### § 223.281 Monitoring and revising sustainable harvest levels.

The Forest Service shall monitor and revise sustainable harvest levels for forest botanical products in accordance with § 223.219 of subpart G.

### § 223.282 Deposit and expenditure of collected fees.

(a) Funds collected under the pilot program for the harvest and sale of forest botanical products shall be deposited into a special account in the Treasury of the United States. These funds shall be available for expenditure at National Forests or National Grasslands where the funds were collected until September 30, 2010, unless the program is extended.

(b) Funds deposited into the special account specified in paragraph (a) of this section shall be expended at a National Forest or National Grassland in an amount equal to the fees collected at that unit and shall be used to pay for the costs of:

(1) Conducting inventories of forest botanical products;

(2) Determining, monitoring, and revising sustainable harvest levels for forest botanical products;

(3) Monitoring and assessing the impact of harvest levels and methods;

(4) Conducting restoration activities, including vegetation restoration; and

(5) Administering the pilot program, including environmental or other analyses.

## Subpart I—Stewardship End Result Contracting Projects

SOURCE: 81 FR 3721, Jan. 22, 2016, unless otherwise noted.

### § 223.300 Applicability.

(a) This part sets forth the regulations applicable to the implementation of section 604 of the Healthy Forest Restoration Act of 2003, ''Stewardship End Result Contracting Projects'' 16 U.S.C. 6591c. This section provides for the use of contracts and agreements to achieve land management goals for the national forests and the public lands that meet local and rural community needs. In the fulfillment of these activities, the Forest Service may apply the value of timber or other forest products removed from the project site as an offset against the cost of services received under such contracts or agreements.

(b)(1) *Procurement of service contracts.* If the Forest Service makes a determination as provided under section 223.301(b)(1) of this subpart that a stewardship contract is a contract for the procurement of services, the Forest Service will utilize the contracting procedures set forth in the Federal Acquisition Regulations, Title 48 of the Code of Federal Regulations including the regulations issued by the Department of Agriculture set forth in Chapter 4 of Title 48 as well as requirements included in § 223.303.

(2) *Sale of property contracts.* If the Forest Service makes a determination under § 223.301(b)(2) of this subpart that a stewardship contract is to be a contract for the sale of property, the regulations set forth in subparts A and B of this part are generally applicable, except as provided in § 223.304.

(3) *Agreements.* Agreements entered into under this subpart are not subject to grant regulations found in 2 CFR part 200 as adopted and supplemented by the USDA in 2 CFR parts 400, 416, and 422.

(4) *Other provisions.* Additional terms and conditions for contracts and agreements may be added to a contract or agreement entered into under this subpart, in accordance with applicable law and to the extent determined to be necessary by the Forest Service.

(c) *Parties to contracts and agreements.* The Forest Service may enter into contracts and agreements under this part with private persons, private entities and public entities.

### § 223.301 Determination of type of contract or agreement.

(a) *Use of a contract or agreement.* When the Forest Service initiates a project under this subpart, a determination will be made whether to use a contract or an agreement to implement the project.

(b) *Type of contract.* If the Forest Service determines that a contract will be utilized:

(1) *Procurement of service contracts.* When the value of timber or other forest products removed through the contract will be less than the total value of the service work items received by the Forest Service, the activity shall be considered a procurement of a service and a contract, for a period not to exceed 10 years, will be utilized as provided in § 223.303 or

(2) *Sale of property contracts.* When the value of timber or other forest products removed through the contract is equal to or exceeds the total value of the service work items received by the Forest Service, the activity shall be considered a sale of property and a contract, for a period not to exceed 10 years, will be utilized as provided in § 223.304.

(c) *Best interest of the government determination.* The Forest Service official who makes a determination under paragraph (b) of this section shall document in the contract file the basis for the determination that:

(1) It is in the best interest of the government that a sale of property contract is more suitable for a contract that would otherwise be subject to paragraph (b)(1) of this section; or

(2) It is in the best interest of the government that a procurement of service contract is more suitable for a contract that would otherwise be subject to paragraph (b)(2) of this section.

### § 223.302 Award of contracts and agreements.

Section 604(d) of HFRA requires that a source for performance of a stewardship agreement or contract be selected on a best-value basis. A stewardship agreement or contract may also be entered into notwithstanding subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a).

### § 223.303 Procurement of service contacts.

All contracts determined under § 223.301(b)(1) to be a contract for receipt of a service shall:

(a) Be administered under the Federal Acquisition Regulations, Title 48 of the Code of Federal Regulations including the regulations issued by the Department of Agriculture set forth in Chapter 4 of Title 48; and

(b) Provide for a fire liability provision. All contracts under this section shall contain a fire liability provision that is in substantially the same form as the fire liability provision contained

in integrated resource timber contracts, as described in Forest Service contract numbered 2400–13, part H, section 4.

(c) Utilize the following provisions of subparts A and B of this part:

(1) Section 223.1 Authority to sell timber.

(2) Section 223.3 Sale of seized material.

(3) Section 223.14 Where timber may be cut.

(4) Section 223.30 Consistency with plans, environmental standards, and other management requirements.

(5) Section 223.34 Advance payment.

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(12) Section 223.61 Establishing minimum stumpage rates.

(13) Section 223.87 Requirements of bidders concerning exports.

(14) Section 223.113 Modification of contracts to prevent environmental damage or to conform to forest plans.

(d) Products may be valued on a per acre basis.

(e) Such other provisions as are necessary to carry out the provisions of section 604 of the Healthy Forest Restoration Act of 2003 (16 U.S.C. 6591c).

### § 223.304 Sale of property contracts.

All contracts determined under § 223.301(b) to be a contract for a sale of property shall:

(a) Utilize the provisions of subparts A and B of this part, except that the following provisions will not be applicable:

(1) Section 223.4 Exchange of trees or portions of trees.

(2) Section 223.31 Duration of contracts.

(3) Section 223.42 Transfer of effective purchaser credits.

(4) Section 223.43 Limit on amounts of transferred purchaser credits.

(5) Section 223.44 Collection rights on contracts involved in transfer of purchaser credit.

(6) Section 223.44 Collection rights on contracts involved in transfer of purchaser credit.

(7) Section 223.45 Definitions applicable to transfer of purchaser credit.

(8) Section 223.49 Downpayments. Paragraph (d).

(9) Section 223.62 Timber purchaser road construction credit.

(10) Section 223.65 Appraisal of timber for land exchange; right-of-way, or other authorized use.

(11) Section 223.80 When advertisement is required.

(12) Section 223.82 Contents of advertisement.

(13) Section 223.83 Contents of prospectus.

(14) Section 223.84 Small business bid form provisions on sales with specified road construction.

(15) Section 223.88 Bidding methods.

(16) Section 223.100 Award to highest bidder.

(17) Section 223.102 Procedure when sale is not awarded to highest bidder.

(18) Section 223.103 Award of small business set aside sales.

(19) Section 223.118 Appeal process for small business timber sale set-aside program share recomputation decisions.

(b) Include the following additional provisions:

(1) If determined by the Forest Service to be necessary to protect the interests of the United States, a performance and payment bond, as described on February 7, 2014, in section 28–103–2 and 28–103–3 of Part 48 of the Code of Federal Regulations, in an amount sufficient to protect the investment in receipts by the United States generated by the contractor from the estimated value of the forest products to be removed under the contract;

(2) Provide for a fire liability provision.

(3) Redetermination of stumpage rates and deposits: The cost of service work included in stewardship contracts will be evaluated along with stumpage

values at the time of a rate determination in accordance with normal rate determination procedures.

(4) Products may be valued on a per acre basis.

(5) Such other provisions as are necessary to carry out the provisions of section 604 of the Healthy Forest Restoration Act of 2003 (16 U.S.C. 6591c).

**§ 223.305 Agreements.**

The Forest Service may enter into an agreement under this subpart in lieu of a contract.

(a) The regulations governing Federal financial assistance relationships are not applicable to such agreements.

(b) All agreements under this section shall contain a fire liability provision that is in substantially the same form as the fire liability provision contained in integrated resource timber contracts, as described in Forest Service contract numbered 2400–13, part H, section 4.

# PART 228—MINERALS

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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

### § 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.

### § 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.

### § 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.

### § 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;

(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 § 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 § 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 § 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.

(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 § 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 § 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 § 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 § 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 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]

### § 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 § 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 § 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 § 228.8.

(c) A supplemental plan or plans of operations provided for in § 228.4(d) and a modification of an approved operating plan as provided for in § 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 § 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.

### § 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 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.

**§ 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.

**§ 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 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.

### § 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.

### § 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.

### § 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.

### § 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 § 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.

### § 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 § 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.

(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 § 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 § 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]

### § 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]

### § 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 § 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 § 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 § 228.10 and restore the surface in accordance with the requirements in § 228.8(g).

(e) The title to timber on patented claims validly established after the land was included within the National 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

### §§ 228.20–228.39 [Reserved]

## Subpart C—Disposal of Mineral Materials

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

### § 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).

### § 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 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 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]

### § 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 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]

### § 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 §§ 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]

### § 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.

### § 228.45 Qualifications of applicants.

The authorized officer may require applicants for prospecting permits, negotiated contracts, or free-use permits 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.

### § 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

### § 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.

### § 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.

### § 228.49 Reappraisal.

If an extension of time is granted as provided in § 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.

### § 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.

### § 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 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 § 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.

### § 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 responsibility under the contract or permit.

### § 228.53 Term.

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

### § 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.

### § 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.

### § 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 § 228.64(b).

## TYPES AND METHODS OF DISPOSAL

### § 228.57 Types of disposal.

Except as provided in § 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 § 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.

### § 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 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 (§ 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 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.

### § 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 (§ 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]

### § 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.

(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 § 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.

### § 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 §§ 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, 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 § 228.49.

**§ 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 § 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 § 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 (§ 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.

**§ 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 § 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 §§ 228.58, 228.59, or 228.62.

### § 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 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 § 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]

### § 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 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]

**§ 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): § 228.45, Qualifications of applicants; § 228.51, Bonding; § 228.52(b)(1), Requirements of assignee; § 228.53(b), Extension of time; § 228.56, Operating plans; § 228.57(c), Conduct of sales; § 228.60, Prospecting permits; § 228.61, Preference right negotiated sales; and § 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

**§ 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 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.

### § 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.

### § 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 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

### § 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, 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 § 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]

### § 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.

### § 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 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

### § 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, 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]

**§ 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.

**§ 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 § 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:

(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 (§ 228.109(a)) if the authorized Forest officer believes that additional bonding is required.

(e) *Supplemental plans*. A supplemental surface use plan of operations (§ 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]

### § 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 (§ 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;

(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.

### § 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.

### § 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.

## ADMINISTRATION OF OPERATIONS

### § 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.

**§ 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 (§ 228.105(a)), an applicable Notice to lessees, transferees, and operators (§ 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 § 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.

(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.

**§ 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 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.

**§ 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 § 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:

(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 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 § 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.

(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.

**§ 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 § 228.104(d) (Notice of decision) and § 228.107(c) (Notice of decision) of this subpart.

**§ 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 § 228.104(a) of this subpart;

(ii) No additional burden hours required to meet the information requirements in § 228.106 (a), (c), and (d) of this subpart;

(iii) 10 minutes for the information requirements in § 228.109(c) of this subpart;

(iv) 10 minutes for the information requirements in § 228.111(a) of this subpart;

(v) 5 minutes for the information requirements in § 228.113(a)(2) of this subpart; and

(vi) 2 hours for the information requirements in § 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.

# PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

## Subpart A—Community Forest and Open Space Conservation Program

Sec.
230.1 Purpose and scope.
230.2 Definitions.
230.3 Application process.
230.4 Application requirements.
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## Subpart B—Urban and Community Forestry Assistance Program

230.20 Scope and authority.
230.21 Implementation of the program.

AUTHORITY: 16 U.S.C. 2103(d) & 2109(e).

SOURCE: 56 FR 63585, Dec. 4, 1991, unless otherwise noted.

## Subpart A—Community Forest and Open Space Conservation Program

SOURCE: 86 FR 17307, Apr. 2, 2021, unless otherwise noted.

### § 230.1 Purpose and scope.

(a)(1) The regulations of this subpart govern the rules and procedures for the Community Forest and Open Space Conservation Program (Community Forest Program), established under Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). Under the Community Forest Program, the Secretary of Agriculture, acting through the Chief of the Forest Service, awards grants to local governments, Indian Tribes, and qualified nonprofit organizations to establish community forests for community benefits by acquiring and protecting private forestlands. This subpart is designed to allow Community Forest and Open Space Program (Community Forest Program) grant recipients to grant conservation easements to funding entities, and, in some circumstances, to convey land to another eligible entity when consistent with the program's purposes.

(2) This subpart applies to grants awarded prior to and after May 3, 2021.

(b) The Community Forest Program applies to eligible entities within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the territories and possessions of the United States.

### § 230.2 Definitions.

The terms used in this subpart are defined as follows:

*Borrowed funds*. Funds used for the purpose of cost share which would encumber the subject property, in whole or in part, to another party.

*Community benefits*. One or more of the following:

(1) Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;

(2) Environmental benefits, including clean air and water, stormwater management, wildlife habitat, and cultural resources;

(3) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.;

(4) Benefits from serving as replicable models of effective forest

stewardship for private landowners; and

(5) Recreational benefits such as hiking, hunting, and fishing secured with public access.

*Community forest*. Forest land owned in fee-simple by an eligible entity that provides public access and is managed to provide community benefits pursuant to a Community Forest Plan.

*Community Forest Plan*. A tract-specific plan developed with community involvement that guides the management and use of a community forest and includes the following components:

(1) A description of all purchased tracts and cost share tracts, including acreage and county location, land use, forest type, and vegetation cover;

(2) Objectives for the community forest and strategies to implement those objectives;

(3) A description of the long-term use and management of the property;

(4) Community benefits to be achieved from the establishment of the community forest;

(5) A description of ongoing activities that promote community involvement in the development and implementation of the Community Forest Plan;

(6) Plans for the utilization or demolition of existing structures and proposed needs for further improvements;

(7) A description of public access and the rationale for any limitations on public access, such as protection of cultural (including tangible and intangible resources) or natural resources or public health and safety concerns; and

(8) Maps of sufficient scale to show the location of the property in relation to roads, communities, and other improvements as well as nearby parks, refuges, or other protected lands and any additional maps required to display planned management activities.

*Eligible entity*. An organization that is qualified to acquire and manage land, limited to the following:

(1) *Local governmental entity*. Any municipal government, county government, or other local government body with jurisdiction over local land use decisions as defined by Federal or State law.

(2) *Indian Tribe*. Defined by Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); includes federally recognized Indian Tribes and Alaska Native Corporations.

(3) *Qualified nonprofit organization*. As defined by the Community Forest Program authorizing statute (16 U.S.C. 2103d(a)(4)), any organization that is described in Section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)) and operates in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A) of that Code (26 U.S.C. 170(h)(4)(A)). Conservation purposes include:

(i) The preservation of land areas for outdoor recreation by, or for the education of, the general public;

(ii) The protection of a relatively natural habitat for fish, wildlife, or plants, or similar ecosystem;

(iii) The preservation of open space (including farmland and forest land) for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, where such preservation will yield a significant public benefit; or

(iv) The preservation of a historically important land area or a certified historic structure.

*Eligible lands*. Private forest lands that:

(1) Are threatened by conversion to nonforest uses;

(2) Are not lands held in trust by the United States, including Indian reservations and allotment land; and

(3) Can provide defined community benefits under the Community Forest Program and allow public access if acquired by an eligible entity.

*Equivalent officials of Indian Tribes*. Individual(s) designated and authorized by the governing body of the Indian Tribe to manage the forest proposed for acquisition.

*Federal appraisal standards*. The current Uniform Appraisal Standards for Federal Land Acquisitions developed by the Interagency Land Acquisition Conference (also known as the yellow book).

*Fee-simple*. Absolute interest in real property, versus a partial interest such as a conservation easement.

*Forest lands*. Lands that are at least five acres in size, suitable to sustain

natural vegetation, and at least 75 percent forested. Forests are determined both by the presence of trees and the absence of incompatible nonforest uses.

*Grant recipient*. An eligible entity that receives a grant from the Forest Service through the Community Forest Program.

*Landscape conservation initiative*. A conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region. Examples of initiatives include community green infrastructure plans, a community or county land use plan, Indian Tribes' area of interest/homelands plans, a Statewide Forest Action Plan, etc. The conservation goals identified in the plan must correspond with the community and environmental benefits outlined for the Community Forest Program project.

*Nonforest uses*. Uses other than forest management that may be compatible or incompatible with maintaining community forest purposes.

(1) Nonforest uses that may be compatible with a community forest may include:

(i) Cultivated farmland, pasture, grassland, shrubland, open water, and wetlands; and

(ii) Low-impact structures or facilities that supports the purposes of the community forest and the Community Forest Program, such as recreational facilities, trails, concession and educational kiosks, energy development for onsite use, facilities associated with appropriate forest management, and parking areas.

(2) Incompatible nonforest uses are activities that threaten forest cover and are inconsistent with the Community Forest Plan. These uses may include, but are not limited to:

(i) Subdivision;

(ii) Residential development, except for a caretaker building;

(iii) Mining and nonrenewable resource extraction, except for activities that would not require surface disturbance of the community forest such as directional drilling for oil and gas development or onsite use of gravel from existing gravel pits;

(iv) Industrial use, including the manufacturing of products;

(v) Commercial use, except for sustainable timber or other renewable resources, and limited compatible commercial activities to support cultural, recreational and educational use of the community forest by the public; and

(vi) Structures, facilities, or organized, continuous, or recurring activities that disturb or compact the surface and/or impact forest and water resources in a manner that threatens the benefits and objectives of the community forest.

*Public access*. Access that is provided on a non-discriminatory basis at reasonable times and places, but may be limited to protect cultural (including tangible and intangible resources) and natural resources or public health and safety.

*State Forester*. The State employee who is responsible for administration and delivery of forestry assistance within a State, or equivalent official.

**§ 230.3 Application process.**

(a) The Forest Service will issue a national request for applications (RFA) for grants under the Community Forest Program. The RFA will be posted to *http://www.grants.gov* as well as other venues. The RFA will include the following information:

(1) The process and timeline for submitting an application;

(2) Application requirements (§ 230.4);

(3) Review process and criteria that will be used by the Forest Service (§ 230.5); and

(4) Additional information as the Forest Service determines appropriate.

(b) Pursuant to the RFA, interested eligible entities will submit an application for program participation to:

(1) The State Forester or equivalent official, for local governments and qualified nonprofit organizations; or

(2) The equivalent officials of the Indian Tribe, for applications submitted by an Indian Tribe.

(c) Interested eligible entities will also notify the Forest Service, pursuant to the RFA, when submitting an application to the State Forester or equivalent officials of the Indian Tribe.

(d) The State Forester or equivalent official of the Indian Tribe will forward all applications to the Forest Service

and, as time and resources allow, provide a review of each application to help the Forest Service determine:

(1) That the applicant is an eligible entity;

(2) That the land is eligible;

(3) That the proposed project has not been submitted for funding consideration under the Forest Legacy Program; and

(4) Whether the project contributes to a landscape conservation initiative.

(e) If an applicant seeks technical assistance from the State Forester, nontribal applicants should contact the State Forester to discuss what technical assistance is needed and confirm that the State Forester is willing to provide that assistance. Tribal applicants should work with their equivalent officials (§ 230.2) to discuss and arrange similar technical assistance needs. Applicants must include a separate budget that outlines the financial needs associated with technical assistance activities (§ 230.10).

(f) A proposed application cannot be submitted for funding consideration simultaneously for both the Community Forest Program and the Forest Service's Forest Legacy Program (16 U.S.C. 2103c).

### § 230.4 Application requirements.

(a) Documentation verifying that the applicant is an eligible entity and that the proposed acquisition is of eligible lands.

(b) Applications must include details of the property proposed for acquisition:

(1) A description of the property, including acreage and county location;

(2) A description of current land uses, including improvements and plans for utilization or demolition of existing structures;

(3) A description of forest type and vegetative cover;

(4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;

(5) A description of applicable zoning and other land use regulations affecting the property;

(6) Relationship of the property within and its contributions to a landscape conservation initiative; and

(7) A description of any threats of conversion to nonforest uses.

(c) Information regarding the proposed establishment of a community forest, including:

(1) Objectives of the community forest;

(2) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;

(3) A description of the community involvement to date in the planning of the community forest and of the community involvement anticipated in its long-term management;

(4) Description of the planned public access and the rationale for any proposed limitations such as protection of cultural (including tangible and intangible resources) or natural resources, or public health and safety concerns;

(5) An identification of persons and organizations that support the project and their specific role in acquiring the land and establishing and managing the community forest;

(6) If the project is within the designated boundary of a Federal management unit, a letter of support for the project from the Federal land manager; and

(7) A description of the resources that will be used to maintain and manage the property as a community forest in perpetuity.

(d) Information regarding the proposed land acquisition, including:

(1) A proposed project budget including a table and/or narrative detailing the source/type of non-Federal cost share and all allowable expenses associated with the project (§ 230.6);

(2) Requests for State Forester, or equivalent official of Indian Tribes, technical assistance in Community Forest Plan preparation should be listed separately in the budget, along with their estimated costs of providing assistance (§ 230.10);

(3) The status of due diligence, as documented by a signed option or purchase and sale agreement, title search, minerals determination, and appraisal;

(4) Description and status of cost share (secure, pending, commitment letter, etc.) (§ 230.6);

(5) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;

(6) The proposed timeline for completing the acquisition and establishing the community forest; and

(7) Long term management costs and funding source(s).

(e) Applications must comply with the Uniform Federal Assistance Regulations (7 CFR part 3015).

### § 230.5 Ranking criteria and proposal selection.

The Forest Service will evaluate all applications received by the State Foresters or equivalent officials of the Indian Tribes and award grants based on the following criteria:

(a) Type and extent of community benefits provided (§ 230.2);

(b) Extent and nature of community engagement in the establishment and long-term management of the community forest;

(c) Extent to which the community forest contributes to a landscape conservation initiative;

(d) Likelihood that, unprotected, the property would be converted to non-forest uses;

(e) Amount of cost share leveraged;

(f) Extent of due diligence completed on the project, including cost share committed and status of appraisal;

(g) Costs to the Federal Government; and

(h) Additional considerations as may be outlined in the RFA.

### § 230.6 Project costs and cost share requirements.

(a) The Community Forest Program Federal contribution cannot exceed 50 percent of the total project costs.

(b) Allowable project and cost share costs will include the purchase price and the following transactional costs associated with the acquisition:

(1) Appraisals and appraisal reviews;

(2) Land surveys;

(3) Legal and closing costs;

(4) Development of the Community Forest Plan; and

(5) Title examination.

(c) The principles and procedures for determining allowable costs for grants are outlined in 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements.

(d) Project costs do not include the following:

(1) Long-term operations, maintenance, and management of the land;

(2) Construction of buildings or recreational facilities;

(3) Research;

(4) Existing liens or taxes owed; and

(5) Costs associated with preparation of the application, except any allowable project costs specified in paragraph (b) of this section completed as part of the application.

(e) Cost share contributions can include cash, in-kind services, or donations and must:

(1) Be supported by grant regulations described in paragraphs (a) through (d) of this section;

(2) Not include other Federal funds unless specifically authorized by Federal statute;

(3) Not include non-Federal funds used as cost share for other Federal programs;

(4) Not include funds used to satisfy mandatory or compensatory mitigation requirements under a Federal regulation, such as the Clean Water Act, the River and Harbor Act, or the Endangered Species Act;

(5) Not include borrowed funds, as defined in § 230.2; and

(6) Be accomplished within the grant period.

(f) Cost share contributions may include the purchase or donation of other lands located within the community forest as long as it is provided by an eligible entity and legally dedicated to perpetual land conservation consistent with Community Forest Program and community forest objectives; such donations need to meet the acquisition requirements specified under § 230.8(a)(1)(ii).

(g) For purposes of calculating the cost share contribution, the grant recipient may request inclusion of project due diligence costs, such as title review and appraisals, incurred prior to issuance of the grant. These pre-award costs may have been incurred up to one year prior to the

issuance of the grant, but cannot include the purchase of Community Forest Program land, including cost share tracts.

**§ 230.7 Grant requirements.**

(a) Once an application is selected, funding will be obligated to the grant recipient through a grant.

(1) The following grant forms and supporting materials must be completed after project selection in order to receive the grant:

(i) An Application for Federal Assistance (Standard Form 424);

(ii) Budget information (Standard Form 424c—Construction Programs);

(iii) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d—Construction Programs); and

(iv) Additional forms, as may be required to award the grant.

(2) The grant paperwork must adhere to the requirements outlined in 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(b) The initial grant period will be two years, and acquisition of lands should occur within that timeframe. The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process.

(c) Forest Service must approve any amendment to a proposal or request to reallocate funding within a grant proposal.

(d) The grant recipient must comply with the requirements in § 230.8(a) before funds will be released.

(e) After the grant has closed, grant recipients must provide the Forest Service with a Geographic Information System (GIS) shapefile: A digital, vector-based storage format for storing geometric location and associated attribute information, of Community Forest Program project tracts and cost share tracts, if applicable.

(f) Any funds not expended within the grant period must be de-obligated and revert to the Forest Service for redistribution.

(g) All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through the Community Forest Program.

**§ 230.8 Acquisition requirements.**

(a) Prior to closing on an acquisition, grant recipients participating in the Community Forest Program must complete the following, which applies to all tracts, including cost share tracts:

(1) Complete an appraisal:

(i) For lands purchased with Community Forest Program funds, the appraisal must comply with Federal appraisal standards prior to the release of the grant funds. The grant recipient must provide documentation that the appraisal and associated appraisal review were conducted in a manner consistent with the Federal appraisal standards.

(ii) For donated cost share tracts, the market value must be determined by an independent appraiser. The value needs to be documented by a responsible official of the party to which the property is donated.

(2) Notify the landowner in writing of the appraised value of the property and that the sale is voluntary. If the grant recipient has a voluntary option for less than appraised value, they do not have to renegotiate the agreement.

(3) Purchase all surface and subsurface mineral rights whenever possible. However, if severed mineral rights cannot be obtained, the grant recipient must follow the retention of qualified mineral interest requirements outlined in the Internal Revenue Service regulations (26 CFR 1.170A–14(g)(4)), which address both surface and subsurface minerals.

(4) Ensure that title to lands acquired conforms to title standards applicable to State land acquisitions where the land is located:

(i) Title to lands acquired using Community Forest Program funds must not be subject to encumbrances or agreements of any kind that would be contrary to the purpose of the Community Forest Program.

(ii) Title insurance must not be a substitute for acceptable title.

(5) The grant recipient must provide all necessary due diligence documentation to regional Forest Service program managers and allow at least 60 days for review and acceptance.

(b) At closing, record a Notice of Grant Requirement with the deed in the lands record of the local county or municipality. This document must:

(1) State that the property (including cost share tracts) was purchased with Community Forest Program funds;

(2) Provide a legal description;

(3) Identify the name and address of the grant recipient who is the authorized title holder;

(4) State the purpose of the Community Forest Program;

(5) Reference the Grant Agreement with the Forest Service (title and agreement number) and the address where it is kept on file;

(6) State that the grant recipient confirms its obligation to manage the interest in real property pursuant to the grant, the Community Forest Plan, and the purpose of the Community Forest Program;

(7) State that the community forest may not be sold and will not be conveyed or transferred to another eligible entity or encumbered in whole or in part, to another party without permission and instructions from the Forest Service; and

(8) State that the grant recipient will manage the interest in real property consistent with the purpose of the Community Forest Program.

### § 230.9 Ownership and use requirements.

(a) Grant recipients shall submit a final Community Forest Plan for Forest Service review within 120 days of the land acquisition and update the plan periodically to guide the management and use of the community forest.

(b) Grantees are encouraged to work with their State Forester or equivalent official of their Indian Tribe for technical assistance when developing or updating the Community Forest Plan. In addition, eligible entities are encouraged to work with technical specialists such as professional foresters, recreation specialists, wildlife biologists, and outdoor education specialists when developing Community Forest Plans.

(c) Grant recipients shall provide public access in accordance with the Community Forest Plan.

(d) Recipients must manage the property in a manner consistent with the purposes of the Community Forest Program. In the event that a grant recipient sells or converts a parcel of land acquired under the Community Forest Program to nonforest uses or any use inconsistent with the purposes of the Community Forest Program, the grant recipient shall:

(1) Pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater. For the purposes of the calculation in this paragraph (d)(1), the parcel's appraised value will be the parcel's full fair market value. The impact of subsequent encumbrances, such as the imposition of conservation easements consistent with the purposes of the Community Forest Program, will not be considered in appraising the parcel's fair market value; and

(2) Not be eligible for additional grants under the Community Forest Program.

(e) For Indian Tribes, land acquired using a grant provided under the Community Forest Program must not be sold, converted to nonforest uses or a use inconsistent with the purpose of the Community Forest Program, or converted to land held in trust by the United States on behalf of any Indian Tribe.

(f) Every five years, grant recipients shall submit a self-certifying statement to the regional Forest Service Program Manager confirming that the property has not been sold or converted to nonforest uses or a use inconsistent with the purpose of the Community Forest Program.

(g) Grant recipients are subject to periodic spot checks conducted by the Forest Service to verify that property acquired under the Community Forest Program has not been sold or converted to nonforest uses or any use inconsistent with the purpose of the Community Forest Program and that the current Community Forest Plan complies with defined minimum requirements in § 230.2.

### § 230.10 Technical assistance funds.

Community Forest Program technical assistance funds may be provided to State Foresters or equivalent officials of Indian Tribes through an administrative grant to help implement projects funded through the Community Forest Program. These funds do not have a cost share requirement. Section 7A(f) of the authorizing statute limits the funds allocated to State Foresters or equivalent officials of Indian Tribes for program administration and technical assistance to no more than 10% of all funds made available to carry out the program for each fiscal year. Funds will only be provided to States or Indian Tribes that:

(a) Have a Community Forest Program project funded within their jurisdiction; and

(b) Indicate the financial need and purpose of technical assistance in their Community Forest Program application.

## Subpart B—Urban and Community Forestry Assistance Program

SOURCE: 65 FR 57549, Sept. 25, 2000, unless otherwise noted.

### § 230.20 Scope and authority.

The Urban and Community Forestry Assistance Program is authorized by Section 9 of the Cooperative Forestry Assistance Act of 1978, as amended (16 U.S.C. 2105). The scope of this authority includes the provision of technical, financial, and related assistance to State and local governments, non-profits, and other members of the public to: maintain, expand, and preserve forest and tree cover; expand research and education efforts related to trees and forest cover; enhance technical skills and understanding of tree maintenance and practices involving cultivation of trees, shrubs and complementary ground covers; and implementing a tree planting program to complement urban tree maintenance and open space programs. The Secretary has delegated the authority for implementing the program to the Chief of the Forest Service under 7 CFR 2.60(a)(16).

### § 230.21 Implementation of the program.

(a) The Urban and Community Forestry Assistance Program is implemented through the Forest Service Grants, Cooperative Agreements, and Other Agreements Program (FSM 1580) and the Grants, Cooperative Agreements, and Other Agreements Handbook (FSH 1509.11). The Forest Service Manual and Handbook are available from the Forest Service internet homepage or at National Forest offices.

(b) The Forest Service, under the authority of the Cooperative Forestry Assistance Act of 1978 and through the Urban and Community Forestry Assistance Program, coordinates financial, technical, and related assistance with the Natural Resources Conservation Service for the Urban Resources Partnership initiative. The Natural Resources Conservation Service provides similar assistance through the Urban Resources Partnership initiative under the authority of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a–590f). The Urban Resources Partnership is an initiative in which Federal agencies, in cooperation with State and local agencies, community groups, and non-governmental organizations endeavor to be more effective, responsive, and efficient in working together to protect, improve, and rehabilitate the environment in urban areas of the Nation. The Forest Service and Natural Resources Conservation Service implement the Urban Resources Partnership initiative under the ''Urban Resources Partnership National Guidance for U.S. Department of Agriculture Personnel'' and applicable agency and departmental procedures for Federal grants and cooperative agreements. Copies of the Guidance may be obtained from the Cooperative Forestry Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

# PART 241—FISH AND WILDLIFE

## Subpart A—General Provisions

Sec.

241.1 Cooperation in wildlife protection.
241.2 Cooperation in wildlife management.

241.3 Federal refuge regulations.

## Subpart B—Conservation of Fish, Wildlife, and Their Habitat, Chugach National Forest, Alaska

241.20 Scope and applicability.
241.21 Definitions.
241.22 Consistency determinations.
241.23 Taking of fish and wildlife.

AUTHORITY: 16 U.S.C. 472, 539, 551, 683.

## Subpart A—General Provisions

SOURCE: 6 FR 1987, Apr. 17, 1941, unless otherwise noted.

### § 241.1 Cooperation in wildlife protection.

(a) Officials of the Forest Service will cooperate with State, county, and Federal officials in the enforcement of all laws and regulations for the protection of wildlife.

(b) Officials of the Forest Service who have been, or hereafter may be, lawfully appointed deputy game wardens under the laws of any State, will serve in such capacity with full power to enforce the State laws and regulations relating to fur-bearing and game animals, birds, and fish. Such officials will serve as State deputy game wardens without additional pay, except that they may accept the usual fees allowed by the respective States for issuing hunting and fishing licenses. All officials of the Forest Service are prohibited from accepting bounties, rewards, or parts of fines offered by any person, corporation or State for aid rendered in the enforcement of any Federal or State law relating to fur-bearing and game animals, birds, and fish.

### § 241.2 Cooperation in wildlife management.

The Chief of the Forest Service, through the Regional Foresters and Forest Supervisors, shall determine the extent to which national forests or portions thereof may be devoted to wildlife protection in combination with other uses and services of the national forests, and, in cooperation with the Fish and Game Department or other constituted authority of the State concerned, he will formulate plans for securing and maintaining desirable populations of wildlife species, and he may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with State game officials in the planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, fur-bearers, and other wildlife on national forest lands.

### § 241.3 Federal refuge regulations.

Until a cooperative agreement has been entered into between the Chief of the Forest Service and appropriate State officials for the regulation of game as provided in § 241.2 and the necessary implementing laws or regulations have been promulgated and taken effect in order to carry out such cooperative agreement the following paragraphs shall be effective:

(a) Any person desiring to hunt or take game or non-game animals, game or non-game birds, or fish, upon any National Forest lands or waters embraced within the boundaries of a military reservation or a national game or bird refuge, preserve, sanctuary, or reservation established by or under authority of an act of Congress, shall procure in advance a permit from the Forest Supervisor. The permit shall be issued for a specified season, shall fix the bag or creel limits, and shall prescribe such other conditions as the Regional Forester may consider necessary for carrying out the purposes for which such lands have been set aside or reserved.

(b) Officials of the Forest Service will cooperate with persons, firms, corporations, and State and county officials in the protection, management, and utilization of game and non-game animals, game and non-game birds, and fish, upon national forest lands of the character referred to in paragraph (a) of this section. The Chief of the Forest Service may authorize the acceptance of contributions from cooperators for the payment of expenses incurred in carrying out the provisions of this section.

(c) When necessary for the protection of the forest or the conservation of animal life on refuges under paragraphs (a) and (b) of this section, the Chief of

the Forest Service may sell, barter, exchange, or donate game and non-game animals. When the interests of game conservation will be promoted thereby, the Chief of the Forest Service may accept donations of game and non-game animals, game and non-game birds, and fish, or the eggs of birds and fish.

## Subpart B—Conservation of Fish, Wildlife, and Their Habitat, Chugach National Forest, Alaska

SOURCE: 56 FR 63463, Dec. 4, 1991, unless otherwise noted.

### § 241.20 Scope and applicability.

(a) The regulations in this subpart apply to management of the Copper River-Rude River addition and Copper River-Bering River portion of the Chugach National Forest, for the conservation of fish, wildlife and their habitat as required by the Alaska National Interest Lands Conservation Act (16 U.S.C. 539). These regulations supplement the general regulations governing use and occupancy of National Forest System lands nationwide in 36 CFR part 251—Land Uses.

(b) The rules of this subpart are applicable only on Federally-owned lands within the boundaries of the Copper River-Rude River addition and the Copper River-Bering River portion of the Chugach National Forest, Alaska, known as the Copper River Management Area and as described and displayed in the Chugach National Forest Land and Resource Management Plan, July 1984.

(c) Nothing in these regulations is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife.

(d) The primary purpose for the management of the Copper River-Rude River addition and the Copper River-Bering River portion of the Chugach National Forest, Alaska, is the conservation of fish and wildlife and their habitat. Consistent with the regulations at part 219 of this chapter, direction for managing the fish and wildlife resources of these units shall be documented in the land management plan for the Chugach National Forest.

### § 241.21 Definitions.

For the purpose of this subpart, the terms listed in this section shall be defined as follows:

*ANILCA* refers to the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*)

*Federal lands* mean lands the title to which is in the United States, but does not include those lands: (1) Tentatively approved, legislatively conveyed, or patented to the State of Alaska, or (2) interim-conveyed or patented to a Native corporation or person.

*Fish and Wildlife* means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or dead body or part thereof. For the purposes of this subpart, birds also include any migratory or endangered bird for which protection is afforded by treaty or other international agreement.

*Land* means lands, waters, and interests therein.

*Multiple-use activity* is a specific management or permitted activity, use, measure, course of action, or treatment of National Forest System lands carried out under the statutory charter of the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*) and the National Forest Management Act (16 U.S.C. 1600 *et seq.*).

*Responsible Forest Officer* is the Forest Service employee who has the authority to select, authorize, permit and/or carry out a specific multiple-use activity.

### § 241.22 Consistency determinations.

(a) Subject to valid existing rights, a multiple-use activity may be permitted or authorized within the areas of the Chugach National Forest subject to this subpart only after a determination by the responsible Forest Officer that such activity is consistent with the conservation of fish, wildlife, and their habitat. A use or activity may be determined to be consistent if it will not materially interfere with or detract

from the conservation of fish, wildlife and their habitat.

(b) Where an evaluation is made pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) for a proposed multiple-use activity, and the responsible Forest Officer prepares an environmental impact statement (EIS) or environmental assessment (EA) or categorically excludes an activity from documentation in an EA or EIS, the consistency determination required by this section for the use or activity shall be included as a part of the decision document.

(c) Guidelines that are consistent with this section may be developed for specific multiple-use activities as a part of the planning and implementation process required by the National Forest Management Act and the implementing regulations at 36 CFR part 219, National Forest System Land and Resource Management Planning.

(d) Subject to valid existing rights, the responsible Forest Officer may incorporate into any permit or other authorization issued pursuant to 36 CFR part 251 or other regulations of this chapter any reasonably practicable measures that are determined to be necessary to maintain consistency with the conservation of fish, wildlife, and their habitat as provided by this subpart.

(e) Subject to valid existing rights, the responsible Forest Officer may revoke, suspend, restrict, or require modification of any activity if it is determined that such measures are required to conserve wildlife, fish, or their habitat within areas of the Chugach National Forest subject to this subpart. Prior to taking action to revoke, suspend, restrict, or require modification of an activity under this section, the responsible Forest Officer shall give affected parties reasonable prior notice and an opportunity to comment, unless it is determined that doing so would likely result in irreparable harm to conservation of fish, wildlife, and their habitat.

(f) Decisions made pursuant to this section are subject to appeal only as provided in 36 CFR part 214.

(g) Nothing in this section affects subsistence activities carried out in accordance with § 241.23 of this subpart or other applicable law.

[56 FR 63463, Dec. 4, 1991, as amended at 78 FR 33724, June 5, 2013]

### § 241.23 Taking of fish and wildlife.

(a) The taking of fish and wildlife by hunting, trapping, or fishing from lands subject to the rules of this subpart is authorized in accordance with applicable State and Federal law.

(b) To the extent consistent with the conservation of fish and wildlife and their habitat in accordance with recognized scientific management principles, local rural residents who depend upon the Chugach National Forest for subsistence needs shall continue to have the opportunity to engage in a subsistence way of life on the lands to which this subpart applies pursuant to applicable State and Federal law.

(c) To the extent consistent with the conservation of fish and wildlife and their habitat, the continuation of existing uses and the future establishment and use of temporary campsites, tent, platforms, shelters, and other temporary facilities and equipment directly and necessarily related to the taking of fish and wildlife may be authorized in accordance with applicable law and regulations. However, the Forest Supervisor may restrict or prohibit facilities or uses in the Copper River-Rude River addition or Copper River-Bering River area if it is determined, after adequate notice to the affected parties, that the continuation of such facilities or uses would materially interfere with or adversely affect the conservation of fish and wildlife and their habitat.

## PART 242—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

### Subpart A—General Provisions

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242.28 Subsistence taking of shellfish.

AUTHORITY: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

## Subpart A—General Provisions

SOURCE: 67 FR 30563, May 7, 2002, unless otherwise noted.

### § 242.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

### § 242.2 Authority.

The Secretary of the Interior and Secretary of Agriculture issue the regulations in this part pursuant to authority vested in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101–3126.

### § 242.3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public land in the State of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency-specific regulations.

(b) The regulations contained in this part apply on all public lands, including all inland waters, both navigable and non-navigable, within and adjacent to the exterior boundaries of the following areas, and on the marine waters as identified in the following areas:

(1) Alaska Maritime National Wildlife Refuge, including the:

(i) Karluk Subunit: All of the submerged land and water of the Pacific Ocean (Sheliokof Strait) extending 3,000 feet from the shoreline between a point on the spit at the meander corner common to Sections 35 and 36 of Township 30 South, Range 33 West, and a point approximately 1¼ miles east of Rocky Point within Section 14 of Township 29 South, Range 31, West, Seward Meridian as described in Public Land Order 128, dated June 19, 1943;

(ii) Womens Bay Subunit: Womens Bay, Gibson Cove, portions of St. Paul Harbor and Chiniak Bay: All of the submerged land and water as described in Public Land Order 1182, dated July 7, 1955 (U.S. Survey 21539);

(iii) Afognak Island Subunit: All submerged lands and waters of the Pacific Ocean lying within 3 miles of the shoreline as described in Proclamation No. 39, dated December 24, 1892;

(iv) Simeonof Subunit: All of the submerged land and water of Simeonof Island together with the adjacent waters of the Pacific Ocean extending 1 mile from the shoreline as described in Public Land Order 1749, dated October 30, 1958; and

(v) Semidi Subunit: All of the submerged land and water of the Semidi Islands together with the adjacent waters of the Pacific Ocean lying between parallels 55°57′57″00–56°15′57″00 North Latitude and 156°30′00″–157°00′00″ West Longitude as described in Executive Order 5858, dated June 17, 1932;

(2) Arctic National Wildlife Refuge, including those waters shoreward of

the line of extreme low water starting in the vicinity of Monument 1 at the intersection of the International Boundary line between the State of Alaska and the Yukon Territory; Canada, and extending westerly, along the line of extreme low water across the entrances of lagoons such that all offshore bars, reefs and islands, and lagoons that separate them from the mainland to Brownlow Point, approximately 70°10′ North Latitude and 145°51′ West Longitude;

(3) National Petroleum Reserve in Alaska, including those waters shoreward of a line beginning at the western bank of the Colville River following the highest highwater mark westerly, extending across the entrances of small lagoons, including Pearl Bay, Wainwright Inlet, the Kuk River, Kugrau Bay and River, and other small bays and river estuaries, and following the ocean side of barrier islands and sandspits within three miles of shore and the ocean side of the Plover Islands, to the northwestern extremity of Icy Cape, at approximately 70°21′ North Latitute and 161°46′ West Longitude; and

(4) Yukon Delta National Wildlife Refuge, including Nunivak Island: the submerged land and water of Nunivak Island together with the adjacent waters of the Bering Sea extending, for Federal Subsistence Management purposes, 3 miles from the shoreline of Nunivak Island as described in Executive Order No. 5059, dated April 15, 1929.

(5) Southeastern Alaska, including the:

(i) Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°02′35″ north latitude, 135°21′07″ west longitude as shown on United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S 58° W, 2,500 feet, to the southern point of Nepovorotni Rocks; S 83° W, 5,600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N 6° W, 4,200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N 24° E, 3,000 feet, to a point, 57°03′15″ north latitude, 134°23′07″ west longitude; East, 2,900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1,496 to angle point No. 35, on the southwestern point of Japonski Island; S 60° E, 3,300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point of beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S 45° E. along the main channel approximately 20.00 chains; thence S 45° W, approximately 9.00 chains to the southeastern point of Aleutski Island; thence S 79° W, approximately 40.00 chains to the southern point of Fruit Island; thence N 60° W, approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of U.S. Survey No. 1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, and Fruit islands and a number of smaller unnamed islands.

(ii) Tongass National Forest:

(A) Beacon Point, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 16. The reference location is marked as 57 south, 79 east, CRM, SEC 8, U.S. Survey No. 1604. The point begins on the low-water line at N 63° W, true and approximately 1,520 feet from Beacon Point beacon; thence due south true 1,520 feet; thence true East 1,800 feet, more or less to an intersection with a low-water line; thence following, is the low-water line round the point to point of the beginning (Approx. Long. 133°00′ W, Lat. 56°56¼′ N).

(B) Bushy Island and Snow Passage are shown on the U.S. Coast and Geodetic Survey Chart, labeled No. 8160—Sheet No. 12. The reference location is

marked as 64 south, 80 east, CRM, SEC. 31/32 on the map labeled, USS 1607. The point begins on a low-water line about ¼ nautical miles and southwesterly from the northwest point of the island, from which a left tangent to an island that is 300 yards in diameter and 100 yards offshore, bears the location—N 60° W, true; thence S 60° E, true and more or less 2,000 feet to an intersection with a low-water line on the easterly side of the island; thence forward along the winding of the low-water line northwesterly and southwesterly to the point of the beginning, including all adjacent rocks and reefs not covered at low water (Approx. Long. 132°58′ W, Lat. 56°16½′ N).

(C) Cape Strait, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 16. The reference location is marked as 56 south, 77478 east, CRM, on the map labeled as USS 1011. It begins at a point on a low-water line that is westerly from the lighthouse and distant 1,520 feet in a direct line from the center of the concrete pier upon which the light tower is erected; thence South 45° E, true by 1,520 feet; thence east true by 1,520 feet, more or less to an intersection with the low-water line; thence north-westerly and westerly, following the windings of the low-water line to the point of beginning (Approx. Long. 133°05′ W, Lat. 57°00′ N).

(D) Point Colpoys and Sumner Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Prince of Wales Island—Sheet No. 12. The reference location is marked as 64 south, 78 east, CRM, SECs. 10, 11, 12 on the map labeled as USS 1634. Location is north of a true east-and-west line running across the point to 1,520 feet true south from the high-water line at the northernmost extremity. Map includes all adjacent rocks and ledges not covered at low water and also includes two rocks awash about 1¼ nautical miles east and South and 75° East, respectively, from the aforementioned point (Approx. Long. 133°12′ W, Lat. 56°20′ N).

(E) Vank Island and Stikine Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 18. Located at 62 south, 82 east, CRM, SEC 34, on the map labeled as USS 1648. This part of the island is lying south of a true east-and-west line that is drawn across the island from low water to low water. Island is 760 feet due North from the center of the concrete pier upon which the structure for the light is erected (Approx. Long. 132°35′ W, Lat. 56°27′ N).

(F) High Point, and Woronkofski Island, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 18. The location begins at a point on low water at the head of the first bight easterly of the point and about ⅛ nautical mile distant therefrom; thence south true 1,520 feet; thence west true 1,100 feet, more or less to an intersection with the low-water line; thence northerly and easterly, following the windings of the low-water line to point of the beginning (Approx. Long. 132°33′ W, Lat. 56°24′ N).

(G) Key Reef and Clarence Strait are shown on the U.S Coast and Geodetic Survey Chart No. 8160—Sheet No. 11. The reef lies 1¾ miles S. 80° E, true, from Bluff Island and becomes awash at extreme high water. Chart includes all adjacent ledges and rocks not covered at low water (Approx. Long. 132°50′ W, Lat. 56°10′ N).

(H) Low Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 22. The location begins at a point on a low-water line that is 760 feet in a direct line, easterly, from the center of Low Point Beacon. The position is located on a point of shoreline about 1 mile easterly from Low Point; thence S. 35° W, true 760 feet; thence N 800 feet and W 760 feet, more or less, to an intersection with the low-water line to the point of beginning (Approx. Long. 132°55½′ W, Lat. 56°27½′ N).

(I) McNamara Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 25. Location begins at a point on a low-water line that is 1,520 feet in a direct line, northerly, from McNamara Point Beacon— a slatted tripod structure; thence true east 1,520 feet; thence true south, more or less, 2,500 feet to an intersection with the low-water line; thence northwesterly and northerly following the windings of the low-water line to the point of the

beginning (Approx. Long. 133°04′ W, Lat. 56°20′ N).

(J) Mountain Point and Wrangell Narrows, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8170—Sheet No. 27. The location begins at a point on a low-water line southerly from the center of Mountain Point Beacon and distant there from 1,520 feet in a direct line; thence true west 1,520 feet; thence true north, more or less, 3,480 feet to an intersection with the low-water line; thence southeasterly and southerly following the windings of the low-water line to the point of the beginning (Approx. Long. 132°57½′ W, Lat. 56°44′ N).

(K) Angle Point, Revillagigedo Channel, and Bold Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8075—Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, USS 1603. The location begins at a point on a low-water line abreast of the lighthouse on Angle Point, the southwestern extremity of Bold Island; thence easterly along the low-water line to a point that is 3,040 feet in a straight line from the beginning point; thence N 30° W, True 3,040 feet; thence true west to an intersection with the low-water line, 3,000 feet, more or less; thence southeasterly along the low-water line to the point of the beginning (Approx. Long. 131°26′ W, Lat. 55°14′ N).

(L) Cape Chacon, Dixon Entrance, and Prince of Wales Island are shown on the U.S Coast and Geodetic Survey Chart No. 8074—Sheet No. 29. The reference location is marked as 83 south, 89 and 90 east, CRM, USS 1608. The location begins at a point at the low-water mark on the shore line of Dixon Entrance from which the southern extremity of Cape Chacon bears south 64° true East and approximately ¾ nautical miles; thence N 45° true East and about 1 nautical mile, more or less, to an intersection with a low-water line on the shore of Clarence Strait; thence southerly, following the meanderings of the low-water line of the shore, to and around Cape Chacon, and continuing to the point of the beginning. Reference includes all adjacent islands, islets, rocks, and reefs that are not covered at the low-water line (Approx. Long 132° W, Lat. 54°42′ N).

(M) Lewis Reef and Tongass Narrows are shown on the U.S Coast and Geodetic Survey Chart No. 8094—Sheet No. 71. The reference location is marked as 75 south, 90 east, CRM, SEC 9. The area point begins at the reef off of Lewis Point and partly bare at low water. This part of the reef is not covered at low water and lies on the northeast side of a true northwest-and-southeast line that is located 300 feet true southwest from the center of the concrete pier of Lewis Reef Light (Approx. Long. 131°44½′ W, Lat. 55°22′25″ N).

(N) Lyman Point and Clarence Strait are shown on the U.S Coast and Geodetic Survey, Chart No. 8076—Sheet No. 8. The reference location is marked as 73 south, 86 east, CRM, SEC 13, on a map labeled as USS 2174 TRC. It begins at a point at the low-water mark. The aforementioned point is 300 feet in a direct line easterly from Lyman Point light; thence due south 300 feet; thence due west to a low-water mark 400 feet, more or less; thence following the winding of the low-water mark to place of beginning (Approx. Long. 132°18′ W, Lat. 35°35′ N).

(O) Narrow Point, Clarence Strait, and Prince of Wales Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8100—Sheet No. 9. The reference location is marked as 70 south, 84 east, CRM, on a map labeled as USS 1628. The point begins at a point on a low-water line about 1 nautical mile southerly from Narrow Point Light, from which point a left tangent to a high-water line of an islet about 500 yards in diameter and about 300 yards off shore, bears south 30° true East; thence north 30° W, true 7,600 feet; thence N 60° E, 3,200 feet, more or less to an intersection with a low-water line; thence southeasterly, southerly, and southwesterly, following the winding of the low-water line to the point of the beginning. The map includes all adjacent rocks not covered at low water (Approx. Long. 132°28′ W, Lat. 55°47½′ N).

(P) Niblack Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. coast and Geodetic Survey Chart No. 8102—Sheet No. 6, which is the same sheet used for Caamano Point. The location begins at a point on a low-water line from which

Niblack Point Beacon, a tripod anchored to three concrete piers, bears southeasterly and is 1,520 feet in a direct line; thence true northeast 1,520 feet; thence true southeast 3,040 feet; thence true southwest at 600 feet, more or less, to an intersection with a low-water line; thence northwesterly following the windings of the low-water line to the point of the beginning (Approx. Long. 132°07′ W, Lat. 55°33′ N).

(Q) Rosa Reef and Tongass Narrows are shown on the U.S. Coast and Geodetic Survey Chart No. 8094—Sheet No. 71. The reference location is marked as 74 south, 90 east, CRM, SEC 31. That part of the reef is not covered at low water and lies east of a true north-and-south line, located 600 feet true west from the center of the concrete pier of Rosa Reef Light. The reef is covered at high water (Approx. Long. 131°48′ W, Lat. 55°24′ 15″ N).

(R) Ship Island and Clarence Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8100—Sheet No. 9. The reference location is marked as south, 8 east, CRM, SEC 27. The point begins as a small island on the northwesterly side of the Clarence Strait, about 10 nautical miles northwesterly from Caamano Point and ¼ mile off the shore of Cleveland Peninsula. The sheet includes all adjacent islets and rocks not connected to the main shore and not covered at low water (Approx. Long. 132°12′ W, Lat. 55°36′ N).

(S) Spire Island Reef and Revillagigedo Channel are shown on the U.S. Coast and Geodetic Survey Chart No. 8075—Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, SEC 19.The detached reef, covered at high water and partly bare at low water, is located northeast of Spire Island. Spire Island Light is located on the reef and consists of small houses and lanterns surmounting a concrete pier. See chart for ''Angle Pt.'' (Approx. Long 131°30′ W, Lat. 55°16′ N).

(T) Surprise Point and Nakat Inlet are shown on the U.S. Coast and Geodetic Survey Chart No. 8051—Sheet No. 1. The reference location is marked as 80 south, 89 east, CRM. This point lies north of a true east-and-west line. The true east-and-west line lies 3,040 feet true south from the northernmost extremity of the point together with adjacent rocks and islets (Approx. Long. 130°44′ W, Lat. 54°49′ N).

(U) Caamano Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8102—Sheet No. 6. Location consists of everything apart of the extreme south end of the Cleveland Peninsula lying on a south side of a true east-and-west line that is drawn across the point at a distance of 800 feet true north from the southernmost point of the low-water line. This includes off-lying rocks and islets that are not covered at low water (Approx. Long. 131°59′ W, Lat. 55°30′ N).

(V) Meyers Chuck and Clarence Strait, Alaska, are shown on the U.S. and Geodetic Survey Chart No. 8124—Sheet No. 26. The small island is about 150 yards in diameter and located about 200 yards northwest of Meyers Island (Approx. Long. 132°16′ W, Lat. 55°44½′ N).

(W) Round Island and Cordova Bay, Alaska, are shown on the U.S coast and Geodetic Survey Chart No. 8145—Sheet No. 36. The Southwestern Island of the group is about 700 yards long, including off-lying rocks and reefs that are not covered at low water (Approx. Long. 132°30½′ W, Lat. 54°46 1/2′ N).

(X) Mary Island begins at a point that is placed at a low-water mark. The aforementioned point is southward 500 feet from a crosscut on the side of a large rock on the second point below Point Winslow and Mary Island; thence due west ¾ mile, statute; thence due north to a low-water mark; thence following the winding of the low water to the place of the beginning (Approx. Long. 131°11′ 00″ W, Lat. 55°05′ 55″ N).

(Y) Tree Point starts a point of a low-water mark. The aforementioned point is southerly ½ mile from extreme westerly point of a low-water mark on Tree Point, on the Alaska Mainland; thence due true east, ¾ mile; thence due north 1 mile; thence due west to a low-water mark; thence following the winding of the low-water mark to the place of the beginning (Approx. Long. 130°57′ 44″ W, Lat. 54°48′ 27″ N).

(c) The regulations contained in this part apply on all public lands, excluding marine waters, but including all inland waters, both navigable and non-

navigable, within and adjacent to the exterior boundaries of the following areas:

(1) Alaska Peninsula National Wildlife Refuge;

(2) Aniakchak National Monument and Preserve;

(3) Becharof National Wildlife Refuge;

(4) Bering Land Bridge National Preserve;

(5) Cape Krusenstern National Monument;

(6) Chugach National Forest;

(7) Denali National Preserve and the 1980 additions to Denali National Park;

(8) Gates of the Arctic National Park and Preserve;

(9) Glacier Bay National Preserve;

(10) Innoko National Wildlife Refuge;

(11) Izembek National Wildlife Refuge;

(12) Kanuti National Wildlife Refuge;

(13) Katmai National Preserve;

(14) Kenai National Wildlife Refuge;

(15) Kobuk Valley National Park;

(16) Kodiak National Wildlife Refuge;

(17) Koyukuk National Wildlife Refuge;

(18) Lake Clark National Park and Preserve;

(19) Noatak National Preserve;

(20) Nowitna National Wildlife Refuge;

(21) Selawik National Wildlife Refuge;

(22) Steese National Conservation Area;

(23) Tetlin National Wildlife Refuge;

(24) Togiak National Wildlife Refuge;

(25) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument;

(26) White Mountain National Recreation Area;

(27) Wrangell-St. Elias National Park and Preserve;

(28) Yukon-Charley Rivers National Preserve;

(29) Yukon Flats National Wildlife Refuge;

(30) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves, or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakleet River.

(d) The regulations contained in this part apply on all other public lands, other than to the military, U.S. Coast Guard, and Federal Aviation Administration lands that are closed to access by the general public, including all non-navigable waters located on these lands.

(e) The public lands described in paragraphs (b) and (c) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

[70 FR 76407, Dec. 27, 2005, as amended at 71 FR 49999, Aug. 24, 2006; 74 FR 34696, July 17, 2009; 83 FR 23817, May 23, 2018]

### § 242.4 Definitions.

The following definitions apply to all regulations contained in this part:

*Agency* means a subunit of a cabinet-level Department of the Federal Government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

*ANILCA* means the Alaska National Interest Lands Conservation Act, Public Law 96–487, 94 Stat. 2371, (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

*Area, District, Subdistrict,* and *Section* mean one of the geographical areas defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code.

*Barter* means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

*Board* means the Federal Subsistence Board as described in § 242.10.

*Commissions* means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

*Conservation of healthy populations of fish and wildlife* means the maintenance

of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

*Customary trade* means exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

*Customary and traditional use* means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

*FACA* means the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770 (codified as amended, at 5 U.S.C. Appendix II, 1–15).

*Family* means all persons related by blood, marriage, or adoption or any other person living within the household on a permanent basis.

*Federal Advisory Committees* or Federal Advisory Committee means the Federal Local Advisory Committees as described in § 242.12.

*Federal lands* means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

*Fish and wildlife* means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

*Game Management Unit or GMU* means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

*Inland Waters* means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

*Marine Waters* means, for the purposes of this part, those waters located seaward of the mean high tide line or the waters located seaward of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea.

*Person* means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust, or society.

*Public lands* or *public land* means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1)(i) through (iii) of this definition, until conveyed or interim conveyed, all Federal lands within the boundaries of any unit of the National

Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

*Regional Councils* or *Regional Council* means the Regional Advisory Councils as described in § 242.11.

*Reserved water right(s)* means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

*Resident* means any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented, or leased; location of stored household goods; residence of spouse, minor children, or dependents; tax documents; or whether the person claims residence in another location for any purpose.

*Rural* means any community or area of Alaska determined by the Board to qualify as such under the process described in § 242.15.

*Secretary* means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

*State* means the State of Alaska.

*Subsistence uses* means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

*Take* or *taking* as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

*Year* means calendar year unless another year is specified.

[67 FR 30563, May 7, 2002, as amended at 69 FR 60962, Oct. 14, 2004]

### § 242.5 Eligibility for subsistence use.

(a) You may take fish and wildlife on public lands for subsistence uses only if you are an Alaska resident of a rural area or rural community. The regulations in this part may further limit your qualifications to harvest fish or wildlife resources for subsistence uses. If you are not an Alaska resident or are a resident of a non-rural area or community listed in § 242.23, you may not take fish or wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § 242.24, only those Alaskans who are residents of rural areas or communities designated by the Board are eligible for subsistence taking of that population or stock on public lands for subsistence uses under the regulations in this part. If you do not live in one of those areas or communities, you may not take fish or wildlife from that population or stock, on public lands under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g., ''no determination''), all Alaskans who are residents of rural areas or communities may harvest for subsistence from that stock or population under the regulations in this part.

(d) The National Park Service may regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service

lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR Part 13.

### § 242.6 Licenses, permits, harvest tickets, tags, and reports.

(a) If you wish to take fish and wildlife on public lands for subsistence uses, you must be an eligible rural Alaska resident and:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish or shellfish, but you must be an Alaska resident) unless Federal licenses are required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal permits (Federal Subsistence Registration Permit or Federal Designated Harvester Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless any of these documents or individual provisions in them are superseded by the requirements in subpart D of this part.

(b) In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to reasonably harvest that species yourself (or under the guidance of an adult).

(c) If you have been awarded a permit to take fish and wildlife, you must have that permit in your possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Upon the request of a State or Federal law enforcement agent, you must also produce any licenses, permits, harvest tickets, tags, or other documents required by this section. If you are engaged in taking fish and wildlife under the regulations in this part, you must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in your possession.

(d) You must validate the harvest tickets, tags, permits, or other required documents before removing your kill from the harvest site. You must also comply with all reporting provisions as set forth in subpart D of this part.

(e) If you take fish and wildlife under a community harvest system, you must report the harvest activity in accordance with regulations specified for that community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of the regulations in this part. Community harvests are reviewed annually under the regulations in subpart D of this part.

(f) You may not make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report.

[67 FR 30563, May 7, 2002, as amended at 68 FR 7704, Feb. 18, 2003]

### § 242.7 Restriction on use.

(a) You may not use fish or wildlife or their parts, taken pursuant to the regulations in this part, unless provided for in this part.

(b) You may not exchange in customary trade or sell fish or wildlife or their parts, taken pursuant to the regulations in this part, unless provided for in this part.

(c) You may barter fish or wildlife or their parts, taken pursuant to the regulations in this part, unless restricted in §§ 242.25, 242.26, 242.27, or 242.28.

### § 242.8 Penalties.

If you are convicted of violating any provision of 50 CFR Part 100 or 36 CFR Part 242, you may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

**§ 242.9 Information collection requirements.**

(a) The rules in this part contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section 242.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in § 242.6 (Federal Subsistence Registration Permit or Federal Designated Harvester Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine if you are eligible for a permit and a report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in § 242.6 require this information before a rural Alaska resident may engage in subsistence uses on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(2) Section 242.20, Request for reconsideration. The information collection requirements contained in § 242.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final review by the Board. We estimate that a request for reconsideration will take 4 hours to prepare and submit.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. These collection requirements would exist in the absence of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible, and information gained from these reports is systematically available to Federal managers by routine computer access requiring less than 1 hour.

(b) You may direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 222 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information requirements may be imposed if Local Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

## Subpart B—Program Structure

SOURCE: 67 FR 30563, May 7, 2002, unless otherwise noted.

**§ 242.10 Federal Subsistence Board.**

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign it responsibility for administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority.

(b) *Membership.* (1) The voting members of the Board are: A Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska

Regional Director, National Park Service; Alaska Regional Forester, U.S. Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each Federal agency member of the Board may appoint a designee.

(2) [Reserved]

(c) Liaisons to the Board are: a State liaison, and the Chairman of each Regional Council. The State liaison and the Chairman of each Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) *Powers and duties.* (1) The Board shall meet at least twice per year and at such other times as deemed necessary. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum consists of five members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Issue regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or nonrural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Restrict the taking of fish and wildlife on public lands for nonsubsistence uses or close public lands to the take of fish and wildlife for nonsubsistence uses when necessary for the conservation of healthy populations of fish or wildlife, to continue subsistence uses of fish or wildlife, or for reasons of public safety or administration. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted;

(vii) Restrict the taking of a particular fish or wildlife population on public lands for subsistence uses, close public lands to the take of fish and wildlife for subsistence uses, or otherwise modify the requirements for take from a particular fish or wildlife population on public lands for subsistence uses when necessary to ensure the continued viability of a fish or wildlife population, or for reasons of public safety or administration. As soon as conditions warrant, the Board may also reopen public lands to the taking of a fish and wildlife population for subsistence users to continue those uses;

(viii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(ix) Restrict or eliminate taking of fish and wildlife on public lands;

(x) Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;

(xi) Authorize the Regional Councils to convene;

(xii) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xiii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary, and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiv) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xv) Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xvi) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies

of the Federal subsistence management program;

(xvii) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xviii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make a recommendation to the Secretaries for their action;

(xix) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xx) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Harvester Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee for analytical and administrative assistance composed of members from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service. A U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) *Relationship to Regional Councils.* (1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

[67 FR 30563, May 7, 2002, as amended at 75 FR 63092, Oct. 14, 2010; 76 FR 56114, Sept. 12, 2011]

**§ 242.11 Regional advisory councils.**

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Regional Councils shall provide for public participation in the Federal regulatory process.

(b) *Establishment of Regional Councils; membership.* (1) The Secretaries, based on Board recommendation, will establish the number of members for each Regional Council. To ensure that each Council represents a diversity of interests, the Board will strive to ensure that 70 percent of the members represent subsistence interests within a region and 30 percent of the members represent commercial and sport interests within a region. The portion of membership that represents the commercial and sport interests shall include, where possible, at least one representative from the sport community and one representative from the commercial community. A Regional Council member must be a resident of the region in which he or she is appointed and must be knowledgeable about the region and subsistence uses of the public lands therein. The Board will accept nominations and make recommendations to the Secretaries for membership on the Regional Councils. In making their recommendations, the Board will identify the interest(s) the applicants propose to represent on the respective Regional Councils. The Secretary of the Interior with the concurrence of the Secretary of Agriculture will make the appointments to the Regional Councils.

(2) Regional Council members shall serve 3-year terms and may be reappointed. Initial members shall be appointed with staggered terms up to 3 years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a 1-year term and may be reelected.

(c) *Powers and Duties.* (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under the regulations in this part within the region;

(iv) Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission within their region in accordance with the requirements of Section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses

among rural Alaska residents pursuant to § 242.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under the regulations in this part, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

(3) The Regional Council recommendations to the Board should be supported by substantial evidence, be consistent with recognized principles of fish and wildlife conservation, and not be detrimental to the satisfaction of subsistence needs.

[67 FR 30563, May 7, 2002, as amended at 68 FR 7704, Feb. 18, 2003; 69 FR 60962, Oct. 14, 2004]

### § 242.12 Local advisory committees.

(a) The Board shall establish such local Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § 242.11.

(b) Local Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

### § 242.13 Board/agency relationships.

(a) *General.* (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall issue regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subparts C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to issue regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

### § 242.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by, the regulations in this part.

(b) The Board may close public lands to hunting, trapping, or fishing, or take actions to restrict the taking of fish and wildlife when necessary to conserve healthy populations of fish and wildlife, continue subsistence uses of such populations, or pursuant to other applicable Federal law. The Board may review and adopt State openings, closures, or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240;

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

### § 242.15 Rural determination process.

(a) The Board determines which areas or communities in Alaska are nonrural. Current determinations are listed at § 242.23.

(b) All other communities and areas are, therefore, rural.

[80 FR 68253, Nov. 4, 2015]

### § 242.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from, the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § 242.24.

### § 242.17 Determining priorities for subsistence uses among rural Alaska residents.

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

### § 242.18 Regulation adoption process.

(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in § 242.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the FEDERAL REGISTER, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § 242.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D of this part in the FEDERAL REGISTER.

(b) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.

[67 FR 30563, May 7, 2002, as amended at 75 FR 63092, Oct. 14, 2010]

### § 242.19 Special actions.

(a) *Emergency special actions.* In an emergency situation, if necessary to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons, the Board may immediately open or close public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for take for subsistence uses, or close public lands to take for nonsubsistence uses of fish and wildlife, or restrict the requirements for take for nonsubsistence uses.

(1) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board may seek Council recommendations on the proposed emergency special action. Such a Council recommendation, if any, will be subject to the requirements of § 242.18(a)(4).

(2) The emergency action will be effective when directed by the Board, may not exceed 60 days, and may not be extended unless the procedures for adoption of a temporary special action, as set forth in paragraph (b) of this section, have been followed.

(b) *Temporary special actions*. After adequate notice and public hearing, the Board may temporarily close or open public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for subsistence take, or close public lands for the taking of fish and wildlife for nonsubsistence uses, or restrict take for nonsubsistence uses.

(1) The Board may make such temporary changes only after it determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on nonsubsistence users. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted.

(i) Prior to implementing a temporary special action, the Board will consult with the State of Alaska and the Chairs of the Regional Councils of the affected regions.

(ii) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board will seek Council recommendations on the proposed temporary special action. Such Council recommendations, if any, will be subject to the requirements of § 242.18(a)(4).

(2) The length of any temporary action will be confined to the minimum time period or harvest limit determined by the Board to be necessary under the circumstances. In any event, a temporary opening or closure will not extend longer than the end of the current regulatory cycle.

(c) The Board may reject a request for either an emergency or a temporary special action if the Board concludes that there are no time-sensitive circumstances necessitating a regulatory change before the next regular proposal cycle. However, a special action request that has been rejected for this reason may be deferred, if appropriate and after consultation with the proponent, for consideration during the next regular proposal cycle. The Board will consider changes to customary and traditional use determinations in subpart C of this part only during the regular proposal cycle.

(d) The Board will provide notice of all regulatory changes adopted via special action by posting the change on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/index.cfml*). When appropriate, notice may also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties. The Board will publish notice and reasons justifying the special action in the FEDERAL REGISTER as soon as practicable.

(e) The decision of the Board on any proposed special action will constitute its final administrative action.

(f) Regulations authorizing any individual agency to implement closures or restrictions on public lands managed by the agency remain unaffected by the regulations in this part.

(g) Fish and wildlife may not be taken in violation of any restriction, closure, or change authorized by the Board.

[75 FR 63092, Oct. 14, 2010]

### § 242.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the FEDERAL REGISTER are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earlier, for which reconsideration is requested.

(d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing

law. You must include the following information in your request for reconsideration:

(1) Your name, and mailing address;

(2) The action which you request be reconsidered and the date of FEDERAL REGISTER publication of that action;

(3) A detailed statement of how you are adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;

(5) A statement of how you would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council and the Alaska Department of Fish and Game (ADFG) for review and recommendation. The Board shall consider any Regional Council and ADFG recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551–559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

### § 242.21 [Reserved]

## Subpart C—Board Determinations

### § 242.22 Subsistence resource regions.

(a) The Board hereby designates the following areas as subsistence resource regions:

(1) Southeast Region;

(2) Southcentral Region;

(3) Kodiak/Aleutians Region;

(4) Bristol Bay Region;

(5) Yukon-Kuskokwim Delta Region;

(6) Western Interior Region;

(7) Seward Peninsula Region;

(8) Northwest Arctic Region;

(9) Eastern Interior Region;

(10) North Slope Region.

(b) You may obtain maps delineating the boundaries of subsistence resource regions from the U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS 121, Anchorage, Alaska 99503.

[67 FR 30570, May 7, 2002, as amended at 76 FR 12569, Mar. 8, 2011]

### § 242.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § 100.15 except the following: Fairbanks North Star Borough; Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area—including Juneau, West Juneau, and Douglas; Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area—including Seward and Valdez, and Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, and Bodenberg Butte.

(b) You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service at the Alaska Regional Office address provided at 50 CFR 2.2(g), or on the Web at *https://www.doi.gov/subsistence*.

[80 FR 68248, Nov. 4, 2015, as amended at 86 FR 17717, Apr. 6, 2021]

### § 242.24 Customary and traditional use determinations.

(a) The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Fish & Wildlife Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence priority for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

(1) *Wildlife determinations.* The rural Alaska residents of the listed communities and areas have a customary and traditional use of the specified species on Federal public lands within the listed areas:

TABLE 1 TO PARAGRAPH (a)(1)

| Area | Species | Determination |
|---|---|---|
| Unit 1 | Black Bear | Residents of Units 1–5. |
| Unit 1 | Brown Bear | Residents of Units 1–5. |
| Unit 1 | Deer | Residents of Units 1–5. |
| Unit 1 | Goat | Residents of Units 1–5. |
| Unit 1 | Moose | Residents of Units 1–5. |
| Unit 2 | Black Bear | Residents of Units 1–5. |
| Unit 2 | Deer | Residents of Units 1–5. |
| Unit 3 | Black Bear | Residents of Units 1–5. |
| Unit 3 | Brown Bear | Residents of Units 1–5. |
| Unit 3 | Deer | Residents of Units 1–5. |
| Unit 3 | Elk | Residents of Units 1–5. |
| Unit 3 | Moose | Residents of Units 1–5. |
| Unit 4 | Brown Bear | Residents of Units 1–5. |
| Unit 4 | Deer | Residents of Units 1–5. |
| Unit 4 | Goat | Residents of Units 1–5. |
| Unit 5 | Black Bear | Residents of Units 1–5. |
| Unit 5 | Brown Bear | Residents of Units 1–5. |
| Unit 5 | Deer | Residents of Units 1–5. |
| Unit 5 | Goat | Residents of Units 1–5. |
| Unit 5 | Moose | Residents of Unit 5A. |
| Unit 5 | Wolf | Residents of Unit 5A. |
| Unit 6A | Black Bear | Residents of Yakutat and Units 6C and 6D, excluding residents of Whittier. |
| Unit 6, remainder | Black Bear | Residents of Units 6C and 6D, excluding residents of Whittier. |
| Unit 6 | Brown Bear | No Federal subsistence priority. |
| Unit 6A | Goat | Residents of Units 5A, 6C, Chenega Bay, and Tatitlek. |
| Unit 6C and Unit 6D | Goat | Residents of Units 6C and 6D. |
| Unit 6A | Moose | Residents of Units 5A, 6A, 6B, and 6C. |
| Unit 6B and Unit 6C | Moose | Residents of Units 6A, 6B, and 6C. |
| Unit 6D | Moose | Residents of Unit 6D. |
| Unit 6A | Wolf | Residents of Units 5A, 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 6, remainder | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 7 | Brown Bear | No Federal subsistence priority. |
| Unit 7 | Caribou | Residents of Cooper Landing and Hope. |
| Unit 7, Brown Mountain hunt area | Goat | Residents of Port Graham and Nanwalek. |
| Unit 7, remainder | Goat | Residents of Chenega Bay, Cooper Landing, Hope, Nanwalek, Ninilchik, Port Graham, Seldovia, and Tatilek. |
| Unit 7 | Moose | Residents of Chenega Bay, Cooper Landing, Hope, and Tatitlek. |
| Unit 7 | Sheep | No Federal subsistence priority. |
| Unit 7 | Ruffed Grouse | No Federal subsistence priority. |
| Unit 8 | Brown Bear | Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions. |
| Unit 8 | Deer | Residents of Unit 8. |
| Unit 8 | Elk | Residents of Unit 8. |
| Unit 8 | Goat | No Federal subsistence priority. |
| Unit 9D | Bison | No Federal subsistence priority. |
| Unit 9A and Unit 9B | Black Bear | Residents of Units 9A, 9B, 17A, 17B, and 17C. |
| Unit 9A | Brown Bear | Residents of Pedro Bay. |
| Unit 9B | Brown Bear | Residents of Unit 9B. |
| Unit 9C | Brown Bear | Residents of Unit 9C, Igiugig, Kakhonak, and Levelock. |
| Unit 9D | Brown Bear | Residents of Units 9D and 10 (Unimak Island). |
| Unit 9E | Brown Bear | Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik. |
| Unit 9A and Unit 9B | Caribou | Residents of Units 9B, 9C, and 17. |
| Unit 9C | Caribou | Residents of Units 9B, 9C, 17, and Egegik. |
| Unit 9D | Caribou | Residents of Unit 9D, Akutan, and False Pass. |
| Unit 9E | Caribou | Residents of Units 9B, 9C, 9E, 17, Nelson Lagoon, and Sand Point. |
| Unit 9A, Unit 9B, Unit 9C, and Unit 9E | Moose | Residents of Units 9A, 9B, 9C, and 9E. |

TABLE 1 TO PARAGRAPH (a)(1)—Continued

| Area | Species | Determination |
|---|---|---|
| Unit 9D | Moose | Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point. |
| Unit 9B | Sheep | Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, and Lake Clark National Park and Preserve within Unit 9B. |
| Unit 9 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 9A, Unit 9B, Unit 9C, and Unit 9E | Beaver | Residents of Units 9A, 9B, 9C, 9E, and 17. |
| Unit 10 Unimak Island | Brown Bear | Residents of Units 9D and 10 (Unimak Island). |
| Unit 10 Unimak Island | Caribou | Residents of Akutan, False Pass, King Cove, and Sand Point. |
| Unit 10, remainder | Caribou | No Federal subsistence priority. |
| Unit 10 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 11 | Bison | No Federal subsistence priority. |
| Unit 11, north of the Sanford River | Black Bear | Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12. |
| Unit 11, remainder | Black Bear | Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Nabesna Road (mileposts 25–46), Slana, Tazlina, Tok Cutoff Road (mileposts 79–110), Tonsina, and Unit 11. |
| Unit 11, north of the Sanford River | Brown Bear | Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12. |
| Unit 11, remainder | Brown Bear | Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Nabesna Road (mileposts 25–46), Slana, Tazlina, Tok Cutoff Road (mileposts 79–110), Tonsina, and Unit 11. |
| Unit 11, north of the Sanford River | Caribou | Residents of Units 11, 12, 13A–D, Chickaloon, Healy Lake, and Dot Lake. |
| Unit 11, remainder | Caribou | Residents of Units 11, 13A–D, and Chickaloon. |
| Unit 11 | Goat | Residents of Unit 11, Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Dot Lake, Tok Cutoff Road (mileposts 79–110 Mentasta Pass), and Nabesna Road (mileposts 25–46). |
| Unit 11, north of the Sanford River | Moose | Residents of Units 11, 12, 13A–D, Chickaloon, Healy Lake, and Dot Lake. |
| Unit 11, remainder | Moose | Residents of Units 11, 13A–D, and Chickaloon. |
| Unit 11, north of the Sanford River | Sheep | Residents of Unit 12, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina, Tonsina, residents along the Nabesna Road—Mileposts 0–46 (Nabesna Road), and residents along the McCarthy Road—Mileposts 0–62 (McCarthy Road). |
| Unit 11, remainder | Sheep | Residents of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina, Tonsina, residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Mileposts 0–46 (Nabesna Road), and residents along the McCarthy Road—Mileposts 0–62 (McCarthy Road). |
| Unit 11 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 11 | Grouse (Spruce, Blue, Ruffed and Sharp-tailed). | Residents of Units 11, 12, 13, and Chickaloon, 15, 16, 20D, 22, and 23. |
| Unit 11 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 12, 13, Chickaloon, 15, 16, 20D, 22, and 23. |
| Unit 12 | Brown Bear | Residents of Unit 12, Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana. |

TABLE 1 TO PARAGRAPH (a)(1)—Continued

| Area | Species | Determination |
|---|---|---|
| Unit 12 | Caribou | Residents of Unit 12, Chistochina, Dot Lake, Healy Lake, and Mentasta Lake. |
| Unit 12, that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to Pickerel Lake. | Moose | Residents of Units 12 and 13C, Dot Lake, and Healy Lake. |
| Unit 12, that portion east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border. | Moose | Residents of Units 12 and 13C and Healy Lake. |
| Unit 12, remainder | Moose | Residents of Unit 11 north of 62nd parallel, Units 12 and 13A–D, Chickaloon, Dot Lake, and Healy Lake. |
| Unit 12 | Sheep | Residents of Unit 12, Chistochina, Dot Lake, Healy Lake, Mentasta Lake, and Slana. |
| Unit 12 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 13 | Brown Bear | Residents of Unit 13 and Slana. |
| Unit 13B | Caribou | Residents of Units 11, 12 (along the Nabesna Road and Tok Cutoff Road, mileposts 79–110), 13, 20D (excluding residents of Fort Greely), and Chickaloon. |
| Unit 13C | Caribou | Residents of Units 11, 12 (along the Nabesna Road and Tok Cutoff Road, mileposts 79–110), 13, Chickaloon, Dot Lake, and Healy Lake. |
| Unit 13A and Unit 13D | Caribou | Residents of Units 11, 12 (along the Nabesna Road), 13, and Chickaloon. |
| Unit 13E | Caribou | Residents of Units 11, 12 (along the Nabesna Road), 13, Chickaloon, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239 (excluding residents of Denali National Park headquarters). |
| Unit 13D | Goat | No Federal subsistence priority. |
| Unit 13A and Unit 13D | Moose | Residents of Unit 13, Chickaloon, and Slana. |
| Unit 13B | Moose | Residents of Units 13 and 20D (excluding residents of Fort Greely) and Chickaloon and Slana. |
| Unit 13C | Moose | Residents of Units 12 and 13, Chickaloon, Healy Lake, Dot Lake, and Slana. |
| Unit 13E | Moose | Residents of Unit 13, Chickaloon, McKinley Village, Slana, and the area along the Parks Highway between mileposts 216 and 239 (excluding residents of Denali National Park headquarters). |
| Unit 13D | Sheep | No Federal subsistence priority. |
| Unit 13 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 13 | Grouse (Spruce, Blue, Ruffed Sharp-tailed). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22 and 23. |
| Unit 13 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22 and 23. |
| Unit 14C | Brown Bear | No Federal subsistence priority. |
| Unit 14 | Goat | No Federal subsistence priority. |
| Unit 14 | Moose | No Federal subsistence priority. |
| Unit 14A and Unit 14C | Sheep | No Federal subsistence priority. |
| Unit 15A and Unit 15B | Black Bear | Residents of Ninilchik. |
| Unit 15C | Black Bear | Residents of Ninilchik, Port Graham, and Nanwalek. |
| Unit 15 | Brown Bear | Residents of Ninilchik. |
| Unit 15B and Unit 15C | Caribou | Residents of Cooper Landing, Hope, Nanwalek, Ninilchik, Port Graham, and Seldovia. |
| Unit 15 | Goat | Residents of Cooper Landing, Hope, Nanwalek, Ninilchik, Port Graham, and Seldovia. |
| Unit 15A and Unit 15B | Moose | Residents of Cooper Landing, Ninilchik, Nanwalek, Port Graham, and Seldovia. |
| Unit 15C | Moose | Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia. |
| Unit 15 | Sheep | Residents of Ninilchik. |

TABLE 1 TO PARAGRAPH (a)(1)—Continued

| Area | Species | Determination |
|---|---|---|
| Unit 15 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Unit 15. |
| Unit 15 | Grouse (Spruce) | Residents of Unit 15. |
| Unit 15 | Grouse (Ruffed) | No Federal subsistence priority. |
| Unit 16B | Black Bear | Residents of Unit 16B. |
| Unit 16 | Brown Bear | No Federal subsistence priority. |
| Unit 16A | Moose | No Federal subsistence priority. |
| Unit 16B | Moose | Residents of Unit 16B. |
| Unit 16 | Sheep | No Federal subsistence priority. |
| Unit 16 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 16 | Grouse (Spruce and Ruffed). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22 and 23. |
| Unit 16 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22 and 23. |
| Unit 17A and that portion of 17B draining into Nuyakuk Lake and Tikchik Lake. | Black Bear | Residents of Units 9A and B, 17, Akiak, and Akiachak. |
| Unit 17, remainder | Black Bear | Residents of Units 9A and B, and 17. |
| Unit 17A, those portions north and west of a line beginning from the Unit 18 boundary at the northwestern end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast towards the northern point of Nuyakuk Lake to the Unit 17A boundary. | Brown Bear | Residents of Unit 17, Akiak, Akiachak, Goodnews Bay, Kwethluk, and Platinum. |
| Unit 17B, beginning at the Unit 17B boundary, those portions north and west of a line running from the southern point of upper Togiak Lake, northeast to the northern point of Nuyakuk Lake, and northeast to the point where the Unit 17 boundary intersects the Shotgun Hills. | Brown Bear | Residents of Unit 17 and Kwethluk. |
| Unit 17A, remainder | Brown Bear | Residents of Unit 17, Akiak, Akiachak, Goodnews Bay, and Platinum. |
| Unit 17B, that portion draining into Nuyakuk Lake and Tikchik Lake. | Brown Bear | Residents of Unit 17, Akiak and Akiachak. |
| Unit 17B, remainder, and Unit 17C | Brown Bear | Residents of Unit 17. |
| Unit 17A, that portion west of the Izavieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River. | Caribou | Residents of Units 9B, 17, Eek, Goodnews Bay, Lime Village, Napakiak, Platinum, Quinhagak, Stony River, and Tuntutuliak. |
| Unit 17A, that portion north of Togiak Lake that includes Izavieknik River drainages. | Caribou | Residents of Units 9B, 17, Akiak, Akiachak, Lime Village, Stony River, and Tuluksak. |
| Units 17A and 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwestern end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills. | Caribou | Residents of Units 9B, 17, Kwethluk, Lime Village, and Stony River. |
| Unit 17B, that portion of Togiak National Wildlife Refuge within Unit 17B. | Caribou | Residents of Units 9B, 17, Akiachak, Akiak, Bethel, Eek, Goodnews Bay, Lime Village, Napakiak, Platinum, Quinhagak, Stony River, Tuluksak, and Tuntutuliak. |
| Unit 17, remainder | Caribou | Residents of Units 9B, 9C, 9E, 17, Lime Village, and Stony River. |
| Unit 17A, those portions north and west of a line beginning from the Unit 18 boundary at the northwestern end of Nenevok Lake, to the southern point of upper Togiak Lake, and to the Unit 17A boundary to the northeast towards the northern point of Nuyakuk Lake and northeast towards the northern point of Nuyakuk Lake to the Unit 17A boundary. | Moose | Residents of Unit 17, Goodnews Bay, Kwethluk, and Platinum. |
| Unit 17A, that portion north of Togiak Lake that includes Izavieknik River drainages. | Moose | Residents of Unit 17, Akiak, Akiachak, Goodnews Bay, and Platinum. |
| Unit 17A, remainder | Moose | Residents of Unit 17, Goodnews Bay and Platinum. |
| Units 17B, beginning at the Unit 17B boundary, those portions north and west of a line running from the southern point of upper Togiak Lake, northeast to the northern point of Nuyakuk Lake, and northeast to the point where the Unit 17 boundary intersects the Shotgun Hills. | Moose | Residents of Unit 17, Akiak, Akiachak, Goodnews Bay, Levelock, Nondalton, and Platinum. |

TABLE 1 TO PARAGRAPH (a)(1)—Continued

| Area | Species | Determination |
|---|---|---|
| Unit 17B, that portion within the Togiak National Wildlife Refuge. | Moose | Residents of Unit 17, Akiak, Akiachak, Goodnews Baym, Levelock, Nondalton, and Platinum. |
| Unit 17B, remainder and Unit 17C | Moose | Residents of Unit 17, Nondalton, Levelock, Goodnews Bay, and Platinum. |
| Unit 17 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 17 | Beaver | Residents of Units 9A, 9B, 9C, 9E, and 17. |
| Unit 18 | Black Bear | Residents of Unit 18, Unit 19A living downstream of the Holokuk River, Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak. |
| Unit 18 | Brown Bear | Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mountain Village, Napaskiak, Platinum, Quinhagak, St. Marys, and Tuluksak. |
| Unit 18 | Caribou | Residents of Unit 18, Lower Kalskag, Manokotak, Stebbins, St. Michael, Togiak, Twin Hills, and Upper Kalskag. |
| Unit 18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including, the Tuluksak River drainage. | Moose | Residents of Unit 18, Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk. |
| Unit 18, that portion north of a line from Cape Romanzof to Kusilvak Mountain to Mountain Village, and all drainages north of the Yukon River downstream from Marshall. | Moose | Residents of Unit 18, Lower Kalskag, St. Michael, Stebbins, and Upper Kalskag. |
| Unit 18, remainder | Moose | Residents of Unit 18, Lower Kalskag, and Upper Kalskag. |
| Unit 18 | Musk ox | No Federal subsistence priority. |
| Unit 18 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 19C and Unit 19D | Bison | No Federal subsistence priority. |
| Unit 19A and Unit 19B | Brown Bear | Residents of Units 18 and 19 within the Kuskokwim River drainage upstream from, and including, the Johnson River. |
| Unit 19C | Brown Bear | No Federal subsistence priority. |
| Unit 19D | Brown Bear | Residents of Units 19A and D, Tuluksak, and Lower Kalskag. |
| Unit 19A and Unit 19B | Caribou | Residents of Units 19A and 19B, Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, and Russian Mission. |
| Unit 19C | Caribou | Residents of Unit 19C, Lime Village, McGrath, Nikolai, and Telida. |
| Unit 19D | Caribou | Residents of Unit 19D, Lime Village, Sleetmute, and Stony River. |
| Unit 19A and Unit 9B | Moose | Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and residents of Unit 19. |
| Unit 19B, west of the Kogrukluk River | Moose | Residents of Eek and Quinhagak. |
| Unit 19C | Moose | Residents of Unit 19. |
| Unit 19D | Moose | Residents of Unit 19 and Lake Minchumina. |
| Unit 19 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 20D | Bison | No Federal subsistence priority. |
| Unit 20F | Black Bear | Residents of Unit 20F, Stevens Village, and Manley Hot Springs. |
| Unit 20E | Brown Bear | Residents of Unit 12 and Dot Lake. |
| Unit 20F | Brown Bear | Residents of Unit 20F, Stevens Village, and Manley Hot Springs. |
| Unit 20A | Caribou | Residents of Cantwell, Nenana, and those domiciled between mileposts 216 and 239 of the Parks Highway, excluding residents of households of the Denali National Park Headquarters. |
| Unit 20B | Caribou | Residents of Unit 20B, Nenana, and Tanana. |

TABLE 1 TO PARAGRAPH (a)(1)—Continued

| Area | Species | Determination |
|---|---|---|
| Unit 20C | Caribou | Residents of Unit 20C living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenana, Nikolai, Tanana, Telida, and those domiciled between mileposts 216 and 239 of the Parks Highway and between mileposts 300 and 309, excluding residents of households of the Denali National Park Headquarters. |
| Unit 20D and Unit 20E | Caribou | Residents of Units 20D, 20E, 20F, 25, 12 (north of the Wrangell-St. Elias National Park and Preserve), Eureka, Livengood, Manley, and Minto. |
| Unit 20F | Caribou | Residents of Units 20F and 25D and Manley Hot Springs. |
| Unit 20A | Moose | Residents of Cantwell, Minto, Nenana, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239, excluding residents of households of the Denali National Park Headquarters. |
| Unit 20B, Minto Flats Management Area | Moose | Residents of Minto and Nenana. |
| Unit 20B, remainder | Moose | Residents of Unit 20B, Nenana, and Tanana. |
| Unit 20C | Moose | Residents of Unit 20C (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), Cantwell, Manley Hot Springs, Minto, Nenana, those domiciled between mileposts 300 and 309 of the Parks Highway, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239, excluding residents of households of the Denali National Park Headquarters. |
| Unit 20D | Moose | Residents of Unit 20D and Tanacross. |
| Unit 20E | Moose | Residents of Unit 20E, Unit 12 north of the Wrangell-St. Elias National Preserve, Circle, Central, Dot Lake, Healy Lake, and Mentasta Lake. |
| Unit 20F | Moose | Residents of Unit 20F, Manley Hot Springs, Minto, and Stevens Village. |
| Unit 20E | Sheep | Residents of Units 20E, 25B, 25C, 25D, and Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, and Tok. |
| Unit 20F | Wolf | Residents of Unit 20F, Stevens Village, and Manley Hot Springs. |
| Unit 20, remainder | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 20D | Grouse, (Spruce, Ruffed and Sharp-tailed). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22, and 23. |
| Unit 20D | Ptarmigan (Rock and Willow). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22, and 23. |
| Unit 21 | Brown Bear | Residents of Units 21 and 23. |
| Unit 21A | Caribou | Residents of Units 21A, 21D, 21E, Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna. |
| Unit 21B and Unit 21C | Caribou | Residents of Units 21B, 21C, 21D, and Tanana. |
| Unit 21D | Caribou | Residents of Units 21B, 21C, 21D, and Huslia. |
| Unit 21E | Caribou | Residents of Units 21A, 21E, Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna. |
| Unit 21A | Moose | Residents of Units 21A, 21E, Takotna, McGrath, Aniak, and Crooked Creek. |
| Unit 21B and Unit 21C | Moose | Residents of Units 21B, 21C, Tanana, Ruby, and Galena. |
| Unit 21D | Moose | Residents of Units 21D, Huslia, and Ruby. |
| Unit 21E, south of a line beginning at the western boundary of Unit 21E near the mouth of Paimiut Slough, extending easterly along the south bank of Paimiut Slough to Upper High Bank, and southeasterly in the direction of Molybdenum Mountain to the juncture of Units 19A, 21A, and 21E. | Moose | Residents of Unit 21E, Aniak, Chuathbaluk, Kalskag, Lower Kalskag, and Russian Mission. |
| Unit 21E remainder | Moose | Residents of Unit 21E and Russian Mission. |

TABLE 1 TO PARAGRAPH (a)(1)—Continued

| Area | Species | Determination |
|---|---|---|
| Unit 21 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 22A | Black Bear | Residents of Unit 22A and Koyuk. |
| Unit 22B | Black Bear | Residents of Unit 22B. |
| Unit 22C, Unit 22D, and Unit 22E | Black Bear | No Federal subsistence priority. |
| Unit 22 | Brown Bear | Residents of Unit 22. |
| Unit 22A | Caribou | Residents of Units 21D west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, 24, Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Nunam Iqua, and Alakanuk. |
| Unit 22, remainder | Caribou | Residents of Units 21D west of the Koyukuk and Yukon Rivers, 22 (excluding residents of St. Lawrence Island), 23, and 24. |
| Unit 22 | Moose | Residents of Unit 22. |
| Unit 22A | Musk ox | All rural residents. |
| Unit 22B, west of the Darby Mountains | Musk ox | Residents of Units 22B and 22C. |
| Unit 22B, remainder | Musk ox | Residents of Unit 22B. |
| Unit 22C | Musk ox | Residents of Unit 22C. |
| Unit 22D | Musk ox | Residents of Units 22B, 22C, 22D, and 22E (excluding St. Lawrence Island). |
| Unit 22E | Musk ox | Residents of Unit 22E (excluding Little Diomede Island). |
| Unit 22 | Wolf | Residents of Units 23, 22, 21D north and west of the Yukon River, and Kotlik. |
| Unit 22 | Grouse (Spruce) | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22, and 23. |
| Unit 22 | Ptarmigan (Rock and Willow). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22, and 23. |
| Unit 23 | Black Bear | Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk. |
| Unit 23 | Brown Bear | Residents of Units 21 and 23. |
| Unit 23 | Caribou | Residents of Units 21D west of the Koyukuk and Yukon Rivers, Galena, 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26A. |
| Unit 23 | Moose | Residents of Unit 23. |
| Unit 23, south of Kotzebue Sound and west of and including the Buckland River drainage. | Musk ox | Residents of Unit 23 south of Kotzebue Sound and west of and including the Buckland River drainage. |
| Unit 23, remainder | Musk ox | Residents of Unit 23 east and north of the Buckland River drainage. |
| Unit 23 | Sheep | Residents of Point Lay and Unit 23 north of the Arctic Circle. |
| Unit 23 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 23 | Grouse (Spruce and Ruffed). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22, and 23. |
| Unit 23 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 13, Chickaloon, 15, 16, 20D, 22, and 23. |
| Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area. | Black Bear | Residents of Stevens Village, Unit 24, and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area. |
| Unit 24, remainder | Black Bear | Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area. |
| Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area. | Brown Bear | Residents of Stevens Village and Unit 24. |
| Unit 24, remainder | Brown Bear | Residents of Unit 24. |
| Unit 24 | Caribou | Residents of Unit 24, Galena, Kobuk, Koyukuk, Stevens Village, and Tanana. |
| Unit 24 | Moose | Residents of Unit 24, Koyukuk, and Galena. |
| Unit 24 | Sheep | Residents of Unit 24 residing north of the Arctic Circle, Allakaket, Alatna, Hughes, and Huslia. |

TABLE 1 TO PARAGRAPH (a)(1)—Continued

| Area | Species | Determination |
|---|---|---|
| Unit 24 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 1626. |
| Unit 25D | Black Bear | Residents of Unit 25D. |
| Unit 25D | Brown Bear | Residents of Unit 25D. |
| Unit 25, remainder | Brown Bear | Residents of Unit 25 and Eagle. |
| Unit 25A | Caribou | Residents of Units 24A and 25. |
| Unit 25B and Unit 25C | Caribou | Residents of Units 12 (north of Wrangell-St. Elias National Preserve), 20D, 20E, 20F, and 25, and Eureka, Livengood, Manley, and Minto. |
| Unit 25D | Caribou | Residents of Units 20F and 25D and Manley Hot Springs. |
| Unit 25A | Moose | Residents of Units 25A and 25D. |
| Unit 25B and Unit 25C | Moose | Residents of Units 20D, 20E, 25B, 25C, 25D, Tok and Livengood. |
| Unit 25D, west | Moose | Residents of Unit 25D West. |
| Unit 25D, remainder | Moose | Residents of remainder of Unit 25. |
| Unit 25A | Sheep | Residents of Arctic Village, Chalkyitsik, Fort Yukon, Kaktovik, and Venetie. |
| Unit 25B and Unit 25C | Sheep | Residents of Units 20E, 25B, 25C, and 25D. |
| Unit 25D | Wolf | Residents of Unit 25D. |
| Unit 25, remainder | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |
| Unit 26 | Brown Bear | Residents of Unit 26 (excluding the Prudhoe Bay-Deadhorse Industrial Complex), Anaktuvuk Pass, and Point Hope. |
| Unit 26A and C | Caribou | Residents of Unit 26, Anaktuvuk Pass, and Point Hope. |
| Unit 26B | Caribou | Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Unit 24 within the Dalton Highway Corridor Management Area. |
| Unit 26 | Moose | Residents of Unit 26 (excluding the Prudhoe Bay-Deadhorse Industrial Complex), Point Hope, and Anaktuvuk Pass. |
| Unit 26A | Musk ox | Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright. |
| Unit 26B | Musk ox | Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik. |
| Unit 26C | Musk ox | Residents of Kaktovik. |
| Unit 26A | Sheep | Residents of Unit 26, Anaktuvuk Pass, and Point Hope. |
| Unit 26B | Sheep | Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman. |
| Unit 26C | Sheep | Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkyitsik, Fort Yukon, Point Hope, and Venetie. |
| Unit 26 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13, Chickaloon, and 16–26. |

(2) *Fish determinations*. The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

TABLE 2 TO PARAGRAPH (a)(2)

| Area | Species | Determination |
|---|---|---|
| KOTZEBUE AREA | All fish | Residents of the Kotzebue Area. |
| NORTON SOUND—PORT CLARENCE AREA: | | |
| Norton Sound—Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point. | All fish | Residents of Kotlik, St. Michael and Stebbins. |
| Norton Sound—Port Clarence Area, remainder. | All fish | Residents of the Norton Sound—Port Clarence Area. |
| YUKON-NORTHERN AREA: | | |
| Yukon River drainage | Salmon, other than fall chum salmon. | Residents of the Yukon River drainage and the community of Stebbins. |

TABLE 2 TO PARAGRAPH (a)(2)—Continued

| Area | Species | Determination |
|---|---|---|
| Yukon River drainage | Fall chum salmon | Residents of the Yukon River drainage and the communities of Chevak, Hooper Bay, Scammon Bay, and Stebbins. |
| Yukon River drainage | Freshwater fish (other than salmon). | Residents of the Yukon-Northern Area. |
| Remainder of the Yukon-Northern Area | All fish | Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B. |
| Tanana River drainage contained within the Tetlin NWR and the Wrangell-St. Elias NPP. | Freshwater fish (other than salmon). | Residents of the Yukon-Northern Area and residents of Chistochina, Mentasta Lake, Slana, and all residents living between Mentasta Lake and Chistochina. |
| KUSKOKWIM AREA: | | |
| | Salmon | Residents of the Kuskokwim Area, except those persons residing on the United States military installations located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB. |
| | Rainbow trout | Residents of the communities of Akiachak, Akiak, Aniak, Atmautluak, Bethel, Chuathbaluk, Crooked Creek, Eek, Goodnews Bay, Kasigluk, Kwethluk, Lower Kalskag, Napakiak, Napaskiak, Nunapitchuk, Oscarville, Platinum, Quinhagak, Tuluksak, Tuntutuliak, and Upper Kalskag. |
| | Pacific cod | Residents of the communities of Chefornak, Chevak, Eek, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Newtok, Nightmute, Tununak, Toksook Bay, and Tuntutuliak. |
| | All other fish other than herring. | Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB. |
| Waters around Nunivak Island | Herring and herring roe | Residents within 20 miles of the coast between the westernmost tip of the Naskonat Peninsula and the terminus of the Ishowik River and on Nunivak Island. |
| BRISTOL BAY AREA: | | |
| Nushagak District, including drainages flowing into the district. | Salmon and freshwater fish. | Residents of the Nushagak District and freshwater drainages flowing into the district. |
| Naknek-Kvichak District—Naknek River drainage. | Salmon and freshwater fish. | Residents of the Naknek and Kvichak River drainages. |
| Naknek-Kvichak District—Kvichak/Iliamna—Lake Clark drainage. | Salmon and freshwater fish. | Residents of the Kvichak/Iliamna-Lake Clark drainage. |
| Togiak District, including drainages flowing into the district. | Salmon and freshwater fish. | Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak. |
| Egegik District, including drainages flowing into the district. | Salmon and freshwater fish. | Residents of South Naknek, the Egegik District and freshwater drainages flowing into the district. |
| Ugashik District, including drainages flowing into the district. | Salmon and freshwater fish. | Residents of the Ugashik District and freshwater drainages flowing into the district. |
| Togiak District | Herring spawn on kelp | Residents of the Togiak District and freshwater drainages flowing into the district. |
| Remainder of the Bristol Bay Area | All fish | Residents of the Bristol Bay Area. |
| ALEUTIAN ISLANDS AREA | All fish | Residents of the Aleutian Islands Area and the Pribilof Islands. |
| ALASKA PENINSULA AREA | All fish | Residents of the Alaska Peninsula Area. |
| CHIGNIK AREA | Salmon and fish other than rainbow/steelhead trout. | Residents of the Chignik Area. |
| KODIAK AREA: | | |
| Except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10′ North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34′ North latitude, 156°20.22′ West longitude). | Salmon | Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base. |

TABLE 2 TO PARAGRAPH (a)(2)—Continued

| Area | Species | Determination |
|---|---|---|
| Kodiak Area | Fish other than rainbow/steelhead trout and salmon. | Residents of the Kodiak Area. |
| COOK INLET AREA: | | |
| Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. | All fish | Residents of the communities of Cooper Landing, Hope and Ninilchik. |
| Waters within the Kasilof River drainage within the Kenai NWR. | All fish | Residents of the community of Ninilchik. |
| Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park. | Salmon | Residents of the Tuxedni Bay Area. |
| Cook Inlet Area | Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot. | Residents of the Cook Inlet Area. |
| Remainder of the Cook Inlet Area | Salmon, Dolly Varden, trout, char, grayling, and burbot. | All rural residents. |
| PRINCE WILLIAM SOUND AREA: | | |
| Southwestern District and Green Island | Salmon | Residents of the Southwestern District, which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands. |
| North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point. | Salmon | Residents of the villages of Tatitlek and Ellamar. |
| Copper River drainage upstream from Haley Creek. | Freshwater fish | Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road. |
| Gulkana National Wild and Scenic River | Freshwater fish | Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road. |
| Waters of the Prince William Sound Area, except for the Copper River drainage upstream of Haley Creek. | Freshwater fish (trout, char, whitefish, suckers, grayling, and burbot). | Residents of the Prince William Sound Area, except those living in the Copper River drainage upstream of Haley Creek. |
| Chitina Subdistrict of the Upper Copper River District. | Salmon | Residents of Cantwell, Chickaloon, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road. |
| Glennallen Subdistrict of the Upper Copper River District. | Salmon | Residents of the Prince William Sound Area and residents of Cantwell, Chickaloon, Chisana, Dot Lake, Dry Creek, Healy Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road. |

TABLE 2 TO PARAGRAPH (a)(2)—Continued

| Area | Species | Determination |
|---|---|---|
| Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek. | Salmon | Residents of Mentasta Lake and Dot Lake. |
| Remainder of the Prince William Sound Area. | Salmon | Residents of the Prince William Sound Area. |
| Waters of the Bering River area from Point Martin to Cape Suckling. | Eulachon | Residents of Cordova. |
| Waters of the Copper River Delta from the Eyak River to Point Martin. | Eulachon | Residents of Cordova, Chenega Bay, and Tatitlek. |
| YAKUTAT AREA | All fish | Residents of Yakutat and Southeastern Alaska Fishery Management Areas. |
| SOUTHEASTERN ALASKA AREA | All fish | Residents of Yakutat and Southeastern Alaska Fishery Management Areas. |

(3) *Shellfish determinations*. The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

TABLE 3 TO PARAGRAPH (a)(3)

| Area | Species | Determination |
|---|---|---|
| Bering Sea Area | All shellfish | Residents of the Bering Sea Area. |
| Alaska Peninsula-Aleutian Islands Area | Shrimp Dungeness, and Tanner crab. | Residents of the Alaska Peninsula-Aleutian Islands Area. |
| Kodiak Area | Shrimp, Dungeness, and Tanner crab. | Residents of the Kodiak Area. |
| Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections. | King crab | Residents of the Kodiak Island Borough, except those residents on the Kodiak Coast Guard base. |
| Cook Inlet Area: | | |
| Federal waters in the Tuxedni Bay Area within the boundaries of Lake Clark National Park. | Shellfish | Residents of Tuxedni Bay, Chisik Island, and Tyonek. |
| Prince William Sound Area | Shrimp, clams, Dungeness, king, and Tanner crab. | Residents of the Prince William Sound Area. |
| Southeastern Alaska—Yakutat Area: | | |
| Section 1E south of the latitude of Grant Island light. | Shellfish, except shrimp, king crab, and Tanner crab.. | Residents of the Southeast Area. |
| Section 1F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra. | Shellfish, except shrimp, king crab, and Tanner crab. | Residents of the Southeast Area. |
| Section 3A and 3B | Shellfish, except shrimp, king crab, and Tanner crab. | Residents of the Southeast Area. |
| District 13 | Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks. | Residents of the Southeast Area. |

(b) [Reserved]

[64 FR 1301, Jan. 8, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 242.24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

## Subpart D—Subsistence Taking of Fish and Wildlife

### § 242.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.

(a) *Definitions*. The following definitions apply to all regulations contained in this part:

*Abalone iron* means a flat device which is used for taking abalone and which is more than 1 inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

*ADF&G* means the Alaska Department of Fish and Game.

*Airborne* means transported by aircraft.

*Aircraft* means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

*Airport* means an airport listed in the Federal Aviation Administration's Alaska Airman's Guide and chart supplement.

*Anchor* means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

*Animal* means those species with a vertebral column (backbone).

*Antler* means one or more solid, hornlike appendages protruding from the head of a caribou, deer, elk, or moose.

*Antlered* means any caribou, deer, elk, or moose having at least one visible antler.

*Antlerless* means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

*Bait* means any material excluding a scent lure that is placed to attract an animal by its sense of smell or taste; however, those parts of legally taken animals that are not required to be salvaged and which are left at the kill site are not considered bait.

*Beach seine* means a floating net which is designed to surround fish and is set from and hauled to the beach.

*Bear* means black bear, or brown or grizzly bear.

*Big game* means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, musk ox, Dall sheep, wolf, and wolverine.

*Bow* means a longbow, recurve bow, or compound bow, excluding a crossbow or any bow equipped with a mechanical device that holds arrows at full draw.

*Broadhead* means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths of an inch.

*Brow tine* means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

*Buck* means any male deer.

*Bull* means any male moose, caribou, elk, or musk oxen.

*Calf* means a moose, caribou, elk, musk ox, or bison less than 12 months old.

*Cast net* means a circular net with a mesh size of no more than 1.5 inches and weights attached to the perimeter, which, when thrown, surrounds the fish and closes at the bottom when retrieved.

*Char* means the following species: Arctic char (*Salvelinus alpinis*), lake trout (*Salvelinus namaycush*), brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

*Closed season* means the time when fish, wildlife, or shellfish may not be taken.

*Crab* means the following species: Red king crab (*Paralithodes camshatica*), blue king crab (*Paralithodes platypus*), brown king crab (*Lithodes aequispina*), scarlet king crab (*Lithodes couesi*), all species of tanner or snow crab (*Chionoecetes* spp.), and Dungeness crab (*Cancer magister*).

*Cub bear* means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

*Depth of net* means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

*Designated hunter or fisherman* means a Federally qualified hunter or fisherman who may take all or a portion of another Federally qualified hunter's or fisherman's harvest limit(s) only under situations approved by the Board.

*Dip net* means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed 5 feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no

portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

*Diving gear* means any type of hard hat or skin diving equipment, including SCUBA equipment; a tethered, umbilical, surface-supplied unit; or snorkel.

*Drainage* means all of the lands and waters comprising a watershed, including tributary rivers, streams, sloughs, ponds, and lakes, which contribute to the water supply of the watershed.

*Drawing permit* means a permit issued to a limited number of Federally qualified subsistence users selected by means of a random drawing.

*Drift gillnet* means a drifting gillnet that has not been intentionally staked, anchored, or otherwise fixed in one place.

*Edible meat* means the breast meat of ptarmigan and grouse and those parts of caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: The meat of the ribs, neck, brisket, front quarters as far as the distal (bottom) joint of the radius-ulna (knee), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed in this definition does not include: Meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera. For black bear, brown and grizzly bear, ''edible meat'' means the meat of the front quarter and hindquarters and meat along the backbone (backstrap).

*Federally qualified subsistence user* means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

*Field* means an area outside of established year-round dwellings, businesses, or other developments usually associated with a city, town, or village; *field* does not include permanent hotels or roadhouses on the State road system or at State or Federally maintained airports.

*Fifty-inch (50-inch) moose* means a bull moose with an antler spread of 50 inches or more.

*Fish wheel* means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish, which is driven by river current or other means.

*Fresh water of streams and rivers* means the line at which fresh water is separated from salt water at the mouth of streams and rivers by a line drawn headland to headland across the mouth as the waters flow into the sea.

*Full curl horn* means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

*Furbearer* means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

*Fyke net* means a fixed, funneling (fyke) device used to entrap fish.

*Gear* means any type of fishing apparatus.

*Gillnet* means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

*Grappling hook* means a hooked device with flukes or claws, which is attached to a line and operated by hand.

*Groundfish* or *bottomfish* means any marine fish except halibut, osmerids, herring, and salmonids.

*Grouse* collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, sooty grouse (formerly blue), and sharp-tailed grouse.

*Hand purse seine* means a floating net that is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

*Handicraft* means a finished product made by a rural Alaskan resident from

the nonedible byproducts of fish or wildlife and is composed wholly or in some significant respect of natural materials. The shape and appearance of the natural material must be substantially changed by the skillful use of hands, such as sewing, weaving, drilling, lacing, beading, carving, etching, scrimshawing, painting, or other means, and incorporated into a work of art, regalia, clothing, or other creative expression, and can be either traditional or contemporary in design. The handicraft must have substantially greater monetary and aesthetic value than the unaltered natural material alone.

*Handline* means a hand-held and operated line, with one or more hooks attached.

*Hare or hares* collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

*Harvest limit* means the number of any one species permitted to be taken by any one person or designated group, per specified time period, in a Unit or portion of a Unit in which the taking occurs even if part or all of the harvest is preserved. A fish, when landed and killed by means of rod and reel, becomes part of the harvest limit of the person originally hooking it.

*Herring pound* means an enclosure used primarily to contain live herring over extended periods of time.

*Highway* means the drivable surface of any constructed road.

*Household* means that group of people residing in the same residence.

*Hook* means a single shanked fishhook with a single eye constructed with one or more points with or without barbs. A hook without a ''barb'' means the hook is manufactured without a barb or the barb has been completely removed or compressed so that barb is in complete contact with the shaft of the hook.

*Hung measure* means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

*Hunting* means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

*Hydraulic clam digger* means a device using water or a combination of air and water used to harvest clams.

*Jigging gear* means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

*Lead* means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a length of fencing employed for guiding fish into a fish wheel, fyke net, or dip net.

*Legal limit of fishing gear* means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district, or section.

*Long line* means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

*Marmot* collectively refers to all species of marmot that occur in Alaska, including the hoary marmot, Alaska marmot, and the woodchuck.

*Mechanical clam digger* means a mechanical device used or capable of being used for the taking of clams.

*Mechanical jigging machine* means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

*Mile* means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

*Motorized vehicle* means a motor-driven land, air, or water conveyance.

*Open season* means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

*Otter* means river or land otter only, excluding sea otter.

*Permit hunt* means a hunt for which State or Federal permits are issued by registration or other means.

*Poison* means any substance that is toxic or poisonous upon contact or ingestion.

*Possession* means having direct physical control of wildlife at a given time

or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

*Possession limit* means the maximum number of fish, grouse, or ptarmigan a person or designated group may have in possession if they have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15-day period.

*Pot* means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

*Ptarmigan* collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

*Purse seine* means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

*Ram* means a male Dall sheep.

*Registration permit* means a permit that authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order requests are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

*Regulatory year* means July 1–June 30, except for fish and shellfish, for which it means April 1–March 31.

*Ring net* means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

*Rockfish* means all species of the genus *Sebastes*.

*Rod and reel* means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole. In either case, bait or an artificial fly or lure is used as terminal tackle. This definition does not include the use of rod and reel gear for snagging.

*Salmon* means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); Chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

*Salmon stream* means any stream used by salmon for spawning, rearing, or for traveling to a spawning or rearing area.

*Salvage* means to transport the edible meat, skull, or hide, as required by regulation, of a regulated fish, wildlife, or shellfish to the location where the edible meat will be consumed by humans or processed for human consumption in a manner that saves or prevents the edible meat from waste, and preserves the skull or hide for human use.

*Scallop dredge* means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

*Scent lure* (in reference to bear baiting) means any biodegradable material to which biodegradable scent is applied or infused.

*Sea urchin rake* means a hand-held implement, no longer than 4 feet, equipped with projecting prongs used to gather sea urchins.

*Sealing* means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

*Set gillnet* means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

*Seven-eighths curl horn* means the horn of a male Dall sheep, the tip of which has grown through seven-eighths (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

*Shovel* means a hand-operated implement for digging clams.

*Skin, hide, pelt, or fur* means any tanned or untanned external covering

of an animal's body. However, for bear, the skin, hide, pelt, or fur means the external covering with claws attached.

*Snagging* means hooking or attempting to hook a fish elsewhere than in the mouth.

*Spear* means a shaft with a sharp point or fork-like implement attached to one end, which is used to thrust through the water to impale or retrieve fish, and which is operated by hand.

*Spike-fork moose* means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

*Stretched measure* means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, must be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements will be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under 5-pound weight.

*Subsistence fishing permit* means a subsistence harvest permit issued by the Alaska Department of Fish and Game or the Federal Subsistence Board.

*Take* or *Taking* means to fish, pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

*Tine* or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least 1 inch.

*To operate fishing gear* means any of the following: To deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet that is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

*Transportation* means to ship, convey, carry, or transport by any means whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

*Trapping* means the taking of furbearers within established trapping seasons and with a required trapping license.

*Trawl* means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

*Troll gear* means a power gurdy troll gear consisting of a line or lines with lures or baited hooks that are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks that are drawn through the water from a vessel by hand trolling, strip fishing, or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical, or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

*Trophy* means a mount of a big game animal, including the skin of the head (cape) or the entire skin, in a lifelike representation of the animal, including a lifelike representation made from any part of a big game animal; ''trophy'' also includes a ''European mount'' in which the horns or antlers and the skull or a portion of the skull are mounted for display.

*Trout* means the following species: Cutthroat trout (*Oncorhynchus clarki*) and rainbow/steelhead trout (*Oncorhynchus mykiss*).

*Unclassified wildlife or unclassified species* means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

*Ungulate* means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk ox.

*Unit* and *Subunit* means one of the geographical areas in the State of Alaska known as Game Management Units, or GMUs, as defined in the codified Alaska Department of Fish and Game

regulations found in Title 5 of the Alaska Administrative Code and collectively listed in this part as Units or Subunits.

*Wildlife* means any hare, ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Taking fish, wildlife, or shellfish for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting, trapping, or fishing during a closed season or in an area closed by this part is prohibited. You may not take for subsistence fish, wildlife, or shellfish outside established Unit or Area seasons, or in excess of the established Unit or Area harvest limits, unless otherwise provided for by the Board. You may take fish, wildlife, or shellfish under State regulations on public lands, except as otherwise restricted at §§ 242.26 through 242.28. Unit/Area-specific restrictions or allowances for subsistence taking of fish, wildlife, or shellfish are identified at §§ 242.26 through 242.28.

(c) *Harvest limits.* (1) Harvest limits authorized by this section and harvest limits established in State regulations may not be accumulated unless specified otherwise in §§ 242.26, 242.27. or 242.28.

(2) Fish, wildlife, or shellfish taken by a designated individual for another person pursuant to § 242.10(d)(5)(ii) counts toward the individual harvest limit of the person for whom the fish, wildlife, or shellfish is taken.

(3) A harvest limit may apply to the number of fish, wildlife, or shellfish that can be taken daily, seasonally and/or during a regulatory year or held in possession.

(4) Unless otherwise provided, any person who gives or receives fish, wildlife, or shellfish must furnish, upon a request made by a Federal or State agent, a signed statement describing the following: Names and addresses of persons who gave and received fish, wildlife, or shellfish; the time and place that the fish, wildlife, or shellfish was taken; and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take fish, wildlife, or shellfish on his or her behalf in accordance with § 242.10(d)(5)(ii), the permit must be furnished in place of a signed statement.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally qualified subsistence user, you (beneficiary) may designate another Federally qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Hunting by designated harvest permit.* If you are a Federally qualified subsistence user (recipient), you may designate another Federally qualified subsistence user to take deer, moose, and caribou, and in Units 1–5, goats, on your behalf unless you are a member of a community operating under a community harvest system or unless unit-specific regulations in § 242.26 preclude or modify the use of the designated hunter system or allow the harvest of additional species by a designated hunter. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time except for goats, where designated

hunters may have no more than one harvest limit in possession at any one time, and unless otherwise specified in unit-specific regulations in § 242.26.

(f) A rural Alaska resident who has been designated to take fish, wildlife, or shellfish on behalf of another rural Alaska resident in accordance with § 242.10(d)(5)(ii) must promptly deliver the fish, wildlife, or shellfish to that rural Alaska resident and may not charge the recipient for his/her services in taking the fish, wildlife, or shellfish or claim for themselves the meat or any part of the harvested fish, wildlife, or shellfish.

(g) *Cultural/educational program permits.* (1) A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Federal Subsistence Board through the Office of Subsistence Management and should be submitted 60 days prior to the earliest desired date of harvest. Harvest must be reported, and any animals harvested will count against any established Federal harvest quota for the area in which it is harvested.

(2) Requests for followup permits must be submitted to the in-season or local manager and should be submitted 60 days prior to the earliest desired date of harvest.

(h) *Permits.* If a subsistence fishing or hunting permit is required by this part, the following permit conditions apply unless otherwise specified in this section:

(1) You may not take more fish, wildlife, or shellfish for subsistence use than the limits set out in the permit;

(2) You must obtain the permit prior to fishing or hunting;

(3) You must have the permit in your possession and readily available for inspection while fishing, hunting, or transporting subsistence-taken fish, wildlife, or shellfish;

(4) If specified on the permit, you must keep accurate daily records of the harvest, showing the number of fish, wildlife, or shellfish taken, by species, location, and date of harvest, and other such information as may be required for management or conservation purposes; and

(5) If the return of harvest information necessary for management and conservation purposes is required by a permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following regulatory year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(i) You may not possess, transport, give, receive, or barter fish, wildlife, or shellfish that was taken in violation of Federal or State statutes or a regulation promulgated hereunder.

(j) *Utilization of fish, wildlife, or shellfish.* (1) You may not use wildlife as food for a dog or furbearer, or as bait, except as allowed for in § 242.26, § 242.27, or § 242.28, or except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, or ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in Units 5, 9B, 17, 18, portions of 19A and 19B, 21D, 22, 23, 24, and 26A need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares, marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse, and ptarmigan.

(4) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and

viscera of legally taken subsistence fish.

(5) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested fish, wildlife, or shellfish, unanticipated weather conditions, or unavoidable loss to another animal.

(6) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the skin, hide, pelt, or fur, including claws, of a black bear.

(i) In Units 1, 2, 3, 4, and 5, you may sell handicraft articles made from the skin, hide, pelt, fur, claws, bones, teeth, sinew, or skulls of a black bear taken from Units 1, 2, 3, or 5.

(ii) [Reserved]

(7) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the skin, hide, pelt, or fur, including claws, of a brown bear taken from Units 1–5, 9A–C, 9E, 12, 17, 20, 22, 23, 24B (only that portion within Gates of the Arctic National Park), 25, or 26.

(i) In Units 1, 2, 3, 4, and 5, you may sell handicraft articles made from the skin, hide, pelt, fur, claws, bones, teeth, sinew, or skulls of a brown bear taken from Units 1, 4, or 5.

(ii) Prior to selling a handicraft incorporating a brown bear claw(s), the hide or claw(s) not attached to a hide must be sealed by an authorized Alaska Department of Fish and Game representative. Old claws may be sealed if an affidavit is signed indicating that the claws came from a brown bear harvested on Federal public lands by a Federally qualified user. A copy of the Alaska Department of Fish and Game sealing certificate must accompany the handicraft when sold.

(8) If you are a Federally qualified subsistence user, you may sell the raw fur or tanned pelt with or without claws attached from legally harvested furbearers.

(9) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the nonedible byproducts (including, but not limited to, skin, shell, fins, and bones) of subsistence-harvested fish or shellfish.

(10) If you are a Federally qualified subsistence user, you may sell handicraft articles made from nonedible byproducts of wildlife harvested for subsistence uses (excluding bear), to include: Skin, hide, pelt, fur, claws, bones (except skulls of moose, caribou, elk, deer, sheep, goat, and musk ox), teeth, sinew, antlers and/or horns (if not attached to any part of the skull or made to represent a big game trophy) and hooves.

(11) The sale of handicrafts made from the nonedible byproducts of wildlife, when authorized in this part, may not constitute a significant commercial enterprise.

(12) You may sell the horns and antlers not attached to any part of the skull from legally harvested caribou (except caribou harvested in Unit 23), deer, elk, goat, moose, musk ox, and sheep.

(13) You may sell the raw/untanned and tanned hide or cape from a legally harvested caribou, deer, elk, goat, moose, musk ox, and sheep.

(k) The regulations found in this part do not apply to the subsistence taking and use of fish, wildlife, or shellfish regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187); the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543); the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407); and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or to any amendments to these Acts. The taking and use of fish, wildlife, or shellfish, covered by these Acts will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(l) Rural residents, nonrural residents, and nonresidents not specifically prohibited by Federal regulations from fishing, hunting, or trapping on public lands in an area may fish, hunt, or trap on public lands in accordance with the appropriate State regulations.

[77 FR 35494, June 13, 2012, as amended at 80 FR 28192, May 18, 2015; 83 FR 50764, Oct. 9, 2018]

### § 242.26 Subsistence taking of wildlife.

(a) *General taking prohibitions.* You may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence

uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(b) *Prohibited methods and means.* Except for special provisions found at paragraphs (n)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(1) Shooting from, on, or across a highway.

(2) Using any poison.

(3) Using a helicopter in any manner, including transportation of individuals, equipment, or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation.

(4) Taking wildlife from a motorized land or air vehicle when that vehicle is in motion, or from a motor-driven boat when the boat's progress from the motor's power has not ceased.

(5) Using a motorized vehicle to drive, herd, or molest wildlife.

(6) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge.

(7) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle, or pistol using center-firing cartridges for the taking of ungulates, bear, wolves, or wolverine, except that—

(i) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine; and

(ii) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk ox, and mountain goat.

(8) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over 9 inches, or conibear style trap with a jaw spread over 11 inches.

(9) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and individuals in possession of a valid trapping license may use snares to take furbearers.

(10) Using a trap to take ungulates or bear.

(11) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag.

(12) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only.

(13) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting an inch-wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least 1 ounce (437.5 grains).

(14) Using bait for taking ungulates, bear, wolf, or wolverine; except you may use bait to take wolves and wolverine with a trapping license, and you may use bait to take black bears and brown bears with a hunting license as authorized in Unit-specific regulations at paragraphs (n)(1) through (26) of this section. Baiting of black bears and brown bears is subject to the following restrictions:

(i) Before establishing a bear bait station, you must register the site with ADF&G.

(ii) When using bait, you must clearly mark the site with a sign reading ''black bear bait station'' that also displays your hunting license number and ADF&G-assigned number.

(iii) You may use only biodegradable materials for bait; if fish or wildlife is used as bait, only the head, bones, viscera, or skin of legally harvested fish and wildlife, the skinned carcasses of furbearers, and unclassified wildlife may be used, except that in Units 7 and 15, fish or fish parts may not be used as bait. Scent lures may be used at registered bait stations.

(iv) You may not use bait within ¼ mile of a publicly maintained road or trail.

(v) You may not use bait within 1 mile of a house or other permanent dwelling, or within 1 mile of a developed campground or developed recreational facility.

(vi) When using bait, you must remove litter and equipment from the bait station site when done hunting.

(vii) You may not give or receive payment for the use of a bait station, including barter or exchange of goods.

(viii) You may not have more than two bait stations with bait present at any one time.

(15) Taking swimming ungulates, bears, wolves, or wolverine.

(16) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft). This restriction does not apply to subsistence taking of deer (except on NPS lands) and of caribou on the Nushagak Peninsula (a portion of Units 17A and 17C) during Jan. 1–Mar. 31, provided the hunter is 300 feet from the airplane; moreover, this restriction does not apply to subsistence setting of snares or traps, or the removal of furbearers from traps or snares.

(17) Taking a bear cub or a sow accompanied by cub(s).

(c) *Defense of life and property*. Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(d) *Trapping furbearing animals*. The following methods and means of trapping furbearers for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b) of this section:

(1) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(2) Disturbing or destroying any beaver house;

(3) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(4) Taking otter with a steel trap having a jaw spread of less than 5⅞ inches during any closed mink and marten season in the same Unit;

(5) Using a net or fish trap (except a blackfish or fyke trap); and

(6) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(e) *Possession and transportation of wildlife*. (1) Except as specified in paragraph (e)(2) or (f)(1) of this section, or as otherwise provided, you may not take a species of wildlife in any Unit, or portion of a Unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § ____.10(d)(5)(iii) or as otherwise provided for by this part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(f) *Harvest limits*. (1) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(2) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of ''one brown/grizzly bear per year'' counts against a ''one brown/grizzly bear every four regulatory years'' harvest limit in other Units. You may not take more than one brown/grizzly bear in a regulatory year.

(g) *Evidence of sex and identity*. (1) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(2) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal, except

that in Units 1–5 antlers are also considered proof of sex for deer if the antlers are naturally attached to an entire carcass, with or without the viscera; and except in Units 11, 13, 19, 21, and 24, where you may possess either sufficient portions of the external sex organs (still attached to a portion of the carcass) or the head (with or without antlers attached; however, the antler stumps must remain attached) to indicate the sex of the harvested moose. However, this paragraph (g)(2) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose harvest limit requires an antlered bull, an antler size, or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (g)(3) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(h) *Removing harvest from the field.* (1) You must leave all edible meat on the bones of the front quarters and hind quarters of caribou and moose harvested in Units 9, 17, 18, and 19B prior to October 1 until you remove the meat from the field or process it for human consumption.

(2) You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of moose harvested in Unit 21 prior to October 1 until you remove the meat from the field or process it for human consumption.

(3) You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of caribou and moose harvested in Unit 24 prior to October 1 until you remove the meat from the field or process it for human consumption. Meat of the front quarters, hind quarters, or ribs from a harvested moose or caribou may be processed for human consumption and consumed in the field; however, meat may not be removed from the bones for purposes of transport out of the field.

(4) You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of caribou and moose harvested in Unit 25 until you remove the meat from the field or process it for human consumption.

(i) *Returning of tags, marks, or collars.* If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return any identification equipment to the ADF&G or to an agency identified on such equipment.

(j) *Sealing of bear skins and skulls.* (1) Sealing requirements for bear apply to brown bears taken in all Units, except as specified in this paragraph (j), and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in Units 5, 9B, 9E, 17, 18, 19A, and 19B downstream of and including the Aniak River drainage, and Units 21D, 22, 23, 24, and 26A need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision does not apply to brown bears taken within Units 5, 9B, 9E, 17, 18, 19A, and 19B downstream of and including the Aniak River drainage, and Units 21D, 22, 23, 24, and 26A and which are not removed from the Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear that does not have the penis sheath or vaginal orifice naturally attached to

indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in Units 9B, 17, 18, and 19A and 19B downstream of and including the Aniak River drainage is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative must remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in Units 21D, 22, 23, 24, and 26A from the area or present it for commercial tanning within the area, you must first have it sealed by an ADF&G representative in Barrow, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative must remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat.

(v) If you remove the skin or skull of a bear taken in Unit 9E from Unit 9, you must first have it sealed by an authorized sealing representative. At the time of sealing, the representative must remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(k) *Sealing of beaver, lynx, marten, otter, wolf, and wolverine.* You may not possess or transport from Alaska the untanned skin of a marten taken in Unit 1–5, 7, 13E, or 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the State, unless the skin has been sealed by an authorized representative in accordance with State or Federal regulations.

(1) In Unit 18, you must obtain an ADF&G seal for beaver skins only if they are to be sold or commercially tanned.

(2) In Unit 2, you must seal any wolf taken on or before the 14th day after the date of taking.

(l) *Sealing form.* If you take a species listed in paragraph (k) of this section but are unable to present the skin in person, you must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (k) of this section.

(m) *Traditional religious ceremonies.* You may take wildlife, outside of established season or harvest limits, for food in traditional religious ceremonies, which are part of a funerary or mortuary cycle, including memorial potlatches, under the following provisions:

(1) The harvest does not violate recognized principles of wildlife conservation and uses the methods and means allowable for the particular species published in the applicable Federal regulations. The appropriate Federal land manager will establish the number, species, sex, or location of harvest, if necessary, for conservation purposes. Other regulations relating to ceremonial harvest may be found in the Unit-specific regulations in paragraph (n) of this section.

(2) No permit or harvest ticket is required for harvesting under this section; however, the harvester must be a federally qualified subsistence user with customary and traditional use in the area where the harvesting will occur.

(3) In Units 1–26 (except for Koyukon/Gwich'in potlatch ceremonies in Unit 20F, 21, 24, or 25):

(i) A tribal chief, village or tribal council president, or the chief's or president's designee for the village in which the religious/cultural ceremony will be held, or a federally qualified subsistence user outside of a village or tribal-organized ceremony, must notify the nearest Federal land manager that a wildlife harvest will take place. The notification must include the species, harvest location, and number of animals expected to be taken.

(ii) Immediately after the wildlife is taken, the tribal chief, village or tribal council president or designee, or other federally qualified subsistence user must create a list of the successful hunters and maintain these records, including the name of the decedent for whom the ceremony will be held. If requested, this information must be

available to an authorized representative of the Federal land manager.

(iii) The tribal chief, village or tribal council president or designee, or other federally qualified subsistence user outside of the village in which the religious/cultural ceremony will be held must report to the Federal land manager the harvest location, species, sex, and number of animals taken as soon as practicable, but not more than 15 days after the wildlife is taken.

(4) In Units 20F, 21, 24, and 25 (for Koyukon/Gwich'in potlatch ceremonies only):

(i) Taking wildlife outside of established season and harvest limits is authorized if it is for food for the traditional Koyukon/Gwich'in Potlatch Funerary or Mortuary ceremony and if it is consistent with conservation of healthy populations.

(ii) Immediately after the wildlife is taken, the tribal chief, village or tribal council president, or the chief's or president's designee for the village in which the religious ceremony will be held must create a list of the successful hunters and maintain these records. The list must be made available, after the harvest is completed, to a Federal land manager upon request.

(iii) As soon as practical, but not more than 15 days after the harvest, the tribal chief, village council president, or designee must notify the Federal land manager about the harvest location, species, sex, and number of animals taken.

(n) *Unit regulations*. You may take for subsistence unclassified wildlife, all squirrel species and marmots in all Units, without harvest limits, for the period of July 1–June 30. Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (n)(1) through (26) of this section.

(1) *Unit 1*. Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1A consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound.

(ii) Unit 1B consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage.

(iii) Unit 1C consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay.

(iv) Unit 1D consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay.

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1A—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1B—the Anan Creek drainage within 1 mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a 1-mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of bear; and

(D) Unit 1C:

(*1*) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area; and

(*2*) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier.

(vi) You may not trap furbearers for subsistence uses in Unit 1C, Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area; and

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail.

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1A, 1B, and 1D between April 15 and June 15.

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

(C) Coyotes taken incidentally with a trap or snare during an open Federal trapping season for wolf, wolverine, or beaver may be legally retained.

(D) A firearm may be used to take beaver under a trapping license during an open beaver season, except on National Park Service lands.

TABLE 1 TO PARAGRAPH (n)(1)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 2 bears, no more than one may be a blue or glacier bear | Sep. 1–June 30. |
| Brown Bear: 1 bear every 4 regulatory years by State registration permit only | Sep. 15–Dec. 31.<br>Mar. 15–May 31. |
| Deer: | |
| Unit 1A—4 antlered deer | Aug. 1–Dec. 31. |
| Unit 1B—2 antlered deer | Aug. 1–Dec. 31. |
| Unit 1C—4 deer; however, female deer may be taken only Sep. 15–Dec. 31 | Aug. 1–Dec. 31. |
| Goat: | |
| Unit 1A, Revillagigedo Island only | No open season. |
| Unit 1B, that portion north of LeConte Bay—1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited. | Aug. 1–Dec. 31. |
| Unit 1A and Unit 1B, that portion on the Cleveland Peninsula south of the divide between Yes Bay and Santa Anna Inlet. | No open season. |
| Unit 1A and Unit 1B, remainder—2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat. The taking of kids or nannies accompanied by kids is prohibited. | Aug. 1–Dec. 31. |
| Unit 1C, that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only. | Oct. 1–Nov. 30. |
| Unit 1C, that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier. | No open season. |
| Unit 1C, remainder—1 goat by State registration permit only | Aug. 1–Nov. 30. |
| Unit 1D, that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only. | Sep. 15–Nov. 30. |
| Unit 1D, that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad. | No open season. |
| Unit 1D, remainder—1 goat by State registration permit only | Aug. 1–Dec. 31. |
| Moose: | |
| Unit 1A—1 antlered bull by Federal registration permit | Sep. 5–Oct. 15. |
| Unit 1B—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on one side, or antlers with 2 brow tines on both sides, by State registration permit only. | Sep. 15–Oct. 15. |
| Unit 1C, that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on one side, or antlers with 2 brow tines on both sides, by State registration permit only. | Sep. 15–Oct. 15. |
| Unit 1C, remainder, excluding drainages of Berners Bay—1 bull by State registration permit only. | Sep. 15–Oct. 15. |
| Unit 1C, Berners Bay—1 bull by drawing permit | Sep.15–Oct. 15 (will be announced). |

TABLE 1 TO PARAGRAPH (n)(1)—Continued

| Harvest limits | Open season |
|---|---|
| Only one moose permit may be issued per household. A household receiving a State permit for Berners Bay drainages moose may not receive a Federal permit. The annual harvest quota will be announced by the USDA Forest Service, Juneau office, in consultation with ADF&G. The Federal harvest allocation will be 25% (rounded up to the next whole number) of bull moose permits. | |
| Unit 1D | No open season. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black, and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe): 5 hares per day | Sep. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: | |
| Units 1A and 1B, south of Bradfield Canal and the east fork of the Bradfield River—5 wolves. | Aug. 1–May 31. |
| Units 1B, remainder, 1C, and 1D—5 wolves | Aug. 1–Apr. 30. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **Trapping** | |
| Beaver: Unit 1—No limit | Nov. 10–May 15. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black, and Silver Phases): No limit | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Dec. 1–Feb. 15. |
| Mink and Weasel: No limit | Dec. 1–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Dec. 1–Feb. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 10–Mar. 1. |

(2) *Unit 2*. Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the westernmost point on Warren Island.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

(C) Coyotes taken incidentally with a trap or snare during an open Federal trapping season for wolf, wolverine, or beaver may be legally retained.

(D) A firearm may be used to take beaver under a trapping license during an open beaver season, except on National Park Service lands.

(ii) [Reserved]

TABLE 2 TO PARAGRAPH (n)(2)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 2 bears, no more than one may be a blue or glacier bear | Sep. 1–June 30. |
| Deer: | |
| 5 deer; however, no more than one may be a female deer. Female deer may be taken only during the period Oct. 15–Jan. 31. Harvest ticket number five must be used when recording the harvest of a female deer, but may be used for recording the harvest of a male deer. Harvest tickets must be used in order except when recording a female deer on tag number five. | July 24–Jan. 31. |
| The Federal public lands on Prince of Wales Island, excluding the southeastern portion (lands south of the West Arm of Cholmondeley Sound draining into Cholmondeley Sound or draining eastward into Clarence Strait), are closed to hunting of deer Aug. 1–15, except by federally qualified subsistence users hunting under these regulations. | |
| Non-federally qualified users may only harvest up to 2 male deer on Federal public lands in Unit 2. | |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black, and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe): 5 hares per day | Sep. 1–Apr. 30. |

TABLE 2 TO PARAGRAPH (n)(2)—Continued

| Harvest limits | Open season |
|---|---|
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: No limit. Any wolf taken in Unit 2 must be sealed within 30 days of the end of the season. | Sep. 1–Mar. 31. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce and Ruffed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **Trapping** | |
| Beaver: No limit | Nov. 10–May 15. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black, and Silver Phases): No limit | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Dec. 1–Feb. 15. |
| Mink and Weasel: No limit | Dec. 1–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Dec. 1–Feb. 15. |
| Wolf: No limit. Any wolf taken in Unit 2 must be sealed within 30 days of the end of the season | Nov. 15–Mar. 31. |
| Wolverine: No limit | Nov. 10–Mar. 1. |

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1B, north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevaroff, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island; and

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth-mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers 1 mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

(C) Coyotes taken incidentally with a trap or snare during an open Federal trapping season for wolf, wolverine, or beaver may be legally retained.

(D) A firearm may be used to take beaver under a trapping license during an open beaver season, except on National Park Service lands.

TABLE 3 TO PARAGRAPH (n)(3)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 2 bears, no more than one may be a blue or glacier bear | Sep. 1–June 30. |
| Deer: | |
| Unit 3, Mitkof, Woewodski, and Butterworth Islands and that portion of Kupreanof Island on the Lindenberg Peninsula east of the Portage Bay-Duncan Canal Portage—1 buck. | Oct. 1–Nov. 7. |
| Unit 3, remainder—2 bucks | Aug. 1–Nov. 30. |
| | Dec. 1–31, season to be announced. |
| Moose: 1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, or antlers with 2 brow tines on both sides by State registration permit only. | Sep. 15–Oct. 15. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black, and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe): 5 hares per day | Sep. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: 5 wolves | Aug. 1–May 31. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession. | Aug. 1–May 15. |

TABLE 3 TO PARAGRAPH (n)(3)—Continued

| Harvest limits | Open season |
|---|---|
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession. | Aug. 1–May 15. |
| **Trapping** | |
| Beaver: | |
| Unit 3, Mitkof Island—No limit | Nov. 10–May 15. |
| Unit 3, except Mitkof Island—No limit | Nov. 10–May 15. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black, and Silver Phases): No limit | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: | |
| No limit (except on Kuiu Island) | Dec. 1–Feb. 15. |
| Kuiu Island portion of Unit 3. No limit | Dec. 1–31. |
| Mink and Weasel: No limit | Dec. 1–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Dec. 1–Feb. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 10–Mar. 1. |

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1C and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take brown bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take brown bears in the Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock); and

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwestern point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay.

(iii) Unit-specific regulations:

(A) You may shoot ungulates from a boat. You may not shoot bear, wolves, or wolverine from a boat, unless you are certified as disabled.

(B) Five Federal registration permits will be issued by the Sitka or Hoonah District Ranger for the taking of brown bear for educational purposes associated with teaching customary and traditional subsistence harvest and use practices. Any bear taken under an educational permit does not count in an individual's one bear every four regulatory years limit.

(C) Coyotes taken incidentally with a trap or snare during an open Federal trapping season for wolf, wolverine, or beaver may be legally retained.

(D) A firearm may be used to take beaver under a trapping license during an open beaver season, except on National Park Service lands.

TABLE 4 TO PARAGRAPH (n)(4)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Brown Bear: | |

TABLE 4 TO PARAGRAPH (n)(4)—Continued

| Harvest limits | Open season |
|---|---|
| Unit 4, Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N lat., 136°21′ W long.) to Rodgers Point (57°35′ N lat., 135°33′ W long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57°34′ N lat., 135°25′ W long.) to the entrance of Gut Bay (56°44′ N lat. 134°38′ W long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only. | Sep. 15–Dec. 31.<br>Mar. 15–May 31. |
| Unit 4, remainder—1 bear every 4 regulatory years by State registration permit only | Sep. 15–Dec. 31.<br>Mar. 15–May 20. |
| Deer: 6 deer; however, female deer may be taken only Sep. 15–Jan. 31 | Aug. 1–Jan. 31. |
| Goat: 1 goat by State registration permit only | Aug. 1–Dec. 31. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black, and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe): 5 hares per day | Sep. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: 5 wolves | Aug. 1–Apr. 30. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **Trapping** | |
| Beaver: No limit | Nov. 10–May 15. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black, and Silver Phases): No limit | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Dec. 1–Feb. 15. |
| Mink and Weasel: No limit | Dec. 1–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Dec. 1–Feb. 15. |
| Wolf: No limit | Nov. 10–Apr. 30. |
| Wolverine: No limit | Nov. 10–Mar. 1. |

(5) *Unit 5*. (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5A consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays; In Unit 5A, Nunatak Bench is defined as that area east of the Hubbard Glacier, north of Nunatak fiord, and north and east of the East Nunatak Glacier to the Canadian border.

(B) Unit 5B consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag if you have obtained a Federal registration permit prior to hunting.

(D) Coyotes taken incidentally with a trap or snare during an open Federal trapping season for wolf, wolverine, or beaver may be legally retained.

(E) A firearm may be used to take beaver under a trapping license during an open beaver season, except on National Park Service lands.

TABLE 5 TO PARAGRAPH (n)(5)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 2 bears, no more than one may be a blue or glacier bear | Sep. 1–June 30. |
| Brown Bear: 1 bear by Federal registration permit only | Sep. 1–May 31. |
| Deer: | |
| Unit 5A—1 buck | Nov. 1–30. |

TABLE 5 TO PARAGRAPH (n)(5)—Continued

| Harvest limits | Open season |
|---|---|
| Unit 5B | No open season. |
| Goat: | |
| Unit 5A—that area between the Hubbard Glacier and the West Nunatak Glacier on the north and east sides of Nunatak Fjord. | No open season. |
| Unit 5A, remainder—1 goat by Federal registration permit. The harvest quota will be announced prior to the season. A minimum of 4 goats in the harvest quota will be reserved for federally qualified subsistence users. | Aug. 1–Jan. 31. |
| Unit 5B—1 goat by Federal registration permit only | Aug. 1–Jan. 31. |
| Moose: | |
| Unit 5A, Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench. | Nov. 15–Feb. 15. |
| Unit 5A, except Nunatak Bench, west of the Dangerous River—1 bull by joint State/Federal registration permit only. From Oct. 8–21, public lands will be closed to taking of moose, except by residents of Unit 5A hunting under these regulations. | Oct. 8–Nov. 15. |
| Unit 5A, except Nunatak Bench, east of the Dangerous River—1 bull by joint State/Federal registration permit only. From Sep. 16–30, public lands will be closed to taking of moose, except by residents of Unit 5A hunting under these regulations. | Sep. 16–Nov. 15. |
| Unit 5B—1 bull by State registration permit only. The season will be closed when 25 bulls have been taken from the entirety of Unit 5B. | Sep. 1–Dec. 15. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe): 5 hares per day | Sep. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: 5 wolves | Aug. 1–Apr. 30. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce and Ruffed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **Trapping** | |
| Beaver: No limit | Nov. 10–May 15. |
| Coyote: No limit | Nov. 10–Feb. 15. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Nov. 10–Feb. 15. |
| Mink and Weasel: No limit | Nov. 10–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Nov. 10–Feb. 15. |
| Wolf: No limit | Nov. 10–Apr. 30. |
| Wolverine: No limit | Nov. 10–Mar. 1. |

(6) *Unit 6*. (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6A consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6B consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6C consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet; and

(D) Unit 6D consists of the remainder of Unit 6.

(ii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15. In addition, you may use bait in Unit 6D between June 16 and June 30. The harvest quota in Unit 6D is 20 bears taken with bait between June 16 and June 30.

(B) You may take coyotes in Units 6B and 6C with the aid of artificial lights.

(C) One permit will be issued by the Cordova District Ranger to the Native Village of Eyak to take one moose from Federal lands in Unit 6B or 6C for

their annual Memorial/Sobriety Day potlatch.

(D) A federally qualified subsistence user (recipient) who is either blind, 65 years of age or older, at least 70 percent disabled, or temporarily disabled may designate another federally qualified subsistence user to take any moose, deer, black bear, and beaver on his or her behalf in Unit 6, and goat in Unit 6D, unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients, but may have no more than one harvest limit in his or her possession at any one time.

(E) A hunter younger than 10 years old at the start of the hunt may not be issued a Federal subsistence permit to harvest black bear, deer, goat, moose, wolf, and wolverine.

(F) A hunter younger than 10 years old may harvest black bear, deer, goat, moose, wolf, and wolverine under the direct, immediate supervision of a licensed adult, at least 18 years old. The animal taken is counted against the adult's harvest limit. The adult is responsible for ensuring that all legal requirements are met.

(G) Up to five permits will be issued by the Cordova District Ranger to the Native Village of Chenega annually to harvest up to five deer total from Federal public lands in Unit 6D for their annual Old Chenega Memorial and other traditional memorial potlatch ceremonies. Permits will have effective dates of July 1–June 30.

(H) Up to five permits will be issued by the Cordova District Ranger to the Tatitlek IRA Council annually to harvest up to five deer total from Federal public lands in Unit 6D for their annual Cultural Heritage Week. Permits will have effective dates of July 1–June 30.

TABLE 6 TO PARAGRAPH (n)(6)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 1 bear. In Unit 6D, a State registration permit is required | Sep. 1–June 30. |
| Deer: | |
| 5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31 | Aug. 1–Dec. 31. |
| Unit 6D—1 buck | Jan. 1–31. |
| Goats: | |
| Unit 6A and B—1 goat by State registration permit only | Aug. 20–Jan. 31. |
| Unit 6C | No open season. |
| Unit 6D (subareas RG242, RG243, RG244, RG245, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. In each of the Unit 6D subareas, goat seasons will be closed by the Cordova District Ranger when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—4 goats, RG244 and RG245 combined—2 goats, RG249—4 goats, RG266—4 goats, RG252—1 goat. | Aug. 20–Feb. 28. |
| Moose: | |
| Unit 6C—1 antlerless moose by Federal drawing permit only | Sep. 1–Oct. 31. |
| Permits for the portion of the antlerless moose quota not harvested in the Sep. 1–Oct. 31 hunt may be available for redistribution for a Nov. 1–Dec. 31 hunt.. | |
| Unit 6C—1 bull by Federal drawing permit only | Sep. 1–Dec. 31. |
| In Unit 6C, only one moose permit may be issued per household. A household receiving a State permit for Unit 6C moose may not receive a Federal permit. The annual harvest quota will be announced by the U.S. Forest Service, Cordova Office, in consultation with ADF&G. The Federal harvest allocation will be 100% of the antlerless moose permits and 75% of the bull permits. Federal public lands are closed to the harvest of moose except by federally qualified users with a Federal permit for Unit 6C moose, Nov. 1–Dec. 31.. | |
| Unit 6, remainder | No open season. |
| Beaver: 1 beaver per day, 1 in possession | May 1–Oct. 31. |
| Coyote: | |
| Unit 6A and D—2 coyotes | Sep. 1–Apr. 30. |
| Unit 6B and 6C—No limit | July 1–June 30. |
| Fox, Red (including Cross, Black and Silver Phases) | No open season. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Jan. 31. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |

TABLE 6 TO PARAGRAPH (n)(6)—Continued

| Harvest limits | Open season |
|---|---|
| **Trapping** | |
| Beaver: No limit | Dec. 1–Apr. 30. |
| Coyote: | |
| Unit 6C, south of the Copper River Highway and east of the Heney Range—No limit | Nov. 10–Apr. 30. |
| Units 6A, 6B, 6C, remainder, and 6D—No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31 |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W long., and all Kenai Peninsula drainages east of 150° W long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park.

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse, ptarmigan, hares, and squirrels with shotguns after September 1.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15, except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved]

TABLE 7 TO PARAGRAPH (n)(7)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Caribou: | |
| Unit 7, north of the Sterling Highway and west of the Seward Highway—1 caribou by Federal registration permit only. The Seward District Ranger will close the Federal season when 5 caribou are harvested by Federal registration permit. | Aug. 10–Dec. 31. |
| Unit 7, remainder | No open season. |
| Goat: 1 goat by Federal Drawing permit. Nannies accompanied by kids may not be taken | Aug. 10–Nov 14. |
| Moose: | |
| Unit 7, that portion draining into Kings Bay—Federal public lands are closed to the taking of moose except by residents of Chenega Bay and Tatitlek. | No open season. |
| Unit 7, remainder—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only. | Aug. 10–Sep. 20. |
| Beaver: 1 beaver per day, 1 in possession | May 1–Oct. 10. |
| Coyote: No limit | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases) | No open season. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Jan. 31. |
| Wolf: | |
| Unit 7, that portion within the Kenai National Wildlife Refuge—2 wolves | Aug. 10–Apr. 30. |
| Unit 7, remainder—5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce): 10 per day, 20 in possession | Aug. 10–Mar. 31. |
| Grouse (Ruffed) | No open season. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Mar. 31. |

TABLE 7 TO PARAGRAPH (n)(7)—Continued

| Harvest limits | Open season |
|---|---|
| **Trapping** | |
| Beaver: 20 beaver per season | Nov. 10–Mar. 31. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Jan. 1–31. |
| Marten: No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–May 15. |
| Otter: No limit | Nov. 10–Feb. 28. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(8) *Unit 8*. Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) *Unit-specific regulations:* If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10 through Apr. 30.

(ii) [Reserved]

TABLE 8 TO PARAGRAPH (n)(8)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Brown Bear: 1 bear by Federal registration permit only. Up to 2 permits may be issued in Akhiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 3 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions. Permits will be issued by the Kodiak Refuge Manager. | Dec. 1–Dec. 15.<br>Apr. 1–May 15. |
| Deer: Unit 8, all lands within the Kodiak Archipelago within the Kodiak National Wildlife Refuge, including lands on Kodiak, Ban, Uganik, and Afognak Islands—3 deer; however, antlerless deer may be taken only Oct. 1–Jan. 31. | Aug. 1–Jan. 31. |
| Elk: Kodiak, Ban, Uganik, and Afognak Islands—1 elk per household by Federal registration permit only. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd. | Sep. 15–Nov. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sep. 1–Feb. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: 30 beaver per season | Nov. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Mar. 31. |
| Marten: No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Jan. 31. |

(9) *Unit 9*. (i) Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9A consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve.

(B) Unit 9B consists of the Kvichak River drainage except those lands drained by the Kvichak River/Bay between the Alagnak River drainage and the Naknek River drainage.

(C) Unit 9C consists of the Alagnak (Branch) River drainage, the Naknek River drainage, lands drained by the

Kvichak River/Bay between the Alagnak River drainage and the Naknek River drainage, and all land and water within Katmai National Park and Preserve.

(D) Unit 9D consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands.

(E) Unit 9E consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park; and

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1 through Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9C within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 9B from April 1 through May 31 and in the remainder of Unit 9 from April 1 through 30.

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in Unit 9B, except that portion within the Lake Clark National Park and Preserve, if you have obtained a State registration permit prior to hunting.

(C) In Unit 9B, Lake Clark National Park and Preserve, residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, and that portion of the park resident zone in Unit 9B and 13.440 permit holders may hunt brown bear by Federal registration permit in lieu of a resident tag. The season will be closed when 4 females or 10 bears have been taken, whichever occurs first. The permits will be issued and closure announcements made by the Superintendent Lake Clark National Park and Preserve.

(D) Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9B for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 10-moose limit is not cumulative with that permitted for potlatches by the State.

(E) For Units 9C and 9E only, a federally qualified subsistence user (recipient) of Units 9C and 9E may designate another federally qualified subsistence user of Units 9C and 9E to take bull caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report and turn over all meat to the recipient. There is no restriction on the number of possession limits the designated hunter may have in his/her possession at any one time.

(F) For Unit 9D, a federally qualified subsistence user (recipient) may designate another federally qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

(G) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1 through December 31 or May 10 through 25, one brown bear for ceremonial purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9D or Unit 10 (Unimak Island) only.

(H) You may hunt brown bear in Unit 9E with a Federal registration permit in lieu of a State locking tag if you

have obtained a Federal registration permit prior to hunting.

TABLE 9 TO PARAGRAPH (n)(9)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 9B, Lake Clark National Park and Preserve—Rural residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, residents of that portion of the park resident zone in Unit 9B; and 13.440 permit holders—1 bear by Federal registration permit only. | July 1–June 30. |
| The season will be closed by the Lake Clark National Park and Preserve Superintendent when 4 females or 10 bear have been taken, whichever occurs first.. | |
| Unit 9B, remainder—1 bear by State registration permit only | Sep. 1–May 31. |
| Unit 9C—1 bear by Federal registration permit only | Oct. 1–May 31. |
| The season will be closed by the Katmai National Park and Preserve Superintendent in consultation with BLM and FWS land managers and ADF&G, when 6 females or 10 bear have been taken, whichever occurs first.. | |
| Unit 9E—1 bear by Federal registration permit | Sep. 25–Dec. 31.<br>Apr. 15–May 25. |
| Caribou: | |
| Unit 9A—2 caribou by State registration permit | Aug. 1–Mar. 15. |
| Unit 9B—2 caribou by State registration permit | Aug. 1–Mar. 31. |
| Unit 9C, that portion within the Alagnak River drainage—2 caribou by State registration permit. | Aug. 1–Mar. 15. |
| Unit 9C, that portion draining into the Naknek River from the north, and Graveyard Creek and Coffee Creek—2 caribou by State registration permit. | Aug. 1–Mar. 15. |
| Unit 9C, remainder—1 bull by Federal registration permit or State permit. Federal public lands are closed to the taking of caribou except by residents of Unit 9C and Egegik. | May be announced. |
| Unit 9D—1–4 caribou by Federal registration permit only | Aug. 1–Sep. 30.<br>Nov. 15–Mar. 31. |
| Unit 9E—1 bull by Federal registration permit or State permit. Federal public lands are closed to the taking of caribou except by residents of Unit 9E, Nelson Lagoon, and Sand Point. | May be announced. |
| Sheep: | |
| Unit 9B, that portion within Lake Clark National Park and Preserve—1 ram with ¾ curl or larger horn by Federal registration permit only. By announcement of the Lake Clark National Park and Preserve Superintendent, the summer/fall season will be closed when up to 5 sheep are taken and the winter season will be closed when up to 2 sheep are taken. | July 15–Oct. 15.<br>Jan. 1–Apr. 1. |
| Unit 9B, remainder—1 ram with ⅞ curl or larger horn by Federal registration permit only | Aug. 10–Oct. 10. |
| Unit 9, remainder—1 ram with ⅞ curl or larger horn | Aug. 10–Sep. 20. |
| Moose: | |
| Unit 9A—1 bull by State registration permit | Sep. 1–15. |
| Unit 9B—1 bull by State registration permit | Sep. 1–20.<br>Dec. 1–Jan. 15. |
| Unit 9C, that portion draining into the Naknek River from the north—1 bull by State registration permit. | Sep. 1–20.<br>Dec. 1–31. |
| Unit 9C, that portion draining into the Naknek River from the south—1 bull by State registration permit. Public lands are closed during December for the hunting of moose, except by federally qualified subsistence users hunting under these regulations. | Aug. 20–Sep. 20.<br>Dec. 1–31. |
| Unit 9C, remainder—1 bull by State registration permit | Sep. 1–20.<br>Dec. 15–Jan. 15. |
| Unit 9D—1 bull by Federal registration permit. Federal public lands will be closed by announcement of the Izembek Refuge Manager to the harvest of moose when a total of 10 bulls have been harvested between State and Federal hunts. | Dec. 15–Jan. 20. |
| Unit 9E—1 bull by State registration permit; however, only antlered bulls may be taken Dec. 1–Jan. 31. | Sep. 1–25.<br>Dec. 1–Jan. 31. |
| Beaver: Unit 9B and 9E—2 beaver per day | Apr. 15–May 31. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Arctic (Blue and White): No limit | Dec. 1–Mar. 15. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sep. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Feb. 28. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 10 per day, 20 in possession | Aug. 10–last day of Feb. |
| **Trapping** | |
| Beaver: | |
| No limit | Oct. 10–Mar. 31. |
| 2 beaver per day; only firearms may be used | Apr. 15–May 31. |

TABLE 9 TO PARAGRAPH (n)(9)—Continued

| Harvest limits | Open season |
|---|---|
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Arctic (Blue and White): No limit | Nov. 10–Feb. 28. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Nov. 10–Feb. 28. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.

(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

(iii) In Unit 10—Unimak Island only, a federally qualified subsistence user (recipient) may designate another federally qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

(iv) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1 through December 31 or May 10 through 25, one brown bear for ceremonial purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9D or Unit 10 (Unimak Island) only.

TABLE 10 TO PARAGRAPH (n)(10)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Caribou: | |
| Unit 10, Unimak Island only—1 bull by Federal registration permit. Federal public lands are closed to the taking of caribou except by residents of False Pass. | Aug. 1–Sep. 30. |
| Unit 10, remainder—No limit | July 1–June 30. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): No limit | July 1–June 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sep. 1–Feb. 15. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Ptarmigan (Rock and Willow): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): No limit | July 1–June 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sep. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) You may use bait to hunt black and brown bear between April 15 and June 15.

(B) One moose without calf may be taken from June 20 through July 31 in the Wrangell-St. Elias National Park and Preserve in Unit 11 or Unit 12 for the Batzulnetas Culture Camp. Two hunters from either Chistochina or Mentasta Village may be designated by the Mt. Sanford Tribal Consortium to receive the Federal subsistence harvest permit. The permit may be obtained from a Wrangell-St. Elias National Park and Preserve office.

(C) For Federally qualified subsistence users living within the Ahtna traditional communities of Chistochina, Chitina, Copper Center, Gakona, Gulkana, Mentasta Lake, and Tazlina, a community harvest system for moose is authorized on Federal public lands within Unit 11, subject to a framework to be established by the Federal Subsistence Board.

(ii) A joint permit may be issued to a pair of a minor and an elder to hunt sheep during the Aug. 1–Oct. 20 hunt. The following conditions apply:

(A) The permittees must be a minor aged 8 to 15 years old and an accompanying adult 60 years of age or older.

(B) Both the elder and the minor must be federally qualified subsistence users with a positive customary and traditional use determination for the area they want to hunt.

(C) The minor must hunt under the direct immediate supervision of the accompanying adult, who is responsible for ensuring that all legal requirements are met.

(D) Only one animal may be harvested with this permit. The sheep harvested will count against the harvest limits of both the minor and accompanying adult.

TABLE 11 TO PARAGRAPH (n)(11)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: 1 bear | Aug. 10–June 15. |
| Caribou: | No open season. |
| Sheep: | |
| 1 ram | Aug. 10–Sep. 20. |
| 1 sheep by Federal registration permit only by persons 60 years of age or older. Ewes accompanied by lambs or lambs may not be taken. | Aug. 1–Oct. 20. |
| Goat: | |
| Unit 11, that portion within the Wrangell-St. Elias National Park and Preserve that is bounded by the Chitina and Nizina rivers on the south, the Kennicott River and glacier on the southeast, and the Root Glacier on the east—1 goat by Federal registration permit only. | Aug. 25–Dec. 31. |
| Unit 11, the remainder of the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. | Aug. 10–Dec. 31. |
| Unit 11, that portion outside of the Wrangell-St. Elias National Park and Preserve | No open season. |
| Federal public lands will be closed by announcement of the Superintendent, Wrangell-St. Elias National Park and Preserve, to the harvest of goats when a total of 45 goats has been harvested between Federal and State hunts.. | |
| Moose: | |
| Unit 11, that portion draining into the east bank of the Copper River upstream from and including the Slana River drainage—1 antlered bull by joint Federal/State registration permit. | Aug. 20–Sep. 20. |
| Unit 11, that portion south and east of a line running along the north bank of the Chitina River, the north and west banks of the Nazina River, and the west bank of West Fork of the Nazina River, continuing along the western edge of the West Fork Glacier to the summit of Regal Mountain—1 bull by Federal registration permit. However, during the period Aug. 20–Sep. 20, only an antlered bull may be taken. | Aug. 20–Sep. 20.<br>Nov. 20–Jan. 20. |
| Unit 11, remainder—1 antlered bull by Federal registration permit only | Aug. 20–Sep. 20. |
| Muskrat: No limit | Sep. 20–June 10. |
| Beaver: 1 beaver per day, 1 in possession | June 1–Oct. 10. |
| Coyote: 10 coyotes | Aug. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Feb. 28. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Feb. 28. |
| Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Mar. 31. |

TABLE 11 TO PARAGRAPH (n)(11)—Continued

| Harvest limits | Open season |
|---|---|
| **Trapping** | |
| Beaver: No limit | Sep. 25–May 31. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Nov. 10–Feb. 28. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(12) *Unit 12*. Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) You may use bait to hunt black and brown bear between April 15 and June 30; you may use bait to hunt wolves on FWS and BLM lands.

(B) You may not use a steel trap, or a snare using cable smaller than 3/32-inch diameter to trap coyotes or wolves in Unit 12 during April and October.

(C) One moose without calf may be taken from June 20 through July 31 in the Wrangell-St. Elias National Park and Preserve in Unit 11 or 12 for the Batzulnetas Culture Camp. Two hunters from either Chistochina or Mentasta Village may be designated by the Mt. Sanford Tribal Consortium to receive the Federal subsistence harvest permit. The permit may be obtained from a Wrangell-St. Elias National Park and Preserve office.

(ii) A joint permit may be issued to a pair of a minor and an elder to hunt sheep during the Aug. 1–Oct. 20 hunt. The following conditions apply:

(A) The permittees must be a minor aged 8 to 15 years old and an accompanying adult 60 years of age or older.

(B) Both the elder and the minor must be federally qualified subsistence users with a positive customary and traditional use determination for the area they want to hunt.

(C) The minor must hunt under the direct immediate supervision of the accompanying adult, who is responsible for ensuring that all legal requirements are met.

(D) Only one animal may be harvested with this permit. The sheep harvested will count against the harvest limits of both the minor and accompanying adult.

TABLE 12 TO PARAGRAPH (n)(12)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: 1 bear | Aug. 10–June 30. |
| Caribou: | |
| Unit 12, that portion within the Wrangell-St. Elias National Park that lies west of the Nabesna River and the Nabesna Glacier. All hunting of caribou is prohibited on Federal public lands. | No open season. |
| Unit 12, that portion east of the Nabesna River and the Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 bull by Federal registration permit only. | Aug. 10–Sep. 30. |
| Federal public lands are closed to the harvest of caribou except by federally qualified subsistence users hunting under these regulations | |
| Unit 12, remainder—1 bull | Sep. 1–20. |

TABLE 12 TO PARAGRAPH (n)(12)—Continued

| Harvest limits | Open season |
|---|---|
| Unit 12, remainder—1 caribou may be taken by a Federal registration permit during a winter season to be announced. Dates for a winter season to occur between Oct. 1 and Apr. 30, and sex of animal to be taken will be announced by Tetlin National Wildlife Refuge Manager in consultation with Wrangell-St. Elias National Park and Preserve Superintendent, Alaska Department of Fish and Game area biologists, and Chairs of the Eastern Interior Regional Advisory Council and Upper Tanana/Fortymile Fish and Game Advisory Committee. | Winter season to be announced. |
| Sheep: | |
| Unit 12—1 ram with full curl or larger horn | Aug. 10–Sep. 20. |
| Unit 12, that portion within Wrangell-St. Elias National Park and Preserve—1 ram with full curl horn or larger by Federal registration permit only by persons 60 years of age or older. | Aug. 1–Oct. 20. |
| Moose: | |
| Unit 12, that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to Pickerel Lake—1 antlered bull by Federal registration permit. | Aug. 24–Sep. 20.<br>Nov. 1–Feb. 28. |
| Unit 12, that portion east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull. | Aug. 24–Sep. 30. |
| Unit 12, that portion within the Nabesna River drainage west of the east bank of the Nabesna River upstream from the southern boundary of Tetlin National Wildlife Refuge—1 antlered bull by joint Federal/State registration permit only. | Aug. 20–Sep. 20. |
| Unit 12, remainder—1 bull | Aug. 24–28.<br>Sep. 8–20. |
| Beaver: Unit 12, Wrangell-St. Elias National Park and Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption. | Sep. 20–May 15. |
| Coyote: 10 coyotes | Aug. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Mar. 15. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: No limit. Hide or meat must be salvaged. Traps, snares, bow and arrow, or firearms may be used. | Sep. 15–Jun 10. |
| Coyote: No limit | Oct. 15–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |
| Lynx: No limit | Nov. 1–Mar. 15. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Sep. 20–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Oct. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Feb. 28. |

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeastern corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north and east bank of the Talkeetna River including the Talkeetna River to its confluence with Clear Creek, the eastside drainages of a

line going up the south bank of Clear Creek to the first unnamed creek on the south, then up that creek to lake 4408, along the northeastern shore of lake 4408, then southeast in a straight line to the northernmost fork of the Chickaloon River; the drainages into the east bank of the Chickaloon River below the line from lake 4408; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13A consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the south bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning.

(B) Unit 13B consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning.

(C) Unit 13C consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier.

(D) Unit 13D consists of that portion of Unit 13 south of Unit 13A.

(E) Unit 13E consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (n)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(B) You may not use motorized vehicles or pack animals for hunting Aug. 5–25 in the Delta Controlled Use Area, the boundary of which is defined as: A line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle benchmark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Cantwell Glacier and Miller Creek to the Delta River.

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Middle Fork trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13B bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson

Highway at approximately Mile 148, then northerly along the Richardson Highway to the Middle Fork Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(D) You may not use any motorized vehicle or pack animal for hunting, including the transportation of hunters, their hunting gear, and/or parts of game from July 26 through September 30 in the Tonsina Controlled Use Area. The Tonsina Controlled Use Area consists of that portion of Unit 13D bounded on the west by the Richardson Highway from the Tiekel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgerton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekel River, and on the south by the north bank of the Tiekel River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) Upon written request by the Camp Director to the Glennallen Field Office, 2 caribou, sex to be determined by the Glennallen Field Office Manager of the BLM, may be taken from Aug. 10 through Sep. 30 or Oct. 21 through Mar. 31 by Federal registration permit for the Hudson Lake Residential Treatment Camp. Additionally, 1 bull moose may be taken Aug. 1 through Sep. 20. The animals may be taken by any federally qualified hunter designated by the Camp Director. The hunter must have in his/her possession the permit and a designated hunter permit during all periods that are being hunted.

(C) For Federally qualified subsistence users living within the Ahtna traditional communities of Cantwell, Chistochina, Chitina, Copper Center, Gakona, Gulkana, Mentasta Lake, and Tazlina, a community harvest system for caribou and moose is authorized on Federal public lands within Unit 13, subject to a framework to be established by the Federal Subsistence Board.

TABLE 13 TO PARAGRAPH (n)(13)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: 1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested. | Aug. 10–May 31. |
| Caribou: | |
| Units 13A and 13B—2 caribou by Federal registration permit only. The sex of animals that may be taken will be announced by the Glennallen Field Office Manager of the Bureau of Land Management in consultation with the Alaska Department of Fish and Game area biologist and Chairs of the Eastern Interior Regional Advisory Council and the Southcentral Regional Advisory Council. | Aug. 1–Sep. 30.<br>Oct. 21–Mar. 31. |
| Unit 13, remainder—2 bulls by Federal registration permit only | Aug. 1–Sep. 30.<br>Oct. 21–Mar. 31. |
| Sheep: Unit 13, excluding Unit 13D and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl or larger horn. | Aug. 10–Sep. 20. |
| Moose: | |
| Unit 13E—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household. | Aug. 1–Sep. 20. |
| Unit 13, remainder—1 antlered bull moose by Federal registration permit only | Aug. 1–Sep. 20. |
| Beaver: 1 beaver per day, 1 in possession | June 15–Sep. 10. |
| Coyote: 10 coyotes | Aug. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Feb. 28. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Feb. 28. |
| Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Mar. 31. |
| **Trapping** | |
| Beaver: No limit | Sep. 25–May 31. |

TABLE 13 TO PARAGRAPH (n)(13)—Continued

| Harvest limits | Open season |
|---|---|
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Nov. 10–Feb. 28. |
| Marten: Unit 13—No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: No limit | Sep. 25–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Oct. 15–Apr. 30. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(14) *Unit 14.* (i) Unit 14 consists of drainages into the northern side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the northern side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south and west bank of the Talkeetna River to its confluence with Clear Creek, the western side drainages of a line going up the south bank of Clear Creek to the first unnamed creek on the south, then up that creek to lake 4408, along the northeastern shore of lake 4408, then southeast in a straight line to the northernmost fork of the Chickaloon River:

(A) Unit 14A consists of drainages in Unit 14 bounded on the west by the east bank of the Susitna River, on the north by the north bank of Willow Creek and Peters Creek to its headwaters, then east along the hydrologic divide separating the Susitna River and Knik Arm drainages to the outlet creek at lake 4408, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the northern side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14B consists of that portion of Unit 14 north of Unit 14A; and

(C) Unit 14C consists of that portion of Unit 14 south of Unit 14A.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservations; and

(B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.

(iii) Unit-specific regulations:

TABLE 14 TO PARAGRAPH (n)(14)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: Unit 14C—1 bear | July 1–June 30. |
| Beaver: Unit 14C—1 beaver per day, 1 in possession | May 15–Oct. 31. |
| Coyote: Unit 14C—2 coyotes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): Unit 14C—2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe): Unit 14C—5 hares per day | Sep. 8–Apr. 30. |
| Lynx: Unit 14C—2 lynx | Dec. 1–Jan. 31. |
| Wolf: Unit 14C—5 wolves | Aug. 10–Apr. 30. |
| Wolverine: Unit 14C—1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce and Ruffed): Unit 14C—5 per day, 10 in possession | Sep. 8–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): Unit 14C—10 per day, 20 in possession | Sep. 8–Mar. 31. |
| **Trapping** | |
| Beaver: Unit 14C, that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season. | Dec. 1–Apr. 15. |

TABLE 14 TO PARAGRAPH (n)(14)—Continued

| Harvest limits | Open season |
|---|---|
| Coyote: Unit 14C—No limit | Nov. 10–Feb. 28. |
| Fox, Red (including Cross, Black and Silver Phases): Unit 14C—1 fox | Nov. 10–Feb. 28. |
| Lynx: Unit 14C—No limit | Dec. 15–Jan. 31. |
| Marten: Unit 14C—No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: Unit 14C—No limit | Nov. 10–Jan. 31. |
| Muskrat: Unit 14C—No limit | Nov. 10–May 15. |
| Otter: Unit 14C—No limit | Nov. 10–Feb. 28. |
| Wolf: Unit 14C—No limit | Nov. 10–Feb. 28. |
| Wolverine: Unit 14C—2 wolverines | Nov. 10–Jan. 31. |

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150°00′ W crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150°00′ W to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15A consists of that portion of Unit 15 north of the north bank of the Kenai River and the northern shore of Skilak Lake;

(B) Unit 15B consists of that portion of Unit 15 south of the north bank of the Kenai River and the northern shore of Skilak Lake, and north of the north bank of the Kasilof River, the northern shore of Tustumena Lake, Glacier Creek, and Tustumena Glacier; and

(C) Unit 15C consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1 through March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15A bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the northern shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westernmost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;

(C) You may not trap marten in that portion of Unit 15B east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier; and

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare.

TABLE 15 TO PARAGRAPH (n)(15)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: | |
| Units 15A and 15B—2 bears by Federal registration permit | July 1–June 30. |
| Unit 15C—3 bears | July 1–June 30. |
| Brown Bear: Unit 15—1 bear every 4 regulatory years by Federal registration permit. The season may be opened or closed by announcement from the Kenai National Wildlife Refuge Manager after consultation with ADF&G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council. | Sep. 1–Nov. 30, to be announced and Apr. 1–June 15, to be announced. |
| Caribou: | |
| Unit 15B, within the Kenai National Wildlife Refuge Wilderness Area—1 caribou by Federal drawing permit. | Aug. 10–Sep. 20. |

TABLE 15 TO PARAGRAPH (n)(15)—Continued

| Harvest limits | Open season |
|---|---|
| Unit 15C, north of the Fox River and east of Windy Lake—1 caribou by Federal drawing permit. | Aug. 10–Sep. 20. |
| Unit 15, remainder | No open season. |
| Goat: 1 goat by Federal drawing permit. Kids or nannies accompanied by kids may not be taken | Aug. 10–Nov. 14. |
| Moose: | |
| Unit 15A—Skilak Loop Wildlife Management Area | No open season. |
| Units 15A, remainder, 15B, and 15C—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only. | Aug. 10–Sep. 20. |
| Units 15B and 15C—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only. The Kenai NWR Refuge Manager is authorized to close the October–November season based on conservation concerns, in consultation with ADF&G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council. | Oct. 20–Nov. 10. |
| Unit 15C—1 cow by Federal registration permit only | Aug. 10–Sep. 20. |
| Sheep: 1 ram with ¾ curl horn or larger by Federal drawing permit | Aug 10–Sep. 20. |
| Coyote: No limit | Sep. 1–Apr. 30. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Jan. 31. |
| Wolf: | |
| Unit 15, that portion within the Kenai National Wildlife Refuge—2 wolves | Aug. 10–Apr. 30. |
| Unit 15, remainder—5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Grouse (Ruffed) | No open season. |
| Ptarmigan (Rock, Willow, and White-tailed): | |
| Unit 15A and 15B—20 per day, 40 in possession | Aug. 10–Mar. 31. |
| Unit 15C—20 per day, 40 in possession | Aug. 10–Dec. 31. |
| Unit 15C—5 per day, 10 in possession | Jan. 1–Mar. 31. |
| **Trapping** | |
| Beaver: 20 beaver per season | Nov. 10–Mar. 31. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): 1 Fox | Nov. 10–Feb. 28. |
| Lynx: No limit | Jan. 1–31. |
| Marten: | |
| Unit 15B, that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier | No open season. |
| Remainder of Unit 15—No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–May 15. |
| Otter: Unit 15—No limit | Nov. 10–Feb. 28. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: Unit 15B and C—No limit | Nov. 10–Feb. 28. |

(16) *Unit 16*. (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the western side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the western side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the southern side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16A consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier; and

(B) Unit 16B consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (n)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

TABLE 16 TO PARAGRAPH (n)(16)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Caribou: 1 caribou | Aug. 10–Oct. 31. |
| Moose: | |
| Unit 16B, Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 bull. | Sep. 1–15. |
| Unit 16B, Denali National Preserve only—1 bull by Federal registration permit. One Federal registration permit for moose issued per household. | Sep. 1–30.<br>Dec. 1–Feb. 28. |
| Unit 16B, remainder—1 bull | Sep. 1–30.<br>Dec. 1–Feb. 28. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sep. 1–Feb. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Dec. 1–Jan. 31. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce and Ruffed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Mar. 31. |
| **Trapping** | |
| Beaver: No limit | Oct. 10–May 15. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Dec. 15–Jan. 31. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17A consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17B consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage and the Wood River drainage upstream from the outlet of Lake Beverley; and

(C) Unit 17C consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bear, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17B, from Aug. 1 through Nov. 1.

(B) [Reserved]

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting.

(C) If you have a trapping license, you may use a firearm to take beaver in Unit 17 from April 15 through May 31. You may not take beaver with a firearm under a trapping license on National Park Service lands.

(D) In Unit 17, a snowmachine may be used to assist in the taking of a caribou, and caribou may be shot from a stationary snowmachine. ''Assist in the taking of a caribou'' means a snowmachine may be used to approach within 300 yards of a caribou at speeds under 15 miles per hour, in a manner that does not involve repeated approaches or that causes a caribou to run. A snowmachine may not be used

to contact an animal or to pursue a fleeing caribou.

TABLE 17 TO PARAGRAPH (n)(17)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 2 bears | Aug. 1–May 31. |
| Brown Bear: Unit 17—1 bear by State registration permit only | Sep. 1–May 31. |
| Caribou: Unit 17A, all drainages west of Right Hand Point—2 caribou by State registration permit | Aug. 1–Mar. 31. |
| Units 17A and 17C, that portion of 17A and 17C consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—up to 5 caribou by Federal registration permit. | Aug. 1–Mar. 31. |
| Public lands are closed to the taking of caribou except by federally qualified users unless the population estimate exceeds 900 caribou. | |
| Units 17A, remainder and 17C, remainder—selected drainages; a harvest limit of up to 2 caribou by State registration permit will be determined at the time the season is announced. | Season may be announced between Aug. 1 and Mar. 31. |
| Units 17B and 17C, that portion of 17C east of the Wood River and Wood River Lakes—2 caribou by State registration permit. | Aug. 1–Mar. 31. |
| Sheep: 1 ram with full curl or larger horn | Aug. 10–Sep. 20. |
| Moose: Unit 17A—1 bull by State registration permit; or | Aug. 25–Sep. 25. |
| 1 antlerless moose by State registration permit; or | Aug. 25–Sep. 25. |
| Unit 17A—up to 2 moose; one antlered bull by State registration permit, one antlerless moose by State registration permit. | Up to a 31-day season may be announced between Dec. 1 and the last day of Feb. |
| Units 17B and 17C—one bull | Aug. 20–Sep. 15.<br>Dec. 1–31. |
| During the period Aug. 20–Sep. 15—one bull by State registration permit; or | |
| During the period Sep. 1–15—one bull with spike-fork or 50-inch antlers or antlers with three or more brow tines on at least one side with a State harvest ticket; or | |
| During the period Dec. 1–31—one antlered bull by State registration permit. | |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): No limit | Dec. 1–Mar. 15. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sep. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Feb. 28. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce and Ruffed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock and Willow): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: Unit 17—No limit | Oct. 10–Mar. 31. |
| Unit 17—2 beaver per day. Only firearms may be used | Apr. 15–May 31. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Mar. 31. |
| Lynx: No limit | Nov. 10–Mar. 31. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: 2 muskrats | Nov. 10–Feb. 28. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers westerly and downstream from a line starting at the downriver boundary of Paimiut on the north bank of the Yukon River then south across the Yukon River to the northern terminus of the Paimiut Portage, then south along the Paimiut Portage to its intersection with Arhymot Lake, then south along the northern and western bank of Arhymot Lake to the outlet at Crooked Creek (locally known as Johnson River), then along the south bank of Crooked Creek downstream to the northern terminus of Crooked Creek to the Yukon-Kuskokwim Portage (locally known as the Mud Creek Tramway), then along the west side of the tramway to Mud

Creek, then along the westerly bank of Mud Creek downstream to an unnamed slough of the Kuskokwim River (locally known as First Slough or Kalskag Slough), then along the west bank of this unnamed slough downstream to its confluence with the Kuskokwim River, then southeast across the Kuskokwim River to its southerly bank, then along the south bank of the Kuskokwim River upriver to the confluence of a Kuskokwim River slough locally known as Old River, then across Old River to the downriver terminus of the island formed by Old River and the Kuskokwim River, then along the north bank of the main channel of Old River to Igyalleq Creek (Whitefish Creek), then along the south and west bank of Igyalleq Creek to Whitefish Lake, then directly across Whitefish Lake to Ophir Creek, then along the west bank of Ophir Creek to its headwaters at 61°10.22′ N lat., 159°46.05′ W long., and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthews, and adjacent islands between Cape Newenham and the Pastolik River, and all seaward waters and lands within 3 miles of these coastlines.

(ii) In the Kalskag Controlled Use Area, which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you are not allowed to use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 18 from April 1 through June 10.

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting.

(C) You may take caribou from a boat moving under power in Unit 18.

(D) You may take moose from a boat moving under power in that portion of Unit 18 west of a line running from the mouth of the Ishkowik River to the closest point of Dall Lake, then to the east bank of the Johnson River at its entrance into Nunavakanukakslak Lake (N 60°59.41′ Latitude; W 162°22.14′ Longitude), continuing upriver along a line ½ mile south and east of, and paralleling a line along the southerly bank of the Johnson River to the confluence of the east bank of Crooked Creek, then continuing upriver to the outlet at Arhymot Lake, then following the south bank west to the Unit 18 border.

(E) Taking of wildlife in Unit 18 while in possession of lead shot size T, .20 caliber or less in diameter, is prohibited.

(F) You may not pursue with a motorized vehicle an ungulate that is at or near a full gallop.

(G) You may use artificial light when taking a bear at a den site.

TABLE 18 TO PARAGRAPH (n)(18)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: 1 bear by State registration permit only | Sep. 1–May 31. |
| Caribou: | |
| Unit 18, that portion to the east and south of the Kuskokwim River—2 caribou by State registration permit. | Aug. 1–Mar. 15. |
| Unit 18, remainder—2 caribou by State registration permit | Aug. 1–Mar. 15. |

TABLE 18 TO PARAGRAPH (n)(18)—Continued

| Harvest limits | Open season |
|---|---|
| Moose: Unit 18, that portion east of a line running from the mouth of the Ishkowik River to the closest point of Dall Lake, then to the east bank of the Johnson River at its entrance into Nunavakanukakslak Lake (N 60°59.41′ Latitude; W 162°22.14′ Longitude), continuing upriver along a line ½ mile south and east of, and paralleling a line along the southerly bank of the Johnson River to the confluence of the east bank of Crooked Creek, then continuing upriver to the outlet at Arhymot Lake, then following the south bank east of the Unit 18 border and then north of and including the Eek River drainage—1 antlered bull by State registration permit; quotas will be announced annually by the Yukon Delta National Wildlife Refuge Manager. | Sep. 1–30. |
| Federal public lands are closed to the taking of moose except by residents of Tuntutuliak, Eek, Napakiak, Napaskiak, Kasigluk, Nunapitchuk, Atmautlauk, Oscarville, Bethel, Kwethluk, Akiachak, Akiak, Tuluksak, Lower Kalskag, and Kalskag. | |
| Unit 18, south of the Eek River drainage and north of the Goodnews River drainage—1 antlered bull by State registration permit. | Sep. 1–30. |
| Unit 18, Goodnews River drainage and south to the Unit 18 boundary—1 antlered bull by State registration permit. | Sep. 1–30. |
| Or | |
| 1 moose by State registration permit | A season may be announced between Dec. 1 and the last day of Feb. |
| Unit 18, remainder—2 moose, only one of which may be antlered. Antlered bulls may not be harvested from Oct. 1 through Nov. 30. | Aug. 1–Apr. 30. |
| Beaver: No limit | July 1–June 30. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): 2 foxes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 5 lynx | Aug. 10–Apr. 30. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 2 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce and Ruffed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock and Willow): 15 per day, 30 in possession | Aug. 10–May 30. |
| **Trapping** | |
| Beaver: No limit | July 1–June 30. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Mar. 31. |
| Lynx: No limit | Nov. 10–Mar. 31. |
| Marten: No limit | Nov. 10–Mar. 31. |
| Mink and Weasel: No limit | Nov. 10–Mar. 31. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Mar. 31. |

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream, excluding the drainages of Arhymot Lake, from a line starting at the outlet of Arhymot Lake at Crooked Creek (locally known as Johnson River), then along the south bank of Crooked Creek downstream to the northern terminus of Crooked Creek to the Yukon-Kuskokwim Portage (locally known as the Mud Creek Tramway), then along the west side of the tramway to Mud Creek, then along the westerly bank of Mud Creek downstream to an unnamed slough of the Kuskokwim River (locally known as First Slough or Kalskag Slough), then along the west bank of this unnamed slough downstream to its confluence with the Kuskokwim River, then southeast across the Kuskokwim River to its southerly bank, then along the south bank of the Kuskokwim River upriver to the confluence of a Kuskokwim River slough locally known as Old River, then across Old River to the downriver terminus of the island formed by Old River and the Kuskokwim River, then along the north bank of the main channel of Old River to Igyalleq Creek (Whitefish Creek), then along the south and west bank of Igyalleq Creek to Whitefish Lake, then directly across Whitefish

Lake to Ophir Creek then along the west bank of Ophir Creek to its headwaters at 61°10.22′ N lat., 159°46.05′ W long.:

(A) Unit 19A consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19B;

(B) Unit 19B consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19C consists of that portion of Unit 19 south and east of a line from Benchmark M #1.26 (approximately 1.26 miles south of the northwestern corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage; and

(D) Unit 19D consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (n)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19D upstream from the mouth of the Selatna River, but excluding the Selatna and Black River drainages, to a line extending from Dyckman Mountain on the northern Unit 19D boundary southeast to the 1,610-foot crest of Munsatli Ridge, then south along Munsatli Ridge to the 2,981-foot peak of Telida Mountain, then northeast to the intersection of the western boundary of Denali National Preserve with the Minchumina-Telida winter trail, then south along the western boundary of Denali National Preserve to the southern boundary of Unit 19D, you may not use aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30.

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in those portions of Units 19A and 19B downstream of and including the Aniak River drainage if you have obtained a State registration permit prior to hunting.

(C) In Unit 19C, individual residents of Nikolai may harvest sheep during the Aug. 10 to Sep. 20 season and not have that animal count against the community harvest limit (during the Oct. 1 to Mar. 30 season). Individual residents of Nikolai that harvest a sheep under State regulations may not participate in the Oct. 1 to Mar. 30 community harvest.

TABLE 19 TO PARAGRAPH (n)(19)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: Units 19A and 19B, those portions which are downstream of and including the Aniak River drainage—1 bear by State registration permit. | Aug. 10–June 30. |
| Units 19A, remainder, 19B, remainder, and Unit 19D—1 bear | Aug. 10–June 30. |
| Caribou: Units 19A and 19B (excluding rural Alaska residents of Lime Village)—2 caribou by State registration permit. | Aug. 1–Mar. 15. |

TABLE 19 TO PARAGRAPH (n)(19)—Continued

| Harvest limits | Open season |
|---|---|
| Unit 19C—1 caribou | Aug. 10–Oct. 10. |
| Unit 19D, south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou. | Aug. 10–Sep. 30.<br>Nov. 1–Jan. 31. |
| Unit 19D, remainder—1 caribou | Aug. 10–Sep. 30. |
| Unit 19, residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1 through Aug. 9. Reporting will be by a community reporting system. | July 1–June 30. |
| Sheep: 1 ram with 7/8 curl horn or larger | Aug. 10–Sep. 20. |
| Unit 19C, that portion within the Denali National Park and Preserve-residents of Nikolai only—no individual harvest limit, but a community harvest quota will be set annually by the Denali National Park and Preserve Superintendent; rams or ewes without lambs only. Reporting will be by a community reporting system. | Oct. 1–Mar. 30. |
| Moose: Unit 19, residents of Lime Village only—no individual harvest limit, but a village harvest quota of 28 bulls (including those taken under the State permits). Reporting will be by a community reporting system. | July 1–June 30. |
| Unit 19A, Lime Village Management Area—2 bulls by State or Federal registration permit | Aug. 10–Sep. 25.<br>Nov. 20–Mar 31. |
| Unit 19A, north of the Kuskokwim River, upstream from but excluding the George River drainage, and south of the Kuskokwim River upstream from and including the Downey Creek drainage, not including the Lime Village Management Area—1 antlered bull by State registration permit available in Sleetmute and Stoney River on July 24. Permits issued on a first come, first served basis (number of permits to be announced annually). | Sep. 1–5. |
| Unit 19A, remainder—1 antlered bull by Federal drawing permit or a State permit. Federal public lands are closed to the taking of moose except by residents of Tuluksak, Lower Kalskag, Upper Kalskag, Aniak, Chuathbaluk, and Crooked Creek hunting under these regulations. | Sep. 1–20. |
| Unit 19B—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side. | Sep. 1–20. |
| Unit 19C—1 antlered bull | Sep. 1–20. |
| Unit 19C—1 bull by State registration permit | Jan. 15–Feb. 15. |
| Unit 19D, that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull. | Sep. 1–30. |
| Unit 19D, remainder of the Upper Kuskokwim Controlled Use Area—1 bull | Sep. 1–30.<br>Dec. 1–Feb. 28. |
| Unit 19D, remainder—1 antlered bull | Sep. 1–30.<br>Dec. 1–15. |
| Coyote: 10 coyotes | Aug. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Feb. 28. |
| Wolf: Unit 19D—10 wolves per day | Aug. 10–Apr. 30. |
| Unit 19, remainder—5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: No limit | Nov. 1–June 10. |
| Coyote: No limit | Nov. 1–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Mar. 31. |
| Lynx: No limit | Nov. 1–Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Mar. 31. |

(20) *Unit 20*. (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20A consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River.

(B) Unit 20B consists of drainages into the northern bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage.

(C) Unit 20C consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River.

(D) Unit 20D consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding, the Banner Creek drainage.

(E) Unit 20E consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage.

(F) Unit 20F consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (n)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(B) You may not use motorized vehicles or pack animals for hunting Aug. 5–25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle benchmark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 of the Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River.

(C) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife.

(D) You may not use any motorized vehicle for hunting August 5–September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20E bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the

south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport.

(E) You may by permit hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River 3 miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning.

(F) You may hunt moose only by bow and arrow in the Fairbanks Management Area. The Area consists of that portion of Unit 20B bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to Isberg Road, then northeasterly on Isberg Road to Cripple Creek Road, then northeasterly on Cripple Creek Road to the Parks Highway, then north on the Parks Highway to Alder Creek, then westerly to the middle fork of Rosie Creek through section 26 to the Parks Highway, then east along the Parks Highway to Alder Creek, then upstream along Alder Creek to its confluence with Emma Creek, then upstream along Emma Creek to its headwaters, then northerly along the hydrographic divide between Goldstream Creek drainages and Cripple Creek drainages to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to Sheep Creek Road, then north on Sheep Creek Road to Murphy Dome Road, then west on Murphy Dome Road to Old Murphy Dome Road, then east on Old Murphy Dome Road to the Elliot Highway, then south on the Elliot Highway to Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, Davidson Ditch, then southeasterly along the Davidson Ditch to its confluence with the tributary to Goldstream Creek in Section 29, then downstream along the tributary to its confluence with Goldstream Creek, then in a straight line to First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its confluence with Ruby Creek, then upstream along Ruby Creek to Esro Road, then south on Esro Road to Chena Hot Springs Road, then east on Chena Hot Springs Road to Nordale Road, then south on Nordale Road to the Chena River, to its intersection with the Trans-Alaska Pipeline right of way, then southeasterly along the easterly edge of the Trans-Alaska Pipeline right of way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along the Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear April 15–June 30; you may use bait to hunt wolves on FWS and BLM lands.

(B) You may not use a steel trap or a snare using cable smaller than 3/32-inch diameter to trap coyotes or wolves in Unit 20E during April and October.

(C) Residents of Units 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals at the request of the Native Village of Tanana only. This three-moose limit is not cumulative with that permitted by the State.

TABLE 20 TO PARAGRAPH (n)(20)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: Unit 20A—1 bear | Sep. 1–May 31. |
| Unit 20E—1 bear | Aug. 10–June 30. |
| Unit 20, remainder—1 bear | Sep. 1–May 31. |
| Caribou: Unit 20E—up to 3 caribou, to be announced, by a joint State/Federal registration permit | Fall season between Aug. 1 and Sep. 30, to be announced. Winter season between Oct. 21 and Mar. 31, to be announced. |
| Unit 20F, north of the Yukon River—1 caribou | Aug. 10–Mar. 31. |
| Unit 20F, east of the Dalton Highway and south of the Yukon River—up to 3 caribou, to be announced, by a joint State/Federal registration permit. | Fall season between Aug. 1 and Sep. 30, to be announced. Winter season between Oct. 21 and Mar. 31, to be announced. |
| Moose: Unit 20A—1 antlered bull | Sep. 1–20. |
| Unit 20B, that portion within the Minto Flats Management Area—1 bull by Federal registration permit only. | Sep. 1–20. Jan. 10–Feb. 28. |
| Unit 20B, remainder—1 antlered bull | Sep. 1–20. |
| Unit 20C, that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken. | Sep. 1–30. Nov. 15–Dec. 15. |
| Unit 20C, remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken. | Sep. 1–30. |
| Unit 20E, that portion within Yukon-Charley Rivers National Preserve—1 bull | Aug. 20–Sep. 30. |
| Unit 20E, that portion drained by the Middle Fork of the Fortymile River upstream from and including the Joseph Creek drainage—1 bull. | Aug. 20–Sep. 30. |
| Unit 20E, remainder—1 bull by joint Federal/State registration permit | Aug. 20–Sep. 30. |
| Unit 20F, that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only. | Sep. 1–25. |
| Unit 20F, remainder—1 antlered bull | Sep. 1–30. Dec. 1–10. |
| Sheep: Unit 20E—1 ram with full-curl horn or larger | Aug. 10–Sep. 20. |
| Unit 20, remainder | No open season. |
| Beaver: Unit 20E—Yukon-Charley Rivers National Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption. | Sep. 20–May 15. |
| Coyote: 10 coyotes | Aug. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: Units 20A, 20B, and that portion of 20C east of the Teklanika River—2 lynx | Dec. 1–Jan. 31. |
| Unit 20E—2 lynx | Nov. 1–Jan. 31. |
| Unit 20, remainder—2 lynx | Dec. 1–Jan. 31. |
| Muskrat: Unit 20E, that portion within Yukon-Charley Rivers National Preserve—No limit | Sep. 20–June 10. |
| Unit 20C, that portion within Denali National Park and Preserve—25 muskrat | Nov. 1–June 10. |
| Unit 20, remainder | No open season. |
| Wolf: Unit 20—10 wolves | Aug. 10–Apr. 30. |
| Unit 20C, that portion within Denali National Park and Preserve—1 wolf during the Aug. 10–Oct. 31 period; 5 wolves during the Nov. 1–Apr. 30 period, for a total of 6 wolves for the season. | Aug. 10–Oct. 31. Nov. 1–Apr. 30. |
| Unit 20C, remainder—10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce, Ruffed, and Sharp-tailed): Units 20A, 20B, 20C, 20E, and 20F—15 per day, 30 in possession. | Aug. 10–Mar. 31. |
| Ptarmigan (Rock and Willow): Unit 20, those portions within 5 miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession. | Aug. 10–Mar. 31. |
| Unit 20, remainder—20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: Units 20A, 20B, 20C, and 20F—No limit | Nov. 1–Apr. 15. |
| Unit 20E—No limit. Hide or meat must be salvaged. Traps, snares, bow and arrow, or firearms may be used.. | Sep. 15–June 10. |
| Coyote: Unit 20E—No limit | Oct. 15–Apr. 30. |
| Unit 20, remainder—No limit | Nov. 1–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |

TABLE 20 TO PARAGRAPH (n)(20)—Continued

| Harvest limits | Open season |
|---|---|
| Lynx: Unit 20A, 20B, and 20C east of the Teklanika River—No limit | Dec. 15–Feb. 15. |
| Unit 20E—No limit | Nov. 1–Mar. 15. |
| Unit 20F and 20C, remainder—No limit | Nov. 1–Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: Unit 20E—No limit | Sep. 20–June 10. |
| Unit 20, remainder—No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: Units 20A, 20B, 20C, and 20F—No limit | Nov. 1–Apr. 30. |
| Unit 20E—No limit | Oct. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Feb. 28. |

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River and Arhymot Lake upstream from a line starting at the downriver boundary of Paimiut on the north bank of the Yukon River then south across the Yukon River to the northern terminus of the Paimiut Portage, then south along the Portage to its intersection with Arhymot Lake, then south along the northern and western bank of Arhymot Lake to the outlet at Crooked Creek (locally known as Johnson River) drainage then to, but not including, the Tozitna River drainage on the north bank, and to but not including the Tanana River drainage on the south bank, and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21A consists of the Innoko River drainage upstream from and including the Iditarod River drainage.

(B) Unit 21B consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Melozitna River drainage upstream from Grayling Creek.

(C) Unit 21C consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage.

(D) Unit 21D consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek.

(E) Unit 21E consists of that portion of Unit 21 in the Yukon River and Arhymot Lake drainages upstream from a line starting at the downriver boundary of Paimiut on the north bank of the Yukon River, then south across the Yukon River to the northern terminus of the Paimiut Portage, then south along the Portage to its intersection with Arhymot Lake, then along the northern and western bank of Arhymot Lake to the outlet at Crooked Creek (locally known as Johnson River) drainage, then to, but not including, the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk at 64°52.58′ N lat., 157°43.10′ W long., then northerly to the confluences of the Honhosa and Kateel Rivers at 65°28.42′ N lat., 157°44.89′ W long., then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N lat., 156°41′ W long.) at 65°56.66′ N lat., 156°40.81′ W long., then easterly to the confluence of the forks of the Dakli River at 66°02.56′ N lat., 156°12.71′ W long., then easterly to the confluence of McLanes Creek and the Hogatza River at 66°00.31′ N lat., 155°18.57′ W long., then southwesterly to the crest of Hochandochtla Mountain at 65°31.87′ N lat., 154°52.18′ W long., then southwest to the mouth of Cottonwood Creek at 65°3.00′ N lat., 156°06.43′ W long., then southwest to Bishop Rock (Yistletaw) at 64°49.35′ N

lat., 157°21.73′ W long., then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G-operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station.

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then extending 2 miles easterly down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) In Unit 21D, you may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; and in the Koyukuk Controlled Use Area, you may also use bait to hunt black bear between September 1 and September 25.

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Nov. 1 through June 10.

(C) The residents of Units 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three-moose limit is not cumulative with that permitted by the State.

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three-moose limit is not cumulative with that permitted by the State.

TABLE 21 TO PARAGRAPH (n)(21)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 21D—1 bear by State registration permit only | Aug. 10–June 30. |
| Unit 21, remainder—1 bear | Aug. 10–June 30. |
| Caribou: | |

TABLE 21 TO PARAGRAPH (n)(21)—Continued

| Harvest limits | Open season |
|---|---|
| Unit 21A—1 caribou | Aug. 10–Sep. 30.<br>Dec. 10–20. |
| Unit 21B, that portion north of the Yukon River and downstream from Ukawutni Creek | No open season. |
| Unit 21C, the Dulbi and Melozitna River drainages downstream from Big Creek | No open season. |
| Unit 21B, remainder, Unit 21C, remainder, and Unit 21E—1 caribou | Aug. 10–Sep. 30. |
| Unit 21D, north of the Yukon River and east of the Koyukuk River—caribou may be taken during a winter season to be announced. | Winter season to be announced. |
| Unit 21D, remainder—5 caribou per day, as follows: Calves may not be taken. | |
| Bulls may be harvested | July 1–Oct. 14.<br>Feb. 1–June 30. |
| Cows may be harvested | Sep. 1–Mar. 31. |
| Moose: | |
| Unit 21B, that portion within the Nowitna National Wildlife Refuge downstream from and including the Little Mud River drainage—1 bull. A State registration permit is required Sep. 5–25. A Federal registration permit is required Sep. 26–Oct. 1. | Sep. 5–Oct. 1. |
| Unit 21B, that portion within the Nowitna National Wildlife Refuge downstream from and including the Little Mud River drainage—1 antlered bull. A Federal registration permit is required during the 5-day season and will be limited to one per household. | Five-day season to be announced between Dec. 1 and Mar. 31. |
| Units 21A and 21B, remainder—1 bull | Aug. 20–Sep. 25.<br>Nov. 1–30. |
| Unit 21C—1 antlered bull | Sep. 5–25. |
| Unit 21D, Koyukuk Controlled Use Area—1 bull by State registration permit; 1 antlerless moose by Federal permit if authorized by announcement by the Koyukuk/Nowitna/Innoko NWR manager. Harvest of cow moose accompanied by calves is prohibited. A harvestable surplus of cows will be determined for a quota. | Sep. 1–25.<br>Mar. 1–5 season to be announced. |
| Or | |
| 1 antlered bull by Federal permit, if there is no Mar. 1–5 season and if authorized by announcement by the Koyukuk/Nowitna/Innoko NWR manager and BLM Central Yukon field office manager. | Apr. 10–15 season to be announced. |
| Unit 21D, that portion south of the south bank of the Yukon River, downstream of the upriver entrance of Kala Slough and west of Kala Creek—1 moose by State registration permit. | Aug. 22–31.<br>Sep. 5–25. |
| Antlerless moose may be taken only during Sep. 21–25 season if authorized jointly by the Koyukuk/Nowitna/Innoko NWR Manager and the BLM Central Yukon Field Office Manager. | Mar. 1–31 season may be announced. |
| Antlerless moose may be harvested during any of the winter seasons. | |
| Harvest of cow moose accompanied by calves is prohibited. | |
| Unit 21D, remainder—1 moose by State registration permit. Antlerless moose may be taken only during Sep. 21–25 and the Mar. 1–5 season if authorized jointly by the Koyukuk/Nowitna/Innoko NWR Manager and the BLM Central Yukon Field Office Manager. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 22–31 and Sep. 5–25 seasons, a State registration permit is required. During the Mar. 1–5 season, a Federal registration permit is required. | Aug. 22–31.<br>Sep. 5–25.<br>Mar. 1–5 season to be announced. |
| Unit 21E—1 moose; however, only bulls may be taken Aug. 25–Sep. 30 | Aug. 25–Sep. 30. |
| During the Feb. 15–Mar. 15 season, a Federal registration permit is required. The permit conditions and any needed closures for the winter season will be announced by the Innoko NWR manager after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and the Middle Yukon Fish and Game Advisory Committee as stipulated in a letter of delegation. Moose may not be taken within one-half mile of the Innoko or Yukon Rivers during the winter season. | Feb. 15–Mar. 15. |
| Beaver: | |
| Unit 21E—No limit | Nov. 1–June 10. |
| Unit 21, remainder | No open season. |
| Coyote: 10 coyotes | Aug. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Feb. 28. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: No Limit | Nov. 1–June 10. |
| Coyote: No limit | Nov. 1–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |
| Lynx: No limit | Nov. 1–Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Nov. 1–June 10. |

TABLE 21 TO PARAGRAPH (n)(21)—Continued

| Harvest limits | Open season |
|---|---|
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Mar. 31. |

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22A consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands.

(B) Unit 22B consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage.

(C) Unit 22C consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands.

(D) Unit 22D consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York and St. Lawrence Island.

(E) Unit 22E consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons.

(B) Coyote, incidentally taken with a trap or snare, may be used for subsistence purposes.

(C) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine.

(D) The taking of one bull moose and up to three musk oxen by the community of Wales is allowed for the celebration of the Kingikmuit Dance Festival under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Wales. The harvest may occur only within regularly established seasons in Unit 22E. The harvest will count against any established quota for the area.

(E) A federally qualified subsistence user (recipient) may designate another federally qualified subsistence user to take musk oxen on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must get a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients in the course of a season, but have no more than two harvest limits in his/her possession at any one time, except in Unit 22E where a resident of Wales or Shishmaref acting as a designated hunter may hunt for any number of recipients, but have no more than four harvest limits in his/her possession at any one time.

TABLE 22 TO PARAGRAPH (n)(22)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: | |
| Units 22A and 22B—3 bears | July 1–June 30. |
| Unit 22, remainder | No open season. |
| Brown Bear: | |
| Units 22A, 22D remainder, and 22E—1 bear by State registration permit only | Aug. 1–May 31. |
| Unit 22B—2 bears by State registration permit | Aug. 1–May 31. |
| Unit 22C—1 bear by State registration permit only | Aug. 1–Oct. 31.<br>Apr. 1–May 31. |
| Unit 22D, that portion west of the Tisuk River drainage, west of the west bank of the unnamed creek originating at the Unit boundary opposite the headwaters of McAdam's Creek and west of the west bank of Canyon Creek to its confluence with Tuksuk Channel—2 bears by Federal registration permit. | July 1–June 30. |
| Caribou: | |
| Unit 22B, that portion west of Golovnin Bay and west of a line along the west bank of the Fish and Niukluk Rivers to the mouth of the Libby River, and excluding all portions of the Niukluk River drainage upstream from and including the Libby River drainage—5 caribou per day by State registration permit. Calves may not be taken. | Oct. 1–Apr. 30.<br>May 1–Sep. 30, a season may be announced. |
| Units 22A, that portion north of the Golsovia River drainage, 22B remainder, that portion of Unit 22D in the Kuzitrin River drainage (excluding the Pilgrim River drainage), and the Agiapuk River drainages, including the tributaries, and Unit 22E, that portion east of and including the Tin Creek drainage—5 caribou per day by State registration permit. Calves may not be taken. | July 1–June 30. |
| Unit 22A, remainder—5 caribou per day by State registration permit. Calves may not be taken. | July 1–June 30, season may be announced. |
| Unit 22D, that portion in the Pilgrim River drainage—5 caribou per day by State registration permit. Calves may not be taken. | Oct. 1–Apr. 30.<br>May 1–Sep. 30, season may be announced. |
| Units 22C, 22D remainder, 22E remainder—5 caribou per day by State registration permit. Calves may not be taken. | July 1–June 30, season may be announced. |
| Moose: | |
| Unit 22A, that portion north of and including the Tagoomenik and Shaktoolik River drainages—1 bull. Federal public lands are closed to hunting except by federally qualified users hunting under these regulations. | Aug. 1–Sep. 30. |
| Unit 22A, that portion in the Unalakleet drainage and all drainages flowing into Norton Sound north of the Golsovia River drainage and south of the Tagoomenik and Shaktoolik River drainages—Federal public lands are closed to the taking of moose, except that residents of Unalakleet, hunting under these regulations, may take 1 bull by Federal registration permit, administered by the BLM Anchorage Field Office with the authority to close the season in consultation with ADF&G. | Aug. 15–Sep. 14. |
| Unit 22A, remainder—1 bull. However, during the period Jan.1–Feb. 15, only an antlered bull may be taken. Federal public lands are closed to the taking of moose, Oct. 1–Aug. 31, except by Federally qualified subsistence users. | Aug. 1–Sep. 30.<br>Jan. 1–Feb. 15. |
| Unit 22B, west of the Darby Mountains—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by federally qualified subsistence users hunting under these regulations. | Sep. 1–14. |
| Unit 22B, west of the Darby Mountains—1 bull by either Federal or State registration permit. Quotas and any needed season closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS, and ADF&G. Federal public lands are closed to the taking of moose except by residents of White Mountain and Golovin hunting under these regulations. | Jan. 1–31. |
| Unit 22B, remainder—1 bull | Aug. 1–Jan. 31. |
| Unit 22C—1 antlered bull | Sep. 1–14. |
| Unit 22D, that portion within the Kougarok, Kuzitrin, and Pilgrim River drainages—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by residents of Units 22D and 22C hunting under these regulations. | Sep. 1–14. |
| Unit 22D, that portion west of the Tisuk River drainage and Canyon Creek—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. | Sep. 1–14. |
| Unit 22D, that portion west of the Tisuk River drainage and Canyon Creek—1 bull by Federal registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by residents of Units 22D and 22C hunting under these regulations. | Dec. 1–31. |
| Unit 22D, remainder—1 bull by State registration permit. Federal public lands are closed to the harvest of moose except by Federally qualified subsistence users. | Aug. 10–Sep. 14. |

TABLE 22 TO PARAGRAPH (n)(22)—Continued

| Harvest limits | Open season |
|---|---|
| Unit 22D, remainder—1 antlered bull by State registration permit. Federal public lands are closed to the harvest of moose except by Federally qualified subsistence users. | Season may be announced, Dec. 1–Jan. 31. |
| Unit 22E—1 antlered bull. Federal public lands are closed to the taking of moose except by federally qualified subsistence users hunting under these regulations. | Aug. 1–Mar. 15. |
| Musk ox: | |
| Unit 22B—1 bull by Federal permit or State permit. Federal public lands are closed to the taking of musk ox except by federally qualified subsistence users hunting under these regulations. | Aug. 1–Mar. 15. |
| Unit 22D, that portion west of the Tisuk River drainage and Canyon Creek—1 bull by Federal permit or State permit. Federal public lands are closed to the harvest of musk ox except by residents of Nome and Teller hunting under these regulations. | Sep. 1–Mar. 15. |
| Unit 22D, that portion within the Kuzitrin River drainages—1 bull by Federal permit or State permit. Federal public lands are closed to the taking of musk ox except for residents of Council, Golovin, White Mountain, Nome, Teller, and Brevig Mission hunting under these regulations. | Aug. 1–Mar. 15. |
| Unit 22D, remainder—1 bull by Federal permit or State permit. Federal public lands are closed to the taking of musk ox except by residents of Elim, White Mountain, Nome, Teller, and Brevig Mission hunting under these regulations. | Aug. 1–Mar. 15. |
| Unit 22E—1 bull by Federal permit or State permit. Federal public lands are closed to the harvest of musk ox except by federally qualified subsistence users hunting under these regulations. | Aug. 1–Mar. 15. |
| Unit 22, remainder | No open season. |
| Beaver: | |
| Units 22A, 22B, 22D, and 22E—50 beaver | Nov. 1–June 10. |
| Unit 22, remainder | No open season. |
| Coyote | No open season. |
| Fox, Arctic (Blue and White Phase): 2 foxes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes | Nov. 1–Apr. 15. |
| Hare (Snowshoe and Tundra): No limit | Sep. 1–Apr. 15. |
| Lynx: 2 lynx | Nov. 1–Apr. 15. |
| Marten: | |
| Units 22A and 22B—No limit | Nov. 1–Apr. 15. |
| Unit 22, remainder | No open season. |
| Mink and Weasel: No limit | Nov. 1–Jan. 31. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 15. |
| Wolverine: 3 wolverines | Sep. 1–Mar. 31. |
| Grouse (Spruce): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock and Willow): | |
| Units 22A and 22B east of and including the Niukluk River drainage—40 per day, 80 in possession. | Aug. 10–Apr. 30. |
| Unit 22E—20 per day, 40 in possession | July 15–May 15. |
| Unit 22, remainder—20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: | |
| Units 22A, 22B, 22D, and 22E—50 beaver | Nov. 1–June 10. |
| Unit 22C | No open season. |
| Coyote | No open season. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 1–Apr. 15. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Apr. 15. |
| Lynx: No limit | Nov. 1–Apr. 15. |
| Marten: No limit | Nov. 1–Apr. 15. |
| Mink and Weasel: No limit | Nov. 1–Jan. 31. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Apr. 15. |

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine,

or for transportation of hunters or harvested species in the Noatak Controlled Use Area for the period August 15–September 30. The Area consists of that portion of Unit 23 in a corridor extending 5 miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek. This closure does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service.

(B) [Reserved]

(iii) You may not use aircraft in any manner for brown bear hunting, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 23.

(B) In addition to other restrictions on method of take found in this section, you may also take swimming caribou with a firearm using rimfire cartridges.

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1 through June 10.

(D) For the Baird and DeLong Mountain sheep hunts—A federally qualified subsistence user (recipient) may designate another federally qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for only one recipient in the course of a season and may have both his and the recipients' harvest limits in his/her possession at the same time.

(E) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine. On BLM-managed lands only, a snowmachine may be used to position a caribou, wolf, or wolverine for harvest provided that the animals are not shot from a moving snowmachine.

(F) A federally qualified subsistence user (recipient) may designate another federally qualified subsistence user to take musk oxen on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must get a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients, but have no more than two harvest limits in his/her possession at any one time.

TABLE 23 TO PARAGRAPH (n)(23)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | Jul. 1–Jun. 30. |
| Brown Bear: Unit 23—2 bears by State subsistence registration permit | Jul. 1–Jun. 30. |
| Caribou: | |
| Unit 23, that portion which includes all drainages north and west of, and including, the Singoalik River drainage—5 caribou per day by State registration permit as follows: | |
| Bulls may be harvested. | Jul. 1–Jun. 30. |
| Cows may be harvested. However, cows accompanied by calves may not be taken July 15–Oct. 14. | Jul. 15–Apr. 30. |
| Unit 23, remainder—5 caribou per day by State registration permit, as follows: | |
| Bulls may be harvested | Jul. 1–Jun. 30. |
| Cows may be harvested. However, cows accompanied by calves may not be taken July 31–Oct. 14. | Jul. 31–Mar. 31. |

TABLE 23 TO PARAGRAPH (n)(23)—Continued

| Harvest limits | Open season |
|---|---|
| Federal public lands within a 10-mile-wide corridor (5 miles either side) along the Noatak River from the western boundary of Noatak National Preserve upstream to the confluence with the Cutler River; within the northern and southern boundaries of the Eli and Agashashok River drainages, respectively; and within the Squirrel River drainage are closed to caribou hunting except by federally qualified subsistence users hunting under these regulations. | |
| Sheep: | |
| Unit 23, south of Rabbit Creek, Kiyak Creek, and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 sheep by Federal registration permit. Federal public lands are closed to the taking of sheep except by federally qualified subsistence users hunting under these regulations. | May be announced. |
| Unit 23, north of Rabbit Creek, Kiyak Creek, and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 sheep by Federal registration permit. | May be announced. |
| Unit 23, remainder (Schwatka Mountains) except for that portion within Gates of the Arctic National Park and Preserve—1 sheep by Federal registration permit. | May be announced. |
| Unit 23, remainder (Schwatka Mountains), that portion within Gates of the Arctic National Park and Preserve—1 ram with 7/8 curl or larger horn. | Aug. 10–Sep. 20. |
| Unit 23, remainder (Schwatka Mountains), that portion within Gates of the Arctic National Park and Preserve—1 sheep. | Oct. 1–Apr. 30. |
| Moose: | |
| Unit 23, that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 antlered bull. No person may take a calf. | July 1–Dec. 31. |
| Unit 23, remainder—1 antlered bull ..... No person may take a calf. | Aug. 1–Dec. 31. |
| Musk ox: | |
| Unit 23, south of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal permit or State permit. | Aug. 1–Mar. 15. |
| Federal public lands are closed to the taking of musk oxen except by federally qualified subsistence users hunting under these regulations. | |
| Unit 23, Cape Krusenstern National Monument—1 bull by Federal permit. Cape Krusenstern National Monument is closed to the taking of musk oxen except by federally qualified subsistence users but not residents of Point Hope. | Aug. 1–Mar. 15. |
| Unit 23, that portion north and west of the Kobuk River drainage—1 bull by State or Federal registration permit. | Aug. 1–Mar. 15 |
| Unit 23, remainder ..... | No open season. |
| Beaver: No limit ..... | July 1–June 30. |
| Coyote: 2 coyotes ..... | Sep. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): No limit ..... | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): No limit ..... | Sep. 1–Mar. 15. |
| Hare: (Snowshoe and Tundra) No limit ..... | July 1–June 30. |
| Lynx: 2 lynx ..... | Nov. 1–Apr. 15. |
| Wolf: 15 wolves ..... | Oct. 1–Apr. 30. |
| Wolverine: 1 wolverine ..... | Sep. 1–Mar. 31. |
| Muskrat: No limit ..... | July 1–June 30. |
| Grouse (Spruce and Ruffed): 15 per day, 30 in possession. ..... | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession ..... | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: | |
| Unit 23, the Kobuk and Selawik River drainages—50 beaver ..... | July 1–June 30. |
| Unit 23, remainder—30 beaver ..... | July 1–June 30. |
| Coyote: No limit ..... | Nov. 1–Apr. 15. |
| Fox, Arctic (Blue and White Phase): No limit ..... | Nov. 1–Apr. 15. |
| Fox, Red (including Cross, Black and Silver Phases): No limit ..... | Nov. 1–Apr. 15. |
| Lynx: No limit ..... | Nov. 1–Apr. 15. |
| Marten: No limit ..... | Nov. 1–Apr. 15. |
| Mink and Weasel: No limit ..... | Nov. 1–Jan. 31. |
| Muskrat: No limit ..... | Nov. 1–June 10. |
| Otter: No limit ..... | Nov. 1–Apr. 15. |
| Wolf: No limit ..... | Nov. 1–Apr. 30. |
| Wolverine: No limit ..... | Nov. 1–Apr. 15. |

(24) *Unit 24*. (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage:

(A) Unit 24A consists of the Middle Fork of the Koyukuk River drainage upstream from but not including the Harriet Creek and North Fork

Koyukuk River drainages, to the South Fork of the Koyukuk River drainage upstream from Squaw Creek, the Jim River Drainage, the Fish Creek drainage upstream from and including the Bonanza Creek drainage, to the 1,410 ft. peak of the hydrologic divide with the northern fork of the Kanuti Chalatna River at N lat. 66°33.303′ W long. 151°03.637′ and following the unnamed northern fork of the Kanuti Chalatna Creek to the confluence of the southern fork of the Kanuti Chalatna River at N lat. 66°27.090′ W long. 151°23.841′, 4.2 miles SSW (194 degrees true) of Clawanmenka Lake and following the unnamed southern fork of the Kanuti Chalatna Creek to the hydrologic divide with the Kanuti River drainage at N lat. 66°19.789′ W long. 151°10.102′, 3.0 miles ENE (79 degrees true) from the 2,055 ft. peak on that divide, and the Kanuti River drainage upstream from the confluence of an unnamed creek at N lat. 66°13.050′ W long. 151°05.864′, 0.9 miles SSE (155 degrees true) of a 1,980 ft. peak on that divide, and following that unnamed creek to the Unit 24 boundary on the hydrologic divide to the Ray River drainage at N lat. 66°03.827′ W long. 150°49.988′ at the 2,920 ft. peak of that divide.

(B) Unit 24B consists of the Koyukuk River Drainage upstream from Dog Island to the Subunit 24A boundary.

(C) Unit 24C consists of the Hogatza River Drainage, the Koyukuk River Drainage upstream from Batza River on the north side of the Koyukuk River and upstream from and including the Indian River Drainage on the south side of the Koyukuk River to the Subunit 24B boundary.

(D) Unit 24D consists of the remainder of Unit 24.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms, snowmobiles, licensed highway vehicles, or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, and Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife.

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area.

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk at 64°52.58′ N lat., 157°43.10′ W long., then northerly to the confluences of the Honhosa and Kateel Rivers at 65°28.42′ N lat., 157°44.89′ W long., then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57 N lat., 156°41 W long.) at 65°56.66′ N lat., 156°40.81′ W long., then easterly to the confluence of the forks of the Dakli River at 66°02.56′ N lat., 156°12.71′ W long., then easterly to the confluence of McLanes Creek and the Hogatza River at 66°00.31′ N lat., 155°18.57′ W long., then southwesterly to the crest of Hochandochtla Mountain at 65°31.87′ N lat., 154°52.18′ W long., then southwest to the mouth of Cottonwood Creek at 65°13.00′ N lat., 156°06.43′ W long., then southwest to Bishop Rock (Yistletaw) at 64°49.35′ N lat., 157°21.73′ W long., then westerly

along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning. However, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area. All hunters on the Koyukuk River passing the ADF&G-operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station.

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. You may not use aircraft in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears. However, this prohibition does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; and in the Koyukuk Controlled Use Area, you may also use bait to hunt black bear Sep. 1–25.

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

(C) If you are a resident of Units 24A, 24B, or 24C, during the dates of Oct. 15–Apr. 30, you may use an artificial light when taking a black bear, including a sow accompanied by cub(s), at a den site within the portions of Gates of the Arctic National Park and Preserve that are within Units 24A, 24B, or 24C.

TABLE 24 TO PARAGRAPH (n)(24)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: Unit 24—1 bear by State registration permit | Aug. 10–June 30. |
| Caribou: | |
| Unit 24A, that portion south of the south bank of the Kanuti River—1 caribou | Aug. 10–Mar. 31. |
| Unit 24B, that portion south of the south bank of the Kanuti River, upstream from and including that portion of the Kanuti-Kilolitna River drainage, bounded by the southeast bank of the Kodosin-Nolitna Creek, then downstream along the east bank of the Kanuti-Kilolitna River to its confluence with the Kanuti River—1 caribou. | Aug. 10–Mar. 31. |
| Units 24A remainder, 24B remainder—5 caribou per day as follows: | |
| Calves may not be taken. | |
| Bulls may be harvested | July 1–Oct. 14.<br>Feb. 1–June 30. |
| Cows may be harvested | July 15–Apr. 30. |
| Units 24C, 24D—5 caribou per day as follows: | |
| Calves may not be taken. | |
| Bulls may be harvested | July 1–Oct. 14.<br>Feb. 1–June 30. |
| Cows may be harvested | Sep. 1–Mar. 31. |
| Sheep: | |
| Units 24A and 24B (Anaktuvuk Pass residents only), that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes, and a daily possession limit of 3 sheep per person, no more than 1 of which may be a ewe. | July 15–Dec. 31. |
| Units 24A and 24B (excluding Anaktuvuk Pass residents), that portion within the Gates of the Arctic National Park—3 sheep, no more than one of which may be a ewe, by Federal registration permit only, with exception for residents of Alatna and Allakaket who will report by a National Park Service community harvest system. | Aug. 1–Apr. 30. |
| Unit 24A, except that portion within the Gates of the Arctic National Park—1 ram by Federal registration permit only. | Aug. 20–Sep. 30. |
| Unit 24, remainder—1 ram with 7/8 curl or larger horn | Aug. 10–Sep. 20. |
| Moose: | |
| Unit 24A—1 antlered bull by Federal registration permit | Aug. 25–Oct. 1. |
| Unit 24B, that portion within the John River Drainage—1 moose by State harvest ticket | Aug. 1–Dec. 14.<br>or |
| 1 antlered bull by State registration permit | Dec. 15–Apr. 15. |
| Unit 24B, remainder—1 antlered bull by State harvest ticket | Aug. 25–Oct. 1. |

TABLE 24 TO PARAGRAPH (n)(24)—Continued

| Harvest limits | Open season |
|---|---|
| Or | or. |
| 1 antlered bull by State registration permit | Dec. 15–Apr. 15. |
| Federal public lands in the Kanuti Controlled Use Area, as described in Federal regulations, are closed to taking of moose, except by federally qualified subsistence users of Unit 24, Koyukuk, and Galena.. | |
| Units 24C and 24D, that portion within the Koyukuk Controlled Use Area and Koyukuk National Wildlife Refuge—1 bull. | Sep. 1–25. |
| 1 antlerless moose by Federal permit if authorized by announcement by the Koyukuk/Nowitna National Wildlife Refuge Manager and BLM Field Office Manager Central Yukon Field Office. Harvest of cow moose accompanied by calves is prohibited. A harvestable surplus of cows will be determined for a quota. | Mar. 1–5 to be announced. |
| Or | or. |
| 1 antlered bull by Federal permit, if there is no Mar. 1–5 season and if authorized by announcement by the Koyukuk/Nowitna National Wildlife Refuge Manager and BLM Field Office Manager Central Yukon Field Office. Harvest of cow moose accompanied by calves is prohibited. Announcement for the March and April seasons and harvest quotas will be made after consultation with the ADF&G Area Biologist and the Chairs of the Western Interior Alaska Subsistence Regional Advisory Council, and the Middle Yukon and Koyukuk River Fish and Game Advisory Committees. | Apr. 10–15 to be announced. |
| Unit 24C, remainder and Unit 24D, remainder—1 antlered bull. During the Sep. 5–25 season, a State registration permit is required. | Aug. 25–Oct. 1. |
| Coyote: 10 coyotes | Aug. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Feb. 28. |
| Wolf: 15 wolves; however, no more than 5 wolves may be taken prior to Nov. 1 | Aug. 10–Apr. 30. |
| Wolverine: 5 wolverine; however, no more than 1 wolverine may be taken prior to Nov. 1 | Sep. 1–Mar. 31. |
| Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock and Willow): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: No limit | Nov. 1–June 10. |
| Coyote: No limit | Nov. 1–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |
| Lynx: | |
| Unit 24A—no limit | Nov. 1–Mar. 31. |
| Units 24B, 24C, and 24D—no limit | Nov. 1–Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Mar. 31. |

(25) *Unit 25*. (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25A consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage.

(B) Unit 25B consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River.

(C) Unit 25C consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20E boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and

the Beaver Creek drainage upstream from and including the Moose Creek drainage.

(D) Unit 25D consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, and Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife.

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25A north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the headwaters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30 and between August 1 and September 25; in Unit 25D you may use bait to hunt brown bear between April 15 and June 30 and between August 1 and September 25; you may use bait to hunt wolves on FWS and BLM lands.

(B) You may take caribou and moose from a boat moving under power in Unit 25.

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25D west provided that:

(*1*) The person organizing the religious ceremony or cultural event contacts the Refuge Manager, Yukon Flats National Wildlife Refuge, prior to taking or attempting to take bull moose and provides to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, and the general area in which the taking will occur.

(*2*) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge, not more than 15 days after the harvest specifying the harvester's name and address, and the date(s) and location(s) of the taking(s).

(*3*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25D west.

(*4*) Any moose taken under this provision counts against the annual quota of 60 bulls.

TABLE 25 TO PARAGRAPH (n)(25)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: | |

TABLE 25 TO PARAGRAPH (n)(25)—Continued

| Harvest limits | Open season |
|---|---|
| Units 25A, 25B, and 25C—3 bears or 3 bears by State community harvest permit | July 1–June 30. |
| | July 1–June 30. |
| Unit 25D—5 bears | July 1–June 30. |
| Brown Bear: | |
| Units 25A and 25B—1 bear | Aug. 10–June 30. |
| Unit 25C—1 bear | Sep. 1–May 31. |
| Unit 25D—2 bears every regulatory year | July 1–June 30. |
| Caribou: | |
| Unit 25A—in those portions west of the east bank of the East Fork of the Chandalar River extending from its confluence with the Chandalar River upstream to Guilbeau Pass and north of the south bank of the mainstem of the Chandalar River at its confluence with the East Fork Chandalar River west (and north of the south bank) along the West Fork Chandalar River—10 caribou. However, only bulls may be taken May 16–June 30. | July 1–June 30. |
| Unit 25C—up to 3 caribou, to be announced, by a joint Federal/State registration permit | Fall season between Aug. 1 and Sep. 30, to be announced. |
| | Winter season between Oct. 21 and Mar. 31, to be announced. |
| Unit 25D, that portion of Unit 25D drained by the west fork of the Dall River west of 150° W. long.—1 bull. | Aug. 10–Sep. 30. |
| | Dec. 1–31. |
| Units 25A remainder, 25B, and Unit 25D, remainder—10 caribou | July 1–Apr. 30. |
| Sheep: | |
| Unit 25A, that portion within the Dalton Highway Corridor Management Area | No open season. |
| Units 25A, Arctic Village Sheep Management Area—2 rams by Federal registration permit only. | Aug. 10–Apr. 30. |
| Federal public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkyitsik hunting under these regulations. | |
| Unit 25A, remainder—3 sheep by Federal registration permit only | Aug. 10–Apr. 30. |
| Units 25B, 25C, and 25D—1 ram with full-curl horn or larger | Aug. 10–Sep. 20. |
| Moose: | |
| Unit 25A—1 antlered bull | Aug. 25–Sep. 25. |
| | Dec. 1–10. |
| Unit 25B, that portion within Yukon-Charley National Preserve—1 bull | Aug. 20–Oct. 7. |
| Unit 25B, that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull. | Aug. 25–Oct. 7. |
| | Dec. 1–10. |
| Unit 25B, that portion, other than Yukon-Charley Rivers National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull. | Sep. 5–Oct. 7. |
| | Dec. 1–15. |
| Unit 25B, remainder—1 antlered bull | Aug. 25–Oct. 7. |
| | Dec. 1–15. |
| Unit 25C—1 antlered bull | Aug. 20–Sep. 30. |
| Unit 25D (west), that portion lying west of a line extending from the Unit 25D boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek, and Lower Mouth of Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzic River, then upstream along the west bank of the Hadweenzic River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25D boundary—1 bull by a Federal registration permit. Permits will be available in the following villages: Beaver (25 permits), Birch Creek (10 permits), and Stevens Village (25 permits). Permits for residents of 25D (west) who do not live in one of the three villages will be available by contacting the Yukon Flats National Wildlife Refuge Office in Fairbanks or a local Refuge Information Technician. Moose hunting on public land in Unit 25D (west) is closed at all times except for residents of Unit 25D (west) hunting under these regulations. The moose season will be closed by announcement of the Refuge Manager Yukon Flats NWR when 60 moose have been harvested in the entirety (from Federal and non-Federal lands) of Unit 25D (west). | Aug. 25–Feb. 28. |
| Unit 25D, remainder—1 antlered moose | Aug. 25–Oct. 1. |
| | Dec. 1–20. |
| Beaver: | |
| Unit 25A, 25B, and 25D—1 beaver per day; 1 in possession | June 11–Aug. 31. |
| Unit 25A, 25B, and 25D—no limit | Sep. 1–June 10. |
| Unit 25C | No open season. |
| Coyote: 10 coyotes | Aug. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sep. 1–Mar. 15. |
| Hare (Snowshoe): No limit | July 1–June 30. |
| Lynx: | |
| Unit 25C—2 lynx | Dec. 1–Jan. 31. |
| Unit 25, remainder—2 lynx | Nov. 1–Feb. 28. |
| Muskrat: | |

TABLE 25 TO PARAGRAPH (n)(25)—Continued

| Harvest limits | Open season |
|---|---|
| Units 25B and 25C, that portion within Yukon-Charley Rivers National Preserve—No limit | Nov. 1–June 10. |
| Unit 25, remainder | No open season. |
| Wolf: | |
| Unit 25A—No limit | Aug. 10–Apr. 30. |
| Unit 25, remainder—10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sep. 1–Mar. 31. |
| Grouse (Spruce, Ruffed, and Sharp-tailed): | |
| Unit 25C—15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Unit 25, remainder—15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock and Willow): | |
| Unit 25C, those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession. | Aug. 10–Mar. 31. |
| Unit 25, remainder—20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Beaver: | |
| Unit 25C—No limit | Nov. 1–Apr. 15. |
| Unit 25, remainder—50 beaver | Nov. 1–Apr. 15. |
| Coyote: No limit | Oct. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |
| Lynx: No limit | Nov. 1–Mar. 31. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Oct. 1–Apr. 30. |
| Wolverine: | |
| Unit 25C—No limit | Nov. 1–Mar. 31. |
| Unit 25, remainder—No limit | Nov. 1–Mar. 31. |

(26) *Unit 26*. (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska–Canada border, including the Firth River drainage within Alaska:

(A) Unit 26A consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26B consists of that portion of Unit 26 east of Unit 26A, west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River; and

(C) Unit 26C consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose during the periods July 1–Sep. 14 and Jan. 1–Mar. 31 in Unit 26A; however, this does not apply to transportation of moose hunters, their gear, or moose parts by aircraft between publicly owned airports.

(B) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife.

(iii) You may not use aircraft in any manner for brown bear hunting, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by

carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 26.

(B) In addition to other restrictions on method of take found in this section, you may also take swimming caribou with a firearm using rimfire cartridges.

(C) In Kaktovik, a federally qualified subsistence user (recipient) may designate another federally qualified subsistence user to take sheep or musk ox on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(D) For the DeLong Mountain sheep hunts—A federally qualified subsistence user (recipient) may designate another federally qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for only one recipient in the course of a season and may have both his and the recipient's harvest limits in his/her possession at the same time.

TABLE 26 TO PARAGRAPH (n)(26)

| Harvest limits | Open season |
|---|---|
| **Hunting** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 26A—1 bear by State subsistence registration permit | July 1–June 30. |
| Unit 26B—1 bear | Jan. 1–Dec. 31. |
| Unit 26C—1 bear | Aug. 10–June 30. |
| Caribou: | |
| Unit 26A—that portion of the Colville River drainage upstream from the Anaktuvuk River, and drainages of the Chukchi Sea south and west of, and including the Utukok River drainage—5 caribou per day by State registration permit as follows:. | |
| Calves may not be taken.. | |
| Bulls may be harvested | July 1–Oct. 14.<br>Dec. 6–June 30. |
| Cows may be harvested; however, cows accompanied by calves may not be taken July 16–Oct. 15. | July 16–Mar. 15. |
| Unit 26A remainder—5 caribou per day by State registration permit as follows: | |
| Calves may not be taken. | |
| Bulls may be harvested | July 1–Oct. 15.<br>Dec. 6–June 30. |
| Up to 3 cows per day may be harvested; however, cows accompanied by calves may not be taken July 16–Oct. 15. | July 16–Mar. 15. |
| Unit 26B, that portion south of 69°30′ N lat. and west of the Dalton Highway—5 caribou per day as follows: | |
| Bulls may be harvested | July 1–Oct. 14.<br>Dec. 10–June 30. |
| Cows may be harvested | July 1–Apr. 30. |
| Unit 26B remainder—5 caribou per day as follows: | |
| Bulls may be harvested | July 1–June 30. |
| Cows may be harvested | July 1–May 15. |
| Unit 26C—10 caribou per day | July 1–Apr. 30. |
| You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass. | |
| Sheep: | |
| Units 26A and 26B (Anaktuvuk Pass residents only), that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person, no more than 1 of which may be a ewe. | July 15–Dec. 31. |
| Unit 26A (excluding Anaktuvuk Pass residents), those portions within the Gates of the Arctic National Park—3 sheep. | Aug. 1–Apr. 30. |
| Unit 26A, that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 sheep by Federal registration permit. | Season may be announced. |
| Unit 26B, that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl or larger horn by Federal registration permit only. | Aug. 10–Sep. 20. |

TABLE 26 TO PARAGRAPH (n)(26)—Continued

| Harvest limits | Open season |
|---|---|
| Unit 26A, remainder and 26B, remainder, including the Gates of the Arctic National Preserve—1 ram with 7/8 curl or larger horn. | Aug. 10–Sep. 20. |
| Unit 26C—3 sheep per regulatory year; the Aug. 10–Sep. 20 season is restricted to 1 ram with 7/8 curl or larger horn. A Federal registration permit is required for the Oct. 1–Apr. 30 season. | Aug. 10–Sep. 20.<br>Oct. 1–Apr. 30. |
| Moose: | |
| Unit 26A, that portion of the Colville River drainage upstream from and including the Anaktuvuk River drainage—1 bull. | Aug. 1–Sep. 14. |
| Unit 26A, that portion of the Colville River drainage upstream from and including the Anaktuvuk River drainage—1 moose; however, you may not take a calf or a cow accompanied by a calf. | Feb. 15–Apr. 15. |
| Unit 26A, that portion west of 156°00′ W longitude excluding the Colville River drainage—1 moose, however, you may not take a calf or a cow accompanied by a calf. | July 1–Sep. 14. |
| Unit 26A, remainder—1 bull | Aug. 1–Sep. 14. |
| Unit 26B, excluding the Canning River drainage—1 bull | Sep. 1–14. |
| Units 26B, remainder and 26C—1 moose by Federal registration permit by residents of Kaktovik only. Federal public lands are closed to the taking of moose except by a Kaktovik resident holding a Federal registration permit and hunting under these regulations. | May be announced. |
| Musk ox: Unit 26C—1 bull by Federal registration permit only. The number of permits that may be issued only to the residents of the village of Kaktovik will not exceed three percent (3%) of the number of musk oxen counted in Unit 26C during a pre-calving census. Public lands are closed to the taking of musk ox, except by rural Alaska residents of the village of Kaktovik hunting under these regulations. | July 15–Mar. 31. |
| Coyote: 2 coyotes | Sep. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): 2 foxes | Sep. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): | |
| Units 26A and 26B—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1 | Sep. 1–Mar. 15. |
| Unit 26C—10 foxes | Nov. 1–Apr. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Apr. 15. |
| Wolf: 15 wolves | Aug. 10–Apr. 30. |
| Wolverine: 5 wolverine | Sep. 1–Mar. 31. |
| Ptarmigan (Rock and Willow): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **Trapping** | |
| Coyote: No limit | Nov. 1–Apr. 15. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 1–Apr. 15. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Apr. 15. |
| Lynx: No limit | Nov. 1–Apr. 15. |
| Marten: No limit | Nov. 1–Apr. 15. |
| Mink and Weasel: No limit | Nov. 1–Jan. 31. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Apr. 15. |

[85 FR 74808, Nov. 23, 2020]

## § 242.27 Subsistence taking of fish.

(a) *Applicability*. (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, except as modified by regulations in paragraph (e) of this section. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(3) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts that have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(b) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by regulations in this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed.

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (b)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed-release device, designed to release in no more than 30 days in saltwater, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed-release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live nonindigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fish wheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:

(i) Yukon–Northern Area; and
(ii) Kuskokwim Area.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) *Transactions between rural residents.* Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulates customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade to rural residents may not exceed $500.00 annually.

(ii) Upper Copper River District—The total number of salmon per household taken within the Upper Copper River District and exchanged in customary trade to rural residents may not exceed 50 percent of the annual harvest of salmon by the household. No more than 50 percent of the annual household limit may be sold under paragraphs (b)(11) and (12) of this section when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rests with the seller.

(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination for Yukon River Chinook salmon.

(12) *Transactions between a rural resident and others.* In customary trade, a rural resident may exchange fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulates customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade between rural residents and individuals other than rural residents may not exceed $400.00 annually. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rest with the seller.

(ii) Upper Copper River District—The total cash value of salmon per household taken within the Upper Copper River District and exchanged in customary trade between rural residents and individuals other than rural residents may not exceed $500.00 annually. No more than 50 percent of the annual household limit may be sold under paragraphs (b)(11) and (12) of this section when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rest with the seller.

(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination for Yukon River Chinook salmon.

(13) *No sale to, nor purchase by, fisheries businesses.* (i) You may not sell fish, their parts, or their eggs taken under the regulations in this part to any individual, business, or organization required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or to any other business as defined under Alaska Statute 43.70.110(1) as part of its business transactions.

(ii) If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or are a business as defined under Alaska Statute 43.70.110(1), you may not purchase, receive, or sell fish, their parts, or their eggs taken

under the regulations in this part as part of your business transactions.

(14) Except as provided elsewhere in this section, you may not take rainbow/steelhead trout.

(15) You may not use fish taken for subsistence use or under subsistence regulations in this part as bait for commercial or sport fishing purposes.

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types.

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(17) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which harvest limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally taken subsistence fish.

(20) The taking of fish from waters within Federal jurisdiction is authorized outside of published open seasons or harvest limits if the harvested fish will be used for food in traditional or religious ceremonies that are part of funerary or mortuary cycles, including memorial potlatches, provided that:

(i) Prior to attempting to take fish, the person (or designee) or Tribal Government organizing the ceremony contacts the appropriate Federal fisheries manager to provide the nature of the ceremony, the parties and/or clans involved, the species and the number of fish to be taken, and the Federal waters from which the harvest will occur;

(ii) The taking does not violate recognized principles of fisheries conservation, and uses the methods and means allowable for the particular species published in the applicable Federal regulations (the Federal fisheries manager will establish the number, species, or place of taking if necessary for conservation purposes);

(iii) Each person who takes fish under this section must, as soon as practical, and not more than 15 days after the harvest, submit a written report to the appropriate Federal fisheries manager, specifying the harvester's name and address, the number and species of fish taken, and the date and locations of the taking; and

(iv) No permit is required for taking under this section; however, the harvester must be eligible to harvest the resource under Federal regulations.

(c) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (d) of this section.

(2) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available

for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you must record, prior to leaving the fishing site, daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances. You must also return any tags or transmitters that have been attached to fish for management and conservation purposes.

(d) *Relation to commercial fishing activities.* (1) If you are a Federally qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(e) *Fishery management area restrictions*—(1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a stretched-mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream, creek, or slough with any gear used to take fish for subsistence uses, except from May 15 to July 15 and August 15 to October 31 when taking whitefish or pike in streams, creeks, or sloughs within the Kobuk River drainage and from May 15 to October 31 in the Selawik River drainage. Only one gillnet 100 feet or less in length with a stretched-mesh size from 2½ to 4½ inches may be used per site. You must check your net at least once in every 24-hour period.

(2) *Norton Sound–Port Clarence Area.* The Norton Sound–Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Point Romanof, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish at any time in the Port Clarence District.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the State commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a stretched-mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday.

(C) Federal public waters of the Unalakleet River, upstream from the mouth of the Chirosky River, are closed to the taking of Chinook salmon from July 1 to July 31, by all users. The BLM field manager is authorized to open the closed area to Federally qualified subsistence users or to all users when run strength warrants.

(iii) You may take salmon only by gillnets, beach seines, fish wheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored gillnet.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time. In those locations where subsistence fishing permits are required, only one subsistence fishing permit will be issued to each household per year. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in this paragraph (e)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal special action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4B and 4C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than 5 days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5D, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take Chinook salmon during the State commercial fishing season, with drift gillnet gear only, from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-

inches stretch-measure may be used from June 15 through September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used. From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(A) In the Yukon River drainage, you may not take salmon for subsistence fishing using gillnets with stretched mesh larger than 7.5 inches.

(B) In Subdistrict 5D you may take salmon once the mid-range of the Canadian interim management escapement goal and the total allowable catch goal are projected to be achieved.

(C) Salmon may be harvested by dip net at any time, except during times of conservation when the Federal in-season manager may announce restrictions on time, areas, and species.

(xiii) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with stretched-mesh larger than 6 inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xiv) In Districts 5 and 6, you may not take salmon for subsistence purposes by drift gillnets.

(xv) In District 4 salmon may be taken by drift gillnet not more than 150 feet in length unless restricted by special action or as modified by regulations in this section.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes.

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms, and each drift gillnet may not exceed 50 fathoms in length.

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other fishing gear operating for commercial, personal, or subsistence use except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear, and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels.

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure from June 15 through September 15.

(F) In Racetrack Slough on the Koyukuk River and in the sloughs of the Huslia River drainage, from when each river is free of ice through June 15, the offshore end of the set gillnet may not be closer than 20 feet from the opposite bank except that sloughs 40 feet or less in width may have $^{3}/_{4}$ width coverage with set gillnet, unless closed by Federal special action.

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xviii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xix) Only one subsistence fishing permit will be issued to each household per year.

(xx) In Districts 1, 2, and 3, from June 1 through July 15. If ADF&G has announced that Chinook salmon can be sold in the commercial fisheries, you may not possess Chinook salmon taken for subsistence purposes unless both tips (lobes) of the tail fin have been removed before the person conceals the salmon from plain view or transfers the salmon from the fishing site.

(xxi) In the Yukon River drainage, Chinook salmon must be used primarily for human consumption and may not be targeted for dog food. Dried Chinook salmon may not be used for dog food anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, and deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole Chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5D, upstream of Circle City.

(4) *Kuskokwim Area*. The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), except the use of gillnets with 6-inch or less mesh size is allowed before June 1 in the Kuskokwim River drainage, unless superseded by a Federal special action.

(iii) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before or during and for 6 hours after each State open commercial salmon fishing period in each district.

(iv) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, you may subsistence fish for salmon with rod and reel 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by this paragraph (e)(4).

(v) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before or during and for 6 hours after each State open commercial salmon fishing period.

(vi) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during and for 6 hours after each State open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during and for 6 hours after each State open commercial salmon fishing period.

(viii) You may only take salmon by gillnet, beach seine, fish wheel, dip net, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(ix) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(x) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xi) You must attach to the bank each subsistence set gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiii) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller stretched-mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch stretched-mesh may not be more than 35 meshes in depth.

(xiv) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xv) You may take rainbow trout only in accordance with the following restrictions:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15 through June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(xvi) All tributaries not expressly closed by Federal special action, or as modified by regulations in this section, remain open to the use of gillnets more than 100 yards upstream from their confluence with the Kuskokwim River.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay, including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(iii) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(iv) Unless otherwise specified, you may take salmon by set gillnet only.

(A) You may also take salmon by spear in the Togiak River, excluding its tributaries.

(B) You may also use drift gillnets not greater than 10 fathoms in length to take salmon in the Togiak River in the first 2 river miles upstream from the mouth of the Togiak River to the ADF&G regulatory markers.

(C) You may also take salmon without a permit in Sixmile Lake and its tributaries within and adjacent to the exterior boundaries of Lake Clark National Park and Preserve unless otherwise prohibited, and Lake Clark and its tributaries, by snagging (by handline or rod and reel), using a spear, bow and arrow, rod and reel, or capturing by bare hand.

(D) You may also take salmon by beach seines not exceeding 25 fathoms in length in Lake Clark, excluding its tributaries.

(E) You may also take fish (except rainbow trout) with a fyke net and lead in tributaries of Lake Clark and the tributaries of Sixmile Lake within and adjacent to the exterior boundaries of Lake Clark National Park and Preserve unless otherwise prohibited.

(*1*) You may use a fyke net and lead only with a permit issued by the Federal in-season manager.

(*2*) All fyke nets and leads must be attended at all times while in use.

(*3*) All materials used to construct the fyke net and lead must be made of wood and be removed from the water when the fyke net and lead is no longer in use.

(v) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(vi) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(vii) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(viii) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(ix) You may take fish other than salmon, herring, and capelin by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(x) You may take salmon only under authority of a State subsistence salmon permit (permits are issued by ADF&G) except when using a Federal permit for fyke net and lead.

(xi) Only one State subsistence fishing permit for salmon and one Federal permit for use of a fyke net and lead for all fish (except rainbow trout) may be issued to each household per year.

(xii) In the Togiak River drainage:

(A) You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(B) You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(xiii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are two per day/two in possession with no size limit from April 10 through October 31 and five per day/five in possession with no size limit from November 1 through April 9.

(xiv) If you take rainbow trout incidentally in other subsistence net fisheries, or through the ice, you may retain them for subsistence purposes.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54°36′ North latitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka–Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(D) Waters of McLees Lake and its tributaries and outlet stream;

(E) All fresh water on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka–Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(7) *Alaska Peninsula Area*. The Alaska Peninsula Area includes all waters of Alaska on the north side of the Alaska peninsula southwest of a line from Cape Menshikof (57°28.34′ North latitude, 157°55.84′ West longitude) to Cape Newenham (58°39.00' North latitude, 162° West longitude) and east of the longitude of Cape Sarichef Light (164°55.70′ West longitude) and on the south side of the Alaska Peninsula from a line extending from Scotch Cape through the easternmost tip of Ugamak Island to a line extending 135° southeast from Kupreanof Point (55°33.98′ North latitude, 159°35.88′ West longitude).

(i) You may take fish, other than salmon, rainbow/steelhead trout, or char, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time, except in those districts and sections open to commercial salmon fishing where salmon may not be taken during the 24 hours before and 12 hours following each State open weekly commercial salmon fishing period, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(8) *Chignik Area*. The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula bounded by a line extending 135° southeast for 3 miles from a point near Kilokak Rocks at 57°10.34′ North latitude, 156°20.22′ West longitude (the longitude of the southern entrance to Imuya Bay) then due south, and a line extending 135° southeast from Kupreanof Point at 55°33.98′ North latitude, 159°35.88′ West longitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time, except as may be specified by a subsistence fishing permit. For salmon, Federal subsistence fishing openings, closings and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action. Within the Chignik Area, depending upon the area that you may fish, in addition to a State subsistence fishing permit, you may be required to also have a Federal subsistence permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon in the Chignik River, with rod and reel, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from

January 1 through August 9, with no daily harvest or possession limit under the authority of a Federal subsistence fishing permit. You may take salmon by gillnet in Black Lake or any tributary to Black or Chignik Lakes with a Federal subsistence fishing permit. You may take salmon in the waters of Clark River and Home Creek from their confluence with Chignik Lake upstream 1 mile. In the open waters of Clark River and Home Creek you may take salmon by snagging (handline or rod and reel), spear, bow and arrow, or capture by hand without a permit. The daily harvest and possession limits using these methods are five per day and five in possession.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit unless otherwise indicated in this section or as noted in the permit conditions.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than the due date listed on the permit.

(v) If you hold a commercial fishing license, you may only subsistence fish for salmon as specified on a subsistence fishing permit.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(9) *Kodiak Area*. The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°51.10′ North latitude), west of 150° West longitude, north of 55°30.00′ North latitude, and north and east of a line extending 135° southeast for three miles from a point near Kilokak Rocks at 57°10.34′ North latitude, 156°20.22′ West longitude (the longitude of the southern entrance of Imuya Bay), then due south.

(i) You may take fish other than salmon, rainbow/steelhead trout, char, bottomfish, or herring at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before or during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed.

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—All waters inside a line from the tip of the Nyman Peninsula (57°43.23′ North latitude, 152°31.51′ West longitude), to the northeastern tip of Mary's Island (57°42.40′ North latitude, 152°32.00′ West longitude), to the southeastern shore of Womens Bay at 57°41.95′ North latitude, 152°31.50′ West longitude.

(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ North latitude, 152°28.38′ West longitude, to a point offshore at 57°45.35′ North latitude, 152°28.15′ West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15′ North latitude, 152°28.65′ West longitude.

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek.

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point.

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek.

(F) All fresh water systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) The annual limit for a subsistence salmon fishing permit holder is as follows:

(A) In the Federal public waters of Kodiak Island, east of the line from Crag Point south to the westernmost point of Saltery Cove, including the waters of Woody and Long Islands, and the salt waters bordering this area within 1 mile of Kodiak Island, excluding the waters bordering Spruce Island, 25 salmon for the permit holder plus an additional 25 salmon for each member of the same household whose names are listed on the permit: an additional permit may be obtained upon request.

(B) In the remainder of the Kodiak Area not described in paragraph (e)(9)(v)(A) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must record all harvested fish prior to leaving the fishing site, and must return the permit by the due date marked on permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(10) *Cook Inlet Area*. The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51.10′ N Lat.) and a line extending south from Cape Fairfield (148°50.25′ W Long.).

(i) *General area regulations*. (A) Unless restricted by regulations in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area.

(B) If you take rainbow or steelhead trout incidentally in subsistence net fisheries, you may retain them for subsistence purposes, unless otherwise prohibited or provided for in this section. With jigging gear through the ice or rod-and-reel gear in open waters, there is an annual limit of two rainbow or steelhead trout 20 inches or longer, taken from Kenai Peninsula fresh waters.

(C) Under the authority of a Federal subsistence fishing permit, you may take only salmon, trout, Dolly Varden, and other char. Permits will be issued by the in-season manager or designated representative and will be valid for that regulatory year, except as otherwise provided for in this section, or as stated under the permit conditions, unless the season is closed or restricted by a special action.

(D) All fish taken under the authority of a Federal subsistence fishing permit must be marked and recorded prior to leaving the fishing site.

(*1*) The fishing site includes the particular Federal public waters and/or adjacent shoreline from which the fish were harvested.

(*2*) Marking means removing the dorsal fin.

(E) You may not take grayling or burbot for subsistence purposes.

(F) You may take smelt with dip nets in fresh water only from April 1 through June 15. There are no harvest or possession limits for smelt.

(G) You may take whitefish in the Tyone River drainage using gillnets.

(H) You may take fish by gear listed in this section unless restricted by other regulations in this section or under the terms of a Federal subsistence fishing permit (as may be modified by regulations in this section).

(I) Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein or by issuance of a Federal special action.

(J) Applicable harvest provisions are as follows:

TABLE 1 TO PARAGRAPH (e)(10)

| Location | Methods and means | Permit type |
|---|---|---|
| Kasilof River Drainage | Kasilof River dip net or rod and reel for salmon; Kasilof River fish wheel for salmon; Kasilof River gillnet for salmon. | Household Annual Permit. |
| Kenai River Drainage | Kenai River dip net or rod and reel for salmon; Kenai River gillnet for salmon. | Household Annual Permit. |
| Kasilof River Drainage | Tustumena Lake rod and reel for salmon; Kasilof River drainage rod and reel for resident species. | General Subsistence Fishing Permit (Daily/Possession Limits). |
| Kenai River Drainage | Kenai River rod and reel only for salmon; Kenai River and tributaries under ice jigging and rod and reel for resident species. | General Subsistence Fishing Permit (Daily/Possession Limits). |
| Tustumena Lake | Tustumena Lake under ice fishery | Tustumena Lake Winter Permit. |

(*1*) Harvest limits may not be accumulated.

(*2*) Each household may harvest its annual salmon limits in one or more days.

(*3*) All salmon harvested as part of a household annual limit must be reported to the Federal in-season manager within 72 hours of leaving the fishing site.

(*4*) For Ninilchik residents, the household annual limits for Chinook salmon in the Kasilof River and for late-run Chinook salmon in the Kenai River are combined.

(ii) *Seasons, harvest limits, and methods and means for Kasilof River fisheries.* Household annual limits for salmon in Kasilof River fisheries are as follows:

TABLE 2 TO PARAGRAPH (e)(10)

| Species | Number of fish allowed for each permit holder | Additional fish allowed for each household member |
|---|---|---|
| Sockeye | 25 | 5 |
| Chinook | 10 | 2 |
| Coho | 10 | 2 |
| Pink | 10 | 2 |

(A) *Kasilof River dip net or rod and reel; salmon.* (*1*) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net or rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river approximately 2.8 miles below the Tustumena Lake boat ramp.

(*2*) Residents using rod-and-reel gear may fish with up to two baited single or treble hooks.

(*3*) Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section.

(*4*) Harvest seasons are as follows:

TABLE 3 TO PARAGRAPH (e)(10)

| Species | Season |
|---|---|
| Sockeye salmon | June 16–August 15. |
| Chinook salmon | June 16–August 15. |
| Coho salmon | June 16–October 31. |
| Pink salmon | June 16–October 31. |

(B) *Kasilof River fish wheel; salmon.* (*1*) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon through a fish wheel fishery in the Federal public waters of the upper mainstem of the Kasilof River.

(*2*) Residents of Ninilchik may retain other species incidentally caught in the Kasilof River fish wheel except for rainbow or steelhead trout, which must be released and returned unharmed to the water.

(*3*) Only one fish wheel may be operated on the Kasilof River. The fish wheel must: Have a live box, be monitored when fishing, be stopped from fishing when it is not being monitored or used, and be installed and operated in compliance with any regulations and restrictions for its use within the Kenai National Wildlife Refuge.

(*4*) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National

Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the fish wheel owner, will be responsible for its construction, installation, operation, use, and removal in consultation with the Federal fishery manager. The owner may not rent or lease the fish wheel for personal gain. As part of the permit, the organization must:

(*i*) *Prior to the season.* Provide a written operational plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik.

(*ii*) *During the season.* Mark the fish wheel with a wood, metal, or plastic plate that is at least 12 inches high by 12 inches wide, permanently affixed, and plainly visible and that contains the following information in letters and numerals at least 1 inch high: Registration permit number; organization's name and address; and primary contact person name and telephone number.

(*iii*) *After the season.* Provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

(*5*) People operating the fish wheel must:

(*i*) Have in possession a valid Federal subsistence fishing permit and remain onsite to monitor the fish wheel and remove all fish at least every hour.

(*ii*) In addition, any person operating the fish wheel who is not the owner must attach to the fish wheel an additional wood, metal, or plastic plate that is at least 12 inches high by 12 inches wide, is plainly visible, and contains the person's fishing permit number, name, and address in letters and numerals at least 1 inch high.

(*6*) The organization owning the fish wheel may operate the fish wheel for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(*i*) Identifies a person who will be responsible for operating the fish wheel; and

(*ii*) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(*7*) Fishing is allowed from June 16 through October 31 on the Kasilof River unless closed or otherwise restricted by Federal special action.

(C) *Kasilof River gillnet; salmon.* (*1*) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon in the Federal public waters of the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch with a single gillnet from June 16 through August 15.

(*2*) Only one community gillnet may be operated on the Kasilof River.

(*i*) The gillnet may not: Be over 10 fathoms in length, be larger than 5.25-inch mesh, and obstruct more than half of the river width with stationary fishing gear.

(*ii*) Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(*iii*) The gillnet may be operated as a set gillnet in a fixed location, as a pole-net system drifted through an area while wading, or as a drift net from a boat.

(*3*) One registration permit will be available and will be issued by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, to the Ninilchik Traditional Council. As the community gillnet owner, the Ninilchik Traditional Council will be responsible for its use and removal in consultation with the Federal in-season manager. As part of the permit, after the season, the Ninilchik Traditional Council must provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to:

(*i*) Persons or households operating the gear;

(*ii*) Hours of operation; and

(*iii*) Number of each species caught and retained or released.

(*4*) The community gillnet is subject to compliance with applicable Kenai

National Wildlife Refuge regulations and restrictions.

(*5*) The Ninilchik Traditional Council may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(*i*) Identifies a person who will be responsible for fishing the gillnet; and

(*ii*) Includes provisions for recording daily catches within 72 hours, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal in-season manager.

(*6*) Residents of Ninilchik may retain other species incidentally caught in the Kasilof River community gillnet fishery. The gillnet fishery will be closed when the retention of rainbow or steelhead trout has been restricted under Federal subsistence regulations.

(D) *Tustumena Lake rod and reel; salmon.* (*1*) In addition to the dip net and rod and reel fishery on the upper mainstem of the Kasilof River described under paragraph (e)(10)(ii)(A)(*1*) of this section, residents of Ninilchik may also take coho and pink salmon through a rod and reel fishery in Tustumena Lake. Fishing is allowed with up to two baited single or treble hooks.

(*2*) Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these species under Alaska sport fishing regulations (5 AAC 56), except for the following harvest and possession limits:

TABLE 4 TO PARAGRAPH (e)(10)

| Species | Size | Limits |
|---|---|---|
| Coho salmon | 16 inches and longer | 4 per day and 4 in possession. |
| Pink salmon | 16 inches and longer | 6 per day and 6 in possession. |

(E) *Kasilof drainage rod and reel; resident species.* Resident fish species including lake trout, rainbow or steelhead trout, and Dolly Varden or Arctic char may be harvested by rod and reel in federally managed waters of the Kasilof River drainage the entire year as follows:

TABLE 5 TO PARAGRAPH (e)(10)

| Species | Specifications | Limits |
|---|---|---|
| Lake trout | Fish 20 inches and longer | 4 per day and 4 in possession. |
| | Fish less than 20 inches in length | 15 per day and 15 in possession. |
| Dolly Varden and Arctic char | In flowing waters | 4 per day and 4 in possession. |
| | In lakes and ponds | 10 per day and 10 in possession. |
| Rainbow or steelhead trout | In flowing waters | 2 per day and 2 in possession. |
| | In lakes and ponds | 5 per day and 5 in possession. |

(F) *Tustumena Lake under ice fishery; resident species.* (*1*) You may fish in Tustumena Lake with a gillnet under the ice, or with jigging gear used through the ice. The gillnet may not be longer than 10 fathoms.

(*2*) Harvest limits are as follows:

TABLE 6 TO PARAGRAPH (e)(10)

| Methods | Limits | Additional provisions |
|---|---|---|
| Jigging gear through the ice. | Household annual limit of 30 fish in any combination of lake trout, rainbow trout, and Dolly Varden or Arctic char. | Household limits are included in the overall total annual harvest quota. |
| Gillnet under the ice | Total annual harvest quota of 200 lake trout, 200 rainbow trout, and 500 Dolly Varden or Arctic char. | The Federal in-season manager will issue a closure for this fishery once any of these quotas has been met. |

(*3*) You may harvest fish under the ice only in Tustumena Lake. Gillnets are not allowed within a ¼ mile radius of the mouth of any tributary to Tustumena Lake, or the outlet of Tustumena Lake.

(*4*) A permit is required. The permit will be issued by the Federal in-season manager or designated representative and will be valid for the winter season unless the season is closed by special action.

(*i*) The permittee must report the following information: The number of each species caught; the number of each species retained; the length, depth (number of meshes deep), and mesh size of gillnet fished; the fishing site; and the total hours fished.

(*ii*) The gillnet must be checked at least once in every 48-hour period.

(*iii*) For unattended gear, the permittee's name and address must be plainly and legibly inscribed on a stake at one end of the gillnet.

(*5*) Incidentally caught fish may be retained and must be recorded on the permit before transporting fish from the fishing site.

(*6*) Failure to return the completed harvest permit by May 31 may result in issuance of a violation notice and/or denial of a future subsistence permit.

(iii) *Seasons, harvest limits, and methods and means for Kenai River fisheries.* Household annual limits for salmon in Kenai River fisheries are as follows:

TABLE 7 TO PARAGRAPH (e)(10)

| Species | Number of fish allowed for each permit holder | Additional fish allowed for each household member | Additional provisions |
|---|---|---|---|
| Sockeye salmon | 25 | 5 | Chum salmon that are retained are to be included within the annual limit for sockeye salmon. |
| Chinook salmon— (July 1 through July 15). | 2 | 1 | For the Kenai River community gillnet fishery described under paragraph (e)(10)(iii)(B) of this section. |
| Chinook salmon— (July 16 through August 31). | 10 | 2 | |
| Coho salmon | 20 | 5 | |
| Pink salmon | 15 | 5 | |

(A) *Kenai River dip net or rod and reel; salmon.* (*1*) You may take only sockeye salmon through a dip net or rod and reel fishery at one specified site on the Russian River.

(*i*) For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released.

(*ii*) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.

(*2*) You may take sockeye, Chinook, coho, and pink salmon through a dip net or rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section.

(*i*) For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for Chinook salmon prior to July 16 (unless otherwise provided for in this section), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released.

(*ii*) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15 through August 31.

(*iii*) At the Kenai River mile 48 site, dip netting is allowed while either

standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15 through August 31.

(*3*) Fishing seasons are as follows:

TABLE 8 TO PARAGRAPH (e)(10)

| Species | Season | Location |
|---|---|---|
| Sockeye salmon | June 15–August 15 | All three sites. |
| Chinook salmon | July 16–September 30 | Kenai River sites only. |
| Pink salmon | July 16–September 30 | Kenai River sites only. |
| Coho salmon | July 16–September 30 | Kenai River sites only. |

(B) *Kenai River gillnet; salmon.* (*1*) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon in the Moose Range Meadows area of the Federal public waters of the Kenai River with a single gillnet to be managed and operated by the Ninilchik Traditional Council.

(*2*) Fishing will be allowed July 1 through August 15 and September 10–30 on the Kenai River unless closed or otherwise restricted by Federal special action. The following conditions apply to harvest in the Kenai River community gillnet fishery:

(*i*) Salmon taken in this fishery will be included as household annual limits of participating households.

*(ii)* The Ninilchik Traditional Council will report all harvested fish within 72 hours of leaving the gillnet location.

(*iii*) Additional harvest restrictions for this fishery are as follows:

TABLE 9 TO PARAGRAPH (e)(10)

| Species | Period | Harvest | Fishery limits |
|---|---|---|---|
| Sockeye salmon | July 1–August 15 and September 10–30. | | |
| Chinook salmon less than 46 inches in length or greater than 55 inches in length. | July 1–15 | Fish may be retained if the most current preseason forecast from the State of Alaska Department of Fish and Game projects the in-river run to be within or above the optimal escapement goal range for early-run Chinook salmon; otherwise, live fish must be released. | Fishery will close until July 16 once 50 Chinook salmon have been retained or released. |
| Chinook salmon | July 16–August 15 | | Fishery will close prior to August 15 if 200 Chinook salmon have been retained or released between July 16 and that date. Fishery will reopen September 10–30 for species available at that time. |
| Pink salmon | July 16–August 15 and September 10–30. | | |
| Coho salmon | July 16–August 15 and September 10–30. | | |
| Incidentally caught rainbow trout and Dolly Varden. | | All live fish must be released. Fish that die in net may be retained. | Fishery will close for the season once 100 rainbow trout or 150 Dolly Varden have been released or retained. |

(*iv*) Chinook salmon less than 20 inches in length may be retained and do not count towards retained or released totals.

(*v*) Other incidentally caught species may be retained; however, all incidental fish mortalities, except for Chinook salmon less than 20 inches in length, count towards released or retained totals specified in this section.

(*3*) Only one community gillnet may be operated on the Kenai River.

(*i*) The gillnet may not: Be over 10 fathoms in length to take salmon; be larger than 5.25-inch mesh; and obstruct more than half of the river width with stationary fishing gear.

(*ii*) Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(*4*) One registration permit will be available and will be issued by the Federal in-season manager, in consultation with the Kenai National Wildlife Refuge manager, to the Ninilchik Traditional Council. As the community gillnet owner, the Ninilchik Traditional Council will be responsible for its use and removal in consultation with the Federal in-season manager. As part of the permit, the Ninilchik Traditional Council must provide post-season written documentation of required evaluation information to the Federal in-season manager including, but not limited to:

(*i*) Persons or households operating the gear;

(*ii*) Hours of operation; and

(*iii*) Number of each species caught and retained or released.

(*5*) The Ninilchik Traditional Council may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(*i*) Identifies a person who will be responsible for fishing the gillnet; and

(*ii*) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal in-season manager.

(C) *Kenai River rod and reel only; salmon.* (*1*) For federally managed waters of the Kenai River and its tributaries, you may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage.

(*2*) Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.540), except for the following harvest and possession limits:

TABLE 10 TO PARAGRAPH (e)(10)

| Species | Size | Limits |
|---|---|---|
| Chinook salmon— (January 1 through July 15). | Less than 46 inches or 55 inches and longer. | 2 per day and 2 in possession. |
| Chinook salmon— (July 16 through August 31). | 20 inches and longer | 2 per day and 2 in possession. |
| All other salmon | 16 inches and longer | 6 per day and 6 in possession, of which no more than 4 per day and 4 in possession may be Coho salmon, except for the Sanctuary Area and Russian River where no more than 2 per day and 2 in possession may be Coho salmon. |

(*i*) In the Kenai River below Skilak Lake, fishing is allowed with up to two baited single or treble hooks June 15 through August 31.

(*ii*) Annual harvest limits for any combination of Chinook salmon are four for each permit holder.

(*iii*) Incidentally caught fish, other than salmon, are subject to regulations found in paragraph (e)(10)(iii)(D) of this section.

(D) *Kenai River and tributaries under ice jigging and rod and reel; resident species.* (*1*) For federally managed waters of the Kenai River and its tributaries below Skilak Lake outlet at river mile 50, you may take resident fish species including lake trout, rainbow trout, and Dolly Varden or Arctic char with jigging gear through the ice or rod and reel gear in open waters. Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these resident species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57,

and 5 AAC 77.540), except for the following harvest and possession limits:

TABLE 11 TO PARAGRAPH (e)(10)

| Species | Specifications | Limits |
|---|---|---|
| Lake trout | 20 inches or longer | 4 per day and 4 in possession. |
| | Less than 20 inches | 15 per day and 15 in possession. |
| Dolly Varden or Arctic char | In flowing waters | For fish less than 18 inches, 1 per day and 1 in possession. |
| | In lakes and ponds | 2 per day and 2 in possession, of which only one may be 20 inches or longer, may be harvested daily. |
| Rainbow or steelhead trout | In flowing waters | For fish less than 18 inches in length, 1 per day and 1 in possession. |
| | In lakes and ponds | 2 per day and 2 in possession, of which only one fish 20 inches or longer may be harvested daily. |

(*2*) For federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile 50, you may take resident fish species including lake trout, rainbow trout, and Dolly Varden or Arctic char with jigging gear through the ice or rod and reel gear in open waters. Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these resident species under Alaska fishing regulations (5 AAC 56, 5 AAC 57, 5 AAC 77.540), except for the following harvest and possession limits:

TABLE 12 TO PARAGRAPH (e)(10)

| Species | Specifications | Limits |
|---|---|---|
| Lake trout | 20 inches or longer | 4 per day and 4 in possession. |
| | Less than 20 inches | 15 per day and 15 in possession. |
| | From Hidden Lake | 2 per day and 2 in possession regardless of length. |
| Dolly Varden or Arctic char | In flowing waters | For fish less than 16 inches in length, 1 per day and 1 in possession. |
| | In lakes and ponds | 2 per day and 2 in possession, of which only one fish 20 inches or longer may be harvested daily. |
| Rainbow or steelhead trout | In flowing waters | For fish less than 16 inches in length, 1 per day and 1 in possession. |
| | In lakes and ponds | 2 per day and 2 in possession, of which only one fish 20 inches or longer may be harvested daily. |

(11) *Prince William Sound Area*. The Prince William Sound Area includes all waters and drainages of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) You may take fish, other than rainbow/steelhead trout, in the Prince William Sound Area only under authority of a subsistence fishing permit, except that a permit is not required to take eulachon. You make not take rainbow/steelhead trout, except as otherwise provided for in this paragraph (e)(11).

(A) In the Prince William Sound Area within Chugach National Forest and in the Copper River drainage downstream of Haley Creek, you may accumulate Federal subsistence fishing harvest limits with harvest limits under State of Alaska sport fishing regulations provided that accumulation of fishing harvest limits does not occur during the same day.

(B) You may accumulate harvest limits of salmon authorized for the Copper River drainage upstream from Haley Creek with harvest limits for salmon authorized under State of Alaska sport fishing regulations.

(ii) You may take fish by gear listed in paragraph (b)(1) of this section unless restricted in this section or under the terms of a subsistence fishing permit.

(iii) If you catch rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, unless restricted in this section.

(iv) In the Copper River drainage, you may take salmon only in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(v) In the Upper Copper River District, you may take salmon only by fish wheels, rod and reel, or dip nets.

(vi) Rainbow/steelhead trout and other freshwater fish caught incidentally to salmon by fish wheel in the Upper Copper River District may be retained.

(vii) Freshwater fish other than rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District may be retained. Rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District must be released unharmed to the water.

(viii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit, or rainbow/steelhead trout caught incidentally to salmon by fish wheel, unless the anal fin has been immediately removed from the fish. You must immediately record all retained fish on the subsistence permit. Immediately means prior to concealing the fish from plain view or transporting the fish more than 50 feet from where the fish was removed from the water.

(ix) You may take salmon in the Upper Copper River District from May 15 through September 30 only.

(x) The total annual harvest limit for subsistence salmon fishing permits in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel.

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for Chinook salmon taken by dip net or rod and reel does not increase.

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel.

(xi) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year.

(B) Multiple types of gear may be specified on a permit, although only one unit of gear per person may be operated at any one time.

(C) You must return your permit no later than October 31 of the year in which the permit is issued, or you may be denied a permit for the following year.

(D) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by paragraph (e)(11)(xii)(B) or (e)(11)(xiii)(E) of this section and during fishing operations.

(E) Only the permit holder and the authorized member(s) of the household listed on the subsistence permit may take salmon.

(F) You must personally operate your fish wheel or dip net.

(G) You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(H) While you are fishing from a boat or other watercraft, you may not use any device that indicates bathymetry and/or fish locations, *e.g.*, fish finders. These devices do not have to be removed or uninstalled from a boat or watercraft.

(xii) If you are a fish wheel owner:

(A) You must register your fish wheel with ADF&G or the Federal Subsistence Board.

(B) Your registration number and a wood, metal, or plastic plate at least 12 inches high by 12 inches wide bearing either your name and address, or your Alaska driver's license number, or your Alaska State identification card number in letters and numerals at least 1 inch high, must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water.

(C) Only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel.

(D) You are responsible for the fish wheel; you must remove the fish wheel from the water at the end of the permit period.

(E) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain.

(xiii) If you are operating a fish wheel:

(A) You may operate only one fish wheel at any one time.

(B) You may not set or operate a fish wheel within 75 feet of another fish wheel.

(C) You must check your fish wheel at least once every 10 hours and remove all fish.

(D) No fish wheel may have more than two baskets.

(E) If you are a permittee other than the owner, you must attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, to the fish wheel so that the name and address are plainly visible.

(xiv) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. The following additional provisions apply to subsistence fishing permits issued under this paragraph (e)(11)(xiv):

(A) The permit will list all households and household members for whom the fish wheel is being operated. The permit will identify a person who will be responsible for the fish wheel and will be the same person as is listed on the fish wheel described in paragraph (e)(11)(xiii)(E) of this section.

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly.

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(D) The permit will include provisions for recording daily catches for each fish wheel; location and number of fish wheels; full legal name of the individual responsible for the lawful operation of each fish wheel as described in paragraph (e)(11)(xiii)(E) of this section; and other information determined to be necessary for effective resource management.

(xv) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, fyke nets, and rod and reel in Tanada Creek. One fyke net and associated lead may be used in Tanada Creek upstream of the National Park Service weir.

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action.

(D) You may retain Chinook salmon taken in a fish wheel in the Copper River. You must return to the water

unharmed any Chinook salmon caught in Tanada Creek.

(E) You must return the permit to the National Park Service no later than October 15 of the year the permit was issued.

(F) You may only use a fyke net after consultation with the in-season manager. You must be present when the fyke net is actively fishing. You may take no more than 1,000 sockeye salmon in Tanada Creek with a fyke net.

(xvi) You may take pink salmon for subsistence purposes from fresh water with a dip net from May 15 through September 30, 7 days per week, with no harvest or possession limits in the following areas:

(A) Green Island, Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island, and adjacent islands, and the mainland waters from the outer point of Granite Bay located in Knight Island Passage to Cape Fairfield;

(B) Waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.

(xvii) In the Chugach National Forest portion of the Prince William Sound Area, you must possess a Federal subsistence fishing permit to take salmon, trout, whitefish, grayling, Dolly Varden, or char. Permits are available from the Cordova Ranger District.

(A) Salmon harvest is not allowed in Eyak Lake and its tributaries, Copper River and its tributaries, and Eyak River upstream from the Copper River Highway bridge.

(B) You must record on your subsistence permit the number of subsistence fish taken. You must record all harvested fish prior to leaving the fishing site, and return the permit by the due date marked on the permit.

(C) You must remove both lobes of the caudal (tail) fin from subsistence-caught salmon before leaving the fishing site.

(D) You may take salmon by rod and reel, dip net, spear, and gaff year round.

(E) For a household with 1 person, 15 salmon (other than pink) may be taken, and 5 cutthroat trout, with only 2 over 20 inches, may be taken; for pink salmon, see the conditions of the permit.

(F) For a household with 2 persons, 30 salmon (other than pink) may be taken, plus an additional 10 salmon for each additional person in a household over 2 persons, and 5 cutthroat trout, with only 2 over 20 inches per each household member with a maximum household limit of 30 cutthroat trout may be taken; for pink salmon, see the conditions of the permit.

(G) You may take Dolly Varden, Arctic char, whitefish, and grayling with rod and reel and spear year round and with a gillnet from January 1–April 1. The maximum incidental gillnet harvest of trout is 10.

(H) You may take cutthroat trout with rod and reel and spear from June 15 to April 14th and with a gillnet from January 1 to April 1.

(I) You may not retain rainbow/steelhead trout for subsistence unless taken incidentally in a subsistence gillnet fishery. Rainbow/steelhead trout must be immediately released from a dip net without harm.

(12) *Yakutat Area*. The Yakutat Area includes all waters and drainages of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may take salmon, trout (other than steelhead), and char only under authority of a subsistence fishing permit. You may take steelhead trout only in the Situk and Ahrnklin Rivers and only under authority of a Federal subsistence fishing permit.

(iii) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(iv) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit. In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing

with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all Federally regulated fish species caught, and they apply to your applicable daily and annual harvest limits for that species. For streams with steelhead, once your daily or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(v) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gillnet at all times when it is being used to take salmon.

(vi) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(vii) You must immediately remove both lobes of the caudal (tail) fin from subsistence-caught salmon when taken.

(viii) You may not possess subsistence-taken and sport-taken salmon on the same day.

(ix) You must possess a subsistence fishing permit to take Dolly Varden. The daily harvest and possession limit is 10 Dolly Varden of any size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish other than salmon, trout, grayling, and char in the Southeastern Alaska Area at any time.

(ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing District 1.

(iii) In the Southeastern Alaska Area, a rainbow trout is defined as a fish of the species *Oncorhyncus mykiss* less than 22 inches in overall length. A steelhead is defined as a rainbow trout with an overall length of 22 inches or larger.

(iv) In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all federally regulated fish species caught, and they apply to your applicable daily, seasonal, and annual harvest limits for that species.

(A) For streams with steelhead, once your daily, seasonal, or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(B) Unless otherwise specified in this paragraph (e)(13), allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

(v) Unless otherwise specified in this paragraph (e)(13), you may use a handline for snagging salmon or steelhead.

(vi) You may fish with a rod and reel within 300 feet of a fish ladder unless the site is otherwise posted by the USDA Forest Service. You may not fish from, on, or in a fish ladder.

(vii) You may not accumulate Federal subsistence harvest limits authorized for the Southeastern Alaska Area with any harvest limits authorized under any State of Alaska fishery with the following exception: Annual or seasonal Federal subsistence harvest limits may be accumulated with State sport fishing harvest limits provided that accumulation of harvest limits does not occur during the same day.

(viii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your subsistence fishing permit.

(ix) Nets are prohibited in streams flowing across or adjacent to the roads on Wrangell and Mitkof islands, and in streams flowing across or adjacent to the road systems connected to the community of Sitka.

(x) You may not possess subsistence-taken and sport-taken fish of a given species on the same day.

(xi) If a harvest limit is not otherwise listed for sockeye in this paragraph (e)(13), the harvest limit for sockeye salmon is the same as provided for in adjacent State subsistence or personal use fisheries. If a harvest limit is not established for the State subsistence or personal use fisheries, the possession limit is 10 sockeye and the annual harvest limit is 20 sockeye per household for that stream.

(xii) The Sarkar River system above the bridge is closed to the use of all nets by both federally qualified and non-federally qualified users.

(xiii) You may take Chinook, sockeye, and coho salmon in the mainstem of the Stikine River only under the authority of a Federal subsistence fishing permit. Each Stikine River permit will be issued to a household. Only dip nets, spears, gaffs, rod and reel, beach seine, or gillnets not exceeding 15 fathoms in length may be used. The maximum gillnet stretched mesh size is 8 inches during the Chinook salmon season and 5 ½ inches during the sockeye salmon season. There is no maximum mesh size during the coho salmon season.

(A) You may take Chinook salmon from May 15 through June 20. The annual limit is five Chinook salmon per household.

(B) You may take sockeye salmon from June 21 through July 31. The annual limit is 40 sockeye salmon per household.

(C) You may take coho salmon from August 1 through October 1. The annual limit is 20 coho salmon per household.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

(E) Fishing nets must be checked at least twice each day.

(xiv) You may take coho salmon with a Federal salmon fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household. Only dip nets, spears, gaffs, handlines, and rod and reel may be used. There are specific rules to harvest any salmon on the Stikine River, and you must have a separate Stikine River subsistence salmon fishing permit to take salmon on the Stikine River.

(xv) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon.

(xvi) Unless otherwise specified in this paragraph (e)(13), you may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xvii) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of two fish per household; however, only one steelhead may be harvested by a household from a particular drainage. You may use only a dip net, handline, spear, or rod and reel. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of five fish per household; however, only two steelhead may be harvested by a household from a particular drainage. You may use only a dip net, handline, spear, or rod and reel. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xviii) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat trout, and rainbow trout apply:

(A) The daily household harvest and possession limit is 20 Dolly Varden; there is no closed season or size limit.

(B) The daily household harvest and possession limit is 20 brook trout; there is no closed season or size limit.

(C) The daily household harvest and possession limit is 20 grayling; there is no closed season or size limit.

(D) The daily household harvest limit is 6 and the household possession limit is 12 cutthroat or rainbow trout in combination; there is no closed season or size limit.

(E) You may only use a rod and reel.

(F) The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xix) There is no subsistence fishery for any salmon on the Taku River.

(xx) The Klawock River drainage is closed to the use of seines and gillnets during July and August.

(xxi) The Federal public waters in the Makhnati Island area, as defined in § 100.3(b)(5) are closed to the harvest of herring and herring spawn, except by federally qualified users.

(xxii) Only federally qualified subsistence users may harvest sockeye salmon in Neva Lake, Neva Creek, and South Creek.

[78 FR 19112, Mar. 29, 2013, as amended at 80 FR 28192, May 18, 2015; 83 FR 3084, Jan. 23, 2018; 84 FR 39191, Aug. 9, 2019; 84 FR 39748, Aug. 12, 2019; 86 FR 17717, Apr. 6, 2021]

### § 242.28 Subsistence taking of shellfish.

(a) *Covered species* (1) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(2) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(b) *Methods, means, and general restrictions.* (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

(i) Abalone iron;

(ii) Diving gear;

(iii) A grappling hook;

(iv) A handline;

(v) A hydraulic clam digger;

(vi) A mechanical clam digger;

(vii) A pot;

(viii) A ring net;

(ix) A scallop dredge;

(x) A sea urchin rake;

(xi) A shovel; and

(xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You must plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, when you may substitute for the keg or buoy a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) Kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § 100.27(b)(2).

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(c) *Taking shellfish by designated harvest permit.* (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on

your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(d) *Permit requirements.* If a subsistence shellfish permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section.

(2) You must obtain a permit prior to subsistence fishing.

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued.

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes.

(5) If specified on the permit, you must keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other information as may be required for management or conservation purposes.

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery.

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(e) *Subsistence take by commercial vessels.* No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening and ending 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(f) *Size restrictions.* You may not take or possess shellfish smaller than the minimum legal size limits.

(g) *Unlawful possession of subsistence shellfish.* You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(h) *Charter and related operations.* (1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this section, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a Federally qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(i) *Subsistence shellfish areas and pertinent restrictions*—(1) *Southeastern Alaska—Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction, except the marine waters occurring in the vicinity of Makhnati Island as described in § 242.3(b)(5) of these regulations.

(2) *Prince William Sound Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.* (i) You may take shellfish for subsistence purposes only as allowed in paragraph (i)(3) of this section.

(ii) You may not take king crab, Dungeness crab, or shrimp for subsistence purposes.

(iii) In the subsistence taking of Tanner crab:

(A) Male Tanner crab may be taken only from July 15 through March 15;

(B) The daily harvest and possession limit is 5 male Tanner crabs;

(C) Only male Tanner crabs 5½; inches or greater in width of shell may be taken or possessed;

(D) No more than two pots per person, regardless of type, with a maximum of two pots per vessel, regardless of type, may be used to take Tanner crab.

(iv) In the subsistence taking of clams:

(A) The daily harvest and possession limit for littleneck clams is 1,000 and the minimum size is 1.5 inches in length;

(B) The daily harvest and possession limit for butter clams is 700 and the minimum size is 2.5 inches in length.

(v) Other than as specified in this section, there are no harvest, possession, or size limits for other shellfish, and the season is open all year.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a State closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit must specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 6½ inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the State opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is three crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed.

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open.

(C) You may only use one crab pot, which may be of any size, to take king crab.

(D) You may take king crab only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location.

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab.

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial

king or Tanner crab fishing season in the location.

(C) The daily harvest and possession limit per person is 12 male crabs with a shell width 5½ inches or greater.

(5) *Alaska Peninsula—Aleutian Islands Area*. (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed State commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit must specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only crabs with a shell width of 6½ inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1 through January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(6) *Bering Sea Area*. (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit must specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Dungeness crabs per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° North latitude, the daily harvest and possession limit is six male crabs per person.

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open.

(C) In waters south of 60° North latitude, you may take crab only from June 1 through January 31.

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Tanner crabs.

[76 FR 12585, Mar. 8, 2011]

# PART 251—LAND USES

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AUTHORITY: 16 U.S.C. 472, 479b, 551, 1134, 3210, 6201–13; 30 U.S.C. 1740, 1761–1771.

## Subpart A—Miscellaneous Land Uses

AUTHORITY: 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Pub. L. 76–867, 54 Stat. 1197.

NATURAL RESOURCES CONTROL

### § 251.9 Management of Municipal Watersheds.

(a) The Forest Service shall manage National Forest watersheds that supply municipal water under multiple use prescriptions in forest plans (36 CFR part 219). When a municipality desires protective actions or restrictions of use not specified in the forest plan, within agreements, and/or special use authorizations, the municipality must apply to the Forest Service for consideration of these needs.

(b) When deemed appropriate by the Regional Forester, requested restrictions and/or requirements shall be incorporated in the forest plan without written agreements. Written agreements with municipalities to assure protection of water supplies are appropriate when requested by the municipality and deemed necessary by the Regional Forester. A special use authorization may be needed to effect these agreements.

(c) In preparing any municipal watershed agreement for approval by the Regional Forester or issuing special use authorization to protect municipal water supplies, the authorized forest officer shall specify the types of uses, if any, to be restricted; the nature and extent of any restrictions; any special land management protective measures and/or any necessary standards and guidelines needed to protect water quality or quantity; and any resources that are to be provided by the municipality.

(d) A special use authorization (36 CFR 251.54) is required if the municipality is to use the subject lands, restrict public access, or control resource uses within the watershed. Special use authorizations issued pursuant to this section are subject to the same fee waivers, conditions, and procedures applicable to all other special uses as set forth in subpart B of this part.

(e) Any municipal watershed management agreements, special use authorizations, requirements, and/or restrictions shall be consistent with forest plans, or amendments and revisions thereto.

[53 FR 27685, July 22, 1988]

### § 251.10 Prohibition of location of mining claims within certain areas in the Norbeck Wildlife Preserve, South Dakota.

The location of mining claims in such areas within 660 feet of any Federal, State or county road and within such other areas where the location of mining claims would not be in the public interest, as may be designated by the Chief, Forest Service, or the Regional Forester, of Forest Service Region 2, is hereby prohibited. The Director, Bureau of Land Management, Department of the Interior, shall be advised of the areas so designated and notices of the boundaries of such areas posted at conspicuous places in the Preserve, as well as at the county courthouses in Pennington in the cities of Custer and Rapid City, and Custer Counties and the post offices State of South Dakota.

[13 FR 3676, July 1, 1948, as amended at 48 FR 31854, July 12, 1983]

### § 251.11 Governing mining locations under the mining laws of the United States within that portion of the Black Hills National Forest, State of South Dakota, designated as the Norbeck Wildlife Preserve.

(a) Whoever locates a mining claim within the Norbeck Wildlife Preserve must, within 10 days after posting the location notice upon such claim, file a true copy of such location notice with the Forest Supervisor of the Black Hills National Forest at Custer, South Dakota, and further, within 10 days after said location notice is filed for record pursuant to the State laws of South Dakota, a true copy of the recorded location certificate must be filed with said Forest Supervisor.

(b) All mining locators shall in all developments and operations make all reasonable provisions for the disposal of tailings, dumpage, and other deleterious materials or substances in such manner as to prevent obstruction, pollution, or deterioration of the land, streams, ponds, lakes, or springs, as may be directed by the Forest Supervisor.

(c) All slash resulting from cutting or destruction of forest growth incident and necessary to mining operations must be disposed of as directed by the Forest Supervisor.

(d) The cutting and removal of timber, except where clearing is necessary in connection with mining operations or to provide space for buildings or structures used in connection with mining operations, shall be conducted in accordance with the marking rules and timber sale practices applicable to the Black Hills National Forest, and such cutting and removal of timber shall be as directed by the Forest Supervisor.

(e) No use of the surface of a mining claim or the resources therefrom not reasonably required for carrying on mining and prospecting shall be allowed, except under the National Forest rules and regulations, nor shall the locator prevent or obstruct other occupancy of the surface or use of surface resources under authority of National Forest Regulations, or permits issued thereunder, if such occupancy or use is not in conflict with mineral developments.

(f) When any road is to be built for mining purposes upon a mining claim, the locator must apply to the Forest Supervisor for the applicable rules and regulations governing the construction and maintenance of roads within the Black Hills National Forest, and such road will be built in accordance with such specifications and in such locations as the Forest Supervisor may direct.

(g) In conducting mining operations the locator, his agents, representatives, or employees, or other persons whose presence in the area or in the vicinity thereof, is occasioned by such mining operations, shall use due diligence in the prevention and suppression of fires, and shall, when requested by the Forest Supervisor, or his authorized representative, be available for service in the extinguishment and suppression of all fires occurring within the Preserve: *Provided,* That if such fire does not originate through any negligence on the part of the locator, his agents, representatives, or employees, or other persons whose presence in the area or in the vicinity thereof, is occasioned by such mining operations and does not threaten the structures, improvements or property incident to

the mining operation, such persons shall be paid for their services at the current rate of pay of fire fighters employed by the United States.

(h) Nothing contained in this section shall be construed to relieve the locator from complying with any requirements of the laws of the State of South Dakota, nor from compliance with or conformity to any requirements of any Federal law or regulation now existing or which later may be enacted or promulgated, and applicable to the subject involved in this section.

[13 FR 4792, Aug. 19, 1948, as amended at 48 FR 31854, July 12, 1983]

### § 251.14 Conditions, rules and regulations to govern exercise of timber rights reserved in conveyance to the United States.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, in conveyance of lands to the United States under authorized programs of the Forest Service, where owners reserve the right to enter upon the conveyed lands and to cut and remove timber and timber products, said reservations shall be subject to the following conditions, rules and regulations which shall be expressed in and made a part of the deed of conveyance to the United States and such reservations shall be exercised thereunder and in obedience thereto:

(1) Whoever undertakes to exercise the reserved rights, hereinafter called operator, shall give prior written notice to Forest Service and shall submit satisfactory evidence of authority to exercise such rights. Operator shall repair, replace, or restore any improvements owned by the United States or its permittees, damaged or destroyed by the timber operations and he shall restore the land to a condition safe and reasonably serviceable for authorized programs of Forest Service.

(2) In cutting and removing timber and timber products and in locating, constructing and using mills, logging roads, railroads, chutes, landings, camps, or other improvements, no unnecessary damage shall be done to the air, water and soil resources, and to young growth or to trees left standing. All survey monuments and witness trees shall be preserved.

(3) All trees, timber or timber products of species or sizes not specifically reserved which are unnecessarily cut, damaged, or destroyed by operator shall be paid for at double the usual rates charged in the locality for sales of similar National Forest timber and timber products.

(4) Slash and debris resulting from the cutting, removal, or processing of timber or timber products, or from construction operations, shall be disposed of or otherwise treated by methods acceptable to the Forest Service. Such treatment or disposal shall comply with known air and water quality criteria and standards and include necessary preparatory work such as fireline constructing and snag falling. The timing of log removal and preparatory work shall not unnecessarily delay slash disposal or treatment.

(5) Operator is authorized to construct and maintain buildings, facilities, and other improvements, including roads needed to log the reserved timber. Construction and maintenance plans, designs, and location shall be approved in writing by Forest Service before construction is started.

(6) All buildings, camps, equipment, and other structures or improvements shall be removed from the lands within 6 months from date of completion or abandonment of the operation, unless relieved by Forest Service by issuance of a special-use permit. Otherwise such buildings, camps, equipment, and other structures or improvements shall become the property of the United States, but this does not relieve operator of liability for the cost of removal and restoration of the site.

(7) Nothing in this section shall be construed to exempt operator from any requirements of the laws of the States in which situated; nor from compliance with or conformity to any requirement of any law which later may be enacted and which otherwise would be applicable.

(8) While operations are in progress, operator, his employees, any subcontractors, and their employees, shall take all reasonable and practicable action in the prevention and suppression of fire, and shall be available for service in the suppression of all fires within the reserved area. On any fire not

caused by negligence on the part of the operator, Forest Service shall pay operator at fire-fighting rates common in the area or at prior agreed rates for equipment or manpower furnished by operator.

(9) Only one cutting shall be made on any portion of the area on which timber is reserved. Forest Service may permit the cutting of special products, or products the cutting of which is seasonal, on any portion of the area in advance of the cutting of the chief products of the reserved timber. Each reservation of timber shall include a specific period of time within which material may be removed.

(10) Forest Service shall have the right to use any road constructed under the authority of this timber reservation for any and all purposes in connection with the protection and administration of the National Forest.

(11) Operator shall take all reasonable precautions to prevent pollution of the air, soil, and water, in operation hereunder.

(12) All activities by operator in the reserved area shall be conducted in a safe, orderly, and workmanlike manner.

(13) For the protection of streamcourses, the following measures shall be observed by operator: Culverts or bridges will be required on temporary roads at all points where it is necessary to cross streamcourses. Such facilities shall be of sufficient size and design to provide unobstructed flow of water. Equipment will not be operated in streamcourses except at designated crossings and as essential to construction or removal of culverts and bridges. Any stream that is temporarily diverted must be restored to the natural course as soon as practicable, and in any event prior to a major runoff season.

(14) Operator shall perform currently as weather and soil conditions permit, the following erosion control work on portions of the reserved area where logging is in progress or has been completed: Construct cross-ditches and water-spreading ditches where staked or otherwise marked on the ground by Forest Service; after a temporary road has served operator's purpose, operator shall remove culverts and bridges, eliminate ditches, out-slope and cross-drain roadbed and remove ruts and berms to the extent necessary to stabilize fills and otherwise minimize erosion; operator shall avoid felling into, yarding in, or crossing natural meadows; and operations will not take place when soil and water conditions are such that excessive damage will result.

(b) The conditions, rules and regulations set forth in paragraphs (a)(1) through (14) of this section shall not apply to reservations contained in conveyances of land to the United States under the Act of March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82, 16 U.S.C. 555).

(c) In cases where a State, or an agency, or a political subdivision thereof, reserves timber rights for the cutting and removal of timber and timber products, in the conveyance of land to the United States under authorized programs of the Forest Service and there are provisions in the laws of such State or in conditions, rules and regulations promulgated by such State, agency or political subdivision thereof, which the Chief, Forest Service, determines are adequate to protect the interest of the United States in the event of the exercise of such reservation, the Chief, Forest Service, is hereby authorized, in his discretion, to subject the exercise of the reservation to such statutory provisions or such conditions, rules, and regulations in lieu of the conditions, rules and regulations set forth in paragraphs (a) (1) through (14) of this section. In that event, such statutory provisions or such conditions, rules and regulations shall be expressed in and made a part of the deed of conveyance to the United States and the reservation shall be exercised thereunder and in obedience thereto.

All regulations heretofore issued by the Secretary of Agriculture to govern the exercise of timber rights reserved in conveyance of lands to the United States under authorized programs of Forest Service shall continue to be effective in the cases to which they are applicable, but are hereby superseded as to timber rights hereafter reserved in conveyances under such programs.

[35 FR 5401, Apr. 1, 1970]

**§ 251.15 Conditions, rules and regulations to govern exercise of mineral rights reserved in conveyances to the United States.**

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, in conveyances of lands to the United States under authorized programs of the Forest Service, where owners reserve the right to enter upon the conveyed lands and to prospect for, mine and remove minerals, oil, gas, or other inorganic substances, said reservations shall be subject to the following conditions, rules and regulations which shall be expressed in and made a part of the deed of conveyance to the United States and such reservations shall be exercised thereunder and in obedience thereto:

(1) Whoever undertakes to exercise the reserved rights shall give prior written notice to the Forest Service and shall submit satisfactory evidence of authority to exercise such rights. Only so much of the surface of the lands shall be occupied, used, or disturbed as is necessary in bona fide prospecting for, drilling, mining (including the milling or concentration of ores), and removal of the reserved minerals, oil, gas, or other inorganic substances.

(2)(i) None of the lands in which minerals are reserved shall be so used, occupied, or disturbed as to preclude their full use for authorized programs of the Forest Service until the record owner of the reserved rights, or the successors, assigns, or lessees thereof, shall have applied for and received a permit authorizing such use, occupancy, or disturbance of those specifically described parts of the lands as may reasonably be necessary to exercise of the reserved rights.

(ii) Said permit shall be issued upon agreement as to conditions necessary to protect the interest of the United States including such conditions deemed necessary to provide for the safety of the public and other users of the land, and upon initial payment of the annual fee, which shall be at the rate of $2 per acre or fraction of acre included in the permit.

(iii) The permit shall also provide that the record owner of the reserved right or the successors, assigns, or lessees thereof, will repair or replace any improvements damaged or destroyed by the mining operations and restore the land to a condition safe and reasonably serviceable for authorized programs of the Forest Service, and shall provide for a bond in sufficient amount as determined necessary by the Forest Service to guarantee such repair, replacement or restoration.

(iv) Failure to comply with the terms and conditions of the permit shall be cause for revocation of all rights to use, occupy, or disturb the surface of the lands covered by the permit, but in the event of revocation, a new permit shall be issued upon application when the causes for revocation of the preceding permit have been satisfactorily remedied and the United States has been reimbursed for any damages it has incurred from the noncompliance.

(3) All structures, other improvements, and materials shall be removed from the lands within one year after the date of revocation of the permit.

(4) Timber and/or young growth cut or destroyed in connection with exercise of the reserved right shall be paid for at rates determined by the Forest Service to be fair and equitable for comparable timber and/or young growth in the locality. All slash resulting from cutting or destruction of timber or young growth shall be disposed of as required by the Forest Service.

(5) In the prospecting for, mining, and removal of reserved minerals, oil, gas, or other inorganic substances all reasonable provisions shall be made for the disposal of tailings, dumpage, and other deleterious materials or substances in such manner as to prevent obstruction, pollution, or deterioration of water resources.

(6) Nothing herein contained shall be construed to exempt operators or the mining operations from any requirements of applicable State laws nor from compliance with or conformity to any requirement of any law which later may be enacted and which otherwise would be applicable.

(7) While any activities and/or operations incident to the exercise of the reserved rights are in progress, the operators, contractors, subcontractors, and any employees thereof shall use due diligence in the prevention and

suppression of fires, and shall comply with all rules and regulations applicable to the land.

(b) The conditions, rules and regulations set forth in paragraphs (a) (1) through (7) of this section shall not apply to reservations contained in conveyances of lands to the United States under the Act of March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82; 16 U.S.C. 555).

(c) In cases where a State, or an agency, or a political subdivision thereof, reserves minerals, oil, gas, or other inorganic substances, in the conveyance of land to the United States under authorized programs of the Forest Service and there are provisions in the laws of such State or in conditions, rules and regulations promulgated by such State, agency or political subdivision thereof, which the Chief, Forest Service, determines are adequate to protect the interest of the United States in the event of the exercise of such reservation, the Chief, Forest Service, is hereby authorized, in his discretion, to subject the exercise of the reservation to such statutory provisions or such conditions, rules and regulations in lieu of the conditions, rules and regulations set forth in paragraphs (a) (1) through (7) of this section. In that event, such statutory provisions or such conditions, rules and regulations shall be expressed in and made a part of the deed of conveyance to the United States and the reservation shall be exercised thereunder and in obedience thereto.

All regulations heretofore issued by the Secretary of Agriculture to govern the exercise of mineral rights reserved in conveyances of lands to the United States under authorized programs of the Forest Service shall continue to be effective in the cases to which they are applicable, but are hereby superseded as to mineral rights hereafter reserved in conveyances under such programs.

[28 FR 4440, May 3, 1963, as amended at 78 FR 33724, June 5, 2013]

RIGHTS OF GRANTORS

### § 251.17 Grantor's right to occupy and use lands conveyed to the United States.

Except as otherwise provided in paragraph (h) of this section, in conveyances of lands to the United States under authorized programs of the Forest Service, where owners reserve the right to occupy and use the land for the purposes of residence, agriculture, industry, or commerce, said reservations shall be subject to the following conditions, rules and regulations which shall be expressed in and made a part of the deed of conveyance to the United States and such reservations shall be exercised thereunder and in obedience thereto:

(a) Except when provided otherwise by statute, the reservation so created shall not be assigned, used, or occupied by anyone other than the grantor without the consent of the United States.

(b) All reasonable precautions shall be taken by the grantor and all persons acting for or claiming under him to prevent and suppress forest fires upon or threatening the premises or other adjacent lands of the United States, and any person failing to comply with this requirement shall be responsible for any damages sustained by the United States by reason thereof.

(c) The premises shall not be used or permitted to be used, without the written consent of the United States, for any purpose or purposes other than those specified in the instrument creating the reservation.

(d) The grantor and all persons acting for or claiming under him shall maintain the premises and all buildings and structures thereon in proper repair and sanitation and shall comply with the National Forest laws and regulations and the laws and lawful orders of the State in which the premises are located.

(e) Except when provided otherwise by statute, the reservation shall terminate: (1) Upon the expiration of the period named in the deed; (2) upon failure for a period of more than one calendar year to use and occupy the premises for the purposes named in the deed; (3) by use and occupancy for unlawful purposes or for purposes other than those

specified in the deed; and (4) by voluntary written relinquishment by the owner.

(f) Upon the termination of the reservation the owners of personal property remaining on the premises shall remove same within a period of three months, and all such property not so removed shall become the property of the United States except that when such removal is prevented by conditions beyond the control of the owners the period shall be extended in writing by the Forest Service to allow a reasonable time for said removal, but in no event longer than one year.

(g) The said reservation shall be subject to rights-of-way for the use of the United States or its permittees, upon, across, or through the said land, as may hereafter be required for the erection, construction, maintenance and operation of public utility systems over all or parts thereof, or for the construction and maintenance of any improvements necessary for the good administration and protection of the National Forests, and shall be subject to the right of officials or employees of the Forest Service to inspect the premises, or any part thereof, at all reasonable times and as often as deemed necessary in the performance of official duties in respect to the premises.

(h) The conditions, rules, and regulations set forth in paragraphs (a) through (g) of this section shall not apply to reservations contained in conveyances of lands to the United States under the Act of March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82; 16 U.S.C. 555).

[33 FR 11452, Aug. 13, 1968, as amended at 36 FR 156, Jan. 6, 1971]

### § 251.18 Rights-of-way reserved by the grantor on lands conveyed to the United States.

This section governs the use, occupancy, and operation of rights-of-way reserved by a grantor of lands to the United States.

(a) Brush and refuse resulting from the exercise of the right-of-way reservation shall be disposed of to the satisfaction of the Forest Officer in charge.

(b) Timber cut and destroyed in the exercise of the right-of-way reservation shall be paid for at rates to be prescribed by the Forest Officer in charge, which rates shall be the usual stumpage prices charged in the locality in sales of national forest timber of the same kind or species; for injury to timber, second growth, and reproduction, the amount of actual damage shall be ascertained by the Forest Supervisor according to the rules applicable in such cases.

(c) All improvements built or maintained upon the right-of-way shall be kept in an orderly, safe and sanitary condition. Failure to maintain such conditions shall be cause for the termination of the reservation after 30 days' notice in writing to the occupant or user that unsatisfactory conditions exist and that the Department intends to terminate all rights under the reservation unless such conditions are forthwith corrected to the satisfaction of the Regional Forester.

(d) Upon the abandonment of a reserved right-of-way, either by formal release, by termination, or by non-use for a period of one calendar year, all improvements thereon not the property of the United States shall be removed therefrom within three months from the date of the abandonment, otherwise such improvements shall vest in and become the property of the United States.

(e) All reasonable precautions to prevent and suppress forest fires shall be taken by the grantor and all persons acting for or claiming under him; suitable crossings shall be constructed by grantor and/or said persons where the reserved right-of-way intersects existing roads and trails; borrow pits shall not be opened outside of the immediate graded section except under a special use permit from the Forest Supervisor.

(f) Officers of the Forest Service shall have free ingress and egress on and over the reserved rights-of-way for all purposes necessary and incidental to the protection and administration of the national forest.

[3 FR 1953, Aug. 9, 1938]

### § 251.19 Exercise of water rights reserved by the grantor of lands conveyed to the United States.

This section governs the exercise of water and related rights reserved by

the grantor of lands conveyed to the United States under the provisions of the act of March 1, 1911 (36 Stat. 961).

(a) All reasonable precautions shall be taken by the grantor and all persons acting for or claiming under him to prevent and suppress forest fires upon or threatening the premises or other adjacent lands of the United States, and any person failing to comply with this requirement shall be responsible for any damages sustained by the United States by reason thereof.

(b) All slash and debris resulting from the cutting and removal of timber shall be disposed of as directed by the Forest Officer in charge.

(c) Flowage and reservoir areas shall be cleared of timber and debris, in a manner satisfactory to the Forest Supervisor, or in accordance with a special agreement approved by him. Timber cut and destroyed in the exercise of the reserved rights shall be paid for at rates to be prescribed by the Forest Officer in charge, which rates shall be the usual stumpage price charged in the locality.

(d) The water surface created shall be open to the Forest Service and its permittees when such use does not interfere with the original purpose of the development.

(e) The water surface shall be open to fishing by the public in accordance with State laws when such use does not interfere with the original purpose of the development.

(f) Plans for dams and supplemental structures, impounding or controlling more than 10 acre-feet of water or with a head in excess of 6 feet, shall be approved by the Regional Engineer of the Forest Service before construction shall begin.

[3 FR 1953, Aug. 9, 1938]

DESIGNATION OF AREAS

### § 251.23 Experimental areas and research natural areas.

The Chief of the Forest Service shall establish and permanently record a series of areas on National Forest land to be known as experimental forests or experimental ranges, sufficient in number and size to provide adequately for the research necessary to serve as a basis for the management of forest and range land in each forest region. Also, when appropriate, the Chief shall establish a series of research natural areas, sufficient in number and size to illustrate adequately or typify for research or educational purposes, the important forest and range types in each forest region, as well as other plant communities that have special or unique characteristics of scientific interest and importance. Research Natural Areas will be retained in a virgin or unmodified condition except where measures are required to maintain a plant community which the area is intended to represent. Within areas designated by this regulation, occupancy under a special-use permit shall not be allowed, nor the construction of permanent improvements permitted except improvements required in connection with their experimental use, unless authorized by the Chief of the Forest Service.

[31 FR 5072, Mar. 29, 1966]

PETERSBURG WATERSHED

### § 251.35 Petersburg watershed.

(a) Except as authorized in paragraphs (b) and (c), access to lands within the Petersburg watershed, Tongass National Forest, as described in the Act of October 17, 1940 (54 Stat. 1197), is prohibited.

(b) Access to lands within the Petersburg watershed is hereby authorized, without further written approval, for the following routine purposes:

(1) The discharge of official duties related to management of the Tongass National Forest by Federal employees, holders of Forest Service contracts, or Forest Service agents;

(2) The operation, maintenance, and improvement of the municipal water system by Federal and State officials and employees of the city of Petersburg; and

(3) Public recreational use of the Raven's Roost Trail for access to and from the Raven's Roost public recreation cabin and the Alpine Recreation Area.

(c) Any person who wishes to enter upon the lands within the watershed for purposes other than those listed in paragraph (b) must obtain a permit that has been signed by the appropriate

city official and countersigned by the District Ranger.

(d) Unauthorized entrance upon lands within the watershed is subject to punishment as provided in 36 CFR 261.1b.

(e) The Forest Supervisor of the Stikine Area of the Tongass National Forest may authorize the removal of timber from the watershed under the regulations governing disposal of National Forest timber (36 CFR part 223). In any removal of timber from the watershed, the Forest Supervisor shall provide adequate safeguards for the protection of the Petersburg municipal water supply.

[53 FR 26595, July 14, 1988]

## Subpart B—Special Uses

AUTHORITY: 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1772.

SOURCE: 45 FR 38327, June 6, 1980, unless otherwise noted.

### § 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing sharing use of roads (§ 212.9); grazing and livestock use (part 222); the sale and disposal of timber and special forest products, such as greens, mushrooms, and medicinal plants (part 223); and minerals (part 228) are designated ''special uses.'' Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer, unless that requirement is waived by paragraphs (c) through (e)(3) of this section.

(b) Nothing in this section prohibits the temporary occupancy of National Forest System lands without a special use authorization when necessary for the protection of life and property in emergencies, if a special use authorization is applied for and obtained at the earliest opportunity, unless waived pursuant to paragraphs (c) through (e)(3) of this section. The authorized officer may, pursuant to § 251.56 of this subpart, impose in that authorization such terms and conditions as are deemed necessary or appropriate and may require changes to the temporary occupancy to conform to those terms and conditions. Those temporarily occupying National Forest System lands without a special use authorization assume liability, and must indemnify the United States, for all injury, loss, or damage arising in connection with the temporary occupancy.

(c) A special use authorization is not required for noncommercial recreational activities, such as camping, picnicking, hiking, fishing, boating, hunting, and horseback riding, or for noncommercial activities involving the expression of views, such as assemblies, meetings, demonstrations, and parades, unless:

(1) The proposed use is a noncommercial group use as defined in § 251.51 of this subpart;

(2) The proposed use is still photography as defined in § 251.51 of this subpart; or

(3) Authorization of that use is required by an order issued under § 261.50 or by a regulation issued under § 261.70 of this chapter.

(d) Travel on any National Forest System road shall comply with all Federal and State laws governing the road to be used and does not require a special use authorization, unless:

(1) The travel is for the purpose of engaging in a noncommercial group use, outfitting or guiding, a recreation event, commercial filming, or still photography, as defined in § 251.51 of this subpart, or for a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use under § 251.110(d) of this part; or

(2) Authorization of that use is required by an order issued under § 261.50 or by a regulation issued under § 261.70 of this chapter.

(e) For proposed uses other than a noncommercial group use, a special use authorization is not required if, based upon review of a proposal, the authorized officer determines that the proposed use has one or more of the following characteristics:

(1) The proposed use will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish

terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations;

(2) The proposed use is regulated by a State agency or another Federal agency in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with National Forest System programs or operations; or

(3) The proposed use is not situated in a congressionally designated wilderness area, and is a routine operation or maintenance activity within the scope of a statutory right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976) or for a ditch or canal pursuant to R.S. 2339 (43 U.S.C. 661, as amended), or the proposed use is a routine operation or maintenance activity within the express scope of a documented linear right-of-way.

[69 FR 41964, July 13, 2004]

### § 251.51 Definitions.

*Applicant*—any individual or entity that applies for a special use authorization.

*Authorized officer*—any employee of the Forest Service to whom has been delegated the authority to perform the duties described in this part.

*Chief*—the Chief of the Forest Service.

*Commercial filming*—use of motion picture, videotaping, sound recording, or any other moving image or audio recording equipment on National Forest System lands that involves the advertisement of a product or service, the creation of a product for sale, or the use of models, actors, sets, or props, but not including activities associated with broadcasting breaking news, as defined in FSH 2709.11, chapter 40.

*Commercial use or activity*—any use or activity on National Forest System lands (a) where an entry or participation fee is charged, or (b) where the primary purpose is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit.

*Easement*—a type of special use authorization (usually granted for linear rights-of-way) that is utilized in those situations where a conveyance of a limited and transferable interest in National Forest System land is necessary or desirable to serve or facilitate authorized long-term uses, and that may be compensable according to its terms.

*Forest road or trail.* A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

*Group use*—an activity conducted on National Forest System lands that involves a group of 75 or more people, either as participants or spectators.

*Guiding*—providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups on National Forest System lands.

*Hazard tree*—for purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter ''vegetation'' (whether located on NFS lands inside or outside the linear right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the owner or operator to be:

(1) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and

(2) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.

*Holder*—an individual or entity that holds a valid special use authorization.

*Lease*—a type of special use authorization (usually granted for uses other than linear rights-of-way) that is used when substantial capital investment is required and when conveyance of a conditional and transferable interest in National Forest System lands is necessary or desirable to serve or facilitate authorized long-term uses, and that may be revocable and compensable according to its terms.

*Linear right-of-way*—an authorized right-of-way for a linear facility, such as a road, trail, pipeline, powerline facility, fence, water transmission facility, or fiber optic cable, whose linear boundary is delineated by its legal description.

*Maintenance*. (1) *Emergency maintenance*—immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

(2) *Non-routine maintenance*—realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement.

(3) *Routine maintenance*—repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (*e.g.*, insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

*Major category*—A processing or monitoring category requiring more than 50 hours of agency time to process an application for a special use authorization (processing category 6 and, in certain situations, processing category 5) or more than 50 hours of agency time to monitor compliance with the terms and conditions of an authorization (monitoring category 6 and, in certain situations, monitoring category 5). Major categories usually require documentation of environmental and associated impacts in an environmental assessment and may require an environmental impact statement.

*Maximum operating sag*—The theoretical position of a powerline facility conductor (wire) when operating at 100 degrees Celsius, which must be accounted for when determining minimum vegetation clearance distance.

*Minimum vegetation clearance distance*—the calculated distance (stated in feet or meters) that is used to prevent flashover between conductors and vegetation for various altitudes and operating voltages. The MVCD is measured from a conductor's maximum operating sag to vegetation on NFS lands within the linear right-of-way for a powerline facility and on NFS lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the owner or operator uses to determine whether vegetation poses a system reliability hazard to the powerline facility.

*Minor category*—A processing or monitoring category requiring 50 hours or less of agency time to process an application for a special use authorization (processing categories 1 through 4 and, in certain situations, processing category 5) or 50 hours or less of agency time to monitor compliance with the terms and conditions of an authorization (monitoring categories 1 through 4 and, in certain situations, monitoring category 5). Minor categories may require documentation of environmental and associated impacts in an environmental assessment.

*Monitoring*—Actions needed to ensure compliance with the terms and conditions in a special use authorization.

*National Forest System land*—all lands, waters, or interests therein administered by the Forest Service.

*National Forest System road*. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

*NEPA procedures*—the rules, policies, and procedures governing agency compliance with the National Environmental Policy Act set forth in 50 CFR parts 1500–1508, 7 CFR part 1b, Forest Service Manual Chapter 1950, and Forest Service Handbook 1909.15.

*Noncommercial use or activity*—any use or activity that does not involve a commercial use or activity as defined in this section.

*Operating plan or agreement for a powerline facility (hereinafter ''operating plan or agreement'')*—a plan or agreement prepared by the owner or operator of a powerline facility, approved by the authorized officer, and incorporated by reference into the corresponding special use authorization that provides for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of the powerline facility on NFS lands within the linear right-of-way for the powerline facility and on NFS lands adjacent to either side of the linear right-of-way to fell or prune hazard trees and to construct, reconstruct, and maintain access roads and trails, to enhance electric reliability, promote public safety, and avoid fire hazards.

*Outfitting*—renting on or delivering to National Forest System lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment.

*Owner or operator*—for purposes of a powerline facility, the owner or operator of the powerline facility or a contractor or other agent engaged by the owner or operator of the powerline facility.

*Permit*—a special use authorization which provides permission, without conveying an interest in land, to occupy and use National Forest System land or facilities for specified purposes, and which is both revocable and terminable.

*Powerline facility*. One or more electric distribution or transmission lines authorized by a special use authorization, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the owner or operator; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.

*Recreation event*—a recreational activity conducted on National Forest System lands for which an entry or participation fee is charged, such as animal, vehicle, or boat races; dog trials; fishing contests; rodeos; adventure games; and fairs.

*Recreation Residence Lot*—a parcel of National Forest System land on which a holder is authorized to build, use, occupy, and maintain a recreation residence and related improvements. A recreation residence lot is considered to be in its natural, native state at the time when the Forest Service first permitted its use for a recreation residence. A recreation residence lot is not necessarily confined to the platted boundaries shown on a tract map or permit area map. A recreation residence lot includes the physical area of all National Forest System land being used or occupied by a recreation residence permit holder, including, but not limited to, land being occupied by ancillary facilities and uses owned, operated, or maintained by the holder, such as septic systems, water systems, boat houses and docks, major vegetative modifications, and so forth.

*Revocation*—the cessation, in whole or in part, of a special use authorization by action of an authorized officer before the end of the specified period of use or occupancy for reasons set forth in § 251.60(a)(1)(i), (a)(2)(i), (g), and (h) of this subpart.

*Right-of-way*—land authorized to be used or occupied for the construction, operation, maintenance and termination of a project or facility passing over, upon, under or through such land.

*Secretary*—the Secretary of Agriculture.

*Ski area*—a site and associated facilities that has been primarily developed for alpine or Nordic skiing and other snow sports, but may also include, in appropriate circumstances, facilities necessary for other seasonal or year-

round natural resource-based recreation activities, provided that a preponderance of revenue generated by the ski area derives from the sale of alpine and Nordic ski area passes and lift tickets, revenue from alpine, Nordic, and other snow sport instruction, and gross revenue from ancillary facilities that support alpine or Nordic skiing and other snow sports.

*Sound business management principles*—a phrase that refers to accepted industry practices or methods of establishing fees and charges that are used or applied by the Forest Service to help establish the appropriate charge for a special use. Examples of such practices and methods include, but are not limited to, appraisals, fee schedules, competitive bidding, negotiation of fees, and application of other economic factors, such as cost efficiency, supply and demand, and administrative costs.

*Special use authorization*—a written permit, term permit, lease, or easement that authorizes use or occupancy of National Forest System lands and specifies the terms and conditions under which the use or occupancy may occur.

*Still photography*—use of still photographic equipment on National Forest System lands that takes place at a location where members of the public generally are not allowed or where additional administrative costs are likely, or uses models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities.

*Suspension*—a temporary revocation of a special use authorization.

*Termination*—the cessation of a special use authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in the authorization, which does not require a decision by an authorized officer to take effect, such as expiration of the authorized term; change in ownership or control of the authorized improvements; or change in ownership or control of the holder of the authorization.

*Term permit*—a special use authorization to occupy and use National Forest System land, other than rights-of-way under § 251.53(l) of this part, for a specified period which is both revocable and compensable according to its terms.

*Vegetation management.* (1) *Emergency vegetation management*—unplanned felling and pruning of vegetation on National Forest System lands within the linear right-of-way for a powerline facility and unplanned felling and pruning of hazard trees on abutting National Forest System lands that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.

(2) *Non-emergency (routine) vegetation management*—planned actions as described in an operating plan or agreement periodically taken to fell or prune vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on abutting National Forest System lands to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

[45 FR 38327, June 6, 1980, as amended at 49 FR 25449, June 21, 1984; 53 FR 16550, May 10, 1988; 54 FR 22593, May 25, 1989; 60 FR 45293, Aug. 30, 1995; 60 FR 54409, Oct. 23, 1995; 63 FR 65964, Nov. 30, 1998; 69 FR 41965, July 13, 2004; 70 FR 68290, Nov. 9, 2005; 71 FR 8913, Feb. 21, 2006; 71 FR 16621, Apr. 3, 2006; 74 FR 68381, Dec. 24, 2009; 78 FR 33725, June 5, 2013; 78 FR 38843, June 28, 2013; 85 FR 41392, July 10, 2020; 85 FR 48476, Aug. 11, 2020; 87 FR 7949, Feb. 11, 2022]

### § 251.52 Delegation of authority.

Special use authorizations shall be issued, granted, amended, renewed, suspended, terminated, or revoked by the Chief, or through delegation, by the Regional Forester, Forest Supervisor, District Ranger or other forest officer, and shall be in such form and contain such terms, stipulations, conditions, and agreements as may be required by the regulations of the Secretary and the instructions of the Chief (7 CFR 2.60; 36 CFR part 200, subpart B).

### § 251.53 Authorities.

Subject to any limitations contained in applicable statutes, the Chief of the

Forest Service, or other Agency official to whom such authority is delegated, may issue special use authorizations for National Forest System land under the authorities cited and for the types of use specified in this section as follows:

(a) Permits governing occupancy and use, including group events and distribution of noncommercial printed materials, under the act of June 4, 1897, 30 Stat. 35 (16 U.S.C. 551);

(b) Leases under the Act of February 28, 1899, 30 Stat. 908 (16 U.S.C. 495) for public sanitariums or hotels near or adjacent to mineral springs;

(c) Permits under the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C. 431, *et seq.*), for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity in conformity with the rules and regulations prescribed by the Secretaries of the Interior, Agriculture, and War, December 28, 1906 (43 CFR part 3);

(d) Term permits under the Act of March 4, 1915, 38 Stat. 1101, as amended, 70 Stat. 708 (16 U.S.C. 497) for periods not over 30 years and (1) for not over 80 acres for (i) hotels, resorts, and other structures and facilities for recreation, public convenience, or safety; (ii) industrial or commercial purposes, and (iii) education or public activities; and (2) for not over 5 acres for summer homes and stores;

(e) Permits or easements for a right-of-way for a pipeline for the transportation of oil, gas, or oil or gas products, where no Federal land besides National Forest System lands is required, and permits for the temporary use of additional National Forest System lands necessary for construction, operation, maintenance, or termination of a pipeline or to protect the natural environment or public safety under section 28 of the Mineral Leasing Act, 41 Stat. 449, as amended (30 U.S.C 185);

(f) Permits, term permits, and easements in the National Grasslands and other lands acquired or administered under title III, Act of July 22, 1937, 50 Stat. 525, as amended, (7 U.S.C. 1011(d));

(g) Permits under section 7 of the Act of April 24, 1950, 64 Stat. 84 (16 U.S.C. 580d) for periods not over 30 years for the use of structures or improvements under the administrative control of the Forest Service and land used in connection therewith;

(h) Permits, term permits, leases, or easements as authorized by the Act of September 3, 1954, 68 Stat. 1146 (43 U.S.C. 931c, 931d), to States, counties, cities, towns, townships, municipal corporations, or other public agencies for periods not over 30 years, at prices representing the fair market value, fixed by the Chief, through appraisal for the purpose of constructing and maintaining on such lands public buildings or other public works;

(i) Permits under the Wilderness Act of September 3, 1964, 78 Stat. 890 (16 U.S.C. 1131–1136) for temporary structures and commercial services and for access to valid mining claims or other valid occupancies and to surrounded State or private land within designated wilderness (see part 293 of this chapter);

(j) Temporary or permanent easements under the Act of October 13, 1964, 78 Stat. 1089 (16 U.S.C. 532–538) for road rights-of-way over lands and interests in land administered by the Forest Service (see § 212.10 of this chapter);

(k) Special recreation permits issued under section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)), for specialized recreation uses of National Forest System lands, such as group activities, recreation events, and motorized recreational vehicle use.

(l) Permits, leases and easements under the Federal Land Policy and Management Act of 1976, 90 Stat. 2776 (43 U.S.C. 1761–1771) for rights-of-way for:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of

such materials in connection therewith;

(4) Systems and related facilities for generation, transmission, and distribution of electric energy, except that the applicant, in addition to obtaining a Forest Service special use authorization, shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935, as amended, 49 Stat. 838 (16 U.S.C. 791a, *et seq.*);

(5) Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through National Forest System lands; and

(8) Any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom;

(m) Permits under the Archaeological Resources Protection Act of 1979, 93 Stat. 721 (16 U.S.C. 470aa).

(n) Operation of nordic and alpine ski areas and facilities for up to 40 years and encompassing such acreage as the Forest Officer determines sufficient and appropriate as authorized by the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 49 FR 25449, June 21, 1984; 53 FR 16550, May 10, 1988; 54 FR 22594, May 25, 1989; 70 FR 70498, Nov. 22, 2005; 74 FR 68381, Dec. 24, 2009]

### § 251.54 Proposal and application requirements and procedures.

(a) *Early notice.* When an individual or entity proposes to occupy and use National Forest System lands, the proponent is required to contact the Forest Service office(s) responsible for the management of the affected land as early as possible in advance of the proposed use.

(b) *Filing proposals.* Proposals for special uses must be filed in writing with or presented orally to the District Ranger or Forest Supervisor having jurisdiction over the affected land (§ 200.2 of this chapter), except as follows:

(1) Proposals for projects on lands under the jurisdiction of two or more administrative units of the Forest Service may be filed at the most convenient Forest Service office having jurisdiction over part of the project, and the proponent will be notified where to direct subsequent communications;

(2) Proposals for cost-share and other road easements to be issued under § 251.53(j) must be filed in accordance with regulations in § 212.10(c) and (d) of this chapter; and

(3) Proposals for oil and gas pipeline rights-of-way crossing Federal lands under the jurisdiction of two or more Federal agencies must be filed with the State Office, Bureau of Land Management, pursuant to regulations at 43 CFR part 2882.

(c) *Rights of proponents.* A proposal to obtain a special use authorization does not grant any right or privilege to use National Forest System lands. Rights or privileges to occupy and use National Forest System lands under this subpart are conveyed only through issuance of a special use authorization.

(d) *Proposal content*—(1) *Proponent identification.* Any proponent for a special use authorization must provide the proponent's name and mailing address, and, if the proponent is not an individual, the name and address of the proponent's agent who is authorized to receive notice of actions pertaining to the proposal.

(2) *Required information*—(i) *Noncommercial group uses.* Paragraphs (d)(3) through (d)(5) of this section do not apply to proposals for noncommercial group uses. A proponent for noncommercial group uses shall provide the following:

(A) A description of the proposed activity;

(B) The location and a description of the National Forest System lands and facilities the proponent would like to use;

(C) The estimated number of participants and spectators;

(D) The starting and ending time and date of the proposed activity; and

(E) The name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the proponent.

(ii) *All other special uses.* At a minimum, proposals for special uses other than noncommercial group uses must include the information contained in paragraphs (d)(3) through (d)(5) of this section. In addition, if requested by an authorized officer, a proponent in one of the following categories must furnish the information specified for that category:

(A) If the proponent is a State or local government agency: a copy of the authorization under which the proposal is made;

(B) If the proponent is a public corporation: the statute or other authority under which it was organized;

(C) If the proponent is a Federal Government agency: the title of the agency official delegated the authority to file the proposal;

(D) If the proponent is a private corporation:

(*1*) Evidence of incorporation and its current good standing;

(*2*) If reasonably obtainable by the proponent, the name and address of each shareholder owning three percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote;

(*3*) The name and address of each affiliate of the entity;

(*4*) In the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the entity owns either directly or indirectly; or

(*5*) In the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly by the affiliate; or

(E) If the proponent is a partnership, association, or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

(3) *Technical and financial capability.* The proponent is required to provide sufficient evidence to satisfy the authorized officer that the proponent has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project for which an authorization is requested, and the proponent is otherwise acceptable.

(4) *Project description.* Except for requests for planning permits for a major development, a proponent must provide a project description, including maps and appropriate resource information, in sufficient detail to enable the authorized officer to determine the feasibility of a proposed project or activity, any benefits to be provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and the proposal's compliance with applicable laws, regulations, and orders.

(5) *Additional information.* The authorized officer may require any other information and data necessary to determine feasibility of a project or activity proposed; compliance with applicable laws, regulations, and orders; compliance with requirements for associated clearances, certificates, permits, or licenses; and suitable terms and conditions to be included in the authorization. The authorized officer shall make requests for any additional information in writing.

(e) *Pre-application actions*—(1) *Initial screening.* Upon receipt of a request for any proposed use other than for noncommercial group use, the authorized officer shall screen the proposal to ensure that the use meets the following minimum requirements applicable to all special uses:

(i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.

(ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan

prepared under the National Forest Management Act and 36 CFR part 219.

(iii) The proposed use will not pose a serious or substantial risk to public health or safety.

(iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.

(v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.

(vi) The proponent does not have any delinquent debt owed to the Forest Service under terms and conditions of a prior or existing authorization, unless such debt results from a decision on an administrative appeal or from a fee review and the proponent is current with the payment schedule.

(vii) The proposed use does not involve gambling or providing of sexually oriented commercial services, even if permitted under State law.

(viii) The proposed use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded.

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

(2) *Results of initial screening.* Any proposed use other than a noncommercial group use that does not meet all of the minimum requirements of paragraphs (e)(1)(i)-(ix) of this section shall not receive further evaluation and processing. In such event, the authorized officer shall advise the proponent that the use does not meet the minimum requirements. If the proposal was submitted orally, the authorized officer may respond orally. If the proposal was made in writing, the authorized officer shall notify the proponent in writing that the proposed use does not meet the minimum requirements and shall simultaneously return the request.

(3) *Guidance and information to proponents.* For proposals for noncommercial group use as well as for those proposals that meet the minimum requirements of paragraphs (e)(1)(i)-(ix), the authorized officer, to the extent practicable, shall provide the proponent guidance and information on the following:

(i) Possible land use conflicts as identified by review of forest land and resource management plans, landownership records, and other readily available sources;

(ii) Proposal and application procedures and probable time requirements;

(iii) Proponent qualifications;

(iv) Applicable fees, charges, bonding, and/or security requirements;

(v) Necessary associated clearances, permits, and licenses;

(vi) Environmental and management considerations;

(vii) Special conditions; and

(viii) identification of on-the-ground investigations which will require temporary use permits.

(4) *Confidentiality.* If requested by the proponent, the authorized officer, or other Forest Service official, to the extent reasonable and authorized by law, shall hold confidential any project and program information revealed during pre-application contacts.

(5) *Second-level screening of proposed uses.* A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration. In order to complete this screening and consideration, the authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects. An authorized officer shall reject any proposal, including a proposal for commercial group uses, if, upon further consideration, the officer determines that:

(i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or

(ii) The proposed use would not be in the public interest; or

(iii) The proponent is not qualified; or

(iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply

with the terms and conditions of the authorization; or

(v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

(6) *NEPA compliance for second-level screening process*. A request for a special use authorization that does not meet the criteria established in paragraphs (e)(5)(i) through (e)(5)(v) of this section does not constitute an agency proposal as defined in 40 CFR 1508.23 and, therefore, does not require environmental analysis and documentation.

(f) *Special requirements for certain proposals*—(1) *Oil and gas pipeline rights-of-way*. These proposals must include the citizenship of the proponent(s) and disclose the identity of its participants as follows:

(i) Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States, shall not own an appreciable interest in any oil and gas pipeline right-of-way or associated permit; and

(ii) The authorized officer shall promptly notify the House Committee on Resources and the Senate Committee on Energy and Natural Resources upon receipt of a proposal for a right-of-way for a pipeline 24 inches or more in diameter, and no right-of-way for that pipeline shall be granted until notice of intention to grant the right-of-way, together with the authorized officer's detailed findings as to the term and conditions the authorized officer proposes to impose, have been submitted to the committees.

(2) *Major development*. Proponents of a major development may submit a request for a planning permit of up to 10 years in duration. Requests for a planning permit must include the information contained in paragraphs (d)(1) through (d)(3) of this section. Upon completion of a master development plan developed under a planning permit, proponents may then submit a request for a long-term authorization to construct and operate the development. At a minimum, a request for a long-term permit for a major development must include the information contained in paragraphs (d)(1) and (d)(2)(ii) through (d)(5) of this section. Issuance of a planning permit does not prejudice approval or denial of a subsequent request for a special use permit for the development.

(g) *Application processing and response*—(1) *Acceptance of applications*. Except for proposals for noncommercial group uses, if a request does not meet the criteria of both screening processes or is subsequently denied, the proponent must be notified with a written explanation of the rejection or denial and any written proposal returned to the proponent. If a request for a proposed use meets the criteria of both the initial and second-level screening processes as described in paragraph (e) of this section, the authorized officer shall notify the proponent that the agency is prepared to accept a written formal application for a special use authorization and shall, as appropriate or necessary, provide the proponent guidance and information of the type described in paragraphs (e)(3)(i) through (e)(3)(viii) of this section.

(2) *Processing applications*. (i) Upon acceptance of an application for a special use authorization other than a planning permit, the authorized officer shall evaluate the proposed use for the requested site, including effects on the environment. The authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects.

(ii) Federal, State, and local government agencies and the public shall receive adequate notice and an opportunity to comment upon a special use proposal accepted as a formal application in accordance with Forest Service NEPA procedures.

(iii) The authorized officer shall give due deference to the findings of another agency such as a Public Utility Commission, the Federal Regulatory Energy Commission, or the Interstate Commerce Commission in lieu of another detailed finding. If this information is already on file with the Forest Service, it need not be refiled, if reference is made to the previous filing date, place, and case number.

(iv) Applications for noncommercial group uses must be received at least 72

hours in advance of the proposed activity. Applications for noncommercial group uses shall be processed in order of receipt, and the use of a particular area shall be allocated in order of receipt of fully executed applications, subject to any relevant limitations set forth in this section.

(v) For applications for planning permits, including those issued for a major development as described in paragraph (f)(3) of this section, the authorized officer shall assess only the applicant's financial and technical qualifications and determine compliance with other applicable laws, regulations, and orders. Planning permits may be categorically excluded from documentation in an environmental assessment or environmental impact statement pursuant to Forest Service Handbook 1909.15 (36 CFR 200.4).

(3) *Response to applications for noncommercial group uses.* (i) All applications for noncommercial group uses shall be deemed granted and an authorization shall be issued for those uses pursuant to the determination as set forth below, unless applications are denied within 48 hours of receipt. Where an application for a noncommercial group use has been granted or is deemed to have been granted and an authorization has been issued under this paragraph, an authorized officer may revoke that authorization only as provided under § 251.60(a)(1)(i).

(ii) An authorized officer shall grant an application for a special use authorization for a noncommercial group use upon a determination that:

(A) Authorization of the proposed activity is not prohibited by the rules at 36 CFR part 261, subpart B, or by Federal, State, or local law unrelated to the content of expressive activity;

(B) Authorization of the proposed activity is consistent or can be made consistent with the standards and guidelines in the applicable forest land and resource management plan required under the National Forest Management Act and 36 CFR part 219;

(C) The proposed activity does not materially impact the characteristics or functions of the environmentally sensitive resources or lands identified in Forest Service Handbook 1909.15, chapter 30;

(D) The proposed activity will not delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands, including but not limited to uses and activities authorized under parts 222, 223, 228, and 251 of this chapter;

(E) The proposed activity does not violate State and local public health laws and regulations as applied to the proposed site. Issues addressed by State and local public health laws and regulations as applied to the proposed site include but are not limited to:

(*1*) The sufficiency of sanitation facilities;

(*2*) The sufficiency of waste-disposal facilities;

(*3*) The availability of sufficient potable drinking water;

(*4*) The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site; and

(*5*) The risk of contamination of the water supply;

(F) The proposed activity will not pose a substantial danger to public safety. Considerations of public safety must not include concerns about possible reaction to the users' identity or beliefs from non-members of the group that is seeking an authorization and shall be limited to the following:

(*1*) The potential for physical injury to other forest users from the proposed activity;

(*2*) The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;

(*3*) The potential for physical injury to users from scheduled or existing uses or activities on National Forest System lands; and

(*4*) The adequacy of ingress and egress in case of an emergency;

(G) The proposed activity does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded; and

(H) A person or persons 21 years of age or older have been designated to sign and do sign a special use authorization on behalf of the applicant.

(iii) If an authorized officer denies an application because it does not meet the criteria in paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section, the authorized officer shall notify the applicant in writing of the reasons for the denial. If an alternative time, place, or manner will allow the applicant to meet the eight evaluation criteria, an authorized officer shall offer that alternative. If an application is denied solely under paragraph (g)(3)(ii)(C) of this section and all alternatives suggested are unacceptable to the applicant, the authorized officer shall offer to have completed the requisite environmental and other analyses for the requested site. A decision to grant or deny the application for which an environmental assessment or an environmental impact statement is prepared is subject to the notice and appeal procedures at 36 CFR part 215 and shall be made within 48 hours after the decision becomes final under that appeal process. A denial of an application in paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section constitutes final agency action, is not subject to administrative appeal, and is immediately subject to judicial review.

(4) *Response to all other applications*—(i) *General*. Based on evaluation of the information provided by the applicant and other relevant information such as environmental findings, the authorized officer shall decide whether to approve the proposed use, approve the proposed use with modifications, or deny the proposed use. A group of applications for similar uses may be evaluated with one analysis and approved in one decision.

(ii) *Communications use applications*. Within 270 days of acceptance of a proposal as an application for a new communications facility or co-location of a new communications use in or on a facility managed by the Forest Service, or within 270 days of receipt of an application for modification of an existing communications facility or co-located communications use on a facility managed by the Forest Service, the authorized officer shall grant or deny the application and notify the applicant in writing of the grant or denial.

(iii) *Tracking of communications use applications*. The Forest Service shall establish a process in its directive system (36 CFR 200.4) for tracking applications for communications uses that provides for:

(A) Identifying the number of applications received, approved, and denied;

(B) For applications that are denied, describing the reasons for denial; and

(C) Describing the amount of time between receipt of an application and grant or denial of the application.

(5) *Authorization of a special use*—(i) *General*. Upon a decision to approve a special use or a group of similar uses, the authorized officer may issue one or more special use authorizations as defined in § 251.51 of this subpart.

(ii) *Minimum term for communications use authorizations*. The term for a communications use authorization shall be 30 years, unless case-specific circumstances warrant a shorter term.

[63 FR 65964, Nov. 30, 1998, as amended at 74 FR 68381, Dec. 24, 2009; 78 FR 33725, June 5, 2013; 85 FR 19665, Apr. 8, 2020]

### § 251.55 Nature of interest.

(a) A holder is authorized only to occupy such land and structures and conduct such activities as is specified in the special use authorization. The holder may sublet the use and occupancy of the premises and improvements authorized only with the prior written approval of the authorized officer, but the holder shall continue to be responsible for compliance with all conditions of the special use authorization.

(b) All rights not expressly granted are retained by the United States, including but not limited to (1) continuing rights of access to all National Forest System land (including the subsurface and air space); (2) a continuing right of physical entry to any part of the authorized facilities for inspection, monitoring, or for any other purposes or reason consistent with any right or obligation of the United States under any law or regulation; and (3) the right to require common use of the land or to authorize the use by others in any way not inconsistent with a holder's existing rights and privileges after consultation with all parties and agencies involved. When costs can be feasibly allocated and have not been amortized, a

new holder may be required to compensate existing holders for an equitable proportion of the original costs or other expense associated with the common use.

(c) Special use authorizations are subject to all outstanding valid rights.

(d) Each special use authorization will specify the lands to be used or occupied which shall be limited to that which the authorized officer determines: (1) Will be occupied by the facilities authorized; (2) to be necessary for the construction, operation, maintenance, and full utilization of the authorized facilities or the conduct of authorized activities; and, (3) to be necessary to protect the public health and safety and the environment.

(e) The holder will secure permission under applicable law, and pay in advance, the value as determined by the authorized officer for any mineral and vegetative materials (including timber) to be cut, removed, used, or destroyed by the holder from the authorized use area or other National Forest System land. The authorized officer may, in lieu of requiring an advance payment, require the holder to stockpile or stack the material at designated locations for later disposal by the United States.

**§ 251.56 Terms and conditions.**

(a) *General.* (1) Each special use authorization must contain:

(i) Terms and conditions which will:

(A) Carry out the purposes of applicable statutes and rules and regulations issued thereunder;

(B) Minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment;

(C) Require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and

(D) Require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance if those standards are more stringent than applicable Federal standards.

(ii) Such terms and conditions as the authorized officer deems necessary to:

(A) Protect Federal property and economic interests;

(B) Manage efficiently the lands subject to the use and adjacent thereto;

(C) Protect other lawful users of the lands adjacent to or occupied by such use;

(D) Protect lives and property;

(E) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes;

(F) Require siting to cause the least damage to the environment, taking into consideration feasibility and other relevant factors; and

(G) Otherwise protect the public interest.

NOTE TO PARAGRAPH (a)(1)(ii)(G): The Department is making explicit its preexisting understanding of § 251.56(a)(1)(ii)(G) of this subpart in the context of authorizing noncommercial group uses of National Forest System lands. Section 251.56(a)(1)(ii)(G) provides that each special use authorization shall contain such terms and conditions as the authorized officer deems necessary to otherwise protect the public interest. In the context of noncommercial group uses, the Forest Service interprets the term ''public interest'' found in § 251.56(a)(1)(ii)(G) to refer to the three public interests identified by the Forest Service on August 30, 1995. These public interests include the protection of resources and improvements on National Forest System lands, the allocation of space among potential or existing uses and activities, and public health and safety concerns. Under this construction, § 251.56(a)(1)(ii)(G) allows the Forest Service to impose terms and conditions that are not specifically addressed in § 251.56(a)(1)(ii)(A)–(F) but only those that further these public interests. The Forest Service shall implement and enforce § 251.56(a)(1)(ii)(G) in accordance with this interpretation.

(2) Authorizations for use of National Forest System lands may be conditioned to require State, county, or other Federal agency licenses, permits, certificates, or other approval documents, such as a Federal Communication Commission license, a Federal Energy Regulatory Commission license, a State water right, or a county building permit.

(b) *Duration and renewability*—(1) *Requirements.* If appropriate, each special use authorization will specify its duration and renewability. The duration shall be no longer than the authorized officer determines to be necessary to

accomplish the purpose of the authorization and to be reasonable in light of all circumstances concerning the use, including

(i) Resource management direction contained in land management and other plans;

(ii) Public benefits provided;

(iii) Cost and life expectancy of the authorized facilities;

(iv) Financial arrangements for the project; and

(v) The life expectancy of associated facilities, licenses, etc. Except for special use authorizations issued under the National Forest Ski Area Permit Act of 1986, authorizations exceeding 30 years shall provide for revision of terms and conditions at specified intervals to reflect changing times and conditions.

(2) *Ski area permits*. (i) For authorizations issued under the National Forest Ski Area Permit Act of 1986, the authorized officer normally shall issue a ski area authorization for 40 years, if, upon consideration of information submitted by the applicant, the authorized officer finds that the ski area development meets the following standards:

(A) In the case of an existing permit holder, existing on-site investment is of sufficient magnitude to justify authorization for 40 years;

(B) In the case of an existing permit holder, existing investment of capital is in ski-related facilities;

(C) Planned investment capital is directly related to development of ski area facilities and is not for financing regular, ongoing operation and maintenance costs;

(D) Ski facilities requiring long-term investment are, or will be, located predominately on land authorized under a permit;

(E) The number and magnitude of planned facilities, as detailed in a Master Development Plan, clearly require long-term financing and/or operation;

(F) The United States is not the owner of the principal facilities within the authorized ski area.

(ii) A term of less than 40 years shall be authorized for a ski area when the applicant requests a shorter term or when, in the authorized officer's discretion:

(A) Analysis of the information submitted by the applicant indicates that a shorter term is sufficient for financing of the ski area;

(B) The ski area development, whether existing or proposed, does not meet the standards of paragraph (2)(i)(A) through (F) of this section; or

(C) A 40-year authorization would be inconsistent with the approved forest land and resource management plan governing the area (36 CFR part 219).

(c) *Preconstruction approvals*. Forest Service approval of location, design and plans (or standards, if appropriate) of all developments within the authorized area will be required prior to construction.

(d) *Liability*. Holders shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with existing Federal and State laws.

(1) Holders shall also indemnify the United States for any and all injury, loss, or damage, including fire suppression costs, the United States may suffer as a result of claims, demands, losses, or judgments caused by the holder's use or occupancy.

(2) Holders of special use authorizations for high risk use and occupancy, such as, but not limited to, powerlines and oil and gas pipelines, shall be held liable for all injury, loss, or damage, including fire suppression costs, caused by the holder's use or occupancy, without regard to the holder's negligence, provided that maximum liability shall be specified in the special use authorization as determined by a risk assessment, prepared in accordance with established agency procedures, but shall not exceed $1,000,000 for any one occurrence. Liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum shall be determined by the laws governing ordinary negligence of the jurisdiction in which the damage or injury occurred.

(e) *Bonding*. An authorized officer may require the holder of a special use authorization for other than a noncommercial group use to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or by any applicable law, regulation or order.

(f) *Special terms and conditions*—(1) *Public service enterprises.* Special use permits authorizing the operation of public service enterprises shall require that the permittee charge reasonable rates and furnish such services as may be necessary in the public interest, except where such rates and services are regulated by Federal, State or municipal agencies having jurisdiction.

(2) *Common carriers.* Oil and gas pipelines and related facilities authorized under section 28 of the Mineral Leasing Act of 1920, 41 Stat. 449, as amended (30 U.S.C. 185), shall be constructed, operated and maintained as common carriers. The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or nonfederal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased. The common carrier provisions of this section shall not apply to any natural gas pipeline operated (i) by any person subject to regulation under the Natural Gas Act, 52 Stat. 821, as amended, (15 U.S.C. 717) or (ii) by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(g) *Conversion of Ski Area Authorizations.* (1) The Forest Service shall request that all existing permit holders convert existing authorizations for ski areas to a new authorization issued pursuant to the National Forest Ski Area Permit Act.

(2) Any current holder of a ski area permit who wishes to convert an existing permit to one issued pursuant to the National Forest Ski Area Permit Act must submit a written request for the new authorization to the authorized officer.

(3) With the consent of the holder, the authorized officer shall convert the authorization if:

(i) The holder is in compliance with the existing authorization;

(ii) All fees currently due under the existing authorization are paid in full; and

(iii) Any proposed modifications of terms and conditions of the existing authorization included in a request for conversion meet the standards of paragraphs (2)(i) (A) through (F) of this section and the relevant requirements of this subpart.

(4) A holder retains the right to decline a new authorization offered pursuant to this paragraph and to continue to operate under the terms of the existing permit. However, pursuant to the rules at § 251.61 of this subpart, major modifications of existing permits shall require conversion to a permit issued under the authority of the National Forest Ski Area Permit Act, unless the holder provides compelling justification for retaining the existing permit.

(h) *Operating plans and agreements.* An operating plan or agreement consistent with this paragraph (h) is required for new and reauthorized powerline facilities on National Forest System lands.

(1) *Use of operating plans.* Operating plans, rather than agreements, are required for powerline facilities that are subject to the mandatory reliability standards established by the Electric Reliability Organization and that sold more than 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years immediately preceding March 23, 2018.

(2) *Use of operating agreements.* Powerline facilities that are not subject to the mandatory reliability standards established by the Electric Reliability Organization and/or that sold less than or equal to 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years immediately

preceding March 23, 2018, may be subject to an agreement, instead of an operating plan. Powerline facilities that are not subject to an agreement must be subject to an operating plan.

(3) *Existing operating plans and lack of an operating plan*. The authorized officer shall determine, in consultation with the owner or operator of a powerline facility, whether the existing operating plan for that powerline facility is consistent with paragraph (h) of this section and shall notify the owner or operator of that determination. Within 18 months of the date of notification that the existing operating plan is inconsistent with paragraph (h) of this section, the owner or operator shall modify the existing operating plan to be consistent with paragraph (h) of this section or, if eligible, shall prepare a proposed operating agreement and shall submit the proposed modified operating plan or proposed operating agreement to the authorized officer for review and approval. Existing operating plans that are consistent with paragraph (h) of this section do not have to be submitted for reapproval by the authorized officer. If an owner or operator does not have an operating plan, within 18 months of the date of notification from the authorized officer that a proposed operating plan or agreement must be submitted, the owner or operator shall submit to the authorized officer a proposed operating plan or agreement consistent with paragraph (h) of this section for review and approval. The authorized officer shall provide notification of the requirement to submit a proposed modified operating plan or a proposed operating plan or agreement no later than September 30, 2026. The authorized officer has the discretion to determine the sequence of notification, based on factors enumerated in implementing Forest Service directives.

(4) *Development of proposed operating plans and agreements*. Owners and operators may develop a proposed operating plan or agreement on their own or in consultation with the authorized officer.

(5) *Content of operating plans and agreements*. At a minimum, operating plans and agreements shall:

(i) Identify the powerline facility covered by the operating plan or agreement (hereinafter ''covered line'');

(ii) Consider preexisting operating plans and agreements for the covered line;

(iii) Address coordination between the owner or operator and the Forest Service and specify their points of contact;

(iv) Describe the vegetation management, inspection, and operation and maintenance methods that may be used to comply with all applicable law, including fire safety requirements and reliability standards established by the Electric Reliability Organization (owners and operators subject to mandatory reliability standards established by the Electric Reliability Organization or superseding standards may use those standards as part of their operating plan); the applicable land management plan; environmental compliance; resource protection; fire control; routine, non-routine, and emergency maintenance of the covered line; and road and trail construction, reconstruction, and maintenance in support of the covered line;

(v) Identify best management practices for vegetation management; the applicable minimum vegetation clearance distance; procedures for designating, marking, and removing or pruning hazard trees and other vegetation; and road and trail standards and best management practices;

(vi) Address the types of activities that shall be allowed by the owner or operator upon approval of the operating plan or agreement by the authorized officer without additional prior written approval as a new, changed, or additional use or area under 36 CFR 251.61, including routine vegetation management and routine maintenance, and those activities that shall require additional prior written approval from the authorized officer as a new, changed, or additional use or area under 36 CFR 251.61, including but not limited to non-routine maintenance and construction of roads and trails in support of the covered line;

(vii) Specify timeframes for:

(A) The owner or operator to notify the authorized officer of routine, non-routine, and emergency maintenance of

the covered line and routine and emergency vegetation management for the covered line;

(B) The owner or operator to request approval from the authorized officer of non-routine maintenance of and routine vegetation management for the covered line; and

(C) The authorized officer to respond to a request by the owner or operator for approval of non-routine maintenance of and routine vegetation management for the covered line;

(viii) Include the following procedures with regard to whether authorized officer approval is required for vegetation management:

(A) *Routine vegetation management.* Routine vegetation management must have prior written approval from the authorized officer, unless all 3 of the following conditions are met:

(*1*) The owner or operator has submitted a request for approval to the authorized officer in accordance with the specified timeframe in the approved operating plan or agreement;

(*2*) The proposed routine vegetation management is covered by approval of a proposed operating plan or agreement or by subsequent case-by-case environmental analysis and consultation; and

(*3*) The authorized officer has failed to respond to the request in accordance with the specified timeframe in the approved operating plan or agreement.

(B) *Emergency vegetation management.* Emergency vegetation management does not require prior written approval from the authorized officer. The owner or operator shall notify the authorized officer by email of the location and type of emergency vegetation management as soon as practicable, but no later than 24 hours after completion. Within 30 days of completion, the owner or operator shall submit to the authorized officer a written report detailing at a minimum the location, type, and scope of emergency vegetation management conducted, the reason it was conducted, the methods used to conduct it, and the resulting benefit;

(ix) Include the following procedures for modification of an approved operating plan or agreement:

(A) The authorized officer shall give the owner or operator of the covered line prior notice of any changed conditions that warrant a modification of the approved operating plan or agreement;

(B) The authorized officer shall give the owner or operator an opportunity to submit a proposed modification of the approved operating plan or agreement, consistent with the procedures described in paragraph (h)(6) of this section, to address the changed conditions;

(C) The authorized officer shall consider the proposed modification consistent with the procedures described in paragraph (h)(6) of this section; and

(D) The owner or operator may continue to implement the approved operating plan or agreement to the extent it does not directly and adversely affect the conditions prompting the modification; and

(x) For agreements only, reflect the relative financial resources of the owner or operator of the covered line compared to other owners or operators of a powerline facility.

(6) *Review and approval of proposed operating plans and agreements.* Proposed operating plans and agreements shall be submitted to the authorized officer for review and approval in writing before they are implemented. Proposed operating plans and agreements shall be reviewed and approved in accordance with procedures developed jointly by the Forest Service and the United States Department of the Interior, Bureau of Land Management, which shall be consistent with applicable law. These procedures shall:

(i) Provide that a proposed operating plan or agreement or proposed modification to an approved operating plan or agreement shall be approved, to the maximum extent practicable, within 120 days from the date the proposed operating plan or agreement or proposed modification was received by the authorized officer, with the understanding that such factors as the number of proposed operating plans and agreements under review by an authorized officer and the number of powerline facilities covered under a single operating plan or agreement may affect the practicability of approving a proposed operating plan or agreement within 120 days from the date of receipt; and

(ii) Specify a timeframe for submission of applicable Agency comments on a proposed operating plan or agreement.

(7) *Review and expiration of approved operating plans and agreements.* At least every 10 years from the approval date of an operating plan or agreement, the owner or operator shall review and, as necessary or appropriate, propose updates to the operating plan or agreement to ensure consistency with changed conditions. Proposed updates to an approved operating plan or agreement that are deemed significant by the authorized officer shall be treated as proposed modifications and shall be submitted by the owner or operator for review and approval by the authorized officer in accordance with the procedures described in paragraph (h)(6) of this section. Proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the owner or operator and the authorized officer. Upon expiration of a special use authorization for a powerline facility, the owner or operator shall prepare a new proposed operating plan or agreement, either solely or in consultation with the authorized officer, and shall submit it to the authorized officer for review and approval in accordance with the procedures described in paragraph (h)(6) of this section.

(8) *Reporting of requests and responses to requests for routine vegetation management.* The Forest Service shall annually report on its website requests for approval of routine vegetation management pursuant to paragraph (h)(5)(viii)(A) of this section and responses to those requests.

(9) *Strict Liability.* (i) Notwithstanding paragraph (d)(2) of this section, strict liability in tort may not be imposed on an owner or operator for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of an operating plan or agreement or unreasonably failing to adhere to an applicable schedule in an approved operating plan or agreement.

(ii) Notwithstanding paragraph (d)(2) of this section, for 10 years from March 23, 2018, strict liability in tort for injury or damages resulting from activities conducted by an owner or operator under an approved agreement may not exceed $500,000 per incident.

(10) *Forest Service directives.* To enhance the reliability of the electric grid and to reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within or on, powerline facility rights-of-way and by hazard trees on abutting National Forest System lands, the Forest Service shall issue and periodically update directives in its directive system (36 CFR 200.4) to ensure that provisions are appropriately developed and implemented for powerline facility vegetation management, powerline facility inspection, and operation and maintenance of powerline facility rights-of-way. The directives shall:

(i) Be developed in consultation with owners;

(ii) Be compatible with mandatory reliability standards established by the Electric Reliability Organization;

(iii) Consider all applicable law, including fire safety and electrical system reliability requirements, such as reliability standards established by the Electric Reliability Organization;

(iv) Consider the 2016 Memorandum of Understanding on Vegetation Management for Powerline Rights-of-Way Among the Edison Electric Institute, Utility Arborist Association, the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, and the U.S. Environmental Protection Agency, and any successor memorandum of understanding;

(v) Seek to minimize the need for case-by-case approvals for routine vegetation management (including hazard tree felling and pruning), powerline facility inspection, and operation and maintenance of powerline facilities; and

(vi) Provide for prompt and timely review of requests to conduct routine vegetation management.

[45 FR 38327, June 6, 1980, as amended at 49 FR 46895, Nov. 29, 1984; 54 FR 22594, May 25, 1989; 60 FR 45294, Aug. 30, 1995; 63 FR 65967, Nov. 30, 1998; 64 FR 48960, Sept. 9, 1999; 85 FR 41393, July 10, 2020; 85 FR 48476, Aug. 11, 2020; 87 FR 7950, Feb. 11, 2022]

**§ 251.57 Rental fees.**

(a) Except as otherwise provided in this part or when specifically authorized by the Secretary of Agriculture, special use authorizations shall require the payment in advance of an annual rental fee as determined by the authorized officer.

(1) The fee shall be based on the fair market value of the rights and privileges authorized, as determined by appraisal or other sound business management principles.

(2) Where annual fees of one hundred dollars ($100) or less are assessed, the authorized officer may require either annual payment or a payment covering more than one year at a time. If the annual fee is greater than one hundred dollars ($100), holders who are private individuals (that is, acting in an individual capacity), as opposed to those who are commercial, other corporate, or business or government entities, may, at their option, elect to make either annual payments or payments covering more than one year.

(3) A base cabin user fee for a recreation residence use shall be 5 percent of the market value of the recreation residence lot, established by an appraisal conducted in accordance with the Act of October 11, 2000 (16 U.S.C. 6201–13).

(b) All or part of the fee may be waived by the authorized officer, when equitable and in the public interest, for the use and occupancy of National Forest System land in the following circumstances:

(1) The holder is a State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue from the authorized use is customer charges; or

(2) The holder is a nonprofit association or nonprofit corporation, which is not controlled or owned by profit-making corporations or business enterprises, and which is engaged in public or semi-public activity to further public health, safety, or welfare, except that free use will not be authorized when funds derived by the holder through the authorization are used to increase the value of the authorized improvements owned by the holder, or are used to support other activities of the holder; or

(3) The holder provides without charge, or at reduced charge, a valuable benefit to the public or to the programs of the Secretary; or

(4) When the rental fee is included in the fees for an authorized use or occupancy for which the United States is already receiving compensation; or

(5) When a right-of-way is authorized in reciprocation for a right-of-way conveyed to the United States; or

(6) For rights-of-way involving cost-share roads or reciprocal right-of-way agreements.

(c) No rental fee will be charged when the holder is the Federal government.

(d) No fee shall be charged when the authorization is for a noncommercial group use as defined in § 251.51 of this subpart.

(e) Special use authorizations issued under § 251.53(g) of this part may require as all or a part of the consideration the reconditioning and maintenance of the government-owned or controlled structures, improvements, and land to a satisfactory standard. The total consideration will be based upon the fair market value of the rights and privileges authorized.

(f) Special use authorizations involving government-owned or controlled buildings, structures, or other improvements which require caretakers' services, or the furnishing of special services such as water, electric lights, and clean-up, may require the payment of an additional fee or charge to cover the cost of such services.

(g) Except where specified otherwise by terms of a special use authorization, rental fees may be initiated or adjusted whenever necessary: (1) As a result of fee review, reappraisal; or (2) upon a change in the holder's qualifications under paragraph (b) of this section; and (3) notice is given prior to initiating or adjusting rental fees.

(h) Each ski area authorization issued under the authority of the National Forest Ski Area Permit Act shall include a clause that provides that the Forest Service may adjust and calculate future rental fees to reflect Agency revisions to the existing system for determining fees based on fair market value or to comply with any new fee system for determining fees based on fair market value that may be

adopted after issuance of the authorization.

(i) Each permit or term permit for a recreation residence use shall include a clause stating that the Forest Service shall recalculate the base cabin user fee at least every 10 years and shall use an appraisal to recalculate that fee as provided in paragraph (a)(3) of this section.

[45 FR 38327, June 6, 1980, as amended at 51 FR 16683, May 6, 1986; 54 FR 22594, May 25, 1989; 60 FR 45294, Aug. 30, 1995; 63 FR 65967, Nov. 30, 1998; 71 FR 16621, Apr. 3, 2006]

### § 251.58 Cost recovery.

(a) *Assessment of fees to recover agency processing and monitoring costs.* The Forest Service shall assess fees to recover the agency's processing costs for special use applications and monitoring costs for special use authorizations. Applicants and holders shall submit sufficient information for the authorized officer to estimate the number of hours required to process their applications or monitor their authorizations. Cost recovery fees are separate from any fees charged for the use and occupancy of National Forest System lands.

(b) *Special use applications and authorizations subject to cost recovery requirements.* Except as exempted in paragraphs (g)(1) through (g)(4) of this section, the cost recovery requirements of this section apply in the following situations to the processing of special use applications and monitoring of special use authorizations issued pursuant to this subpart:

(1) *Applications for use and occupancy that require a new special use authorization.* Fees for processing an application for a new special use authorization shall apply to any application formally accepted by the agency on or after March 23, 2006 and to any application formally accepted by the agency before March 23, 2006, which the agency has not commenced processing. Proposals accepted as applications which the agency has commenced processing prior to March 23, 2006 shall not be subject to processing fees. The cost recovery provisions of this section shall not apply to or supersede written agreements providing for recovery of processing costs executed by the agency and applicants prior to March 23, 2006.

(2) *Changes to existing authorizations.* Processing fees apply to proposals that require an application to amend or formally approve specific activities or facilities as identified in an existing authorization, operating plan, or master development plan. Processing fees also apply to agency actions to amend a special use authorization.

(3) *Agency actions to issue a special use authorization and applications for issuance of a new special use authorization due to termination of an existing authorization, including termination caused by expiration, a change in ownership or control of the authorized facilities, or a change in ownership or control of the holder of the authorization.* Upon termination of an existing authorization, a holder shall be subject to a processing fee for issuance of a new authorization, even if the holder's existing authorization does not require submission of an application for a new authorization.

(4) Monitoring of authorizations issued or amended on or after March 23, 2006.

(c) *Processing fee requirements.* A processing fee is required for each application for or agency action to issue a special use authorization as identified in paragraphs (b)(1) through (b)(3) of this section. Processing fees do not include costs incurred by the applicant in providing information, data, and documentation necessary for the authorized officer to make a decision on the proposed use or occupancy pursuant to the provisions at § 251.54.

(1) *Basis for processing fees.* The processing fee categories 1 through 6 set out in paragraphs (c)(2)(i) through (c)(2)(vi) of this section are based upon the costs that the Forest Service incurs in reviewing the application, conducting environmental analyses of the effects of the proposed use, reviewing any applicant-generated environmental documents and studies, conducting site visits, evaluating an applicant's technical and financial qualifications, making a decision on whether to issue the authorization, and preparing documentation of analyses, decisions, and authorizations for each application. The processing fee for an application shall be based only on costs necessary

for processing that application. ''Necessary for'' means that but for the application, the costs would not have been incurred and that the costs cover only those activities without which the application cannot be processed. The processing fee shall not include costs for studies for programmatic planning or analysis or other agency management objectives, unless they are necessary for the application being processed. For example, the processing fee shall not include costs for capacity studies, use allocation decisions, corridor or communications site planning, and biological studies that address species diversity, unless they are necessary for the application. Proportional costs for analyses, such as capacity studies, that are necessary for an application may be included in the processing fee for that application. The costs incurred for processing an application, and thus the processing fee, depend on the complexity of the project; the amount of information that is necessary for the authorized officer's decision in response to the proposed use and occupancy; and the degree to which the applicant can provide this information to the agency. Processing work conducted by the applicant or a third party contracted by the applicant minimizes the costs the Forest Service will incur to process the application, and thus reduces the processing fee. The total processing time is the total time estimated for all Forest Service personnel involved in processing an application and is estimated case by case to determine the fee category.

(i) *Processing fee determinations.* The applicable fee rate for processing applications in minor categories 1 through 4 (paragraphs (c)(2)(i) through (c)(2)(iv) of this section) shall be assessed from a schedule. The processing fee for applications in category 5, which may be either minor or major, shall be established in the master agreement (paragraph (c)(2)(v) of this section). For major category 5 (paragraph (c)(2)(v) of this section) and category 6 (paragraph (c)(2)(vi) of this section) cases, the authorized officer shall estimate the agency's full actual processing costs. The estimated processing costs for category 5 and category 6 cases shall be reconciled as provided in paragraphs (c)(5)(ii) and (iii) and (c)(6)(ii) and (iii) of this section.

(ii) *Reduction in processing fees for certain category 6 applications.* For category 6 applications submitted under authorities other than the Mineral Leasing Act, the applicant:

(A) May request a reduction of the processing fee based upon the applicant's written analysis of actual costs, the monetary value of the rights and privileges sought, that portion of the costs incurred for the benefit of the general public interest, the public service provided, the efficiency of the agency processing involved, and other factors relevant to determining the reasonableness of the costs. The agency will determine whether the estimate of full actual costs should be reduced based upon this analysis and will notify the applicant in writing of this determination; or

(B) May agree in writing to waive payment of reasonable costs and pay the actual costs incurred in processing the application.

(2) *Processing fee categories.* No fee is charged for applications taking 1 hour or less for the Forest Service to process. Applications requiring more than 1 hour for the agency to process are covered by the fee categories 1 through 6 set out in the following paragraphs i through vi.

(i) *Category 1: Minimal Impact: More than 1 hour and up to and including 8 hours.* The total estimated time in this minor category is more than 1 hour and up to and including 8 hours for Forest Service personnel to process an application.

(ii) *Category 2: More than 8 and up to and including 24 hours.* The total estimated time in this minor category is more than 8 and up to and including 24 hours for Forest Service personnel to process an application.

(iii) *Category 3: More than 24 and up to and including 36 hours.* The total estimated time in this minor category is more than 24 and up to and including 36 hours for Forest Service personnel to process an application.

(iv) *Category 4: More than 36 and up to and including 50 hours.* The total estimated time in this minor category is more than 36 and up to and including 50

hours for Forest Service personnel to process an application.

(v) *Category 5: Master agreements.* The Forest Service and the applicant may enter into master agreements for the agency to recover processing costs associated with a particular application, a group of applications, or similar applications for a specified geographic area. This category is minor if 50 hours or less are needed for Forest Service personnel to process an application and major if more than 50 hours are needed. In signing a master agreement for a major category application submitted under authorities other than the Mineral Leasing Act, an applicant waives the right to request a reduction of the processing fee based upon the reasonableness factors enumerated in paragraph (c)(1)(ii)(A) of this section. A master agreement shall at a minimum include:

(A) The fee category or estimated processing costs;

(B) A description of the method for periodic billing, payment, and auditing;

(C) A description of the geographic area covered by the agreement;

(D) A work plan and provisions for updating the work plan;

(E) Provisions for reconciling differences between estimated and final processing costs; and

(F) Provisions for terminating the agreement.

(vi) *Category 6: More than 50 hours.* In this major category more than 50 hours are needed for Forest Service personnel to process an application. The authorized officer shall determine the issues to be addressed and shall develop preliminary work and financial plans for estimating recoverable costs.

(3) *Multiple applications other than those covered by master agreements (category 5).* (i) *Unsolicited applications where there is no competitive interest.* Processing costs that are incurred in processing more than one of these applications (such as the cost of environmental analysis or printing an environmental impact statement that relates to all of the applications) must be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by each applicant, including applicants for recreation special uses that are otherwise exempt under paragraph (g)(3) of this section when the Forest Service requires more than 50 hours in the aggregate to process the applications submitted in response to the prospectus.

(ii) *Unsolicited proposals where competitive interest exists.* When there is one or more unsolicited proposals and the authorized officer determines that competitive interest exists, the agency shall issue a prospectus. All proposals accepted pursuant to that solicitation shall be processed as applications. The applicants are responsible for the costs of environmental analyses that are necessary for their applications and that are conducted prior to issuance of the prospectus. Processing fees for these cases shall be determined pursuant to the procedures for establishing a category 6 processing fee and shall include costs such as those incurred in printing and mailing the prospectus; having parties other than the Forest Service review and evaluate applications; establishing a case file; recording data; conducting financial reviews; and, for selected applicants, any additional environmental analysis required in connection with their applications. Processing fees shall be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by all parties who submitted proposals that were processed as applications pursuant to the solicitation, including applicants for recreation special uses that are otherwise exempt under paragraph (g)(3) of this section when the Forest Service requires more than 50 hours in the aggregate to process the applications submitted in response to the prospectus.

(iii) *Solicited applications.* When the Forest Service solicits applications through the issuance of a prospectus on its own initiative, rather than in response to an unsolicited proposal or proposals, the agency is responsible for the cost of environmental analyses conducted prior to issuance of the prospectus. All proposals accepted pursuant to that solicitation shall be processed as applications. Processing fees for these cases shall be determined pursuant to the procedures for establishing a category 6 processing fee and

shall include costs such as those incurred in printing and mailing the prospectus; having parties other than the Forest Service review and evaluate applications; establishing a case file; recording data; conducting financial reviews; and, for selected applicants, any additional environmental analysis required in connection with their applications. Processing fees shall be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by all parties who submitted proposals that were processed as applications pursuant to the solicitation, including applicants for recreation special uses that are otherwise exempt under paragraph (g)(3) of this section when the Forest Service requires more than 50 hours in the aggregate to process the applications submitted in response to the prospectus.

(4) *Billing and revision of processing fees.* (i) *Billing.* When the Forest Service accepts a special use application, the authorized officer shall provide written notice to the applicant that the application has been formally accepted. The authorized officer shall not bill the applicant a processing fee until the agency is prepared to process the application.

(ii) *Revision of processing fees.* Minor category processing fees shall not be reclassified into a higher minor category once the processing fee category has been determined. However, if the authorized officer discovers previously undisclosed information that necessitates changing a minor category processing fee to a major category processing fee, the authorized officer shall notify the applicant or holder of the conditions prompting a change in the processing fee category in writing before continuing with processing the application. The applicant or holder may accept the revised processing fee category and pay the difference between the previous and revised processing categories; withdraw the application; revise the project to lower the processing costs; or request review of the disputed fee as provided in paragraphs (e)(1) through (e)(4) of this section.

(5) *Payment of processing fees.* (i) Payment of a processing fee shall be due within 30 days of issuance of a bill for the fee, pursuant to paragraph (c)(4) of this section. The processing fee must be paid before the Forest Service can initiate or, in the case of a revised fee, continue with processing an application. Payment of the processing fee by the applicant does not obligate the Forest Service to authorize the applicant's proposed use and occupancy.

(ii) For category 5 cases, when the estimated processing costs are lower than the final processing costs for applications covered by a master agreement, the applicant shall pay the difference between the estimated and final processing costs.

(iii) For category 6 cases, when the estimated processing fee is lower than the full actual costs of processing an application submitted under the Mineral Leasing Act, or lower than the full reasonable costs (when the applicant has not waived payment of reasonable costs) of processing an application submitted under other authorities, the applicant shall pay the difference between the estimated and full actual or reasonable processing costs.

(6) *Refunds of processing fees.* (i) Processing fees in minor categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the processing fee exceeds the agency's final processing costs for the applications covered by a master agreement, the authorized officer either shall refund the excess payment to the applicant or, at the applicant's request, shall credit it towards monitoring fees due.

(iii) For category 6 cases, if payment of the processing fee exceeds the full actual costs of processing an application submitted under the Mineral Leasing Act, or the full reasonable costs (when the applicant has not waived payment of reasonable costs) of processing an application submitted under other authorities, the authorized officer either shall refund the excess payment to the applicant or, at the applicant's request, shall credit it towards monitoring fees due.

(iv) For major category 5 and category 6 applications, an applicant whose application is denied or withdrawn in writing is responsible for costs incurred by the Forest Service in

processing the application up to and including the date the agency denies the application or receives written notice of the applicant's withdrawal. When an applicant withdraws a major category 5 or category 6 application, the applicant also is responsible for any costs subsequently incurred by the Forest Service in terminating consideration of the application.

(7) *Customer service standards.* The Forest Service shall endeavor to make a decision on an application that falls into minor processing category 1, 2, 3, or 4, and that is subject to a categorical exclusion pursuant to the National Environmental Policy Act, within 60 calendar days from the date of receipt of the processing fee. If the application cannot be processed within the 60-day period, then prior to the 30th calendar day of the 60-day period, the authorized officer shall notify the applicant in writing of the reason why the application cannot be processed within the 60-day period and shall provide the applicant with a projected date when the agency plans to complete processing the application. For all other applications, including all applications that require an environmental assessment or an environmental impact statement, the authorized officer shall, within 60 calendar days of acceptance of the application, notify the applicant in writing of the anticipated steps that will be needed to process the application. These customer service standards do not apply to applications that are subject to a waiver of or exempt from cost recovery fees under §§ 251.58(f) or (g).

(d) *Monitoring fee requirements.* The monitoring fee for an authorization shall be assessed independently of any fee charged for processing the application for that authorization pursuant to paragraph (c) of this section. Payment of the monitoring fee is due upon issuance of the authorization.

(1) *Basis for monitoring fees.* Monitoring is defined at § 251.51. For monitoring fees in minor categories 1 through 4, authorization holders are assessed fees based upon the estimated time needed for Forest Service monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. Major category 5 and category 6 monitoring fees shall be based upon the agency's estimated costs to ensure compliance with the terms and conditions of the authorization during all phases of its term, including but not limited to monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. Monitoring for all categories does not include billings, maintenance of case files, annual performance evaluations, or scheduled inspections to determine compliance generally with the terms and conditions of an authorization.

(i) *Monitoring fee determinations.* The applicable fee rate for monitoring compliance with authorizations in minor categories 1 through 4 (paragraphs (d)(2)(i) through (d)(2)(iv) of this section) shall be assessed from a schedule. The monitoring fee for authorizations in category 5, which may be minor or major, shall be established in the master agreement (paragraph (d)(2)(v) of this section). For major category 5 (paragraph (d)(2)(v) of this section) and category 6 (paragraph (d)(2)(vi) of this section) cases, the authorized officer shall estimate the agency's full actual monitoring costs. The estimated monitoring costs for category 5 and category 6 cases shall be reconciled as provided in paragraphs (d)(3)(ii) and (iii) and (d)(4)(ii) and (iii) of this section.

(ii) *Reductions in monitoring fees for certain category 6 authorizations.* For category 6 authorizations issued under authorities other than the Mineral Leasing Act, the holder:

(A) May request a reduction of the monitoring fee based upon the holder's written analysis of actual costs, the monetary value of the rights or privileges granted, that portion of the costs incurred for the benefit of the general public interest, the public service provided, the efficiency of the agency monitoring involved, and other factors relevant to determining the reasonableness of the costs. The agency will determine whether the estimate of full actual costs should be reduced based upon this analysis and will notify the

holder in writing of this determination; or

(B) May agree in writing to waive payment of reasonable costs and pay the actual costs incurred in monitoring the authorization.

(2) *Monitoring fee categories.* No monitoring fee is charged for authorizations requiring 1 hour or less for the Forest Service to monitor. Authorizations requiring more than1 hour for the agency to monitor are covered by fee categories 1 through 6 set out in the following paragraphs (d)(2)(i) through (vi) of this section.

(i) *Category 1: Minimal Impact: More than 1 hour and up to and including 8 hours.* This minor category requires more than1 hour and up to and including 8 hours for Forest Service personnel to monitor compliance with a special use authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(ii) *Category 2: More than 8 and up to and including 24 hours.* This minor category requires more than 8 and up to and including 24 hours for Forest Service personnel to monitor compliance with a special use authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(iii) *Category 3: More than 24 and up to and including 36 hours.* This minor category requires more than 24 and up to and including 36 hours for Forest Service personnel to monitor compliance with a special use authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(iv) *Category 4: More than 36 and up to and including 50 hours.* This minor category requires more than 36 and up to and including 50 hours for Forest Service personnel to monitor compliance with a special use authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(v) *Category 5: Master agreements.* The Forest Service and the holder of an authorization may enter into a master agreement for the agency to recover monitoring costs associated with a particular authorization or by a group of authorizations for a specified geographic area. This category is minor if 50 hours or less are needed for Forest Service personnel to monitor compliance with an authorization and major if more than 50 hours are needed. In signing a master agreement for a major category authorization issued under authorities other than the Mineral Leasing Act, a holder waives the right to request a reduction of the monitoring fee based upon the reasonableness factors enumerated in paragraph (d)(1)(ii)(A) of this section. A master agreement shall at a minimum include:

(A) The fee category or estimated monitoring costs;

(B) A description of the method for periodic billing, payment, and auditing of monitoring fees;

(C) A description of the geographic area covered by the agreement;

(D) A monitoring work plan and provisions for updating the work plan;

(E) Provisions for reconciling differences between estimated and final monitoring costs; and

(F) Provisions for terminating the agreement.

(vi) *Category 6: More than 50 hours.* This major category requires more than 50 hours for Forest Service personnel to monitor compliance with the terms and conditions of the authorization during all phases of its term, including, but not limited, to monitoring compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(3) *Billing and payment of monitoring fees.* (i) The authorized officer shall estimate the monitoring costs and shall notify the holder of the required fee. Monitoring fees in minor categories 1 through 4 must be paid in full before or at the same time the authorization is issued. For authorizations in major category 5 and category 6, the estimated monitoring fees must be paid in full before or at the same time the authorization is issued, unless the authorized officer and the applicant or holder agree in writing to periodic payments.

(ii) For category 5 cases, when the estimated monitoring costs are lower than the final monitoring costs for authorizations covered by a master agreement, the holder shall pay the difference between the estimated and final monitoring costs.

(iii) For category 6 cases, when the estimated monitoring fee is lower than the full actual costs of monitoring an authorization issued under the Mineral Leasing Act, or lower than the full reasonable costs (when the holder has not waived payment of reasonable costs) of monitoring an authorization issued under other authorities, the holder shall pay the difference in the next periodic payment or the authorized officer shall bill the holder for the difference between the estimated and full actual or reasonable monitoring costs. Payment shall be due within 30 days of receipt of the bill.

(4) *Refunds of monitoring fees.* (i) Monitoring fees in minor categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the monitoring fee exceeds the agency's final monitoring costs for the authorizations covered by a master agreement, the authorized officer shall either adjust the next periodic payment to reflect the overpayment or refund the excess payment to the holder.

(iii) For category 6 cases, if payment of the monitoring fee exceeds the full actual costs of monitoring an authorization issued under the Mineral Leasing Act, or the full reasonable costs (when the holder has not waived payment of reasonable costs) of monitoring an authorization issued under other authorities, the authorized officer shall either adjust the next periodic payment to reflect the overpayment or refund the excess payment to the holder.

(e) *Applicant and holder disputes concerning processing or monitoring fee assessments; requests for changes in fee categories or estimated costs.* (1) If an applicant or holder disagrees with the processing or monitoring fee category assigned by the authorized officer for a minor category or, in the case of a major processing or monitoring category, with the estimated dollar amount of the processing or monitoring costs, the applicant or holder may submit a written request before the disputed fee is due for substitution of an alternative fee category or alternative estimated costs to the immediate supervisor of the authorized officer who determined the fee category or estimated costs. The applicant or holder must provide documentation that supports the alternative fee category or estimated costs.

(2) In the case of a disputed processing fee:

(i) If the applicant pays the full disputed processing fee, the authorized officer shall continue to process the application during the supervisory officer's review of the disputed fee, unless the applicant requests that the processing cease.

(ii) If the applicant fails to pay the full disputed processing fee, the authorized officer shall suspend further processing of the application pending the supervisory officer's determination of an appropriate processing fee and the applicant's payment of that fee.

(3) In the case of a disputed monitoring fee:

(i) If the applicant or holder pays the full disputed monitoring fee, the authorized officer shall issue the authorization or allow the use and occupancy to continue during the supervisory officer's review of the disputed fee, unless the applicant or holder elects not to exercise the authorized use and occupancy of National Forest System lands during the review period.

(ii) If the applicant or holder fails to pay the full disputed monitoring fee, the authorized officer shall not issue the applicant a new authorization or shall suspend the holder's existing authorization in whole or in part pending the supervisory officer's determination of an appropriate monitoring fee and the applicant's or holder's payment of that fee.

(4) The authorized officer's immediate supervisor shall render a decision on a disputed processing or monitoring fee within 30 calendar days of receipt of the written request from the applicant

or holder. The supervisory officer's decision is the final level of administrative review. The dispute shall be decided in favor of the applicant or holder if the supervisory officer does not respond to the written request within 30 days of receipt.

(f) *Waivers of processing and monitoring fees.* (1) All or part of a processing or monitoring fee may be waived, at the sole discretion of the authorized officer, when one or more of the following criteria are met:

(i) The applicant or holder is a local, State, or Federal governmental entity that does not or would not charge processing or monitoring fees for comparable services the applicant or holder provides or would provide to the Forest Service;

(ii) A major portion of the processing costs results from issues not related to the project being proposed;

(iii) The application is for a project intended to prevent or mitigate damage to real property, or to mitigate hazards or dangers to public health and safety resulting from an act of God, an act of war, or negligence of the United States;

(iv) The application is for a new authorization to relocate facilities or activities to comply with public health and safety or environmental laws and regulations that were not in effect at the time the authorization was issued;

(v) The application is for a new authorization to relocate facilities or activities because the land is needed by a Federal agency or for a Federally funded project for an alternative public purpose; or

(vi) The proposed facility, project, or use will provide, without user or customer charges, a valuable benefit to the general public or to the programs of the Secretary of Agriculture.

(2) An applicant's or holder's request for a full or partial waiver of a processing or monitoring fee must be in writing and must include an analysis that demonstrates how one or more of the criteria in paragraphs (f)(1)(i) through (f)(1)(vi) of this section apply.

(g) *Exemptions from processing or monitoring fees.* No processing or monitoring fees shall be charged when the application or authorization is for a:

(1) Noncommercial group use as defined in § 251.51, or when the application or authorization is to exempt a noncommercial activity from a closure order, except for an application or authorization for access to non-Federal lands within the boundaries of the National Forest System granted pursuant to section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)).

(2) Water systems authorized by section 501(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(c)).

(3) A use or activity conducted by a Federal agency that is not authorized under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771); the Mineral Leasing Act of 1920 (30 U.S.C. 185); the National Historic Preservation Act of 1966 (16 U.S.C. 470h–2); or the Act of May 26, 2000 (16 U.S.C. 460*l*–6d).

(4) Recreation special use as defined in the Forest Service's directive system and requires 50 hours or less for Forest Service personnel to process, except for situations involving multiple recreation special use applications provided for in paragraph (c)(3) of this section. No monitoring fees shall be charged for a recreation special use authorization that requires 50 hours or less for Forest Service personnel to monitor.

(h) *Appeal of decisions.* (1) A decision by the authorized officer to assess a processing or monitoring fee or to determine the fee category or estimated costs is not subject to administrative appeal.

(2) A decision by an authorized officer's immediate supervisor in response to a request for substitution of an alternative fee category or alternative estimated costs likewise is not subject to administrative appeal.

(i) *Processing and monitoring fee schedules.* (1) The Forest Service shall maintain schedules for processing and monitoring fees in its directive system (36 CFR 200.4). The rates in the schedules shall be updated annually by using the annual rate of change, second quarter to second quarter, in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) index. The Forest Service shall

round the changes in the rates either up or down to the nearest dollar.

(2) Within 5 years of the effective date of this rule, March 23, 2006, the Forest Service shall review these rates:

(i) To determine whether they are commensurate with the actual costs incurred by the agency in conducting the processing and monitoring activities covered by this rule and

(ii) To assess consistency with processing and monitoring fee schedules established by the United States Department of the Interior, Bureau of Land Management.

[71 FR 8913, Feb. 21, 2006]

### § 251.59 Transfer of authorized improvements.

If the holder, through death, voluntary sale, transfer, or through enforcement of a valid legal proceeding or operation of law, ceases to be the owner of the authorized improvements, the authorization terminates upon change of ownership. Except for easements issued under authorities other than § 251.53(e) and leases and easements under § 251.53(l) of this subpart, the new owner of the authorized improvements must apply for and receive a new special use authorization. The new owner must meet requirements under applicable regulations of this subpart and agree to comply with the terms and conditions of the authorization and any new terms and conditions warranted by existing or prospective circumstances.

[63 FR 65967, Nov. 30, 1998]

### § 251.60 Termination, revocation, and suspension.

(a) *Grounds for termination, revocation, and suspension*—(1) *Noncommercial group uses*—(i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for a noncommercial group use only under one of the following circumstances:

(A) Under the criteria for which an application for a special use authorization may be denied under § 251.54(g)(3)(ii);

(B) For noncompliance with applicable statutes or regulations or the terms and conditions of the authorization;

(C) For failure of the holder to exercise the rights or privileges granted; or

(D) With the consent of the holder.

(ii) *Judicial review.* Revocation or suspension of a special use authorization under this paragraph constitutes final agency action, is not subject to administrative appeal, and is immediately subject to judicial review.

(iii) *Termination.* A special use authorization for a noncommercial group use terminates when it expires by its own terms. Termination of a special use authorization under this paragraph does not involve agency action and is not subject to administrative or judicial review.

(2) *All other special uses*—(i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for all other special uses, except a permit or an easement issued pursuant to § 251.53(e) or an easement issued under § 251.53(l) of this subpart:

(A) For noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization;

(B) For failure of the holder to exercise the rights or privileges granted;

(C) With the consent of the holder; or

(D) At the discretion of the authorized officer for specific and compelling reasons in the public interest.

(ii) *Administrative review.* Except for revocation or suspension of an easement issued pursuant to § 251.53(e) or § 251.53(l) of this subpart, revocation or suspension of a special use authorization under this paragraph is subject to appeal pursuant to 36 CFR part 214.

(iii) *Termination.* For all special uses except noncommercial group uses, a special use authorization terminates when, by its terms, a fixed or agreed-upon condition, event, or time occurs. Termination of a special use authorization under this paragraph does not involve agency action and is not subject to administrative or judicial review.

(b) For purposes of this section, the authorized officer is that person who issues the authorization or that officer's successor.

(c) A right-of-way authorization granted to another Federal agency will be limited, suspended, revoked, or terminated only with that agency's concurrence.

(d) A right-of-way authorization serving another Federal agency will be limited, suspended, revoked, or terminated only after advance notice to, and consultation with, that agency.

(e) Except when immediate suspension pursuant to paragraph (f) of this section is indicated, the authorized officer shall give the holder written notice of the grounds for suspension or revocation under paragraph (a) of this section and reasonable time to cure any noncompliance, prior to suspension or revocation pursuant to paragraph (a) of this section.

(f) Immediate suspension of a special use authorization, in whole or in part, may be required when the authorized officer deems it necessary to protect the public health or safety or the environment. In any such case, within 48 hours of a request of the holder, the superior of the authorized officer shall arrange for an on-site review of the adverse conditions with the holder. Following this review, the superior officer shall take prompt action to affirm, modify, or cancel the suspension.

(g) The authorized officer may suspend or revoke permits or easements issued under § 251.53(e) or easements issued under § 251.53(l) of this subpart under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under 7 CFR 1.130 through 1.151.

(h)(1) The Chief may revoke any easement granted under the provisions of the Act of October 13, 1964, 78 Stat. 1089, 16 U.S.C. 534:

(i) By consent of the owner of the easement;

(ii) By condemnation; or

(iii) Upon abandonment after a 5-year period of nonuse by the owner of the easement.

(2) Before any such easement is revoked upon abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, shall be given an appeal in accordance with the provisions of 36 CFR part 214.

(i) Upon revocation or termination of a special use authorization, the holder must remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the authorized officer, unless the requirement to remove structures or improvements is otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but holder shall remain liable for the costs of removal and site restoration.

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 48 FR 28639, June 23, 1983; 60 FR 45295, Aug. 30, 1995; 63 FR 65968, Nov. 30, 1998; 74 FR 68381, Dec. 24, 2009; 75 FR 14995, Mar. 26, 2010; 75 FR 24802, May 6, 2010; 78 FR 33725, June 5, 2013]

### § 251.61 Applications for new, changed, or additional uses or area.

(a) Holders shall file a new or amended application for authorization of any new, changed, or additional uses or area, including any changes that involve any activity that has an impact on the environment, other uses, or the public. In approving or denying new, changed, or additional uses or area, the authorized officer shall consider, at a minimum, the findings or recommendations of other affected agencies and whether to revise the terms and conditions of the existing authorization or issue a new authorization. Once approved, any new, changed, or additional uses or area must be reflected in the existing or a new authorization.

(b) A holder may be required to furnish as-built plans, maps, or surveys upon completion of construction.

[78 FR 33725, June 5, 2013]

### § 251.62 Acceptance.

Except for an easement, a special use authorization shall become effective when signed by both the applicant and the authorized officer. The authorization must be signed by the applicant and returned to the authorized officer within 60 days of its receipt by the applicant, unless extended by the authorized officer. Refusal of an applicant to sign and accept a special use authorization within the time allowed, and before its final approval and signature by an authorized officer, shall terminate

an application and constitute denial of the requested use and occupancy.

[53 FR 16550, May 10, 1988]

### §251.63 Reciprocity.

If it is determined that a right-of-way shall be needed by the United States across nonfederal lands directly or indirectly owned or controlled by an applicant for a right-of-way across Federal lands, the authorized officer may condition a special use authorization to require the holder to grant the United States the needed right-of-way.

### §251.64 Renewals.

(a) When a special use authorization provides for renewal, the authorized officer shall renew it where such renewal is authorized by law, if the project or facility is still being used for the purpose(s) previously authorized and is being operated and maintained in accordance with all the provisions of the authorization. In making such renewal, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations or other management decisions. Special uses may be reauthorized upon expiration so long as such use remains consistent with the decision that approved the expiring special use or group of uses. If significant new information or circumstances have developed, appropriate environmental analysis must accompany the decision to reauthorize the special use.

(b) When a special use authorization does not provide for renewal, it is discretionary with the authorized officer, upon request from the holder and prior to its expiration, whether or not the authorization shall be renewed. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section.

[45 FR 38327, June 6, 1980, as amended at 63 FR 65968, Nov. 30, 1998]

### §251.65 Information collection requirements.

The rules of this subpart governing special use proposals and applications (§251.54), terms and conditions (§251.56), rental fees (§251.57), and modifications (§251.61) specify the information that proponents or applicants for special use authorizations or holders of existing authorizations must provide to allow an authorized officer to act on a request or administer the authorization. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. These information collection requirements are assigned OMB Control Number 0596–0082.

[74 FR 68382, Dec. 24, 2009]

## Subpart C [Reserved]

## Subpart D—Access to Non-Federal Lands

SOURCE: 56 FR 27417, June 14, 1991, unless otherwise noted.

### §251.110 Scope and application.

(a) The regulations in this subpart set forth the procedures by which landowners may apply for access across National Forest System lands and the terms and conditions that govern any special use or other authorization that is issued by the Forest Service to permit such access.

(b) These regulations apply to access across all National Forest System lands, including Congressionally designated areas, and supplement the regulations in subpart B of this part, and in parts 212 and 293 of this chapter. The regulations of this subpart do not affect rights-of-way established under authority of R.S. 2477 (43 U.S.C. 932); rights-of-way transferred to States under 23 U.S.C. 317; access rights outstanding in third parties at the time the United States acquired the land; or the rights reserved in conveyances to the United States and in other easements granted by an authorized officer of the Forest Service. Except for the aforementioned rights-of-way, currently valid special-use authorizations will become subject to the rules of this subpart upon expiration, termination, reversion, modification, or reauthorization.

(c) Subject to the terms and conditions contained in this part and in

parts 212 and 293 of this chapter, as appropriate, landowners shall be authorized such access as the authorized officer deems to be adequate to secure them the reasonable use and enjoyment of their land.

(d) In those cases where a landowner's ingress or egress across National Forest System lands would require surface disturbance or would require the use of Government-owned roads, trails, or transportation facilities not authorized for general public use, the landowner must apply for and receive a special-use or road-use authorization documenting the occupancy and use authorized on National Forest System lands or facilities and identifying the landowner's rights, privileges, responsibilities, and obligations.

(e) Where ingress and egress will require the use of existing Government-owned roads, trails, or other transportation facilities which are open and available for general public use, use by the landowner shall be in accordance with the provisions of part 212 of this chapter.

(f) The rules of this subpart do not apply to access within conservation system units in Alaska which are subject to title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101), except for access to inholdings authorized by section 1110(b) of that Act.

(g) Where there is existing access or a right of access to a property over non-National Forest land or over public roads that is adequate or that can be made adequate, there is no obligation to grant additional access through National Forest System lands.

### § 251.111 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

*Access* means the ability of landowners to have ingress and egress to their lands. It does not include rights-of-way for power lines or other utilities.

*Adequate access* means a route and method of access to non-Federal land that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly situated non-Federal land and that minimizes damage or disturbance to National Forest System lands and resources.

*Congressionally designated area* means lands which are within the boundaries of a component of the National Wilderness Preservation System, National Wild and Scenic River System, National Trails System, and also National Monuments, Recreation, and Scenic Areas within the National Forest System, and similar areas designated by Federal statute.

*Landowner(s)* means the owner(s) of non-Federal land or interests in land within the boundaries of the National Forest System.

### § 251.112 Application requirements.

(a) A landowner shall apply for access across National Forest System lands in accordance with the application requirements of § 251.54 of this part. Such application shall specifically include a statement of the intended mode of access to, and uses of, the non-Federal land for which the special-use authorization is requested.

(b) The application shall disclose the historic access to the landowner's property and any rights of access which may exist over non-federally owned land and shall provide reasons why these means of access do not provide adequate access to the landowners property.

(c) The information required to apply for access across National Forest lands under this subpart is approved for use under subpart B of this part and assigned OMB control number 0596–0082.

### § 251.113 Instrument of authorization.

To grant authority to construct and/or use facilities and structures on National Forest System lands for access to non-Federal lands, the authorized officer shall issue a special-use authorization in conformance with the provisions of subpart B of this part or a road-use permit. In cases where Road Rights-of-way Construction And Use Agreements are in effect, the authorized officer may grant an easement in accordance with the provisions of part 212 of this chapter.

**§ 251.114 Criteria, terms and conditions.**

(a) In issuing a special-use authorization for access to non-Federal lands, the authorized officer shall authorize only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that minimize the impacts on the Federal resources. The authorizing officer shall determine what constitutes reasonable use and enjoyment of the lands based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria.

(b) Landowners must pay an appropriate fee for the authorized use of National Forest System lands in accordance with § 251.57 of this part.

(c) A landowner may be required to provide a reciprocal grant of access to the United States across the landowner's property where such reciprocal right is deemed by the authorized officer to be necessary for the management of adjacent Federal land. In such case, the landowner shall receive the fair market value of the rights-of-way granted to the United States. If the value of the rights-of-way obtained by the Government exceeds the value of the rights-of-way granted, the difference in value will be paid to the landowner. If the value of the rights-of-way across Government land exceeds the value of the rights-of-way across the private land, an appropriate adjustment will be made in the fee charged for the special-use authorization as provided in § 251.57(b)(5) of this part.

(d) For access across National Forest System lands that will have significant non-Forest user traffic, a landowner may be required to construct new roads or reconstruct existing roads to bring the roads to a safe and adequate standard. A landowner also may be required to provide for the operation and maintenance of the road. This may be done by arranging for such road to be made part of the local public road system, or formation of a local improvement district to assume the responsibilities for the operation and maintenance of the road as either a private road or as a public road, as determined to be appropriate by the authorizing officer.

(e) When access is tributary to or dependent on forest development roads, and traffic over these roads arising from the use of landowner's lands exceeds their safe capacity or will cause damage to the roadway, the landowner(s) may be required to obtain a road-use permit and to perform such reconstruction as necessary to bring the road to a safe and adequate standard to accommodate such traffic in addition to the Government's traffic. In such case, the landowner(s) also shall enter into a cooperative maintenance arrangement with the Forest Service to ensure that the landowner's commensurate maintenance responsibilities are met or shall make arrangements to have the jurisdiction and maintenance responsibility for the road assumed by the appropriate public road authority.

(f) In addition to ensuring that applicable terms and conditions of paragraphs (a) through (e) of this section are met, the authorizing officer, prior to issuing any access authorization, must also ensure that:

(1) The landowner has demonstrated a lack of any existing rights or routes of access available by deed or under State or common law;

(2) The route is so located and constructed as to minimize adverse impacts on soils, fish and wildlife, scenic, cultural, threatened and endangered species, and other values of the Federal land;

(3) The location and method of access is as consistent as reasonably possible with the management of any congressionally designated area and is consistent with Forest Land and Resource Management Plans or the plans are amended to accommodate the access grant, and;

(4) When access routes exist across the adjacent non-Federal lands or the best route as determined by the authorizing officer is across non-Federal lands, the applicant landowner has demonstrated that all legal recourse to obtain reasonable access across adjacent non-Federal lands has been exhausted or has little chance of success.

(g) In addition to the other requirements of this section, the following factors shall be considered in authorizing access to non-federally owned lands over National Forest System

lands which are components of the National Wilderness Preservation System:

(1) The use of means of ingress and egress which have been or are being customarily used with respect to similarly situated non-Federal land used for similar purposes;

(2) The combination of routes and modes of travel, including nonmotorized modes, which will cause the least lasting impact on the wilderness but, at the same time, will permit the reasonable use of the non-federally owned land;

(3) The examination of a voluntary acquisition of land or interests in land by exchange, purchase, or donation to modify or eliminate the need to use wilderness areas for access purposes.

## Subpart E—Revenue-Producing Visitor Services in Alaska

AUTHORITY: 16 U.S.C. 3197.

SOURCE: 68 FR 35121, June 11, 2003, unless otherwise noted.

### § 251.120 Applicability and scope.

(a) These regulations implement section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3197) with regard to the continuation of visitor services offered as of January 1, 1979, and the granting of a preference to local residents and certain Native Corporations to obtain special use authorizations for visitor services provided on National Forest System lands within Conservation System Units of the Tongass and Chugach National Forests in Alaska.

(b) Except as may be specifically provided in this subpart, the regulations at subpart B shall apply to special use authorizations issued under this subpart. However, if subpart B conflicts with subpart E, subpart E controls.

(c) This subpart does not apply to the guiding of sport hunting and fishing.

### § 251.121 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

*Best application*—the application, as determined by the authorized officer, that best meets the evaluation criteria contained in a prospectus to solicit visitor services.

*Conservation System Unit (CSU) as it relates to the Tongass and Chugach National Forests in Alaska*—a National Forest Monument or any unit of the National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, including existing units and any such unit established, designated, or expanded hereafter.

*Controlling interest*—in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

*Historical operator*—a holder of a valid special use authorization to provide visitor services in a CSU under Forest Service jurisdiction who:

(1) On or before January 1, 1979, was lawfully and adequately providing visitor services in that CSU;

(2) Has continued lawfully and adequately to provide the same or similar types of visitor services within that CSU; and

(3) Is otherwise determined by the authorized officer to have a right to continue to provide the same or similar visitor services.

*Local area*—any site within 100 miles of the location within a CSU where any visitor services covered by a single solicitation by the Forest Service are to be authorized.

*Local resident:*

(1) *For individuals*—Alaska residents who have lived within the local area for 12 consecutive months prior to

issuance of a solicitation of applications for a visitor services authorization for a CSU; who maintain their primary, permanent residence and business within the local area; and who, whenever absent from this primary, permanent residence, have the intention of returning to it.

(2) *For corporations, partnerships, limited partnerships, joint ventures, individual entrepreneurships, and other circumstances*—where the controlling interest is held by an individual or individuals who qualify as local residents within the meaning of this section.

(3) *For nonprofit entities*—where a majority of the board members and a majority of the officers qualify as local residents within the meaning of this section.

*Native Corporation* has the same meaning as under section 102(6) of ANILCA (16 U.S.C. 3197).

*Preferred operator*—a Native Corporation that is determined, pursuant to § 251.123, to be most directly affected by establishment or expansion of a CSU; or a local resident, as defined in this section, who competes for a visitor service special use authorization under § 251.124 of this subpart.

*Responsive application*—an application that is received in a timely manner and that meets the requirements stated in the prospectus.

*Visitor service*—any service or activity for which persons who visit a CSU pay a fee, commission, brokerage, or other compensation, including such services as providing food, accommodations, transportation, tours, and outfitting and guiding, except the guiding of sport hunting and fishing.

### § 251.122 Historical operator special use authorizations.

(a) A historical operator has the right to continue to provide visitor services under appropriate terms and conditions contained in a special use authorization, as long as such services are determined by the authorized officer to be consistent with the purposes for which the CSU was established or expanded. A historical operator may not operate without such an authorization.

(b) Any person who qualifies as a historical operator under this subpart and who wishes to exercise the rights granted to historical operators under section 1307(a) of ANILCA (16 U.S.C. 1397(a)) must notify the authorized officer responsible for the CSU.

(c) A historical operator may apply for a special use authorization to provide visitor services similar to but in lieu of those provided by that historical operator before January 1, 1979. The authorized officer shall grant the application if those visitor services are determined by the authorized officer to be:

(1) Consistent with the purposes for which the applicable CSU was established or expanded;

(2) Similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; and

(3) Consistent with the legal rights of any other person.

(d) Upon the authorized officer's determination that the person qualifies as a historical operator, under either paragraph (a) or paragraph (c) of this section, the authorized officer shall amend the current special use authorization or issue a new special use authorization to identify that portion of the authorized services that is deemed to be historical operations. The special use authorization shall identify the location, type, and frequency or volume of visitor services to be provided.

(e) When a historical operator's special use authorization expires, the authorized officer shall offer to reissue the special use authorization for the same or similar visitor services, as long as the visitor services remain consistent with the purposes for which the CSU was established or expanded, the historical operator was lawfully and adequately providing visitor services under the previous special use authorization, and the historical operator continues to possess the capability to provide the visitor services adequately.

(1) If the operator accepts the offer to reissue, the authorized officer shall issue a new special use authorization that clearly identifies the historical operations as required by paragraph (d) of this section.

(2) If the authorized officer determines that it is necessary to reduce the

visitor services to be provided by a historical operator, the authorized officer shall modify the historical operator's special use authorization to reflect the reduced services as follows:

(i) If more than one historical operator provides services in the area where visitor service capacity is to be reduced, the authorized officer shall apportion the reduction among the historical operators, taking into account historical operating levels and such other factors as are relevant to achieve a proportionate reduction among the operators.

(ii) If the reductions in visitor service capacity make it necessary to reduce operators in an area, the authorized officer shall select, through a competitive process that is limited to historical operators only, the operator or operators to receive a special use authorization from among the historical operators. Historical operators participating in this competitive process may not claim a preference as a preferred operator under § 251.124.

(f) Any of the following shall result in the loss of historical operator status:

(1) Revocation of a special use authorization for historical types and levels of visitor services for failure to comply with the terms and conditions of the special use authorization;

(2) A historical operator's refusal of an offer to reissue a special use authorization made pursuant to paragraph (e) of this section;

(3) A change in the controlling interest of a historical operator through sale, assignment, devise, transfer, or otherwise, except as provided in paragraph (g) of this section; or

(4) An operator's failure to provide the authorized services for a period of more than 24 consecutive months.

(g) A change in the controlling interest of a historical operator that results only in the acquisition of the controlling interest by an individual or individuals, who were personally engaged in the visitor service activities of the historical operator before January 1, 1979, shall not be deemed a change in the historical operator's controlling interest for the purposes of this subpart.

(h) Nothing in this section shall prohibit the authorized officer from authorizing persons other than historical operators to provide visitor services in the same area, as long as historical operators receive authorization to provide visitor services that are the same as or similar to those they provided on or before January 1, 1979.

(i) If an authorized officer grants to a historical operator an increase in the scope or level of visitor services from what was provided on or before January 1, 1979, beyond what was authorized under paragraph (d) of this section, for either the same or similar visitor services, the historical operator has no right of preference for the increased amount of authorized services. If additional operations are authorized, the special use authorization shall explicitly state that they are not subject to the historical operator preference.

### § 251.123 Most directly affected Native Corporation determination.

(a) Before issuance of the first special use authorization for a specific CSU pursuant to § 251.124 on or after the effective date of this subpart, the authorized officer shall give notice to Native Corporations interested in providing visitor services within the CSU and give them an opportunity to submit an application to be considered the Native Corporation most directly affected by the establishment or expansion of the CSU under section 1307(b) of ANILCA (16 U.S.C. 1397(b)). In giving notice of the application procedure, the authorized officer shall make clear that this is the only opportunity to apply for most directly affected status for that particular CSU.

(1) At a minimum, an application from an interested Native Corporation shall include the following:

(i) Name, address, and telephone number of the Native Corporation; date of its incorporation; its articles of incorporation and structure; and the name of the applicable CSU and the solicitation to which the Native Corporation is responding;

(ii) Location of the Native Corporation's population centers; and

(iii) An assessment of the socioeconomic impacts (including changes in historical and traditional use and landownership patterns) on the Native

Corporation resulting from establishment or expansion of the applicable CSU.

(2) In addition to the minimum information required by paragraph (a)(1) of this section, Native Corporations may submit such additional information as they consider relevant.

(b) Upon receipt of all applications from interested Native Corporations, the authorized officer shall determine the most directly affected Native Corporation considering the following factors:

(1) Distance and accessibility from the Native Corporation's population centers and/or business address to the applicable CSU;

(2) Socioeconomic impacts (including changes in historical and traditional use and landownership patterns) on Native Corporations resulting from establishment or expansion of the applicable CSU; and

(3) Information provided by Native Corporations and other information considered relevant by the authorized officer to assessment of the effects of establishment or expansion of the applicable CSU.

(c) In the event that two or more Native Corporations are determined to be equally affected for purposes of the most directly affected Native Corporation determination pursuant to this section, each such Native Corporation shall be considered a preferred operator under this subpart.

(d) A Native Corporation determined to be most directly affected for a CSU shall maintain that status for all future visitor service solicitations for that CSU.

### §251.124 Preferred operator competitive special use authorization procedures.

(a) In selecting persons to provide visitor services for a CSU, the authorized officer shall, if the number of visitor service authorizations is to be limited, give a preference (subject to any rights of historical operators under this subpart) to preferred operators as defined in this subpart who are determined to be qualified to provide such visitor services.

(b) In such circumstances, the authorized officer shall solicit applications competitively by issuing a prospectus for persons to apply for a visitor services authorization. Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook 2709.11, chapter 40, when authorizations, including priority use permits for activities other than sport hunting and fishing, expire in accordance with their terms, they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.

(c) To qualify as a preferred operator under this subpart, an applicant responding to a solicitation made under this section must be determined by the authorized officer to be a local resident as defined in §251.121 of this subpart, or the Native Corporation most directly affected by establishment or expansion of the CSU covered by the solicitation pursuant to §251.123 of this subpart.

(d) Applicants seeking preferred operator status based on local residency must provide documentation verifying their claim. Factors demonstrating the location of an individual's primary, permanent residence and business include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns, and voter registration.

(e) An application from a preferred operator in the form of a corporation, partnership, limited partnership, joint venture, individual entrepreneurship, nonprofit entity, or other form of organization shall be considered valid only when the application documents to the satisfaction of the authorized officer that the preferred operator holds the controlling interest in the corporation, partnership, limited partnership, joint venture, individual entrepreneurship, nonprofit entity, or other form of organization.

(f) A qualified preferred operator shall be given preference, pursuant to paragraph (g) of this section, over all other applicants, except with respect to use allocated to historical operators pursuant to §251.122 of this subpart.

(g) If the best application from a preferred operator is at least substantially equal to the best application from a non-preferred operator, the preferred operator shall be issued the visitor service authorization. If an application

from an applicant other than a preferred operator is determined to be the best application (and no preferred operator submits a responsive application that is substantially equal to it), the preferred operator who submitted the best application from among the applications submitted by preferred operators shall be given the opportunity, by amending its application, to meet the terms and conditions of the best application received. If the amended application of that preferred operator is considered by the authorized officer to be at least substantially equal to the best application, the preferred operator shall be issued the visitor service authorization. If a preferred operator does not amend its application to meet the terms and conditions of the best application, the authorized officer shall issue the visitor service authorization to the applicant who submitted the best application in response to the prospectus.

### § 251.125 Preferred operator privileges and limitations.

(a) A preferred operator has no preference within a National Forest in Alaska beyond that authorized by section 1307 of ANILCA (16 U.S.C. 1397) and by § 251.124 of this subpart.

(b) Local residents and most directly affected Native Corporations have equal priority for consideration in providing visitor services pursuant to § 251.124 of this subpart.

(c) Nothing in this subpart shall prohibit the authorized officer from issuing special use authorizations to other applicants within the CSU, as long as the requirements of § 251.124 are met.

(d) If an operator qualifies as a local resident for any part of an area designated in the solicitation for a specific visitor service, in matters related solely to that solicitation, the operator shall be treated as a local resident for the entire area covered by that solicitation.

(e) The preferences described in this section may not be sold, assigned, transferred, or devised, either directly or indirectly, in whole or in part.

### § 251.126 Appeals.

Decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service under this subpart or related to the modification of special use authorizations to reflect historical use are subject to administrative appeal under 36 CFR part 214.

[78 FR 33725, June 5, 2013]

## PART 254—LANDOWNERSHIP ADJUSTMENTS

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## Subpart A—Land Exchanges

AUTHORITY: 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 485, 486, 516, 551, 555a; 43 U.S.C. 1701, 1715, 1716, 1740.

SOURCE: 59 FR 10867, Mar. 8, 1994, unless otherwise noted.

### § 254.1 Scope and applicability.

(a) These rules set forth the procedures for conducting exchanges of National Forest System lands. The procedures in these rules may be supplemented by instructions issued to Forest Service officers in Chapter 5400 of the Forest Service Manual and Forest Service Handbooks 5409.12 and 5409.13.

(b) These rules apply to all National Forest System exchanges of land or interests in land, including but not limited to minerals, water rights, and timber, except those exchanges made under the authority of Small Tracts Act of January 12, 1983 (16 U.S.C. 521c–521i) (36 CFR part 254, subpart C), and as otherwise noted. These rules also apply to other methods of acquisition, where indicated.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621), or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions which do not conflict with the provisions of these Acts.

(d) Unless the parties to an exchange otherwise agree, land exchanges for which the parties have agreed in writing to initiate prior to April 7, 1994, will proceed in accordance with the rules and regulations in effect at the time of the agreement.

(e) Except for exchanges requiring cash equalization payments made available through the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460[1]9), the boundaries of a national forest are automatically extended to encompass lands acquired under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), provided the acquired lands are contiguous to existing national forest boundaries and total no more than 3,000 acres in each exchange.

(f) Exchanges under the Weeks Act of March 1, 1911, or the General Exchange Act of March 20, 1922, may involve land-for-timber (non-Federal land exchanged for the rights to Federal timber), or timber-for-land (the exchange of the rights to non-Federal timber for Federal land), or tripartite land-for-timber (non-Federal land exchanged for the rights to Federal timber cut by a third party in behalf of the exchange parties).

(g) Land exchanges involving National Forest System lands are authorized by a number of statutes, depending upon the status (conditions of ownership) of such lands and the purpose for which an exchange is to be made. The status of National Forest System land is determined by the method by which the land or interests therein became part of the National Forest System. Unless otherwise provided by law, lands acquired by the United States in exchanges assume the same status as the Federal lands conveyed.

(h) The Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701), is supplemental to all applicable exchange laws, except the cash equalization provisions of the Sisk Act of December 4, 1967, as amended (16 U.S.C. 484a).

### § 254.2 Definitions.

For the purposes of this subpart, the following terms have the meanings set forth in this section.

*Acquisition* means the attainment of lands or interests in lands by the Secretary, acting on behalf of the United States, by exchange, purchase, donation, or eminent domain.

*Adjustment to relative values* means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

*Agreement to initiate* means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and

which may be amended by consent of the parties or terminated at any time upon written notice by any party.

*Appraisal or appraisal report* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

*Approximately equal value* means a comparative estimate of value of the lands involved in an exchange which have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

*Arbitration* is a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

*Assembled land exchange* means an exchange of Federal land for a package of multiple ownership parcels of non-Federal land consolidated for purposes of one land exchange transaction.

*Authorized officer* means a Forest Service line or staff officer who has been delegated the authority and responsibility to make decisions and perform the duties described in this subpart.

*Bargaining* is a process other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

*Federal lands* means any lands or interests in lands, such as mineral and timber interests, that are owned by the United States and administered by the Secretary of Agriculture through the Chief of the Forest Service, without regard to how the United States acquired ownership.

*Hazardous substances* are those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

*Highest and best use* means an appraiser's supported opinion of the most probable and legal use of a property, based on market evidence, as of the date of valuation.

*Lands* means any land and/or interests in land.

*Market value* means the most probable price in cash, or terms equivalent to cash, which lands or interest in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

*Mineral laws* means the mining and mineral leasing laws applicable to Federally owned lands and minerals reserved from the public domain for national forest purposes and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 *et seq.*), but not the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

*Outstanding interests* are rights or interests in property held by an entity other than a party to an exchange.

*Party* means the United States or any person, State, or local government who enters into an agreement to initiate an exchange.

*Person* means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated. No Member of Congress may participate in a land exchange with an agency of the United States, as set forth in 18 U.S.C. 431–433.

*Public land laws* means that body of non-mineral land laws dealing with the disposal of National Forest System lands administered by the Secretary of Agriculture.

*Reserved interest* means an interest in real property retained by a party from a conveyance of the title to that property.

*Resource values* means any of the various commodity values or non-commodity values, such as wildlife habitat and aesthetics, contained within land interests, surface and subsurface.

*Secretary* means the Secretary of Agriculture or the individual to whom responsibility has been delegated.

*Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the Federal lands from appropriation under

the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

*Statement of value* means a written report prepared by a qualified appraiser in conformance with the minimum standards of the Uniform Standards of Professional Appraisal Practice that states the appraiser's conclusion(s) of value.

**§ 254.3 Requirements.**

(a) *Discretionary nature of exchanges.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal at any time during the exchange process.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served.

(1) *Factors to consider.* When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of existing or planned land use authorizations (§ 254.4(c)(4); promotion of multiple-use values; implementation of applicable Forest Land and Resource Management Plans; and fulfillment of public needs.

(2) *Findings.* To determine that an exchange well serves the public interest, the authorized officer must find that—

(i) The resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed, and

(ii) The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.

(3) *Documentation.* The findings and the supporting rationale shall be documented and made part of the administrative record.

(c) *Equal value exchanges.* Except as provided in § 254.11 of this subpart, lands or interests to be exchanged must be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), through other acceptable and commonly recognized methods of determining market value, or through arbitration.

(d) *Same-State exchanges.* Unless otherwise provided by statute, the Federal and non-Federal lands involved in an exchange must be located within the same State.

(e) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by the Secretary of the Interior by exchange under the authority granted by the Federal Land Policy and Management Act of 1976, as amended, which are within the boundaries of any unit of the National Forest System, the National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, or any other system established by Act of Congress; or the boundaries of any national conservation area or national recreation area established by Act of Congress, immediately are reserved for and become a part of the unit or area in which they are located, without further action by the Secretary of the Interior, and, thereafter, shall be managed in accordance with all laws, rules, regulations, and land resource management plans applicable to such unit or area.

(f) *Land and resource management planning*. The authorized officer shall consider only those exchange proposals that are consistent with land and resource management plans (36 CFR part 219). Lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, regulations, and land and resource management plan applicable to such area.

(g) *Environmental analysis*. After an agreement to initiate an exchange is signed, the authorized officer shall undertake an environmental analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Forest Service environmental policies and procedures (Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15). In making this analysis, the authorized officer shall consider timely written comments received in response to the exchange notice published pursuant to § 254.8 of this subpart.

(h) *Reservations or restrictions in the public interest*. In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(i) *Hazardous substances*—(1) *Federal lands*. The authorized officer shall determine whether hazardous substances are known to be present on the Federal lands involved in the exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands in the contract agreement and in the conveyance document, pursuant to 40 CFR part 373 and 42 U.S.C. 9620. For purposes of this section, the notice of hazardous substances on involved Federal lands in an agreement to initiate an exchange or an exchange agreement meets the requirements for notices established in 40 CFR part 373. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a) and participated as an owner, or in the operation, arrangement, generation, or transportation of the hazardous substances found on the Federal land, the conveyance document from the United States must contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such substances remaining on the property has been taken before the date of transfer and that any additional remedial action found necessary after the transfer shall be conducted by the United States, pursuant to 42 U.S.C. 9620(h)(3). The conveyance document must also reserve to the United States the right of access to the conveyed property if remedial or corrective action is required after the date of transfer. Where the non-Federal party is a potentially responsible party with respect to the property, it may be appropriate to enter into an agreement as referenced in 42 U.S.C. 9607(e) whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands*. The non-Federal party shall notify the authorized officer of any hazardous substances known to have been released, stored, or disposed of on the non-Federal land, pursuant to § 254.4 of this subpart. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are known to be present on the non-Federal land involved in an exchange. If hazardous substances are known or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate ''hold harmless agreement'' shall be included

in an exchange agreement, pursuant to § 254.14 of this subpart.

(j) *Legal description of properties.* All lands subject to an exchange must be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if those laws and standards cannot be applied, the lands shall be properly described and clearly locatable by other means as may be prescribed or allowed by law.

(k) *Special review.* Except as provided in this paragraph, land acquisitions of $150,000 or more in value made under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), must be submitted to Congress for oversight review, pursuant to the Act of October 22, 1976, as amended (16 U.S.C. 521b). However, minor and insignificant changes in land acquisition proposals need not be resubmitted for congressional oversight, provided the general concept of and basis for the acquisition remain the same.

**§ 254.4 Agreement to initiate an exchange.**

(a) Exchanges may be proposed by the Forest Service or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands proposed for exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of the values of the lands involved in the proposal. A qualified appraiser must prepare the preliminary estimate.

(c) If the authorized officer agrees to proceed with an exchange proposal, all prospective parties shall execute a nonbinding agreement to initiate an exchange. At a minimum, the agreement must include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by a party, other than the United States and State and local governments, that such party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses, including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of § 254.7 of this subpart;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands (§ 254.3(i) and § 254.14);

(9) A grant of permission by each party to physically examine the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 254.5 of this subpart;

(11) A statement as to the arrangements for relocation of any tenants occupying non-Federal lands pursuant to § 254.15 of this subpart;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 254.15 of this subpart; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use

other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate may be amended by consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is not consummated or to anyone doing business with any such party.

(g) The withdrawal from an exchange proposal by the authorized officer at any time prior to the notice of decision pursuant to § 254.13 of this subpart is not appealable under 36 CFR part 214 or 215.

[59 FR 10867, Mar. 8, 1984, as amended at 64 FR 25822, May 13, 1999; 78 FR 33725, June 5, 2013]

### § 254.5 Assembled land exchanges.

(a) Whenever the authorized officer determines it to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple ownership parcels of non-Federal lands are consolidated into a package for the purpose of completing one exchange transaction.

(c) An assembled land exchange arrangement must be documented in the agreement to initiate an exchange, pursuant to § 254.4 of this subpart.

(d) Value of the Federal and non-Federal lands involved in an assembled land exchange arrangement shall be estimated pursuant to § 254.9 of this subpart.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994]

### § 254.6 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may request the appropriate State Office of the Bureau of Management (BLM) to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(c) The segregative effect terminates as follows:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published in the FEDERAL REGISTER by the appropriate BLM State Office, if a decision is made not to proceed with the exchange or upon removal of any lands from the exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation on the public land records, whichever occurs first.

### § 254.7 Assumption of costs.

(a) Generally, each party to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest as specified in paragraph (b) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) Subject to the limitation in paragraph (c) of this section, the parties may agree to make adjustments to the relative values involved in an exchange transaction, in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: land surveys; appraisals; mineral examinations; timber cruises; title searches; title curative actions; cultural resource surveys and

mitigation; hazardous substance surveys and controls; removal of encumbrances; arbitration, including all fees; bargaining; cure of deficiencies preventing highest and best use of the land; conduct of public hearings; assemblage of non-Federal parcels from multiple ownerships; and the expenses of complying with laws, regulations, and policies applicable to exchange transactions, or which are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) As a condition of an agreement to initiate, the authorized officer may agree to assume without compensation costs ordinarily borne by the non-Federal party or to compensate the non-Federal party for assuming Federal costs only on an exceptional basis when it is clearly in the public interest and when the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of such cost assumed or compensation is reasonable and accurately reflects the value of the cost or service provided, or any responsibility and requirement assumed;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensation of the non-Federal party; and

(5) There are no other practicable means available to the authorized officer for meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of an adjustment agreed to as compensation for costs pursuant to this section shall not exceed the limitations set forth in § 254.12(b) of this subpart.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994]

### § 254.8 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, the jurisdictional State and local governments, and the congressional delegation and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the agency as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent and from whom additional information may be obtained.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments must be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish legal descriptions of any lands that may be excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

### § 254.9 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards as set forth in paragraphs (a) through (d) of this section, and, to the extent appropriate, with the Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference

1992 (Washington, DC, 1992), ISBN 0–16–038050–2 when appraising the values of the Federal and non-Federal lands involved in an exchange.

(a) *Appraiser qualifications.* (1) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual agreeable to all parties and approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

(2) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State or Territory does not have approved policies, practices, and procedures regulating the activities of appraisers, the Forest Service may establish appraiser qualification standards commensurate with those generally adopted by other States or Territories meeting the requirements of FIRREA.

(b) *Market value.* (1) In estimating market value, the appraiser shall:

(i) Determine the highest and best use of the property to be appraised;

(ii) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(iii) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities as reflected in prices paid for similar properties in the competitive market;

(iv) Consider the contributory value of any interest in land such as water rights, minerals, or timber, to the extent they are consistent with the highest and best use of the property; and

(v) If stipulated in the agreement to initiate in accordance with § 254.4 of this subpart, estimate separately the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 254.5 of this subpart. In this case, the appraiser also must estimate the value of the Federal and non-Federal properties in a similar manner.

(2) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

(i) The various interests contribute their full value (pro rata) to the value of the whole; and

(ii) The valuation is compatible with the highest and best use of the property.

(3) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

(c) *Appraisal report standards.* Appraisals prepared for exchange purposes must contain the following minimum information:

(1) A summary of facts and conclusions;

(2) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(3) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(4) An adequate description of the physical characteristics of the land being appraised; a statement of all encumbrances; title information; location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(5) A disclosure of any condition that is observed during the inspection of the property or becomes known to the appraiser through the normal research which would lead the appraiser to believe that hazardous substances may be present on the property being appraised;

(6) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(7) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(8) An estimate of market value;

(9) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(10) A certification by the appraiser to the following:

(i) The appraiser has personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(ii) The appraiser has personally examined the subject property and all comparable sale properties relied upon in the report;

(iii) The appraiser has no present or prospective interest in the appraised property; and

(iv) The appraiser has not received compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(11) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment which were relied upon by the appraiser to estimate value, which may include, but is not limited to, current title reports, mineral reports, or timber cruises prepared by qualified specialists.

(d) *Appraisal review.* (1) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in paragraph (a) of this section. Statements of value prepared by agency appraisers are not subject to this review.

(2) The review appraiser shall determine whether the appraisal report:

(i) Is complete, logical, consistent, and supported by market analysis;

(ii) Complies with the standards prescribed in paragraph (c) of this section; and

(iii) Reasonably estimates the probable market value of the lands appraised.

(3) The review appraiser shall prepare a written review report, containing at a minimum:

(i) A description of the review process used;

(ii) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(iii) The review appraiser's conclusions regarding the appraiser's estimate of market value; and

(iv) A certification by the review appraiser to the following:

(A) The review appraiser has no present or prospective interest in the property which is the subject of the review report; and

(B) The review appraiser has not received compensation that was contingent upon approval of the appraisal report.

### § 254.10 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following:

(1)(i) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values or may initiate a process of bargaining or some other process to determine values. Bargaining or any other process must be based on an objective analysis of the valuation in the appraisal report(s) and is a means of reconciling differences in such report(s). Bargaining or another process to determine values may involve one or more of the following actions:

(A) Submission of the disputed appraisal(s) to another qualified appraiser for review:

(B) Request for additional appraisals;

(C) Involvement of an impartial third party to facilitate resolution of the value disputes, or

(D) Use of some other acceptable and commonly recognized practice for resolving value disputes.

(ii) Any agreement based upon bargaining must be in writing and made part of the administrative record of the exchange. Such agreement must contain a reference to all relevant appraisal information and state how the

parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s), at the initiative of either party, must be submitted to arbitration, unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it must be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official to whom such authority has been delegated shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange must determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration are binding upon all parties for a period not to exceed 2 years from the date of the arbitration decision.

(b) Arbitration is limited to the disputed valuation of the lands involved in a proposed exchange and an arbitrator's award decision is limited to the value estimate(s) of the contested appraisal(s). An arbitrator may not include in an award decision recommendations regarding the terms of a proposed exchange, nor may an arbitrator's award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

### § 254.11 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands which are of approximately equal value upon a determination that:

(1) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and accepted by an authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer, not the non-Federal party, determines whether the Federal and non-Federal lands are approximately equal in value and must document how the determination was made.

### § 254.12 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree to:

(1) Modify the exchange proposal by adding or excluding lands; and/or

(2) Use cash equalization, after making all reasonable efforts to equalize values by adding or deleting lands.

(b) The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 254.7 of this subpart may not exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The Secretary of Agriculture may not waive cash equalization payment due the United States, but the parties may agree to waive cash equalization payment due the non-Federal party. The amount to be waived may not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less.

(d) A cash equalization payment may be waived only after the authorized officer certifies, in writing, that the waiver will expedite the exchange and that the public interest will be best served by the waiver.

### § 254.13 Approval of exchanges; notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. At a minimum, the notice must include:

(i) The date of decision;

(ii) A concise description of the decision;

(iii) The name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) The date of the beginning of the appeal period.

(2) The authorized officer shall distribute notices to the State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, and individuals who requested notification or filed written objections, and others as appropriate.

(b) The decision to approve or disapprove an exchange proposal shall be subject to appeal as provided under 36 CFR part 214 or 215 for 45 days after the date of publication of a notice of availability of the decision.

[59 FR 10867, Mar. 8, 1994, as amended at 64 FR 25822, May 13, 1999; 78 FR 33725, June 5, 2013]

### § 254.14 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 254.13 of this subpart. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement must contain the following:

(1) Identification of the parties, description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, stipulation of any necessary cash equalization, and all other terms and conditions necessary to complete an exchange;

(2) Inclusion of the terms regarding responsibility for removal, indemnification (''hold harmless'' agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands; and

(3) The agreed upon values of the involved lands, until consummation of the land exchange.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) The exchange proposal receives any required Secretarial approval;

(5) No objections are raised during any required congressional oversight;

(6) In the event of an appeal under 36 CFR part 214 or 215, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

(7) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) In the event of a failure to perform or to comply with the terms of an exchange agreement, the noncomplying party is liable for all costs borne by the other party as a result of the proposed exchange, including, but not limited to, land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and

controls, removal of encumbrances, arbitration, curing deficiencies preventing highest and best use of the land, and any other expenses incurred in processing the proposed land exchange.

(d) Absent an executed exchange agreement, an action taken by the parties prior to consummation of an exchange does not create any contractual or other binding obligations or rights enforceable against any party.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994, as amended at 64 FR 25822, May 13, 1999; 78 FR 33725, June 5, 2013]

### § 254.15 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the USDA Office of the General Counsel, evidence of title for the non-Federal lands being conveyed to the United States must be in recordable form and in conformance with the Department of Justice regulations and ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States'' in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.* (1) Unless otherwise specified by the USDA Office of the General Counsel, all conveyances to the United States must be prepared, executed, and acknowledged in accordance with the Department of Justice regulations and ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States'' in effect at the time of conveyance.

(2) Conveyances of lands from the United States are made by patent, quitclaim deed, or deed and without express or implied warranties, except as to hazardous substances pursuant to § 254.3 of this subpart.

(c) *Title encumbrances*—(1) *Non-Federal lands.* (i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the USDA Office of the General Counsel or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of the land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to the appropriate rules and regulations of the Secretary, except upon special finding by the Chief, Forest Service in the case of States, agencies, or political subdivisions thereof (36 CFR part 251, subpart A).

(iii) Any personal property owned by the non-Federal party which is not a part of the exchange proposal, should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to relocation benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to

issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether there are specific and compelling reasons in the public interest for revoking the authorization for that use pursuant to 36 CFR 251.60.

[59 FR 10867, Mar. 8, 1994, as amended at 78 FR 33726, June 5, 2013]

### § 254.16 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States* v. *Schurz,* 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands pass simultaneously and are deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner must be met. The minimum requirements and conditions necessary for recordation include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands;

(2) The issuance of title evidence as of the date of recordation which conforms to the instructions and requirements of the USDA Office of the General Counsel's preliminary title opinion; and

(3) Continuation searches disclosing no matters of record that would require any change in the aforementioned title evidence as issued.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-Federal lands acquired through exchange by the United States automatically are segregated from appropriation under the public land laws and mineral laws until midnight of the 90th day after acceptance of title by the United States, and the public land records must be noted accordingly. Thereafter, the lands will be open automatically to operation of the public land laws and mineral laws, except to the extent otherwise provided by law, unless action is taken pursuant to 43 CFR part 2300 to initiate a withdrawal within the 90-day period.

### § 254.17 Information requirements.

The requirements governing the preparation of an agreement to initiate in § 254.4 of this subpart and an exchange agreement in § 254.14 of this subpart constitute information requirements as defined by the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and have been approved for use pursuant to 5 CFR part 1320 and assigned OMB Control Number 0596–0105.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994]

## Subpart B—National Forest Townsites

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SOURCE: 50 FR 29673, July 22, 1985, unless otherwise noted.

### § 254.20 Purpose and scope.

(a) A Forest Service official may, upon application, set aside and designate for townsite purposes up to 640 acres of National Forest System lands adjacent to or contiguous to an established community in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(b) National Forest System lands, needed by a community, may be sold under the Townsite Act, for fair market value if those lands would serve indigenous community objectives that outweigh the public objectives and values of retaining the lands in Federal ownership. Indigenous community objectives may include space for housing and for service industries, expansion of existing economic enterprises, new industries utilizing local resources and skills, public schools, public health facilities, community parks, and other recreation areas for local citizens, but would exclude such uses as commercial enterprises or new industries and housing projects that would change the character of the local community.

**§ 254.21 Applications.**

(a) An application to purchase National Forest System lands—

(1) Must be made by designated officials) authorized to do business in the name of a county, city, or local governmental subdivision;

(2) May be in the form of a letter, ordinance, or resolution;

(3) Must be furnished to the District Ranger or the Forest Supervisor for the National Forest area in which the lands are situated; and

(4) Must be limited to 640 acres or less adjacent to an established community.

(b) An application must be accompanied by—

(1) A description of the land desired; and

(2) A development plan, consisting of a narrative statement and map, which gives a detailed description of the intended use of the site and how essential community needs will be met by the purchase.

**§ 254.22 Designation and public notice.**

(a) A Forest Service official must—

(1) Ensure the application meets the requirements of § 254.21;

(2) Process an order to set aside and designate the lands for townsite purposes; and

(3) Transmit, where applicable, a copy of the designation order to the State Director, Bureau of Land Management.

(b) The designation order will segregate the lands from other forms of entry as long as the application remains in force.

(c) The designation order does not preclude compatible land adjustments under the Secretary's authority within the area set aside.

(d) A Forest Service official must prepare a public notice of the proposed townsite sale to be inserted once a week for 4 consecutive weeks in a local newspaper:

(1) The notice shall include descriptive information on the proposed townsite sale and identify the applicant and responsible Forest Service official; and

(2) A period of 45 days, from first date of publication, must be provided for accepting public comments.

**§ 254.23 Studies, assessments, and approval.**

(a) After initial public notice has been published, a Forest Service official must conduct the necessary studies and assessments to—

(1) Determine if the applicant has made a satisfactory showing that the land will meet essential community needs resulting from internal growth;

(2) Determine if lands applied for would serve indigenous community objectives that outweigh other public objectives and values which would be served by maintaining such a tract in Federal ownership;

(3) Determine if the sale would substantially affect or impair important scenic, wildlife, environmental, historical, archeological, or cultural values;

(4) Evaluate the applicability of public comments;

(5) Identify the extent of valid existing rights and uses; and

(6) Determine if zoning ordinances, covenants, or standards are needed to protect adjacent National Forest land and to protect or mitigate valid existing rights and uses.

(b) Upon approval, the authorized Forest Service official shall take appropriate steps to have an assessment made of the fair market value of the land and process the conveyance pursuant to §§ 254.24, 254.25, and 254.26.

(c) Upon disapproval, a Forest Service official shall—

(1) Notify the applicant in writing of the reasons the proposal is not acceptable;

(2) Inform the applicant of alternate proposals under other authorities and/or appeal rights.

**§ 254.24 Conveyance.**

(a) Conveyance of the approved tract(s) may be made by a single transaction or by multiple transactions spread over a period of time in accordance with a prearranged schedule.

(b) The authorized Forest Service official shall—

(1) Execute and convey title to the townsite tract(s) by quitclaim deed;

(2) Ensure deeds are free of terms and covenants, except those deemed necessary to ensure protection of adjacent National Forest System land and/or valid existing rights and uses; and

(3) Deliver executed deeds to the governmental body upon—

(i) Adoption of zoning ordinance and development plan if found necessary; and

(ii) Notice from the authorized Forest Service Fiscal Agent that payment has been received.

### § 254.25 Survey.

The authorized Forest Service official shall conduct or provide for the necessary tract survey and boundary posting of National Forest System land.

### § 254.26 Appraisal.

Fair market value of townsite tracts shall be determined following Forest Service appraisal procedures and the Uniform Standards for Federal Acquisitions.

## Subpart C—Conveyance of Small Tracts

AUTHORITY: Pub. L. 97–465; 96 Stat. 2535.

SOURCE: 49 FR 1185, Jan. 10, 1984, unless otherwise noted.

### § 254.30 Purpose.

These regulations set forth procedures by which the Secretary of Agriculture may resolve land disputes and management problems pursuant to Pub. L. 97–465, commonly called the Small Tracts Act, by conveying, through sale, exchange, or interchange, three categories of tracts of land: Parcels encroached on, road rights-of-way, and mineral survey fractions. Implementation of these regulations does not constitute authorization of nor consent to adverse possession against lands administered by the Secretary of Agriculture.

### § 254.31 Definitions.

For the purpose of this subpart,

An *applicant* is a person who occupies or has improvements on National Forest System land under claim of title or color of title, or who owns land abutting or underlying a road right-of-way, or who owns land interspersed with or adjacent to mineral survey fractions.

*Approximately equal value* is a comparative estimate of value of lands involved in an interchange where elements of value, such as physical characteristics and other amenities, are readily apparent and substantially similar.

*Claim of title* is a claim of land as a person's own, based on any reasonable evidence which establishes the person's actual use of the land as though the person had full title thereto from the time the person obtained ownership of abutting land.

*Color of title* arises from an instrument purporting to convey title to a tract of land.

*Encroachments* are improvements occupied or used on National Forest System land under claim of title or color of title.

*Exchange* is a discretionary, voluntary transaction involving mutual transfers of land or interests in land between the Secretary of Agriculture acting by and through the Forest Service and a nonfederal entity.

*Good faith* is honesty of intention and freedom from knowledge of circumstances which ought to put a prudent person upon inquiry.

*Improvements* mean an addition to property costing labor or capital which affects its value. The term generally includes fixtures, structures and attendant facilities, or buildings.

*Interchange* is a land transfer in which the Secretary and another person exchange lands or interests in lands of approximately equal value without a formal appraisal.

*Mineral survey fractions* are small parcels of National Forest System lands interspersed with or adjacent to lands transferred out of Federal ownership under the mining laws.

*Permanent Habitable Improvement* means a dwelling, improvement, house, or other structure presently being used as a residence or domicile for a lasting or indefinite period of time.

*Person* includes any nonfederal entity such as a State or any political subdivision as well as any individual or business entity.

*Secretary* refers to the Secretary of the United States Department of Agriculture.

[49 FR 1185, Jan. 10, 1984, as amended at 85 FR 60916, Sept. 29, 2020]

### § 254.32 Encroachments and other improvements.

(a) This subpart allows conveyance of parcels of 10 acres or less, which will resolve encroachments by persons on National Forest System lands:

(1) To whom no advance notice was given that the improvements encroached or would encroach, and

(2) Who in good faith relied on an erroneous survey, title search, or other land description which did not reveal such encroachment.

(b) This subpart also allows conveyance of parcels of 10 acres or less that are not eligible for conveyance under subsection (a) but are encroached on by a permanent habitable improvement for which there is no evidence that the encroachment was intentional or negligent.

(c) Forest Service officials shall consider the following factors when determining whether to convey lands upon which encroachments exist under subsections (a) and (b):

(1) The location of the property boundaries based on historical location and continued acceptance and maintenance,

(2) Factual evidence of claim of title or color of title,

(3) Notice given to persons encroaching on National Forest System lands,

(4) Degree of development in the encroached upon area, and

(5) Creation of an uneconomic remnant.

(d) This subpart also allows conveyance of parcels that are used as a cemetery (including a parcel of not more than one acre adjacent to the parcel used as a cemetery), a landfill, or a sewage treatment plant under a special use authorization issued or otherwise authorized by a Forest Service official.

[85 FR 60916, Sept. 29, 2020]

### § 254.33 Road rights-of-way.

(a) Reserved or acquired road right-of-way parcels subject to conveyance under this subpart are limited to those which are substantially surrounded by lands not owned by the United States.

(b) Forest Service officials shall consider public road system right-of-way needs based on National Forest transportation planning and State and local law before making any conveyance of rights-of-way.

(c) Reimbursement will be required for the value of any improvements made by the United States or other highway authorities, unless waived by the Chief of the Forest Service.

### § 254.34 Mineral survey fractions.

(a) Mineral survey fractions subject to conveyance under this subpart are limited to those tracts which:

(1) Cannot be efficiently administered because of size, shape, or location;

(2) Are occupied or could be occupied or used by adjoining owners; and

(3) When sold separately or aggregated in one transaction, do not exceed 40 acres.

(b) Forest Service officials shall consider the following criteria in determining whether to convey mineral survey fractions under this subpart:

(1) The mineral survey fractions are interspersed among and are more or less an integral part of private land holdings;

(2) The feasibility and cost of surveying the parcels in order to manage them effectively;

(3) The size, shape, and location of the parcels as they affect management, utility, access, occupancy or use of the parcels or the lands with which they are interspersed.

### § 254.35 Limitations.

(a) Lands within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National Trails System, and National Monuments are excluded from any conveyance under these provisions.

(b) Lands within National Recreation Areas may not be conveyed by sale under this subpart.

(c) The value of Federal lands conveyed in any transaction, pursuant to this subpart, shall not exceed $500,000.

(d) Compensation for lands conveyed shall be of at least equal value, or in the case of interchange, of approximately equal value, and may be in the form of land, interest in land (including minerals), or cash, or any combination thereof.

(e) The sale, exchange, or interchange of lands or interest in lands

under these rules are discretionary and shall be made only if found to be in the public interest.

(f) The abutting landowner(s) shall have the first right of acquisition.

(g) The area of land conveyed shall be limited to the minimum necessary to resolve encroachment or land management problems.

[49 FR 1185, Jan. 10, 1984; 49 FR 2762, Jan. 23, 1984, as amended at 85 FR 8181, Feb. 13, 2020]

### § 254.36 Determining public interest.

(a) All pertinent requirements of this subpart must be met before a determination of public interest is made.

(b) Before a conveyance is made under this subpart, such conveyance must be determined to be in the public interest.

(c) Forest Service officials shall consider the following criteria in determining when the public interest will be served:

(1) Sale, exchange, or interchange of the affected lands is not practicable under any other authority of the Secretary;

(2) Administration and management of National Forest System lands will be more efficient and will result in improved utilization;

(3) Access to and use and enjoyment of National Forest System lands by the general public will not be unduly impeded or restricted;

(4) New or extensive inholdings which would create management problems will not be established;

(5) Scenic, wildlife, environmental, historical, archaeological, or cultural values will not be substantially affected or impaired;

(6) Existence of structures authorized under a special use permit or easement, and

(7) Applicable Federal, State, and local laws, rules, regulations, and zoning ordinances will not be violated.

[49 FR 1185, Jan. 10, 1984, as amended at 85 FR 8181, Feb. 13, 2020]

### § 254.37 Conveyance of parcels 40 acres or less that no longer meet National Forest System objectives.

(a) This subpart allows conveyance of parcels of 40 acres or less that are determined by Forest Service officials to:

(1) be physically isolated from other Federal land; or

(2) be inaccessible; or

(3) have lost National Forest character.

(b) [Reserved]

[85 FR 60916, Sept. 29, 2020]

### § 254.38 Disposition of proceeds.

(a) The net proceeds derived from any sale or exchange of parcels in § 254.32(b) and (d) and § 254.37 shall be deposited in the fund commonly known as the ''Sisk Act'' account.

(b) Amounts deposited shall be available until expended for:

(1) Acquisition of land or interests in land for administrative sites for the National Forest System in the State from which the amounts were derived; or

(2) Acquisition of land or interests in land for inclusion in the National Forest System in that State, including land or interests in land that enhance opportunities for recreational access.

(3) Reimbursement for costs incurred in preparing a sale conducted under § 254.37 if the sale is a competitive sale.

[85 FR 8181, Feb. 13, 2020, as amended at 85 FR 60916, Sept. 29, 2020]

### § 254.39 [Reserved]

### § 254.40 Applications.

(a) A request for conveyance of National Forest System land must be made in writing to the District Ranger or the Forest Supervisor who has administrative jurisdiction over the land.

(b) The applicant shall bear all reasonable costs of administration, survey, and appraisal incidental to the conveyance.

(c) Costs incidental to the conveyance may be waived at the discretion of the Chief of the Forest Service.

### § 254.41 Public sale or exchange in absence of application.

(a) Mineral survey fractions or road rights-of-way which have not been applied for by an abutting landowner may be offered to the public for sale or exchange at not less than fair market value.

(b) Public notice of a proposed sale of land for which there is no applicant shall be published once a week for four

consecutive weeks in a local newspaper prior to the date of sale.

(c) The public notice shall describe the lands to be sold, minimum acceptable price, conditions of sale, sealed or oral bid procedures, date and location of sale.

**§ 254.42 Valuation of tracts.**

(a) Approximately equal value shall be determined by comparing and evaluating the elements of value on the lands or interest in lands to be interchanged. Elements of value to be considered include size, shape, location, physical attributes, functional utility, proximity of other similar sites, and amenities in the immediate environs of the parcel. Findings that tracts are approximately equal in value shall be documented. An applicant must signify acceptance of the value determination by signing the documented findings prior to the interchange.

(b) Equal value in sale or exchange transactions shall be developed by recognized appraisal methods following Forest Service appraisal procedures and the Uniform Appraisal Standards for Federal Land Acquisition. The date of the value estimate will be current with the date of sale or exchange.

(c) Improvements to National Forest System land made by any persons other than the Government may be excluded from the property value determinations.

**§ 254.43 Surveys.**

All necessary tract surveys of National Forest System land shall be conducted by a licensed private surveyor under Forest Service instructions, contracted by the person applying for the conveyance, or by a Forest Service surveyor. The person will also be required to have all Federal property boundaries resulting from a conveyance marked and posted to Forest Service standards.

**§ 254.44 Document of conveyance.**

(a) Title to the United States may be conveyed by quitclaim or warranty deed. The United States will convey title only by quitclaim deed.

(b) Deeds shall be free of terms, conditions, and convenants except those deemed necessary to ensure protection of the public interest.

(c) A copy of all documents of conveyance will be transmitted after recordation, where applicable, to the appropriate State Office of the Bureau of Land Management.

# PART 261—PROHIBITIONS

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AUTHORITY: 7 U.S.C. 1011(f); 16 U.S.C. 4601–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

SOURCE: 42 FR 2957, Jan. 14, 1977, unless otherwise noted.

## Subpart A—General Prohibitions

### § 261.1 Scope.

(a) The prohibitions in this part apply, except as otherwise provided, when:

(1) An act or omission occurs in the National Forest System or on a National Forest System road or trail.

(2) An act or omission affects, threatens, or endangers property of the United States administered by the Forest Service.

(3) An act or omission affects, threatens, or endangers a person using, or engaged in the protection, improvement or administration of the National Forest System or a National Forest System road or trail.

(4) An act or omission occurs within the designated boundaries of a component of the National Wild and Scenic Rivers System.

(b) Nothing in this part shall preclude activities as authorized by the Wilderness Act of 1964 or the U.S. Mining Laws Act of 1872 as amended.

(c) Unless an offense set out in this part specifies that intent is required, intent is not an element of any offense under this part.

(d) None of these prohibitions apply to any person engaged in fire suppression actions.

[42 FR 35958, July 13, 1977, as amended at 43 FR 32136, July 25, 1978; 46 FR 33519, June 30, 1981; 66 FR 3218, Jan. 12, 2001; 73 FR 30307, May 27, 2008]

### § 261.1a Special use authorizations, contracts and operating plans.

The Chief, each Regional Forester, each Forest Supervisor, and each District Ranger or equivalent officer may issue special-use authorizations, award contracts, or approve operating plans authorizing the occupancy or use of a road, trail, area, river, lake, or other part of the National Forest System in accordance with authority which is delegated elsewhere in this chapter or in the Forest Service Manual. These Forest Officers may permit in the authorizing document or approved plan an act or omission that would otherwise be a violation of a subpart A or subpart C regulation or a subpart B order. In authorizing such uses, the Forest Officer may place such conditions on the authorization as that officer considers necessary for the protection or administration of the National Forest System, or for the promotion of public health, safety, or welfare.

[49 FR 25450, June 21, 1984]

### § 261.1b Penalty.

Any violation of the prohibitions of this part (261) shall be punished by a fine of not more than $500 or imprisonment for not more than six months or both pursuant to title 16 U.S.C., section 551, unless otherwise provided.

[46 FR 33519, June 30, 1981]

### § 261.2 Definitions.

The following definitions apply to this part:

*Administrative unit*. A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

*Archaeological resource* means any material remains of prehistoric or historic human life or activities which are of archaeological interest and are at least 50 years of age, and the physical site, location, or context in which they are found.

*Area*. A discrete, specifically delineated space that is smaller, and, except for over-snow vehicle use, in most cases much smaller, than a Ranger District.

*Campfire* means a fire, not within any building, mobile home or living accommodation mounted on a motor vehicle, which is used for cooking, personal warmth, lighting, ceremonial, or esthetic purposes. *Fire* includes campfire.

*Camping* means the temporary use of National Forest System lands for the purpose of overnight occupancy without a permanently-fixed structure.

*Camping equipment* means the personal property used in or suitable for camping, and includes any vehicle used for transportation and all equipment in possession of a person camping. Food and beverage are not considered camping equipment.

*Cave* means any naturally occurring void, cavity, recess, or system of interconnected passages beneath the surface of the earth or within a cliff or ledge and which is large enough to permit a person to enter, whether the entrance is excavated or naturally formed. Such term shall include any natural pit, sinkhole, or other opening which is an extensive of a cave entrance or which is an integral part of the cave.

*Cave resources* mean any materials or substances occurring in caves including, but not limited to, biotic, cultural, mineralogic, paleontologic, geologic, and hydrologic resources.

*Commercial use or activity*— any use or activity on National Forest System lands (a) where an entry or participation fee is charged, or (b) where the primary purpose is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit.

*Damaging* means to injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill or in any way harm or disturb.

*Developed recreation site* means an area which has been improved or developed for recreation.

*Distribution of printed material*— disseminating, posting, affixing, or erecting printed material as defined in this section.

*Forest officer* means an employee of the Forest Service.

*Forest road or trail*. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

*Historical resource* means any structural, architectural, archaeological, artifactual or other material remains of past human life or activities which are of historical interest and are at least 50 years of age, and the physical site, location, or context in which they are found.

*Indian tribe* means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community that is included on a list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

*Motorized equipment* means any machine activated by a nonliving power source except small battery-powered handcarried devices such as flashlights, shavers, Geiger counters, and cameras.

*Motor vehicle* means any vehicle which is self-propelled, other than:

(1) A vehicle operated on rails; and

(2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area.

*National Forest System* includes all national forest lands and waters reserved or withdrawn from the public domain of the United States, national forest lands and waters acquired through purchase, exchange, donation, or other means, national grasslands and land utilization projects and waters administered under title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010–1012), and other lands, waters, or interests therein acquired

under the Wild and Scenic River Act (16 U.S.C. 1271–1287) or National Trails System Act (16 U.S.C. 1241–1249).

*National Forest System road.* A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

*National Forest System trail.* A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

*National Forest wilderness* means those parts of the National Forest System which were designated units of the National Wilderness Preservation System by the Wilderness Act of September 3, 1964, and such other areas of the National Forest System as are added to the wilderness system by act of Congress.

*Operating plan* means the following documents, providing that the document has been issued or approved by the Forest Service: A plan of operations as provided for in 36 CFR part 228, subparts A and D, and 36 CFR part 292, subparts C and G; a supplemental plan of operations as provided for in 36 CFR part 228, subpart A, and 36 CFR part 292, subpart G; an operating plan as provided for in 36 CFR part 228, subpart C, and 36 CFR part 292, subpart G; an amended operating plan and a reclamation plan as provided for in 36 CFR part 292, subpart G; a surface use plan of operations as provided for in 36 CFR part 228, subpart E; a supplemental surface use plan of operations as provided for in 36 CFR part 228, subpart E; a permit as provided for in 36 CFR 251.15; and an operating plan and a letter of authorization as provided for in 36 CFR part 292, subpart D.

*Person* means natural person, corporation, company, partnership, trust, firm, or association of persons.

*Permission* means oral authorization by a forest officer.

*Permit* means authorization in writing by a forest officer.

*Prehistoric resource* means any structural, architectural, archaeological, artifactual or other material remains of past human life or activity generally prior to the advent of written records and of anthropological interest, and the physical site, location, or context in which they are found.

*Prescribed fire* means a planned and intentionally lit fire allowed to burn within the requirements of Federal or State laws, regulations, or permits.

*Primitive areas* are those areas within the National Forest System classified as *Primitive* on the effective date of the Wilderness Act, September 3, 1964.

*Printed material*—any written and/or graphic material including but not limited to pamphlets, brochures, photographs, graphics, signs, and posters.

*Publicly nude* means nude in any place where a person may be observed by another person. Any person is nude if the person has failed to cover the rectal area, pubic area or genitals. A female person is also nude if she has failed to cover both breasts below a point immediately above the top of the areola. Each such covering must be fully opaque. No person under the age of 10 years shall be considered publicly nude.

*Recreation fee* means a standard amenity recreation fee, an expanded amenity recreation fee, or a special recreation permit fee as defined in section 802(8) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801(8)).

*Residence.* Any structure or shelter, whether temporary or permanent, including, but not limited to, buildings, buses, cabins, campers, houses, leantos, mills, mobile homes, motor homes, pole barns, recreational vehicles, sheds, shops, tents and trailers, which is being used, capable of being used, or designed to be used, in whole or in part, full or part-time, as living or sleeping quarters by any person, including a guard or watchman.

*Special-use authorization* means a permit, term permit, lease or easement which allows occupancy, or use rights or privileges of National Forest System land.

*State* means any State, the Commonwealth of Puerto Rico, and the District of Columbia.

*State law* means the law of any State in whose exterior boundaries an act or omission occurs regardless of whether State law is otherwise applicable.

*Stove fire* means a campfire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including a space-heating device.

*Traditional and cultural purpose* means, with respect to a definable use, area, or practice, that it is identified by an Indian tribe as traditional or cultural because of its long-established significance or ceremonial nature for the Indian tribe.

*Unauthorized livestock* means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by § 222.20(b)(13), which is not authorized by permit to be upon the land on which the livestock is located and which is not related to use authorized by a grazing permit; provided, that noncommercial pack and saddle stock used by recreationists, travelers, other Forest visitors for occasional trips, as well as livestock to be trailed over an established driveway when there is no overnight stop on Forest Service administered land do not fall under this definition.

*Vehicle* means any device in, upon, or by which any person or property is or may be transported, including any frame, chassis, or body of any motor vehicle, except devices used exclusively upon stationary rails or tracks.

*Volunteer or hosted enrollee* means any person, not a Forest Service employee, officially participating in a Forest Service human resource program as authorized by an act of Congress and identified to accomplish one or more of the following objectives: provide skills training; education; useful work; develop understanding of ecological systems and conservation of natural resources; build cultural and communication bridges between various socioeconomic groups; and further the administration, development, and management of National Forest resources, forest research, and State and Private Forest activities.

*Wild free-roaming horses and burros* mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat, but does not include any horse or burro introduced onto National Forest System lands on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership. Unbranded, claimed horses and burros, where the claim is found to be erroneous, are also considered as wild and free-roaming if they meet the criteria above.

[42 FR 2957, Jan. 14, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 261.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

### § 261.3 Interfering with a Forest officer, volunteer, or human resource program enrollee or giving false report to a Forest officer.

The following are prohibited:

(a) Threatening, resisting, intimidating, or interfering with any forest officer engaged in or on account of the performance of his official duties in the protection, improvement, or administration of the National Forest System is prohibited.

(b) Giving any false, fictitious or fraudulent report or other information to any Forest Officer engaged in or on account of the performance of his official duties knowing that such report or other information contains false, fictitious or fraudulent statement or entry.

(c) Threatening, intimidating, or intentionally interfering with any Forest officer, volunteer, or human resource program enrollee while engaged in, or on account of, the performance of duties for the protection, improvement, or administration of the National Forest System or other duties assigned by the Forest Service.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984]

### § 261.4 Disorderly conduct.

The following are prohibited:

(a) Engaging in fighting.

(b) Addressing any offensive, derisive, or annoying communication to any other person who is lawfully present when such communication has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed.

(c) Make statements or other actions directed toward inciting or producing imminent lawless action and likely to incite or produce such action.

(d) Causing public inconvenience, annoyance, or alarm by making unreasonably loud noise.

[46 FR 33520, June 30, 1981]

### §261.5 Fire.

The following are prohibited:

(a) Carelessly or negligently throwing or placing any ignited substance or other substance that may cause a fire.

(b) Firing any tracer bullet or incendiary ammunition.

(c) Causing timber, trees, slash, brush or grass to burn except as authorized by permit.

(d) Leaving a fire without completely extinguishing it.

(e) Causing and failing to maintain control of a fire that is not a prescribed fire that damages the National Forest System.

(f) Building, attending, maintaining, or using a campfire without removing all flammable material from around the campfire adequate to prevent its escape.

(g) Negligently failing to maintain control of a prescribed fire on Non-National Forest System lands that damages the National Forest System.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 73 FR 30307, May 27, 2008]

### §261.6 Timber and other forest products.

The following are prohibited:

(a) Cutting or otherwise damaging any timber, tree, or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.

(b) Cutting any standing tree, under permit or timber sale contract, before a Forest Officer has marked it or has otherwise designated it for cutting.

(c) Removing any timber or other forest product cut under permit or timber sale contract, except to a place designated for scaling, or removing it from that place before it is scaled, measured, counted, or otherwise accounted for by a forest officer.

(d) Stamping, marking with paint, or otherwise identifying any tree or other forest product in a manner similar to that employed by forest officers to mark or designate a tree or any other forest product for cutting or removal.

(e) Loading, removing or hauling timber or other forest product acquired under any permit or timber sale contract unless such product is identified as required in such permit or contract.

(f) Selling or exchanging any timber or other forest product obtained under free use pursuant to §§223.5 through 223.11.

(g) Violating any timber export or substitution restriction in §§223.160 through 223.164.

(h) Removing any timber, tree or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.

(i) Violating the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), or its implementing regulations at 36 CFR 223.185–223.203.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 51 FR 1250, Jan. 10, 1986; 60 FR 46934, Sept. 8, 1995]

EFFECTIVE DATE NOTE: At 73 FR 79392, Dec. 29, 2008, §261.6 was revised, effective Jan. 28, 2009. At 74 FR 5107, Jan. 29, 2009, the amendment was delayed until Mar. 30, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was further delayed until May 29, 2009. At 74 FR 26091, June 1, 2009, the amendment was delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

#### §261.6 Timber and other forest products.

The following are prohibited:

(a) Cutting, removing, or otherwise damaging any timber, tree, or other forest product, including special forest products and forest botanical products, except as authorized by Federal law, regulation, permit, contract, special use authorization, free-use authorization, or personal-use authorization.

(b) Cutting any standing tree under any permit or contract before a Forest Officer has marked it or has otherwise designated it for cutting.

(c) Unless otherwise provided for in any permit or contract, removing any timber or other forest product, including special forest products and forest botanical products, except to a place designated for scaling, measuring, counting, or other method of accounting by a forest officer.

(d) Stamping, marking with paint, or otherwise identifying any tree, or other forest product, including special forest products and forest botanical products, in a manner similar to that employed by forest officers to mark or designated a tree or any other forest product for cutting, or removal.

(e) Loading, removing or hauling timber, or other forest products, including special forest products and forest botanical products, acquired under any permit, contract, free-use authorization, memorandum of agreement, memorandum of understanding, or personal-use authorization unless such product is designated for loading, removing, or hauling as required or authorized in such permit, contract, free-use authorization, memorandum of agreement, memorandum of understanding, or personal-use authorization

(f) Selling or exchanging any timber or other forest product, including special forest products and forest botanical products, obtained under free use or personal use pursuant to §§ 223.5 through 223.11, § 223.239 or § 223.279 of this chapter.

(g) Violating any timber export or substitution restriction in §§ 223.160 through 223.164 of this chapter.

(h) Violating the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), or its implementing regulations at §§ 223.185 through 223.203 of this chapter.

### § 261.7 Livestock.

The following are prohibited:

(a) Placing or allowing unauthorized livestock to enter or be in the National Forest System or other lands under Forest Service control.

(b) Not removing unauthorized livestock from the National Forest System or other lands under Forest Service control when requested by a forest officer.

(c) Failing to reclose any gate or other entry.

(d) Molesting, injuring, removing, or releasing any livestock impounded under § 262.10 while in the custody of the Forest Service or its authorized agents.

[42 FR 35959, July 13, 1977, as amended at 51 FR 1251, Jan. 10, 1986]

### § 261.8 Fish and wildlife.

The following are prohibited to the extent Federal or State law is violated:

(a) Hunting, trapping, fishing, catching, molesting, killing or having in possession any kind of wild animal, bird, or fish, or taking the eggs of any such bird.

(b) Possessing a firearm or other implement designed to discharge a missile capable of destroying animal life.

(c) Possessing equipment which could be used for hunting, fishing, or trapping.

(d) Possessing a dog not on a leash or otherwise confined.

(e) Curtail the free movement of any animal or plant life into or out of a cave, except as authorized to protect a cave resource.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 59 FR 31152, June 17, 1994]

### § 261.9 Property.

The following are prohibited:

(a) Damaging any natural feature or other property of the United States.

(b) Removing any natural feature or other property of the United States.

(c) Damaging any plant that is classified as a threatened, endangered, sensitive, rare, or unique species.

(d) Removing any plant that is classified as a threatened, endangered, sensitive, rare, or unique species.

(e) Entering any building, structure, or enclosed area owned or controlled by the United States when such building, structure, or enclosed area is not open to the public.

(f) Using any pesticide except for personal use as an insect repellent or as provided by special-use authorization for other minor uses.

(g) Digging in, excavating, disturbing, injuring, destroying, or in any way damaging any prehistoric, historic, or archaeological resource, structure, site, artifact, or property.

(h) Removing any prehistoric, historic, or archaeological resource, structure, site, artifact, property.

(i) Excavating, damaging, or removing any cave resource from a cave without a special use authorization, or removing any cave resource for commercial purposes.

[46 FR 33520, June 30, 1981, as amended at 49 FR 25450, June 21, 1984; 51 FR 30356, Aug. 26, 1986; 59 FR 31152, June 17, 1994; 80 FR 21629, Apr. 17, 2015]

### § 261.10 Occupancy and use.

The following are prohibited:

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, significant surface disturbance, or other improvement on National Forest System lands or facilities without a special-use authorization, contract, or approved operating plan when such authorization is required.

(b) Construction, reconstructing, improving, maintaining, occupying or using a residence on National Forest System lands unless authorized by a special-use authorization or approved operating plan when such authorization is required.

(c) Selling or offering for sale any merchandise or conducting any kind of work activity or service unless authorized by Federal law, regulation, or special-use authorization.

(d) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property as follows:

(1) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area, or

(2) Across or on a National Forest System road or a body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge.

(3) Into or within any cave.

(e) Abandoning any personal property.

(f) Placing a vehicle or other object in such a manner that it is an impediment or hazard to the safety or convenience of any person.

(g) Commercial distribution of printed material without a special use authorization.

(h) When commercially distributing printed material, delaying, halting, or preventing administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands; misrepresenting the purposes or affiliations of those selling or distributing the material; or misrepresenting the availability of the material without cost.

(i) Operating or using in or near a campsite, developed recreation site, or over an adjacent body of water without a permit, any device which produces noise, such as a radio, television, musical instrument, motor or engine in such a manner and at such a time so as to unreasonably disturb any person.

(j) Operating or using a public address system, whether fixed, portable or vehicle mounted, in or near a campsite or developed recreation site or over an adjacent body of water without a special-use authorization.

(k) Use or occupancy of National Forest System land or facilities without special-use authorization when such authorization is required.

(l) Violating any term or condition of a special-use authorization, contract or approved operating plan.

(m) Failing to stop a vehicle when directed to do so by a Forest Officer.

(n) Failing to pay any special use fee or other charges as required.

(o) Discharging or igniting a firecracker, rocket or other firework, or explosive into or within any cave.

(p) Use or occupancy of National Forest System lands or facilities without an approved operating plan when such authorization is required.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984; 53 FR 16550, May 10, 1988; 59 FR 31152, June 17, 1994; 60 FR 45295, Aug. 30, 1995; 66 FR 3218, Jan. 12, 2001; 69 FR 41965, July 13, 2004; 73 FR 65999, Nov. 6, 2008]

### § 261.11 Sanitation.

The following are prohibited:

(a) Depositing in any toilet, toilet vault, or plumbing fixture any substance which could damage or interfere with the operation or maintenance of the fixture.

(b) Possessing or leaving refuse, debris, or litter in an exposed or unsanitary condition.

(c) Placing in or near a stream, lake, or other water any substance which does or may pollute a stream, lake, or other water.

(d) Failing to dispose of all garbage, including any paper, can, bottle, sewage, waste water or material, or rubbish either by removal from the site or area, or by depositing it into receptacles or at places provided for such purposes.

(e) Dumping of any refuse, debris, trash or litter brought as such from private property or from land occupied

under permit, except, where a container, dump or similar facility has been provided and is identified as such, to receive trash generated from private lands or lands occupied under permit.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981]

### § 261.12 National Forest System roads and trails.

The following are prohibited:

(a) Violating the load, weight, height, length, or width limitations prescribed by State law except by special-use authorization or written agreement or by order issued under § 261.54 of this Chapter.

(b) Failing to have a vehicle weighed at a Forest Service weighing station, if required by a sign.

(c) Damaging and leaving in a damaged condition any such road, trail, or segment thereof.

(d) Blocking, restricting, or otherwise interfering with the use of a road, trail, or gate.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984; 55 FR 25832, June 25, 1990]

### § 261.13 Motor vehicle use.

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District of the National Forest System, and these designations have been identified on a motor vehicle use map, it is prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or Ranger District other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

(a) Aircraft;

(b) Watercraft;

(c) Over-snow vehicles;

(d) Limited administrative use by the Forest Service;

(e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(f) Authorized use of any combat or combat support vehicle for national defense purposes;

(g) Law enforcement response to violations of law, including pursuit;

(h) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; and

(i) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

[70 FR 68291, Nov. 9, 2005]

### § 261.14 Over-snow vehicle use.

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated for over-snow vehicle use pursuant to 36 CFR 212.81 on an administrative unit or a Ranger District of the National Forest System, and these designations have been identified on an over-snow vehicle use map, it is prohibited to possess or operate an over-snow vehicle on National Forest System lands in that administrative unit or Ranger District other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

(a) Limited administrative use by the Forest Service;

(b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(c) Authorized use of any combat or combat support vehicle for national defense purposes;

(d) Law enforcement response to violations of law, including pursuit;

(e) Over-snow vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; and

(f) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

[80 FR 4512, Jan. 28, 2015]

### § 261.15 Use of vehicles off roads.

It is prohibited to operate any vehicle off National Forest System, State or County roads:

(a) Without a valid license as required by State law.

(b) Without an operable braking system.

(c) From one-half hour after sunset to one-half hour before sunrise unless equipped with working head and tail lights.

(d) In violation of any applicable noise emission standard established by any Federal or State agency.

(e) While under the influence of alcohol or other drug;

(f) Creating excessive or unusual smoke;

(g) Carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person or property.

(h) In a manner which damages or unreasonably disturbs the land, wildlife, or vegetative resources.

(i) In violation of State law established for vehicles used off roads.

[42 FR 2957, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 66 FR 3218, Jan. 12, 2001. Redesignated at 70 FR 68291, Nov. 9, 2005]

### § 261.16 Developed recreation sites.

The following are prohibited:

(a) Occupying any portion of the site for other than recreation purposes.

(b) Building, attending, maintaining, or using a fire outside of a fire ring provided by the Forest Service for such purpose or outside of a stove, grill or fireplace.

(c) Cleaning or washing any personal property, fish, animal, or food, or bathing or washing at a hydrant or water faucet not provided for that purpose.

(d) Discharging or igniting a firecracker, rocket or other firework, or explosive.

(e) Occupying between 10 p.m. and 6 a.m. a place designated for day use only.

(f) Failing to remove all camping equipment or personal property when vacating the area or site.

(g) Placing, maintaining, or using camping equipment except in a place specifically designated or provided for such equipment.

(h) Without permission, failing to have at least one person occupy a camping area during the first night after camping equipment has been set up.

(i) Leaving camping equipment unattended for more than 24 hours without permission.

(j) Bringing in or possessing an animal, other than a service animal, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.

(k) Bringing in or possessing in a swimming area an animal, other than a service animal.

(l) Bringing in or possessing a saddle, pack, or draft animal except as authorized by posted instructions.

(m) Operating or parking a motor vehicle or trailer except in places developed or designated for this purpose.

(n) Operating a bicycle, motorbike, or motorcycle on a trail unless designated for this use.

(o) Operating a motorbike, motorcycle, or other motor vehicle for any purpose other than entering or leaving the site.

(p) Depositing any body waste except into receptacles provided for that purpose.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984; 60 FR 45295, Aug. 30, 1995. Redesignated at 70 FR 68291, Nov. 9, 2005; 76 FR 58404, Sept. 21, 2011]

### § 261.17 Recreation fees.

Failure to pay any recreation fee is prohibited. Notwithstanding 18 U.S.C. 3571(e), the fine imposed for the first offense of nonpayment shall not exceed $100.

[70 FR 70498, Nov. 22, 2005]

### § 261.18 National Forest Wilderness.

The following are prohibited in a National Forest Wilderness:

(a) Possessing or using a motor vehicle, motorboat or motorized equipment except as authorized by Federal Law or regulation.

(b) Possessing or using a hang glider or bicycle.

(c) Landing of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter.

[42 FR 2957, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 50 FR 16231, Apr. 25, 1985. Redesignated at 70 FR 68291, Nov. 9, 2005]

### § 261.19 Boundary Waters Canoe Area Wilderness.

The following are prohibited in the Boundary Waters Canoe Area Wilderness:

(a) Possessing or transporting any motor or other mechanical device capable of propelling a watercraft through water by any means, except by permit or as specifically authorized by Federal law or regulation.

(b) Transporting, using, or mooring amphibious craft of any type or any watercraft designed for or used as floating living quarters.

(c) Using wheels, rollers, or other mechanical devices for the overland transportation of any watercraft, except by special-use authorization, or as authorized by Federal law or regulation.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 50 FR 16231, Apr. 25, 1985. Redesignated at 70 FR 68291, Nov. 9, 2005]

### § 261.20 Pacific Crest National Scenic Trail.

It is prohibited to use a motorized vehicle on the Pacific Crest National Scenic Trail without a special-use authorization.

[49 FR 25450, June 21, 1984. Redesignated at 70 FR 68291, Nov. 9, 2005]

### § 261.21 National Forest primitive areas.

The following are prohibited in any area classified as a National Forest Primitive Area on September 3, 1964:

(a) Landing of aircraft or using a motor boat, unless such use had become well established before September 3, 1964.

(b) Possessing or using a motor or motorized equipment, except small battery powered, hand-held devices, such as cameras, shavers, flashlights, and Geiger-counters.

[42 FR 35959, July 13, 1977. Redesignated at 70 FR 68291, Nov. 9, 2005]

### § 261.22 Unauthorized use of "Smokey Bear" and "Woodsy Owl" symbol.

(a) Manufacture, importation, reproduction, or use of ''Smokey Bear'' except as provided under §§ 271.2, 271.3, or 271.4 is prohibited.

(b) Manufacture, importation, reproduction, or use of ''Woodsy Owl'' except as provided under §§ 272.2, 272.3, or 272.4 is prohibited.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977. Redesignated at 70 FR 68291, Nov. 9, 2005]

### § 261.23 Wild free-roaming horses and burros.

The following are prohibited:

(a) Removing or attempting to remove a wild free-roaming horse or burro from the National Forest System unless authorized by law or regulation.

(b) Causing or allowing the inhumane treatment or harassment of a wild free-roaming horse or burro.

(c) Removing or attempting to remove, alter or destroy any official mark used to identify a wild horse or burro or its remains unless authorized or permitted by law or regulation.

(d) Violating any terms or conditions specified in a care and maintenance agreement or permit.

[46 FR 33520, June 30, 1981. Redesignated at 70 FR 68291, Nov. 9, 2005]

## Subpart B—Prohibitions in Areas Designated by Order

### § 261.50 Orders.

(a) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of described areas within the area over which he has jurisdiction. An order may close an area to entry or may restrict the use of an area by applying any or all of the prohibitions authorized in this subpart or any portion thereof.

(b) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of any National Forest System road or trail within the area over which he has jurisdiction.

(c) Each order shall:

(1) For orders issued under paragraph (a) of this section, describe the area to which the order applies;

(2) For orders issued under paragraph (b) of this section, describe the road or trail to which the order applies;

(3) Specify the times during which the prohibitions apply if applied only during limited times;

(4) State each prohibition which is applied; and

(5) Be posted in accordance with § 261.51.

(d) The prohibitions which are applied by an order are supplemental to the general prohibitions in Subpart A.

(e) An order may exempt any of the following persons from any of the prohibitions contained in the order:

(1) Persons with a permit specifically authorizing the otherwise prohibited act or omission.

(2) Owners or lessees of land in the area;

(3) Residents in the area;

(4) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty; and

(5) Persons engaged in a business, trade, or occupation in the area.

(6) Any other person meeting exemption requirements specified in the order.

(f) Any person wishing to use a National Forest System road or trail or a portion of the National Forest System, should contact the Forest Supervisor, Director, Administrator, or District Ranger to ascertain the special restrictions which may be applicable thereto.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 42 FR 35959, July 13, 1977; 46 FR 33521, June 30, 1981; 66 FR 3218, Jan. 12, 2001]

### § 261.51 Posting.

Posting is accomplished by:

(a) Placing a copy of the order imposing each prohibition in the offices of the Forest Supervisor and District Ranger, or equivalent officer who have jurisdiction over the lands affected by the order, and

(b) Displaying each prohibition imposed by an order in such locations and manner as to reasonably bring the prohibition to the attention of the public.

### § 261.52 Fire.

When provided by an order, the following are prohibited:

(a) Building, maintaining, attending or using a fire, campfire, or stove fire.

(b) Using an explosive.

(c) Smoking.

(d) Smoking, except within an enclosed vehicle or building, a developed recreation site, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable material.

(e) Going into or being upon an area.

(f) Possessing, discharging or using any kind of firework or other pyrotechnic device.

(g) Entering an area without any firefighting tool prescribed by the order.

(h) Operating an internal combustion engine.

(i) Welding, or operating an acetylene or other torch with open flame.

(j) Operating or using any internal or external combustion engine without a spark arresting device that is properly installed, maintained, and in effective working order in accordance with U.S. Forest Service Standard 5100–1.

(k) Violating any state law specified in the order concerning burning, fires or which is for the purpose of preventing, or restricting the spread of fires.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977;,42 FR 35959, July 13, 1977; 46 FR 33521, June 30, 1981; 77 FR 58493, Sept. 21, 2012]

### § 261.53 Special closures.

When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of:

(a) Threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish.

(b) Special biological communities.

(c) Objects or areas of historical, archeological, geological, or paleontological interest.

(d) Scientific experiments or investigations.

(e) Public health or safety.

(f) Property.

(g) The privacy of tribal activities for traditional and cultural purposes. Closure to protect the privacy of tribal activities for traditional and cultural

purposes must be requested by an Indian tribe; is subject to approval by the Forest Service; shall be temporary; and shall affect the smallest practicable area for the minimum period necessary for activities of the requesting Indian tribe.

[42 FR 2957, Jan. 14, 1977, as amended at 76 FR 3017, Jan. 19, 2011]

### § 261.54 National Forest System roads.

When provided by an order, the following are prohibited:

(a) Using any type of vehicle prohibited by the order.

(b) Use by any type of traffic prohibited by the order.

(c) Using a road for commercial hauling without a permit or written authorization.

(d) Operating a vehicle in violation of the speed, load, weight, height, length, width, or other limitations specified by the order.

(e) Being on the road.

(f) Operating a vehicle carelessly, recklessly, or without regard for the rights or safety of other persons or in a manner or at a speed that would endanger or be likely to endanger any person or property.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981]

### § 261.55 National Forest System trails.

When provided by an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a National Forest System trail:

(a) Being on a trail.

(b) Using any type of vehicle prohibited by the order.

(c) Use by any type of traffic or mode of transport prohibited by the order.

(d) Operating a vehicle in violation of the width, weight, height, length, or other limitations specified by the order.

(e) Shortcutting a switchback in a trail.

[55 FR 25832, June 25, 1990, as amended at 69 FR 41965, July 13, 2004; 70 FR 68291, Nov. 9, 2005]

### § 261.56 Use of vehicles off National Forest System roads.

When provided by an order, it is prohibited to possess or use a vehicle off National Forest System roads.

[42 FR 2957, Jan. 14, 1977, as amended at 66 FR 3218, Jan. 12, 2001]

### § 261.57 National Forest wilderness.

When provided by an order, the following are prohibited:

(a) Entering or being in the area.

(b) Possessing camping or pack-outfitting equipment, as specified in the order.

(c) Possessing a firearm or firework.

(d) Possessing any non-burnable food or beverage containers, including deposit bottles, except for non-burnable containers designed and intended for repeated use.

(e) Grazing.

(f) Storing equipment, personal property or supplies.

(g) Disposing of debris, garbage, or other waste.

(h) Possessing or using a wagon, cart or other vehicle.

[42 FR 2957, Jan. 14, 1977, as amended at 49 FR 25450, June 21, 1984]

### § 261.58 Occupancy and use.

When provided by an order, the following are prohibited:

(a) Camping for a period longer than allowed by the order.

(b) Entering or using a developed recreation site or portion thereof.

(c) Entering or remaining in a campground during night periods prescribed in the order except for persons who are occupying such campgrounds.

(d) Occupying a developed recreation site with prohibited camping equipment prescribed by the order.

(e) Camping.

(f) Using a campsite or other area described in the order by more than the number of users allowed by the order.

(g) Parking or leaving a vehicle in violation of posted instructions.

(h) Parking or leaving a vehicle outside a parking space assigned to one's own camp unit.

(i) Possessing, parking or leaving more than two vehicles, except motorcycles or bicycles per camp unit.

(j) Being publicly nude.

(k) Entering or being in a body of water.

(l) Being in the area after sundown or before sunrise.

(m) Discharging a firearm, air rifle, or gas gun.

(n) Possessing or operating a motorboat.

(o) Water skiing.

(p) Storing or leaving a boat or raft.

(q) Operating any watercraft in excess of a posted speed limit.

(r) Launching a boat except at a designated launching ramp.

(s) Possessing, storing, or transporting any bird, fish, or other animal or parts thereof, as specified in the order.

(t) Possessing, storing, or transporting any part of a tree or other plant, as specified in the order.

(u) Being in the area between 10 p.m. and 6 a.m. except a person who is camping or who is visiting a person camping in that area.

(v) Hunting or fishing.

(w) Possessing or transporting any motor or mechanical device capable of propelling a watercraft through water by any means.

(x) Using any wheel, roller, or other mechanical device for the overland transportation of any watercraft.

(y) Landing of aircraft, or dropping or picking up any material, supplies, or person by means of an aircraft, including a helicopter.

(z) Entering or being on lands or waters within the boundaries of a component of the National Wild and Scenic Rivers System.

(aa) Riding, hitching, tethering or hobbling a horse or other saddle or pack animal in violation of posted instructions.

(bb) Possessing a beverage which is defined as an alcoholic beverage by State law.

(cc) Possessing or storing any food or refuse, as specified in the order.

(dd) [Reserved]

(ee) Depositing any body waste in caves except into receptacles provided for that purpose.

[42 FR 2597, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 43 FR 32136, July 25, 1978; 46 FR 33521, June 30, 1981; 52 FR 19347, May 22, 1987; 59 FR 31152, June 17, 1994]

## Subpart C—Prohibitions in Regions

### § 261.70 Issuance of regulations.

(a) Pursuant to 7 CFR 2.60, the Chief, and each Regional Forester, to whom the Chief has delegated authority, may issue regulations prohibiting acts or omissions within all or any part of the area over which he has jurisdiction, for one or more of the following purposes:

(1) Fire prevention or control.

(2) Disease prevention or control.

(3) Protection of property, roads, or trails.

(4) Protection of threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish, or special biological communities.

(5) Protection of objects or places of historical, archaeological, geological or paleontological interest.

(6) Protection of scientific experiments or investigations.

(7) Public safety.

(8) Protection of health.

(9) Establishing reasonable rules of public conduct.

(b) Regulations issued under this subpart shall not be contrary to or duplicate any prohibition which is established under existing regulations.

(c) In issuing any regulations under paragraph (a) of this section, the issuing officer shall follow 5 U.S.C. 553.

(d) In a situation when the issuing officer determines that a notice of proposed rule making and public participation thereon is impracticable, unnecessary, or contrary to the public interest, he shall issue, with the concurrence of the Chief, an interim regulation containing an expiration date.

(e) No interim regulation issued under paragraph (d) of this section will be effective for more than 90 days unless readopted as a permanent rule after a notice of proposed rule making under 5 U.S.C. 553 (b) and (c).

**§ 261.71 Regulations applicable to Region 1, Northern Region, as defined in § 200.2. [Reserved]**

**§ 261.72 Regulations applicable to Region 2, Rocky Mountain Region, as defined in § 200.2. [Reserved]**

**§ 261.73 Regulations applicable to Region 3, Southwestern Region, as defined in § 200.2. [Reserved]**

**§ 261.74 Regulations applicable to Region 4, Intermountain Region, as defined in § 200.2. [Reserved]**

**§ 261.75 Regulations applicable to Region 5, California Region, as defined in § 200.2.**

(a) *Definitions.* In this section: (1) *Middle Fork of the Feather River* means the river and land area in or adjacent to Plumas National Forest described as the *River Area* in the notice at 35 FR 4219 or any amendment to that notice.

(2) *Motorized equipment* means any equipment having or using an engine or motor, except small battery-powered handheld devices such as cameras, shavers, flashlights, and Geiger counters.

(3) *Wild river zone* means the area described as the Bald Rock Canyon Wild River Zone or as the Upper Canyon Wild River Zone in the notice at 35 FR 4219 or any amendment to that notice.

(b) *Prohibitions.* (1) Possessing or using motorized equipment in the wild river zone of the Middle Fork of the Feather River, except on the Stag Point Trail or the Cleghorn Bar Trail, is prohibited.

(2) Paragraph (b)(1) of this section does not apply to any equipment authorized by a permit from the Forest Supervisor, Plumas National Forest, containing such terms and conditions as he considers necessary for the protection or preservation of the wild river zone or the health, safety or welfare of its users. Violation of any term or condition of such a permit is prohibited.

[42 FR 31789, June 23, 1977]

**§ 261.76 Regulations applicable to Region 6, Pacific Northwest Region, as defined in § 200.2. [Reserved]**

**§ 261.77 Prohibitions in Region 8, Southern Region.**

(a) Using or occupying any area of the Sumter National Forest or the Chattahoochee National Forest abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized by permit obtained through registration at Forest Service Registration Stations abutting the Chattooga River located at Highway 28, Low-Water Bridge, Earl's Ford, Sandy Ford, Highway 76, Woodall Shoals, or Overflow Bridge or unless authorized under special use permit.

(b) Using or occupying within the scope of any commercial operation or business any area of the Sumter National Forest or the Chattahoochee National Forest abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized by special use permit.

(c) Violating or failing to comply with any of the terms or conditions of any permit authorizing the occupancy and use specified in paragraph (a) or (b) of this section is prohibited.

(d) Entering, going, riding, or floating upon any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest in, on, or upon any floatable object or craft of every kind of description, unless authorized by a permit obtained through registration at Forest Service Registration Stations abutting the Chattooga River located at Highway 28, Low-Water Bridge, Earl's Ford, Sandy Ford, Highway 76, Woodall Shoals, or Overflow Bridge or unless authorized under special use permit.

(e) Entering, going, riding, or floating within the scope of any commercial operation or business upon any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest in, on, or upon any floatable object or craft of every kind or description, unless authorized by special use permit.

(f) Violating or failing to comply with any of the terms or conditions of any permit authorizing the occupancy and use specified in paragraph (d) or (e) of this section is prohibited.

[43 FR 3706, Jan. 27, 1978]

### § 261.78 Prohibitions applicable to Region 9, Eastern Region, as defined in § 200.2.

(a) Using or occupying any area of the Manistee National Forest abutting the Pine River between a point commencing 1 mile downstream from Lincoln Bridge to a point one-half mile upstream from Stronach Dam, for the purpose of entering, leaving, or going upon the river, in, on, or upon any floatable object of any kind or description during specific dates set forth annually and posted in such locations and manner as to reasonably bring the closure and dates to the attention of the public, is prohibited unless otherwise authorized by permit.

(b) [Reserved]

[43 FR 42749, Sept. 21, 1978]

### § 261.79 Regulations applicable to Region 10, Alaska Region, as defined in § 200.2. [Reserved]

# PART 262—LAW ENFORCEMENT SUPPORT ACTIVITIES

## Subpart A—Rewards and Payments

Sec.
262.1 Definitions.
262.2 Rewards in connection with fire or property prosecutions.
262.3 Payments for information and evidence in furtherance of investigations.
262.4 Audit of expenditures.
262.5 Disposal of purchased property.

## Subpart B—Administrative Impoundment and Removal

262.10 Impoundment and disposal of unauthorized livestock.
262.11 Impoundment of dogs.
262.12 Impoundment of property.
262.13 Removal of obstructions.

AUTHORITY: 7 U.S.C. 1011(f); 16 U.S.C. 470ee, 470ff, 470gg, 472, 551, 559a; 40 U.S.C. 552; 41 CFR 102–41.

## Subpart A—Rewards and Payments

### § 262.1 Definitions.

The following definitions apply to subparts A and B:

*Camping equipment*. Personal property used in or suitable for camping, including any vehicle used for transportation and all equipment in possession of a person camping, other than food and beverages.

*Damage*. To injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill, or in any way harm or disturb.

*Forest officer*. An employee of the Forest Service.

*Law enforcement personnel*. An employee of the Forest Service who is a special agent, law enforcement officer, or reserve law enforcement officer.

*National Forest System*. As defined in the Forest and Rangeland Renewable Resources Planning Act of 1974, the ''National Forest System'' includes 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 (50 Stat. 525, 7 U.S.C. 1010–1012), and other lands, waters or interests therein which are administered by the Forest Service or are designated for administration by the Forest Service as a part of that system.

*Vehicle*. Any device in, upon, or by which any person or property may be transported, including any frame, chassis, or body of any motor vehicle, except devices used exclusively upon stationary rails or tracks.

[79 FR 44295, July 31, 2014]

### § 262.2 Rewards in connection with fire or property prosecutions.

(a) Law enforcement personnel may pay up to $50,000 as a reward for information and evidence leading to the conviction of any person for:

(1) Willfully or maliciously setting on fire or causing to be set on fire any timber, underbrush, or grass on National Forest System lands or on non-

National Forest System lands if the fire endangers or injures National Forest System lands or users;

(2) Kindling or causing to be kindled a fire on National Forest System lands or on non-National Forest System lands if the fire endangers or injures National Forest System lands or users; or

(3) Destroying, damaging, or stealing any property of the United States.

(b) See 36 CFR 296.17 for direction on payment of a reward from a criminal or civil penalty collected under Section 6 or 7 of the Archaeological Resources Protection Act (16 U.S.C. 470ee or 470ff) for information and evidence leading to the criminal conviction or civil liability of the person who paid the penalty.

(c) Officers and employees of the United States Department of Agriculture may not receive rewards under this section.

(d) Submit applications for a reward to the Special Agent in Charge who has responsibility for the investigation involved in the violation of law no later than 3 months after the date of conviction of an offender. Applications submitted after that date will not be considered. To allow all claimants to present their claims within the prescribed limit, the Special Agent in Charge shall not take action with respect to rewards regarding an investigation until 3 months after the date of conviction of an offender.

(e) The Special Agent in Charge reserves the right to refuse payment of a reward when it is determined that collusion or improper methods were used to secure the conviction involved.

(f) The Special Agent in Charge reserves the right to pay only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, but may, depending on the circumstances, determine that payment of a reward for each conviction is justified.

[79 FR 44295, July 31, 2014]

### § 262.3 Payments for information and evidence in furtherance of investigations.

(a) *Approval of Payment*. Law enforcement personnel may pay for information and evidence in furtherance of investigations of felonies and misdemeanors related to Forest Service administration.

(1) Criminal investigators in the GS–1811 series and other law enforcement personnel designated by the Chief of the Forest Service, Director of Law Enforcement and Investigations, or Special Agent in Charge may, without prior approval, pay up to $1,000 for information and evidence under this section.

(2) Payments over $1,000 and up to $5,000 require prior written approval from the Special Agent in Charge.

(3) Payments over $5,000 and up to $10,000 require prior written approval from the Director of Law Enforcement and Investigations.

(4) Payments over $10,000 require prior written approval from the Chief of the Forest Service.

(b) *Limitations*. Payments for information and evidence under this section are restricted to furthering investigations of felony and misdemeanor violations. Payments for information and evidence in furtherance of investigations of infractions are not authorized under this section.

[79 FR 44295, July 31, 2014]

### § 262.4 Audit of expenditures.

The Chief of the Forest Service shall, through appropriate directives to agency personnel, assure the accountability of all funds spent in carrying out the provisions of this subpart and safeguard the identity of those wishing to remain anonymous.

[48 FR 26605, June 9, 1983]

### § 262.5 Disposal of purchased property.

All evidence purchased under the authority of this subpart shall be maintained in accordance with all laws, regulations, and rules applicable to the care, custody, and control of evidence. Evidence purchased under this subpart shall be disposed of in accordance with laws, regulation, rules, and Forest Service policy applicable to the disposal of evidence.

[48 FR 26605, June 9, 1983]

## Subpart B—Administrative Impoundment and Removal

### § 262.10 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock or livestock in excess of those authorized by a grazing permit on the National Forest System, which are not removed therefrom within the periods prescribed by this regulation, may be impounded and disposed of by a forest officer as provided herein.

(a) When a Forest officer determines that such livestock use is occurring, has definite knowledge of the kind of livestock, and knows the name and address of the owners, such livestock may be impounded any time five days after written notice of intent to impound such livestock is mailed by certified or registered mail or personally delivered to such owners.

(b) When a Forest officer determines that such livestock use is occurring, but does not have complete knowledge of the kind of livestock, or if the name of the owner is unknown, such livestock may be impounded any time 15 days after the date a notice of intent to impound livestock is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will identify the area in which it will be effective.

(c) Unauthorized livestock or livestock in excess of those authorized by a grazing permit on National Forest System which are owned by persons given notice under paragraph (a) of this section, and any such livestock in areas for which a notice has been posted and published under paragraph (b) of this section, may be impounded without further notice any time within the 12-month period immediately following the effective date of the notice or notices given under paragraphs (a) and (b) of this section.

(d) Following the impoundment of livestock, a notice of sale of impounded livestock will be published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will describe the livestock and specify the date, time, and place of the sale. The date shall be at least five days after the publication and posting of such notice.

(e) The owner may redeem the livestock any time before the date and time set for the sale by submitting proof of ownership and paying for all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock. However, when the impoundment costs exceed fair market value a minimum acceptable redemption price at fair market value may be established for each head of livestock.

(f) If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be sold at public sale to the highest bidder, providing this bid is at or above the minimum amount set by the Forest Service. If a bid at or above the minimum amount is not received, the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the forest officer making the sale shall furnish the purchaser a bill or other written instrument evidencing the sale. Agreements may be made with State agencies whereby livestock of unknown ownership and livestock of known ownership, which are not redeemed by the owner, are released to the agency for disposal in accordance with State law, *Provided*, That remuneration of proceeds from the sale of said animals in excess of costs of impoundment and to arrange for disposal of livestock of known ownership will be refunded to the former owner.

[42 FR 2961, Jan. 14, 1977, as amended at 43 FR 36245, Aug. 16, 1978. Redesignated at 48 FR 26605, June 9, 1983]

### § 262.11 Impoundment of dogs.

Any dog found running at large in a part of the National Forest System, which has been closed to dogs running at large, may be captured and impounded by Forest officers. Forest officers will notify the owner of the dog, if known, of such impounding, and the owner will be given five days to redeem the dog. A dog may be redeemed by the owner submitting adequate evidence of

ownership and paying all expenses incurred by the Forest Service in capturing and impounding it. If the owner fails to redeem the dog within five days after notice, or if the owner cannot be ascertained within 10 days from the date of impounding, the dog may be destroyed or otherwise disposed of at the discretion of the Forest officer having possession of it.

[42 FR 2961, Jan. 14, 1977. Redesignated at 48 FR 26605, June 9, 1983]

### § 262.12 Impoundment of property.

(a) Automobiles or other vehicles, trailers, boats, and camping equipment and other inanimate personal property on National Forest System lands without the authorization of a Forest officer which are not removed therefrom within the prescribed period after a warning notice as provided in this regulation may be impounded by a Forest officer. Whenever such Forest officer knows the name and address of the owner, such impoundment may be effected at any time five days after the date that written notice of the trespass is mailed by registered mail or delivered to such owner.

(b) If the local Forest Officer does not know the name and address of the owner of property in trespass, impoundment may be effected at any time 72 hours after a notice of intention to impound the property in trespass is posted in at least one place in the vicinity of the property.

(c) Personal property impounded under this regulation may be disposed of at the expiration of 90-days after the date of impoundment. The owner may redeem the personal property within the 90-day period by submitting proof of ownership and paying all expenses incurred by the United States in advertising, gathering, moving, impounding, storing, and otherwise caring for the property, and also for the value of the use of the site occupied during the period of the trespass.

(d) The owner of impounded property may redeem it by the date set for its disposition, but shall remain liable for all costs associated with its impoundment, removal, transportation, and storage. Impounded property that is not redeemed by the date set for its disposition shall become the property of the United States and may be retained by the Forest Service for official use, sold at public sale to the highest bidder, or otherwise disposed of. When impounded property is sold, the forest officer conducting the sale shall furnish the purchaser with a bill of sale or other written instrument evidencing the sale. The original owner shall remain liable for all costs associated with impoundment, removal, transportation, and storage of the property, minus any amount received from the sale of the property.

(e) The provisions of this section shall not apply to the impoundment or disposal of beached logs in Alaska if deemed abandoned under State law.

[42 FR 2961, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981. Redesignated at 48 FR 26604, June 9, 1983; 79 FR 44296, July 31, 2014]

### § 262.13 Removal of obstructions.

A Forest Officer may remove or have removed a vehicle or other object on National Forest System lands that is abandoned or vandalized or that poses an impediment or hazard to the safety, convenience, or comfort of National Forest System visitors.

[79 FR 44296, July 31, 2014]

# PART 264—PROPERTY MANAGEMENT

## Subpart A—Official Forest Service Insignia

Sec.
264.1 Definitions.
264.2 Use of insignia.
264.3 Licensing for commercial use.
264.4 Unauthorized use.
264.5 Power to revoke.

## Subpart B—Mount St. Helens National Volcanic Monument Symbol

264.10 Establishment.
264.11 Use of symbol.
264.12 Use without permission.
264.13 Unauthorized use.

AUTHORITY: 5 U.S.C. 301.

## Subpart A—Official Forest Service Insignia

SOURCE: 49 FR 7367, Feb. 29, 1984, unless otherwise noted.

### § 264.1 Definitions.

(a) The term *Insignia* means the Official Forest Service Insignia as shown here

or any likeness thereof, in total or in part, which is used in such a manner as to suggest the insignia.

(b) The term *Chief* means the Chief of the Forest Service, U.S. Department of Agriculture, or a person designated to act for the Chief.

### § 264.2 Use of insignia.

The Forest Service insignia is reserved for the official use of the Forest Service. Such use will be primarily for identification purposes. The Chief may authorize other uses of the insignia as follows:

(a) *Public service use*. The Chief may authorize the use of the insignia for non-commercial educational purposes, without charge when such use is essentially a public service and will contribute to public knowledge and understanding of the Forest Service, its mission, and objectives. An example of this would be the use of the insignia on a printed program for a dedication ceremony where the Forest Service participates but is not the sponsor of the event.

(b) *Commercial use*. Through the issuance of licenses, the Chief may authorize commercial use of the insignia to (1) contribute to the public recognition of the Forest Service, such as a likeness of the insignia on a toy forest ranger's truck or (2) promote employee esprit de corps or pride in the organization, such as a likeness of the insignia on belt buckles. Such use must be consistent with the status of a national insignia. Business or calling cards commercially prepared for employees, at employee expense, may display the insignia without special license.

### § 264.3 Licensing for commercial use.

(a) Each commercial license granted for the use of the insignia or likeness thereof shall contain the following terms and conditions:

(1) A use charge, royalty payment, or payment in kind which is reasonably related to the commercial value of the license must be established. This is to be paid by the licensee.

(2) A definite expiration date shall be specified.

(3) The license shall be nonexclusive.

(4) Licensees are not authorized to grant sublicenses, or transfer or reassign licenses to another person or company, in connection with the manufacture and/or sale of an item, unless and except as approved in writing by the Chief.

The Chief may incorporate additional terms and requirements into any commercial license issued under this subpart.

### § 264.4 Unauthorized use.

Whoever manufactures, sells, or possesses the insignia, except as provided under § 264.2, is subject to criminal penalty under 18 U.S.C. 701.

### § 264.5 Power to revoke.

All authorities and licenses granted under this subpart shall be subject to cancellation by the Chief at any time the Chief finds that the use involved is offensive to decency and good taste or injurious to the image of the Forest Service. The Chief may also revoke any license or authorization when there is a failure to comply with the terms and conditions of the license or authorization.

## Subpart B—Mount St. Helens National Volcanic Monument Symbol

SOURCE: 49 FR 31413, Aug. 7, 1984, unless otherwise noted.

### § 264.10 Establishment.

There is hereby established an official symbol, as depicted herein, to designate and represent the Mount St. Helens National Volcanic Monument located in the Gifford Pinchot National Forest in the State of Washington.

### § 264.11 Use of symbol.

Except as provided in § 264.12, use of the Mount St. Helens National Volcanic Monument official symbol, including a facsimile thereof, in total or in part, is restricted to official signs, publications, and other materials of the Forest Service, U.S. Department of Agriculture.

### § 264.12 Use without permission.

Business or calling cards commercially prepared at employee expense for employees assigned to the Volcanic Monument may depict the official Monument symbol without special permission from Forest Service officials.

### § 264.13 Unauthorized use.

Except as provided in §§ 264.11 and 264.12, whoever manufactures, sells, or possesses the official symbol of the Mount St. Helens National Volcanic Monument may be subject to criminal penalty under 18 U.S.C. 701.

## PART 271—USE OF "SMOKEY BEAR" SYMBOL

Sec.

271.1 Definitions.
271.2 Use of official campaign materials.
271.3 Public service use.
271.4 Commercial license.
271.5 [Reserved]
271.6 Review of licenses.
271.7 Power to revoke.
271.8 Consultation with Association of State Foresters and the Advertising Council.

AUTHORITY: 66 Stat. 92 (18 U.S.C. 711).

SOURCE: 27 FR 6928, July 21, 1962, unless otherwise noted.

### § 271.1 Definitions.

(a) The term *Smokey Bear* as used in the regulations in this part means the character *Smokey Bear* originated by the Forest Service of the United States Department of Agriculture in cooperation with the Association of State Foresters and The Advertising Council, or any facsimile thereof, or the name *Smokey Bear*, or any name or designation sufficiently similar as to suggest the character *Smokey Bear*.

(b) The term *Chief* means the Chief of the Forest Service, United States Department of Agriculture, or person designated to act for him.

(c) The term *Association of State Foresters* means the national organization of State Foresters.

(d) The term *The Advertising Council* is the Advertising Council, Inc., organized under the laws of the State of New York.

### § 271.2 Use of official campaign materials.

Official Cooperative Forest Fire Prevention materials may be used without express approval where such use is solely for the purpose of increasing public information regarding forest fire prevention.

### § 271.3 Public service use.

The Chief may authorize the use of *Smokey Bear* for non-commercial educational purposes, without charge, when such use is essentially as a public service, and will, in his judgment, contribute to public information and education concerning the prevention of forest fires.

### § 271.4 Commercial license.

(a) The Chief may authorize the commercial manufacture, importation, reproduction, or use of *Smokey Bear* upon the following findings:

(1) That the use to which the article or published material involving Smokey Bear is to be put shall contribute to public information concerning the prevention of forest fires.

(2) That the proposed use is consistent with the status of Smokey Bear as the symbol of forest fire prevention and does not in any way detract from such status.

(3) That a use or royalty charge which is reasonably related to the commercial enterprise has been established.

(b) Such other conditions shall be included as the Chief deems necessary in particular cases.

### § 271.5 [Reserved]

### § 271.6 Review of licenses.

The Chief will cooperate with the Association of State Foresters and the Advertising Council, and for this purpose may review with these organizations from time to time the nature and status of licenses granted under these regulations in this part.

### § 271.7 Power to revoke.

It is the intention of the regulations in this part that the Chief, in exercising the authorities delegated hereunder, will at all times consider the primary purpose of fostering public information in the prevention of forest fires. All authorities and licenses granted under the regulations in this part shall be subject to abrogation by the Chief at any time he finds that the use involved is injurious to the purpose of forest fire prevention, is offensive to decency or good taste, or for similar reasons in addition to any other limitations and terms contained in the licenses.

### § 271.8 Consultation with Association of State Foresters and the Advertising Council.

These regulations in this part have been issued after consultation with the Association of State Foresters and the Advertising Council.

## PART 272—USE OF "WOODSY OWL" SYMBOL

Sec.
272.1 Definitions.
272.2 Use of official campaign materials.
272.3 Public service use.
272.4 Commercial use.
272.5 [Reserved]
272.6 Power to revoke.

AUTHORITY: 7 U.S.C. 2201 and 16 U.S.C. 528–531.

### § 272.1 Definitions.

(a) The term *Woodsy Owl* means the name and representation of a fanciful owl, who wears slacks (forest green when colored), a belt (brown when colored), and a Robin Hood style hat (forest green when colored) with a feather (red when colored), and who furthers the slogan, *Give a Hoot, Don't Pollute*, originated by the Forest Service of the United States Department of Agriculture, or a facsimile or simulation thereof, in such a manner as suggests *Woodsy Owl*.

(b) The term *Chief* means the Chief of the Forest Service, U.S. Department of Agriculture, or person designated to act for him.

[36 FR 23220, Dec. 7, 1971, as amended at 40 FR 12641, Mar. 20, 1975]

### § 272.2 Use of official campaign materials.

Official materials produced for the *Woodsy Owl* campaign may be used without express approval from the Chief of the Forest Service where such use is solely for the purpose of increasing public knowledge about wise use of the environment and programs which foster maintenance and improvement of environmental quality.

[40 FR 12641, Mar. 20, 1975]

### § 272.3 Public service use.

The Chief of the Forest Service may authorize the use of *Woodsy Owl* for noncommercial educational purposes, without charge, when such use is essentially as a public service and will, in his judgment, contribute to public information and education concerning wise use of the environment and programs which foster maintenance and improvement of environmental quality.

[40 FR 12641, Mar. 20, 1975]

### § 272.4 Commercial use.

(a) *General*. The Chief may authorize the Commercial manufacture, importation, reproduction, or use of *Woodsy Owl* upon the following findings:

(1) That the proposed use of *Woodsy Owl* will contribute to public knowledge about wise use of the environment and programs which foster maintenance and improvement of environmental quality.

(2) That the proposed use is consistent with the status of *Woodsy Owl* as a national symbol for a public service campaign to promote wise use of

the environment and programs which foster maintenance and improvement of environmental quality.

(3) That a use charge, royalty charge, or payment in kind which is reasonably related to the commercial value has been established.

(4) That the applicant is well qualified to further the goals and purposes of the *Woodsy Owl* campaign.

(5) That, when an exclusive license is requested, no other qualified applicant can be found who will provide comparable campaign support under a nonexclusive license.

(6) That such other conditions as the Chief may deem necessary in each case have been established.

(b) *Requirements for exclusive licenses.* Exclusive licenses when granted, shall conform to the following:

(1) A definite expiration date shall be specified based on the minimum time determined by the Chief to be needed by the licensee to introduce or popularize the item licensed and to recover the costs and expenses incurred in so doing.

(2) The Chief shall retain the independent right to use *Woodsy Owl* in any concurrent, noncommercial program, and to allow for the manufacture and sale of *Woodsy Owl* merchandise which, in his judgment, would not be in conflict with the licensed item.

(3) The licensee shall be required to have the licensed item available for sale, and promotion within a specified period, or show cause why this could not be done.

(4) The licensee shall be required to invest a specified minimum amount of money in the development, production, and promotion of the licensed item, as determined by the Chief to be necessary to insure that the licensee's use of *Woodsy Owl* will result in a substantial contribution to public information concerning pollution abatement and environmental enhancement.

(5) The Chief shall retain the right to revoke any license for failure of the licensee to comply with all the terms and conditions of the license.

(6) The licensee shall be required to submit periodic progress reports to apprise the Forest Service of his activities and progress in achieving stated objectives.

(7) The license shall not be subject to transfer or assignment, except as approved in writing by the Chief.

(8) The licensee shall not be authorized to grant sublicenses in connection with the manufacture and sale of the item, except as approved in writing by the Chief.

[37 FR 5700, Mar. 18, 1972, as amended at 40 FR 12641, Mar. 20, 1975]

### § 272.5 [Reserved]

### § 272.6 Power to revoke.

It is the intention of these regulations that the Chief, in exercising the authorities delegated hereunder, will at all times consider the primary purpose of carrying on a public service campaign to promote wise use of the environment and programs which foster maintenance and improvement of environmental quality. All authorities and licenses granted under these regulations shall be subject to abrogation by the Chief at any time he finds that the use involved is injurious to the purpose of the *Woodsy Owl* campaign, is offensive to decency or good taste, or for similar reasons, in addition to any other limitations and terms contained in the licenses and other authorities.

[40 FR 12641, Mar. 20, 1975]

## PART 290—CAVE RESOURCES MANAGEMENT

Sec.

290.1 Purpose and scope.
290.2 Definitions.
290.3 Nomination, evaluation, and designation of significant caves.
290.4 Confidentiality of cave location information.
290.5 Collection of information.

AUTHORITY: 16 U.S.C. 4301–4309; 102 Stat. 4546.

SOURCE: 59 FR 31152, June 17, 1994, unless otherwise noted.

### § 290.1 Purpose and scope.

The rules of this part implement the requirements of the Federal Cave Resources Protection Act (16 U.S.C. 4301–4309), hereafter referred to as the ''Act''. The rules apply to cave management on National Forest System lands. These rules, in conjunction with

rules in part 261 of this chapter, provide the basis for identifying and managing significant caves on National Forest System lands in accordance with the Act. National Forest System lands will be managed in a manner which, to the extent practical, protects and maintains significant cave resources in accordance with the policies outlined in the Forest Service Directive System and the management direction contained in the individual forest plans.

**§ 290.2 Definitions.**

For the purposes of this part, the terms listed in this section have the following meaning:

*Authorized officer* means the Forest Service employee delegated the authority to perform the duties described in this part.

*Cave* means any naturally occurring void, cavity, recess, or system of interconnected passages beneath the surface of the earth or within a cliff or ledge and which is large enough to permit a person to enter, whether the entrance is excavated or naturally formed. Such term shall include any natural pit, sinkhole, or other opening which is an extension of a cave entrance or which is an integral part of the cave.

*Cave resources* mean any materials or substances occurring in caves including, but not limited to, biotic, cultural, mineralogic, paleontologic, geologic, and hydrologic resources.

*National Forest System lands* means all national forest lands reserved or withdrawn from the public domain, acquired through purchase, exchange, or donation, national grasslands and land utilization projects, and other lands, waters, or interests administered by the Forest Service.

*Secretary* means the Secretary of Agriculture.

*Significant cave* means a cave located on National Forest System lands that has been determined to meet the criteria in § 290.3 (c) or (d) and has been designated in accordance with § 290.3(e).

**§ 290.3 Nomination, evaluation, and designation of significant caves.**

(a) *Nominations for initial and subsequent listings.* The authorized officer will give governmental agencies and the public, including those who utilize caves for scientific, educational, or recreational purposes, the opportunity to nominate caves. The authorized officer shall give public notice, including a notice published in the FEDERAL REGISTER, calling for nominations for the initial listing and setting forth the procedures for preparing and submitting the nominations. Nominations for subsequent listings will be accepted from governmental agencies and the public by the Forest Supervisor where the cave is located as new cave discoveries are made. Caves nominated but not approved for designation may be renominated as additional documentation or new information becomes available.

(b) *Evaluation for initial and subsequent listings.* The evaluation of the nominations for significant caves will be carried out in consultation with individuals and organizations interested in the management and use of caves and cave resources, within the limits imposed by the confidentiality provisions of § 290.4. Nominations shall be evaluated using the criteria in § 290.3 (c) and (d).

(c) *Criteria for significant caves.* A significant cave on National Forest System lands shall possess one or more of the following features, characteristics, or values.

(1) *Biota.* The cave provides seasonal or yearlong habitat for organisms or animals, or contains species or subspecies of flora or fauna native to caves, or are sensitive to disturbance, or are found on State or Federal sensitive, threatened, or endangered species lists.

(2) *Cultural.* The cave contains historic properties or archeological resources (as defined in Parts 800.2 and 296.3 of this chapter respectively, or in 16 U.S.C. 470, *et seq.*), or other features included in or eligible for inclusion on the National Register of Historic Places because of their research importance for history or prehistory, historical associations, or other historical or traditional significance.

(3) *Geologic/Mineralogic/Paleontologic.* The cave possesses one or more of the following features:

(i) Geologic or mineralogic features that are fragile, represent formation

processes that are of scientific interest, or that are otherwise useful for study.

(ii) Deposits of sediments or features useful for evaluating past events.

(iii) Paleontologic resources with potential to contribute useful educational or scientific information.

(4) *Hydrologic*. The cave is a part of a hydrologic system or contains water which is important to humans, biota, or development of cave resources.

(5) *Recreational*. The cave provides or could provide recreational opportunities or scenic values.

(6) *Educational or scientific*. The cave offers opportunities for educational or scientific use; or, the cave is virtually in a pristine state, lacking evidence of contemporary human disturbance or impact; or, the length, volume, total depth, pit depth, height, or similar measurements are notable.

(d) *Specially designated areas*. All caves located within special management areas, such as Special Geologic Areas, Research Natural Areas, or National Monuments, that are designated wholly or in part due to the cave resources found therein are determined to be significant.

(e) *Designation and documentation*. If the authorized officer determines that a cave nominated and evaluated under paragraphs (a) and (b) of this section meets one or more of the criteria in paragraph (c) of this section, the authorized officer shall designate the cave as significant. The authorized officer will notify the nominating party of the results of the evaluation and designation. Each forest will retain appropriate documentation for all significant caves located within its administrative boundaries. At a minimum, this documentation shall include a statement of finding signed and dated by the authorized officer and the information used to make the determination. This documentation will be retained as a permanent record in accordance with the confidentiality provision in § 290.4.

(f) *Undiscovered passages*. If a cave is determined to be significant, its entire extent on federal land, including passages not mapped or discovered at the time of the determination, is deemed significant. This includes caves that extend from lands managed by any other Federal agency into National Forest System lands, as well as caves initially believed to be separate for which interconnecting passages are discovered after significance is determined.

(g) *Decision final*. The decision to designate or not designate a cave as significant is made at the sole discretion of the authorized officer based upon the criteria in paragraphs (c) and (d) of this section and is not subject to further administrative review of appeal under Parts 217 or 251.82 of this chapter.

### § 290.4 Confidentiality of cave location information.

(a) *Information disclosure*. No Forest Service employee shall disclose any information that could be used to determine the location of a significant cave or a cave nominated for designation, unless the authorized officer determines that disclosure will further the purposes of the Act and will not create a substantial risk of harm, theft, or destruction to cave resources.

(b) *Requesting confidential information*. Notwithstanding paragraph (a) of this section, the authorized officer may make confidential cave information available to Federal or State governmental agencies, bona fide educational or research institutes, or individuals or organizations assisting the land management agencies with cave management activities. To request confidential cave information, such entities shall make a written request to the authorized officer which includes the following:

(1) Name, address, and telephone number of the individual responsible for the security of the information received;

(2) A legal description of the area for which the information is sought;

(3) A statement of the purpose for which the information is sought; and,

(4) Written assurances that the requesting party will maintain the confidentiality of the information and protect the cave and its resources.

(c) *Decision final*. The decision to permit or deny access to confidential cave information is made at the sole discretion of the authorized officer and is not subject to further administrative review or appeal under 5 U.S.C. 552 or parts 217 or 251.82 of this chapter.

### § 290.5 Collection of information.

The collection of information contained in this rule represents new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service has received approval by the Office of Management and Budget to collect cave nomination information under clearance number 0596–0123 and confidential information under 0596–0122. The information provided for the cave nominations will be used to determine which caves will be listed as ''significant'' and the information in the requests to obtain confidential cave information will be used to decide whether to grant access to this information. Response to the call for cave nominations is voluntary. No action may be taken against a person for refusing to supply the information requested. Response to the information requirements for obtaining confidential cave information is required to obtain a benefit in accordance with section 5 of the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4304).

## PART 291—PALEONTOLOGICAL RESOURCES PRESERVATION

Sec.

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AUTHORITY: 16 U.S.C. 470aaa through 470aaa–11.

SOURCE: 80 FR 21630, Apr. 17, 2015, unless otherwise noted.

### § 291.1 Purpose.

(a) The regulations in this part implement provisions of the Paleontological Resources Preservation Act, 16 U.S.C. 470aaa through 16 U.S.C. 470aaa–11 (hereinafter referred to as the Act), which provides for the preservation, management, and protection of paleontological resources on National Forest System lands and encourages the scientific, educational and where appropriate, the casual collection of these resources. Paleontological resources are nonrenewable, and are an accessible and irreplaceable part of America's natural heritage.

(b) The Secretary shall manage, protect, and preserve paleontological resources on National Forest System lands using scientific principles and expertise. These regulations provide for coordinated management of paleontological resources and encourage scientific and educational use by promoting public awareness, providing for collection under permit, setting curation standards, establishing civil and criminal penalties, clarifying that paleontological resources cannot be collected from National Forest System

lands for commercial purposes, and by allowing the casual collection of some of these resources on certain lands and under specific conditions.

(c) To the extent possible, the Secretary of Agriculture and the Secretary of the Interior will coordinate in the implementation of the Act.

### § 291.2 Authorities.

The regulations in this part are promulgated pursuant to the Omnibus Public Lands Act, Title VI, subtitle D on Paleontological Resources Preservation, 16 U.S.C. 470aaa through 16 U.S.C. 470aaa–11, which requires the Secretary to issue such regulations as are appropriate to carry out the Act.

### § 291.3 Exceptions.

The regulations in this part do not:

(a) Invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under the general mining laws, the mineral or geothermal leasing laws, laws providing for mineral materials disposal, or laws providing for the management or regulation of the activities authorized by the aforementioned laws including but not limited to the Federal Land Policy and Management Act (43 U.S.C. 1701–1784), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1358), and the Organic Administration Act (16 U.S.C. 478, 482, 551);

(b) Invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under existing laws and authorities relating to reclamation and multiple uses of National Forest System lands;

(c) Apply to Indian lands;

(d) Apply to any materials associated with an archaeological resource (site), as defined in 16 U.S.C. 470, or any cultural items defined in 16 U.S.C. 30001;

(e) Apply to, or require a permit for, casual collecting of a rock, mineral, or invertebrate or plant fossil that is not protected under the Act;

(f) Affect any land other than National Forest System lands, or affect the lawful recovery, collection, or sale of paleontological resources from land other than National Forest System lands; or

(g) Create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity. No person who is not an officer or employee of the United States acting in that capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this part.

### § 291.4 Preservation of existing authorities.

The regulations in this part do not alter or diminish the authority of the Forest Service under any other law to manage, preserve, and protect paleontological resources on National Forest System lands in addition to the protection provided under the Act or this part.

### § 291.5 Definitions.

*Act* means Title VI, Subtitle D of the Omnibus Public Land Management Act on Paleontological Resources Preservation (16 U.S.C. 470aaa through 470aaa-11).

*Associated records* means original records (or copies thereof) that document the efforts to locate, evaluate, record, study, preserve, or recover paleontological resources, including but not limited to paper and electronic documents such as:

(1) *Primary records* relating to the identification, evaluation, documentation, study, preservation, context, or recovery of a paleontological resource, regardless of format;

(2) *Public records* including, but not limited to, land status records, agency reports, publications, court documents, agreements; and

(3) *Administrative records and reports* generated by the permitting process and pertaining to the survey, excavation, or other study of the resource.

*Authorized Officer* means the person or persons to whom authority has been delegated by the Secretary to take action under the Act.

*Casual collecting* means the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools, resulting in only negligible disturbance to

the Earth's surface and other resources.

*Collection* means all paleontological resources resulting from excavation or removal from National Forest System lands as well as any associated records resulting from excavation or removal from National Forest System lands under a permit.

*Common invertebrate and plant paleontological resources* are invertebrate or plant fossils that are of ordinary occurrence and wide-spread distribution. Not all invertebrate and plant paleontological resources are common.

*Consumptive analysis* means the alteration, removal, or destruction of a paleontological specimen, or parts thereof, from a collection for scientific research.

*Curatorial services and curation* mean those activities pertinent to management and preservation of a collection over the long term according to professional museum and archival practices, including at a minimum:

(1) Accessioning, cataloging, labeling, and inventorying a collection;

(2) Identifying, evaluating, and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physical security controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection;

(6) Handling, cleaning, sorting, and stabilizing a collection in such a manner as to preserve it; and

(7) Lending a collection, or parts thereof, for scientific, educational or preservation purposes.

*Federal land* means land controlled or administered by the Secretary except for Indian land as defined in 16 U.S.C. 470aaa.

*Fossil* means any fossilized remains, traces, or imprints of organisms, preserved in or on the Earth's crust.

*Fossilized* means preserved by natural processes, including, but not limited to burial in accumulated sediments, preservation in ice or amber, or replacement by minerals, or alteration by chemical processes such as permineralization whereby minerals are deposited in the pore spaces of the hard parts of an organism's remains, which may or may not alter the original organic content.

*Indian land* means land of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

*National Forest System* lands means those lands in a nationally significant system of federally owned units of forest, range, and related lands consisting of national forests, purchase units, national grasslands, land utilization project areas, experimental forest areas, experimental range areas, designated experimental areas, other land areas, water areas, and interests in lands that are administered by the Forest Service, U.S. Department of Agriculture, or designated for administration through the Forest Service. As used herein, the term ''National Forest System lands'' refers to Federal land controlled or administered by the Secretary of Agriculture.

*Negligible disturbance* means little or no change to the surface of the land and causing minimal or no effect on other resources. The Authorized Officer has discretion to determine what constitutes negligible disturbance.

*Non-commercial personal use* means uses other than for purchase, sale, financial gain, or research. Research, in the context of these regulations, is considered to be a structured activity undertaken by qualified individuals with the intent to obtain and disseminate information via publication in a peer-reviewed professional scientific journal or equivalent venue, which increases the body of knowledge available to a scientific community.

*Non-powered hand tools* mean small tools that do not use or are not operated by a motor, engine, or other power source. These tools are limited to small tools that can be easily carried by hand such as geologic hammers, trowels, or sieves, but not large tools such as full-sized shovels or pick axes.

*Paleontological locality*, *location*, and *site* mean a geographic area where a paleontological resource is found. Localities, locations, and sites may be relatively large or small.

*Paleontological resource* means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's crust, that are of paleontological interest, and that provide information about the history of life on earth. The term does not include:

(1) Any materials associated with an archaeological resource (as defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)); or

(2) Any cultural item (as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)).

*Paleontological site* is used interchangeably with paleontological locality or location, but is never intended to be synonymous with ''archaeological site.''

*Reasonable amount* means a maximum per calendar year of one-hundred pounds by weight, not to exceed twenty-five pounds per day.

*Repository* means a facility, such as a museum, paleontological research center, laboratory, or an educational or storage facility managed by a university, college, museum, other educational or scientific institution, or a Federal, State or local government agency that is capable of providing professional curatorial services on a long-term basis.

*Repository agreement* means a formal written agreement between the Authorized Officer and the repository official in which the parties agree on how the repository will provide curatorial services for collections.

*Repository official* means any officer, employee, or agent officially representing the repository that is providing curatorial services for a collection that is subject to this part.

*Secretary* means the Secretary of Agriculture with respect to National Forest System lands controlled or administered by the Secretary of Agriculture.

*State* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

### § 291.6 Confidentiality of information—general.

(a) Information concerning the nature and specific location of a paleontological resource is exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), unless the Authorized Officer has made a written determination that disclosure would:

(1) Further the purposes of the Act and this part;

(2) Not create risk of harm to or theft or destruction of the resource or the site containing the resource; and

(3) Be in accordance with other applicable laws.

(b) *Sharing protected information does not constitute a disclosure*. The Authorized Officer may share information concerning the nature and specific location of a paleontological resource with non-Agency personnel for scientific, educational, or resource management purposes. A recipient of such information may be required to sign a confidentiality agreement in which the recipient agrees not to share the information with anyone not authorized to receive the information.

### § 291.7 Public awareness and education.

The Chief of the Forest Service will establish a program to increase public awareness about the significance of paleontological resources on National Forest System lands.

### § 291.8 Area closures.

(a) In order to protect paleontological or other resources or to provide for public safety, the Authorized Officer may restrict access to or close areas to the collection of paleontological resources.

(b) The regulations in this part do not preclude the use of other authorities that provide for area closures.

### § 291.9 Determination of paleontological resources.

(a) All paleontological resources on National Forest System lands will be managed, protected, and preserved in accordance with the regulations in this

part unless the Authorized Officer determines that such resources are not paleontological resources in accordance with paragraph (b) of this section.

(b) Using scientific principles and expertise, the Authorized Officer may determine that certain paleontological resources do or do not meet the definition of ''paleontological resource'' as set forth in these regulations, and therefore, whether or not such resources are covered by the Act or this Part.

(c) Determinations as described in paragraph (b) of this section are subject to the following conditions:

(1) A recommendation for determination must be in writing and be prepared by a paleontologist with demonstrated subject matter expertise in the specific group of paleontological resources under consideration.

(2) An Agency paleontologist will review the basis for the determination and make a recommendation to the Authorized Officer concerning the determination.

(3) The Authorized Officer will make the final determination based upon the recommendation of an Agency paleontologist and will ensure that the basis for the determination is documented, and that the determination is made available to the public.

(4) Any determination made pursuant to this section will in no way affect the Authorized Officer's obligations under the Act or other applicable laws or regulations to manage, protect, or preserve all paleontological resources.

(d) On National Forest System lands, the following are not paleontological resources for purposes of the Act or this part:

(1) Mineral resources, including coal, oil, natural gas, and other economic minerals that are subject to the existing mining and mineral laws;

(2) Petrified wood as defined at 30 U.S.C. 611 and managed under 36 CFR 228.62 unless determined under paragraph (b) of this section to be a paleontological resource;

(3) Geological units, including, but not limited to, limestones, diatomites, and chalk beds).

**§ 291.10 Collecting.**

A paleontological resource may only be collected from National Forest System lands in accordance with the casual collecting provisions in §§ 291.11 and 291.12, or in accordance with a permit issued by the Authorized Officer as identified in § 291.13.

**§ 291.11 Casual collecting on National Forest System lands.**

(a) Casual collecting is allowed without a permit on National Forest System lands where such collection is consistent with the laws governing the management of those lands, the land management plans, and where the lands in question are not closed to casual collection.

(b) National Forest System lands are open to casual collection unless otherwise closed, as described in § 291.12.

(c) Research activities do not constitute casual collection, and therefore, research involving the collecting of common invertebrate and plant paleontological resources requires a permit.

(d) Using scientific principles and expertise, the Authorized Officer may determine that certain invertebrate and plant paleontological resources do or do not meet the definition of ''common invertebrate and plant paleontological resources'' as set forth in these regulations, and thus, whether such resources can be casually collected or must be collected under permit.

(e) Determinations as described above in paragraph (d) of this section are subject to the conditions as stated in § 291.9(c)(1) through (4).

(f) It is the responsibility of the collecting public to ensure that they are casually collecting in an area that is open to casual collection, and that the materials they collect are subject to casual collection.

(g) Paleontological resources collected on National Forest System lands, including common invertebrate and plant paleontological resources subject to casual collecting, cannot be sold. Sale of these paleontological resources is a violation of 16 U.S.C. 470aaa–5(a)(3) and § 291.27(a)(3) and may subject the violator to civil and criminal penalties.

**§ 291.12 National Forest System lands closed to casual collection.**

(a) Casual collecting is not allowed in:

(1) National Monuments within the National Forest System; and

(2) Other National Forest System lands closed to casual collecting in accordance with this Part, other statutes, executive orders, regulations, or land use plans.

(b) Existing closures of certain areas to casual collecting, authorized under separate authority, remain closed under these regulations.

**§ 291.13 Permits.**

(a) The Authorized Officer may issue a permit for the collection of a paleontological resource pursuant to an application if the Authorized Officer determines that:

(1) The applicant is qualified to carry out the permitted activity;

(2) The permitted activity is undertaken for the purpose of furthering paleontological knowledge;

(3) The permitted activity is consistent with any management plan applicable to the National Forest System lands concerned; and

(4) The proposed methods of collection will not threaten significant natural or cultural resources pursuant to 16 U.S.C. 470aaa–3(b)(4).

(5) Collected materials will not be sold or otherwise used for commercial purposes.

(b) Permits may be issued at the Authorized Officer's discretion to applicants that provide a complete application, as provided in § 291.14, and meet qualification and eligibility requirements in § 291.15.

**§ 291.14 Application process.**

Applicants for permits must provide the following records and information to the Authorized Officer in support of an application.

(a) The name, titles, academic or professional affiliations, and business contact information of the applicant and all persons who would be named on the permit;

(b) The applicant's current resume, curriculum vita, or other documents that support an applicant's qualifications;

(c) A detailed scope of work or research plan for the proposed activity. This must include maps, field methods, associated records, estimated time and duration of field season, proposed field party size, and specific information regarding storage, stabilization, and curatorial arrangements for collected specimens and data;

(d) Information regarding previous or currently held Federal paleontological permits including the issuing agency, permit number, and name of the Authorized Officer;

(e) Identification of a proposed repository for collected specimens, including written verification that the proposed repository agrees to receive the collection of paleontological resources and associated records and acknowledges that all costs will be borne by the applicant and/or approved repository, unless otherwise addressed in a separate written document; and

(f) Other records or information identified by the Authorized Officer as necessary to support an application for a permit.

**§ 291.15 Application qualifications and eligibility.**

(a) *Qualified applicant*. The information submitted by applicants under § 291.14 must demonstrate qualifications for carrying out the proposed activities, as follows:

(1) The applicant has a graduate degree in paleontology or a related field of study with a major emphasis in paleontology from an accredited institution, or can demonstrate training and/or experience commensurate to the nature and scope of the proposed activities; and

(2) The applicant has experience in collecting, analyzing, summarizing, and reporting paleontological data and experience in planning, equipping, staffing, organizing, and supervising field crews on projects commensurate to the type, nature and scope of work proposed in the application; and

(3) The applicant meets any additional qualifications as may be required by the Authorized Officer that are considered necessary to undertake the proposed project in the context of the project location.

(b) *Eligibility*. The information submitted by applicants under § 291.14 must demonstrate that the proposed work is eligible for a permit in accordance with § 291.13(a)(2) through (4).

**§ 291.16 Terms and conditions.**

The collection of paleontological resources pursuant to a permit must be conducted in accordance with the following terms and conditions:

(a) All paleontological resources that are collected from National Forest System lands under permit will remain the property of the United States.

(b) The collection will be preserved in an approved repository to be made available for scientific research and public education.

(c) Specific locality data will not be released by the permittee or repository unless authorized in accordance with § 291.6.

(d) The permittee recognizes that the area within the scope of the permit may be subject to other authorized uses.

(e) The permittee must conform to all applicable Federal, State, and local laws.

(f) The permittee must assume responsibility for all work conducted under the permit and the actions of all persons conducting this work.

(g) The permit cannot be transferred.

(h) The permittee cannot modify the permit without the approval of the Authorized Officer.

(i) The permittee must comply with all timelines established in the permit, and must request modification of the permit if those timelines cannot be met.

(j) The permittee or other persons named on the permit must be on site at all times when field work is in progress and will have a copy of the signed permit on hand.

(k) The permittee will comply with any vehicle or access restrictions, safety or environmental restrictions, or local safety conditions or restrictions.

(l) The permittee will report suspected resource damage or theft of paleontological or other resources to the Authorized Officer in a timely manner after learning of such damage or theft.

(m) The permittee will acknowledge the Forest Service in any report, publication, paper, news article, film, television program, or other media resulting from the permittee's work performed under the permit.

(n) The permittee will comply with the timeline established in the permit for providing a complete list to the Authorized Officer of specimens collected and the current location of the specimens.

(o) The permittee will provide scheduled reports to the Authorized Officer within the timeline established in the permit

(p) The permittee and/or approved repository will be responsible for all costs for the proposed activity, including fieldwork and collections maintenance, unless otherwise addressed in a separate written document

(q) The permittee will comply with the permit terms and conditions established by the Authorized Officer, even in the event of permit expiration, suspension, or revocation.

(r) Additional stipulations, terms, and conditions as required by the Authorized Officer and/or the Agency may be appended.

**§ 291.17 Permit reports.**

Permit reports must contain the following information as appropriate:

(a) Permittee(s)' name, title, affiliation, and professional contact information;

(b) Permit number;

(c) Date of report;

(d) Project name, number, or reference;

(e) Description of project, methodology, or summary of research scope of work;

(f) Dates of field work;

(g) Name(s) of people who performed field work;

(h) Description of work performed or accomplished and a summary of results and discoveries;

(i) Summary of regional or local geology and/or paleontology including context, geography, stratigraphy, and geological unit;

(j) Identification of potential impacts to paleontological resources by proposed land use action;

(k) Mitigation recommendations to address potential paleontological resource impacts;

(l) Relevant literature citations;

(m) Relevant associated records, including anything that aids in explaining, clarifying, or understanding the findings;

(n) Listing of collected paleontological resources, including field numbers and field identifications that are referenced to specific localities;

(o) Repository name, identifying acronym, and address;

(p) Repository official name, title, and contact information;

(q) Approved repository accession and/or catalog number(s);

(r) Assigned locality numbers;

(s) Administrative area (State, county, ranger district, forest, and so forth);

(t) Map name, source, size, edition, projection, datum, and/or other mapping information;

(u) Geographic location, survey data, and/or related metadata;

(v) Paleontological taxa collected, observed, or in a repository;

(w) Resource identifications, condition, location, and quantity; and

(x) Recommendations or information for the approved repository regarding the condition or care of collected resources or associated records.

### § 291.18 Modification or cancellation of permits.

The Authorized Officer may modify a permit, consistent with applicable laws and policies, when:

(a) The Authorized Officer determines that there are management, administrative, or safety reasons to modify a permit; or

(b) A permittee requests a modification in writing.

### § 291.19 Suspension and revocation of permits.

(a) The Authorized Officer may suspend or revoke a permit issued under this section;

(1) For resource, safety or other management considerations; or

(2) When there is a violation of term or condition of a permit issued under this section.

(b) The permit shall be revoked if any person working under the authority of the permit is convicted of a violation under section 16 U.S.C. 470aaa 6306 or is assessed a civil penalty under 16 U.S.C. 470aaa 6307.

(c) Suspensions, modifications, and revocations shall be administered in accordance with the procedures set forth in 36 CFR part 214.

### § 291.20 Appeals.

A permittee may appeal the denial or revocation of a permit in accordance with 36 CFR part 214. Pending the appeal, the decision of the Authorized Officer remains in effect unless determined otherwise in accordance with 36 CFR part 214, subpart C.

### § 291.21 Curation of paleontological resources.

Collections from National Forest System lands made under a permit issued according to this Part will be deposited in an approved repository. The curation of paleontological resources collected from National Forest System lands before the effective date of these regulations is covered under the terms of the original collection permit and/or agreement. Such collections remain Federal property unless otherwise transferred or disposed of in a Forest Service agreement.

### § 291.22 Becoming an approved repository.

(a) A repository identified during the permit application process in § 291.14 must be approved to receive collections by the Authorized Officer as follows:

(1) A repository must meet the minimum requirements in § 291.23 in order to be approved.

(2) A repository must agree in writing that collections:

(i) Remain the property of the Federal government;

(ii) Will be preserved for the public in accordance with § 291.24;

(iii) Will be made available for scientific research and public education; and

(iv) That specific locality data will not be released except in accordance with § 291.6.

(b) The Authorized Officer and the repository official may enter into a formal agreement that explains the responsibilities of the parties for the curation of the collection in accordance with § 291.26.

(c) The repository must agree in writing to periodic inventory and inspection of the collections as described in § 291.25.

(d) Prior to depositing the collection, an Agency paleontologist in consultation with the repository official will determine the content of the collection to be curated based on scientific principles and expertise. A copy of the final catalog will be provided by the repository to the Authorized Officer.

(e) A repository approved by a Federal agency or bureau may be considered an approved repository by the Forest Service.

### § 291.23 Minimum requirements of approval of a repository.

The Authorized Officer will determine whether a facility should be an approved repository based on whether the repository has:

(a) The capability to provide adequate curatorial services as defined in § 291.5;

(b) A scope of collections statement or similar policy that identifies paleontological resources as part of its scope of collections;

(c) A current collections management plan, including but not limited to policies for documentation, loans, and access; and

(d) Staff with primary responsibility for managing and preserving the collections that have training or experience in the curation of paleontological resources at levels appropriate to the nature and use of the paleontological collections maintained by that repository.

### § 291.24 Standards for access and use of collections.

(a) The repository will make collections available for scientific research and public education or as otherwise provided in a repository agreement.

(b) The repository may provide access to specific locality data and associated records when consistent with an approval under § 291.22 or an agreement under § 291.26.

(c) The repository may loan specimens after entering into a signed loan agreement with the borrowing institution. The loan agreement must specify the terms and conditions of the loan and that the repository is responsible for care and maintenance of the loaned specimens.

(d) The repository must maintain administrative records of all scientific and educational uses of the collection.

(e) The repository may charge reasonable fees to cover costs for access to and use of collections, including handling, packing, shipping, and insuring paleontological resources, photocopying associated records and other occasional costs not associated with ongoing curatorial services.

(f) The following uses of the collection will require written approval from the Authorized Officer, in consultation with an Agency paleontologist, unless specified in the approval in § 291.22 or an agreement under § 291.26:

(1) Prior to reproducing a paleontological resource, the repository will notify and obtain approval from the Authorized Officer. Reproductions include, but are not limited to, molding and casting, and computerized axial tomography (CAT) scans. Routine photographic and/or digital reproductions would not require individual approvals, providing the reproductions are not made for commercial purposes, and that the reproductions do not require transfer of the specimen(s) to a different facility.

(2) The repository may only allow consumptive analysis of specimens if the Authorized Officer has determined, in consultation with an Agency paleontologist, that the potential gain in scientific or interpretive information outweighs the potential loss of the paleontological resource and provides the repository with written authorization for such use.

### § 291.25 Conducting inspections and inventories of collections.

(a) The repository and the Authorized Officer must ensure that inspections and inventories of collections are in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 541 *et seq.*), its implementing regulations (41 CFR parts 101 and 102), any Agency-specific regulations on the management of Federal property, and any Agency-specific statutes and regulations on the management of museum collections.

(b) The frequency and methods for conducting and documenting inspections and inventories will be appropriate to the nature and content of the collection.

(c) When two or more Federal agencies deposit collections in the same repository, they may enter into an interagency agreement consistent with the Single Audit Act (31 U.S.C. 75) for inspections and inventories.

**§ 291.26 Repository agreements.**

(a) The Authorized Officer may enter into an agreement with Federal and non-Federal repositories regarding the curation of paleontological resources and their associated records.

(b) An agreement will contain the following, as appropriate, including but not limited to:

(1) A statement (updated as necessary) that identifies the collection or group of collections provided to the repository;

(2) A statement that identifies the Federal ownership and the Agency that administers the collection;

(3) A statement of work to be performed by the repository;

(4) A statement of the responsibilities of the Authorized Officer and the repository official for the long-term care of the collection;

(5) A statement that collections are available for scientific and educational uses consistent with § 291.22;

(6) Any special procedures and restrictions for curatorial services and collection management, including loans;

(7) Provisions for consumptive analyses of paleontological specimens;

(8) Any special procedures and/or restrictions on the disclosure of specific locality data;

(9) A statement that all proceeds derived from any use of the collections will be used for their support;

(10) A statement that all exhibits, publications, and studies of Federal specimens by repository staff and/or repository research affiliates will credit the Agency that administers the collection;

(11) Specification of the frequency and methods for periodic inventories;

(12) A statement that accession, catalog, and inventory information will be made available to the Authorized Officer or their staff

(13) A statement that no employee of the repository will sell or financially encumber the collection;

(14) A statement that, in the event the repository can no longer provide care for a collection under the terms of the agreement, the repository official will notify the Authorized Officer in writing;

(15) A statement that the terminating party is responsible for the transfer of collections to another approved repository, including costs;

(16) The term of the repository agreement and procedures for modification, cancellation, suspension, extension, and termination of the agreement; and

(17) Any additional terms and conditions as needed.

**§ 291.27 Prohibited acts.**

(a) A person may not:

(1) Excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resources located on National Forest System lands unless such activity is conducted in accordance with the Act and this part;

(2) Exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if the person knew or should have known such resource to have been excavated or removed from National Forest System lands in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including the Act and this part; or

(3) Sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from National Forest System lands.

(b) A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from National Forest System lands.

**§ 291.28 Civil penalty.**

(a) A person who violates any prohibition contained in this Part or permit issued under this Part may be assessed a penalty by the Authorized Officer after the person is given notice and opportunity for a hearing with respect to the violation, as provided in §§ 291.30 and 291.31.

(b) Each violation is considered a separate offense.

**§ 291.29 Amount of civil penalty.**

(a) *Determination of civil penalty amount.* The amount of such penalty assessed under § 291.28 shall be determined by taking into account:

(1) The scientific or fair market value, whichever is greater, of the paleontological resource involved, as determined by the Authorized Officer, and

(2) The cost of response to and restoration and repair of the resource and the paleontological site involved, and

(3) Any other factors under §§ 291.37 through 291.39 considered relevant by the Authorized Officer in assessing the penalty.

(b) *Multiple offenses.* In the case of subsequent or repeated violations by the same person, the amount of a penalty assessed under § 291.28(a) may be doubled.

(c) *Maximum amount of penalty.* The amount of any penalty assessed for any one violation shall not exceed an amount equal to double the cost of response to, and restoration and repair of resources and paleontological site damage plus double the scientific or fair market value of resources destroyed or not recovered.

(d) *Determination of scientific and fair market values and cost of response to, and restoration and repair.* Scientific and fair market values and the cost of response to, and restoration and repair are determined as described in §§ 291.37 through 291.39.

**§ 291.30 Civil penalty process.**

(a) *Notice of violation.* The Authorized Officer shall serve a notice of violation by certified mail (return receipt requested) or other type of verifiable delivery upon any person believed to be subject to a civil penalty. The Authorized Officer shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the section(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The penalty proposed;

(4) Notification of the right to request a hearing in accordance with paragraph (f) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(b) *Response to notice of violation.* The person served with a notice of violation shall have 45 calendar days from the date of mailing in which to respond. During this time the person may:

(1) Accept the proposed penalty, either in writing or by payment. Acceptance of the proposed penalty will be deemed a waiver of the right to request a hearing as described in paragraph (f) in this section.

(2) Seek informal discussions with the Authorized Officer;

(3) File a written response. This written response must be filed with the Authorized Officer within 45 calendar days of the date of mailing of the notice of violation, and must be signed by the person served with the notice of violation. If the person is a corporation, the written response must be signed by an officer authorized to sign such documents. The written response will set forth in full the legal or factual basis for the requested relief.

(4) Request a hearing in accordance with paragraph (f) of this section.

(c) *Assessment of penalty.* (1) The Authorized Officer shall assess a civil penalty upon completion of the 45 calendar day response period, informal discussions, or review of the written response, whichever is later.

(2) The Authorized Officer shall take into consideration all available information, including information provided under paragraph (b) of this section or furnished upon further request by the Authorized Officer.

(3) If the facts warrant a conclusion that no violation has occurred, the Authorized Officer shall notify the person served with the notice of violation that no violation has occurred and no penalty will be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Authorized Officer shall determine a penalty amount in accordance with § 291.29.

(d) *Penalty modification and remittance.* The Authorized Officer may offer to modify or remit the penalty. Modification or remittance may be based upon any or all of the following factors:

(1) Agreement by the person being assessed a civil penalty to return to the Authorized Officer paleontological resources removed from National Forest System lands;

(2) Agreement by the person being assessed a civil penalty to assist the Authorized Officer in activity to preserve, restore, or otherwise contribute to the protection and study of paleontological resources on National Forest System lands;

(3) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(4) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(5) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(e) *Notice of assessment.* The Authorized Officer shall serve a written notice of assessment upon the person served with a notice of violation. The notice of assessment establishes the penalty amount assessed by the Authorized Officer and is served by certified mail (return receipt requested), or other type of verifiable delivery. The Authorized Officer shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(f) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (b)(1) of this section, the person served with a notice of assessment may file a written request for a hearing with the hearing office specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request for hearing by certified mail (return receipt requested), as specified in the notice of assessment.

(2) Failure to deliver a written request for a hearing within 45 calendar days of the date of mailing of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with §§ 291.28 through 291.33, and shall not be limited by the amount assessed by the Authorized Officer under § 291.29(a) or any offer of mitigation or remission made by the Authorized Officer.

(g) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (b)(1) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not requested a hearing within 45 calendar days of the date of mailing of the notice of assessment, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing, the decision resulting from the hearing shall constitute the final administrative decision.

(h) *Payment of penalty.* The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court as provided in § 291.32.

(i) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the

right to pursue other available legal or administrative remedies.

### § 291.31 Civil penalties hearing procedures.

(a) *Requests for hearings.* Any person wishing to request a hearing on a notice of assessment of civil penalty may file a written dated request for a hearing with the hearing office specified in the notice. The person shall enclose a copy of the notice of violation and the notice of assessment. The request shall state the relief sought, the basis for challenging the facts used for assessing the penalty, and the person's preference as to the place and date for a hearing. A copy of the request shall be served upon the USDA Office of the General Counsel by certified mail, at the addresses specified in the notice of assessment. Hearings shall be conducted in accordance with 5 U.S.C. 554.

(b) *Commencement of hearing procedures.* Upon receipt of a request for a hearing, the hearing office shall assign an administrative law judge to the case. Notice of assignment shall be given promptly to the parties, and thereafter, all pleadings, papers, and other documents in the proceeding shall be filed directly with the administrative law judge, with copies served on the opposing party.

(c) *Appearance and practice.* (1) The respondent may appear in person, by representative, or by counsel, and may participate fully in the proceedings. If respondent fails to appear and the administrative law judge determines such failure is without good cause, the administrative law judge may, in his/her discretion, determine that such failure shall constitute a waiver of the right to a hearing and consent to the making of a decision on the record made at the hearing.

(2) Departmental counsel shall represent the Agency in the proceedings. Upon notice to the Authorized Officer of the assignment of an administrative law judge to the case, said counsel shall enter his/her appearance on behalf of the Agency and shall file all petitions and correspondence exchanges by the Agency and the respondent which shall become part of the hearing record. Thereafter, service upon the Agency shall be made to Departmental counsel.

(d) *Hearing administration.* (1) The administrative law judge shall have all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions in accordance with 5 U.S.C. 554 through 557.

(2) The transcript of testimony; the exhibits; and all papers, documents and requests filed in the proceedings shall constitute the record for decision. The administrative law judge shall render a written decision upon the record, which shall set forth his/her findings of fact and conclusions of law, and the reasons and basis therefore, and an assessment of a penalty, if any.

(3) The administrative law judge's decision shall become effective 30 calendar days from the date of this decision.

### § 291.32 Petition for judicial review; collection of unpaid assessments.

(a) *Judicial review.* Any person against whom a final administrative decision is issued assessing a penalty may file a petition for judicial review of the decision in the U.S. District Court for the District of Columbia or in the district in which the violation is alleged to have occurred within the 30 calendar day period beginning on the date the decision was issued. Upon notice of such filing, the Secretary shall promptly file such a certified copy of the record on which the decision was issued. The court shall hear the action on the record made before the Secretary and shall sustain the action if it is supported by substantial evidence on the record considered as a whole. Judicial review is limited by the requirement to exhaust administrative remedies under 7 U.S.C. 6912(e).

(b) *Failure to pay.* Failure to pay a penalty assessed is a debt to the U.S. Government. If any person fails to pay a penalty within 30 calendar days after the final administrative decision and the person has not filed a petition for judicial review of the decision in accordance with paragraph (a) of this section; or after a court in an action brought in paragraph (a) of this section has entered a final judgment upholding

the assessment of the penalty, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which the person if found, resides, or transacts business, to collect the penalty (plus interest at currently prevailing rates from the date of the final decision or the date of the final judgment, as the case may be). The district court shall have jurisdiction to hear and decide any such action. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty shall be required to pay, in addition to such amount and interest, attorney's fees and costs for collection proceedings. This section does not preclude the use of other collection methods such as Treasury offset, where appropriate.

### § 291.33 Use of recovered amounts.

Penalties and/or restitution collected shall be available to the Authorized Officer and without further appropriation may be used only as follows:

(a) To protect, restore, or repair the paleontological resources and sites which were the subject of the action, and to protect, monitor, and study the resources and sites; and/or

(b) To provide educational materials to the public about paleontological resources, sites, and their protection; and/or

(c) To provide for the payment of rewards as provided in § 291.40.

### § 291.34 Criminal penalties.

(a) A person who knowingly violates or counsels, procures, solicits, or employs another person to violate § 291.27 shall, upon conviction, be fined in accordance with Title 18, United States Code, or imprisoned not more than 5 years, or both; but if the sum of the commercial and paleontological value of the paleontological resources involved and the cost of restoration and repair of such resources does not exceed $500, such person shall be fined in accordance with Title 18, United States Code, or imprisoned not more than 2 years, or both.

(b) Paleontological and commercial values and the cost of restoration and repair are determined under §§ 291.37 through 291.39.

### § 291.35 Multiple offenses.

In the case of subsequent or repeat violations by the same person, the amount of the monetary penalty assessed may be doubled.

### § 291.36 General exception.

The provisions in §§ 291.28 through 291.35 do not apply to any person with respect to any paleontological resource which was in the lawful possession of such person prior to the date of enactment of the Act.

### § 291.37 Scientific or paleontological value.

The scientific value of any paleontological resource involved in a violation of the prohibitions contained in this part or conditions of a permit issued pursuant to this Part shall be the value of the information associated with the paleontological resource. The term ''scientific value'' can be used interchangeably with the term ''paleontological value.'' This value shall be determined in terms of the costs of the retrieval of the scientific and educational information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports or educational materials or displays as would be necessary to realize the information potential.

### § 291.38 Fair market or commercial value.

The fair market value of any paleontological resource involved in a violation of the prohibitions contained in this part or conditions of a permit issued pursuant to this part shall be the commercial value of the resources, determined using the condition of the paleontological resource prior to the violation, to the extent that its prior condition can be ascertained. The term ''fair market value'' can be used interchangeably with the term ''commercial value.'' Fair market value of paleontological resources can be established

through the use of comparable sales or pricing information, advertisements for comparable resources, appraisals, and/or other information on legal or illegal markets.

### § 291.39 Cost of response, restoration, and repair.

The cost of response, restoration, and repair of paleontological resources involved in a violation of prohibitions contained in this part or conditions of a permit issued pursuant to this part, shall be the sum of the costs incurred for response, investigation, assessment, emergency restoration, or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include but need not be limited to the costs of:

(a) Reconstruction of the paleontological resource;

(b) Stabilization and/or salvage of the paleontological resource;

(c) Ground contour reconstruction and surface stabilization;

(d) Research necessary to carry out reconstruction or stabilization;

(e) Physical barriers or other protective devices or signs, necessitated by the disturbance of the paleontological resource, to protect it from further disturbance;

(f) Examination and analysis of the paleontological resource including recording remaining paleontological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(g) Storage, preparation, and curation;

(h) Site monitoring; and

(i) Preparation of reports relating to any of the above activities.

### § 291.40 Rewards.

(a) The Authorized Officer may, at his or her discretion, pay from penalties collected under §§ 291.28 through 291.36, or from appropriated funds, an amount up to half of the penalties collected to any person who furnishes information which leads to a finding of the civil violation(s) or to the criminal conviction(s).

(b) If several persons provided the information, the amount may be divided at the discretion of the Authorized Officer among the persons.

(c) No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of their official duties shall be eligible for payment.

### § 291.41 Forfeiture.

(a) *Forfeiture*. All paleontological resources with respect to which a violation under §§ 291.28 through 291.36 occurred and which are in the possession of any person, are subject to forfeiture proceedings. All forfeitures will be initiated pursuant to cooperative agreements with agencies having law enforcement authority and forfeiture regulations in place.

(b) *Transfer of administration of forfeited resources*. The administration of forfeited resources may be transferred to Federal or non-Federal institutions to be used for scientific or educational purposes, in furtherance of the purposes of the Act.

# PART 292—NATIONAL RECREATION AREAS

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## Subpart A—General

**§§ 292.1–292.10 [Reserved]**

## Subpart B—Whiskeytown-Shasta-Trinity National Recreation Area

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, Sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472.

SOURCE: 38 FR 5853, Mar. 5, 1973, unless otherwise noted.

**§ 292.11 Introduction.**

(a) Administration of the Shasta and Clair Engle-Lewiston Units will be coordinated with the other purposes of the Central Valley Project of the Bureau of Reclamation and of the recreation area as a whole so as to provide for: (1) Public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) the management, utilization, and disposal of renewable natural resources which in the judgment of the Secretary of Agriculture will promote or is compatible with, and does not significantly impair, public recreation and conservation of scenic, scientific, historic, or other values contributing to public enjoyment.

(b) The Secretary may not acquire without consent of the owner any privately owned ''improved property'' or interests therein within the boundaries of these units, so long as the appropriate local zoning agency shall have in force and applicable to such property a duly adopted, valid, zoning ordinance that is approved by the Secretary. This suspension of the Secretary's authority to acquire ''improved property'' without the owner's consent would automatically cease: (1) If the property is made the subject of a variance or exception to any applicable zoning ordinance that does not conform to the applicable standards contained in §§ 292.11 to 292.13; or (2) if such property is put to any use which does not conform to any applicable zoning ordinance approved by the Secretary.

(c) *Improved property* as used in §§ 292.11 to 292.13, means any building or group of related buildings, the actual construction of which was begun before February 7, 1963, together with not more than three acres of land in the same ownership on which the building or group of buildings is situated, but the Secretary may exclude from such ''improved property'' any shore or waters, together with so much of the land adjoining such shore or waters, as he deems necessary for public access thereto.

(d) Sections 292.11 to 292.13 specify the standards with which local zoning ordinances for the Shasta and Clair Engle-Lewiston Units must conform if

the ''improved property'' or unimproved property proposed for development as authorized by the Act within the boundaries of the units is to be exempt from acquisition by condemnation. The objectives of §§ 292.11 to 292.13 are to:

(1) Prohibit new commercial or industrial uses other than those which the Secretary considers to be consistent with the purposes of the act establishing the national recreation area; (2) promote the protection and development of properties in keeping with the purposes of that Act by means of use, acreage, setback, density, height or other requirements; and (3) provide that the Secretary receive notice of any variance granted under, or any exception made to, the application of the zoning ordinance approved by him.

(e) Following promulgation of §§ 292.11 to 292.13 of final form, the Secretary is required to approve any zoning ordinance or any amendment to an approved zoning ordinance submitted to him which conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment.

(f) Any owner of unimproved property who proposes to develop his property for service to the public may submit to the Secretary a development plan setting forth the manner in which and the time by which the property is to be developed and the use to which it is proposed to be put. If the Secretary determines that the development and the use of the property conforms to approved zoning ordinances, and serves the purposes of the National Recreation Area and that the property is not needed for easements and rights-of-way for access, utilities, or facilities, or for administration sites, campgrounds, or other areas needed for use by the United States for visitors, he may in his discretion issue to such owner a certification that so long as the property is developed, maintained, and used in conformity with approved zoning ordinances the Secretary's authority to acquire the property without the owner's consent is suspended.

**§ 292.12 General provisions; procedures.**

(a) *Approval of zoning ordinance and development plans.* (1) All validly adopted zoning ordinances and amendments thereto pertaining to the Shasta and Clair Engle-Lewiston Units may be submitted by the county of origin to the Secretary for written approval relative to their conformance with the applicable standards of §§ 292.11 to 292.13. Within 60 days following submission, the county will be notified of the Secretary's approval or disapproval of the zoning ordinances or amendments thereto. If more than 60 days are required, the county will be notified of the expected delay and of the additional time deemed necessary to reach a decision. The Secretary's approval shall remain effective so long as the zoning ordinances or amendments thereto remain in effect as approved.

(2) Development plans pertaining to unimproved property within the Shasta and Clair Engle-Lewiston Units may be submitted by the owner to the Secretary for determination as to whether they conform with approved zoning ordinances and whether the planned use and development would serve the Act. Within 30 days following submission of such plans the Secretary will approve or disapprove the plans or, if more than 30 days are required, will notify the applicant of the expected delay and of the additional time deemed necessary.

(b) *Amendment of ordinances.* Amendments of approved ordinances may be furnished in advance of their adoption to the Secretary for written decision as to their conformance with applicable standards of §§ 292.11 to 292.13.

(c) *Variances or exceptions to application of ordinances.* (1) The Secretary shall be given written notice of any variance granted under, or any exception made to, the application of a zoning ordinance or amendment thereto approved by him.

(2) The County, or private owners of improved property, may submit to the Secretary proposed variances or exceptions to the application of an approved zoning ordinance or amendment thereto for written advice as to whether the intended use will make the property subject to acquisition without the owner's consent. Within 30 days following

his receipt of such a request, the Secretary will advise the interested party or parties as to his determination. If more than 30 days are required by the Secretary for such determination, he shall so notify the interested party or parties stating the additional time required and the reasons therefore.

(d) *Certification of property*. Where improvements and land use of improved property conform with approved ordinances, or with approved variances from such ordinances, certification that the Secretary's authority to acquire the property without the owner's consent is suspended may be obtained by any party in interest upon request to the Secretary. Where the development and use of unimproved property for service to the public is approved by the Secretary, certification that the authority to acquire the property without the owner's consent is suspended may be issued to the owner.

(e) *Effect of noncompliance*. Suspension of the Secretary's authority to acquire any improved property without the owner's consent will automatically cease if: (1) Such property is made the subject of variance or exception to any applicable zoning ordinance that does not conform to the applicable standard in the Secretary's regulation, (2) such property is put to a use which does not conform to any applicable zoning ordinance, or, as to property approved by the Secretary for development, a use which does not conform to the approved development plan or (3) the local zoning agency does not have in force a duly adopted, valid zoning ordinance that is approved by the Secretary in accordance with the standards of §§ 292.11 to 292.13.

(f) *Nonconforming commercial or industrial uses*. Any existing commercial or industrial uses not in conformance with approved zoning ordinances shall be discontinued within 10 years from the date such ordinances are approved: *Provided, however,* That with the approval of the Secretary such 10-year period may be extended by the county for a prescribed period sufficient to allow the owner reasonable additional time to amortize investments made in the property before November 8, 1965.

**§ 292.13 Standards.**

(a) The standards set forth in §§ 292.11–292.13 shall apply to the Shasta and Clair Engle-Lewiston Units, which are defined by the boundary descriptions in the notice of the Secretary of Agriculture of July 12, 1966 (31 FR 9469), and to a strip of land outside the National Recreation Area on either side of Federal Aid Secondary Highway Numbered 1089, as more fully described in 2(a) of the act establishing the recreation area (79 Stat. 1296).

(b) *New industrial or commercial uses*. New industrial or commercial uses will be prohibited in any location except under the following conditions:

(1) The industrial use is such that its operation, physical structures, or waste byproducts would not have significant adverse impacts on surrounding or nearby outdoor recreation, scenic and esthetic values. Industrial uses having an adverse impact include, but are not limited to, cement production, gravel extraction operations involving more than one-fourth acre of surface, smelters, sand, gravel and aggregate processing plants, fabricating plants, pulpmills, and commercial livestock feeder yards.

(2)(i) The commercial use is for purposes of providing food, lodging, automotive or marine maintenance facilities and services to accommodate recreationists and the intended land occupancy and physical structures are such that they can be harmonized with adjacent land development and surrounding appearances in accordance with approved plans and schedules.

(ii) This standard provides for privately owned and operated businesses whose purposes and physical structures are in keeping with objectives for use and maintenance of the area's outdoor recreation resources. It precludes establishment of drive-in theaters, zoos, and similar nonconforming types of commercial entertainment.

(c) *Protection of roadsides*. Provisions to protect natural scenic qualities and maintain screening along public travel routes will include:

(1) Prohibition of new structural improvements or visible utility lines within a strip of land extending back not less than 150 feet from both sides of the centerline of any public road or

roadway except roads within subdivisions or commercial areas. In addition to buildings, this prohibition pertains to above-ground power and telephone lines, borrow pits, gravel, or earth extraction areas, and quarries.

(2) Retention of trees and shrubs in the above-prescribed roadside strips to the full extent that is compatible with needs for public safety and road maintenance. Wholesale clearing by chemical or other means for fire control and other purposes will not be practiced under this standard.

(d) *Protection of shorelines.* Provisions to protect scenic qualities and reduce potentials for pollution of public reservoirs will include: Prohibition of structures within 300 feet horizontal distance from highwater lines of reservoirs other than structures the purpose of which is to service and accommodate boating or to facilitate picnicking and swimming: *Provided,* That exceptions to this standard may be made upon showing satisfactory to the Secretary that proposed structures will not conflict with scenic and antipollution considerations.

(e) *Property development.* Location and development of structures will conform with the following minimum standards:

(1) *Commercial development.* (i) Stores, restaurants, garages, service stations, and comparable business enterprises will be situated in centers zoned for this purpose unless they are operated as part of a resort or hotel. Commercial centers will be of sufficient size that expansion of facilities or service areas is not dependent upon use of public land.

(ii) Sites outside designated commercial centers will be used for resort development contingent upon case by case concurrence of the responsible county officials and the Secretary that such use is, in all aspects, compatible with the purposes for establishing the recreation area.

(iii) Structures for commercial purposes, inclusive of isolated resorts or motels, will not exceed two stories height at front elevation, and will be conventional architecture and will utilize colors, nonglare roofing materials, and spacing or layout that harmonizes with forested settings. Except for signs, structures designed primarily for purposes of calling attention to products or service will not be permitted.

(2) *Residential development.* (i) Locations approved for residential development will be buffered by distance, topography, or forest cover from existing or planned public use areas such as trailer parks, campgrounds, or organization sites. Separation will be sufficient to avoid conflicts resulting from intervisibility, noise, and proximity that is conducive to private property trespass.

(ii) Requirements for approval of residential areas will include: (*a*) Construction of access when main access would otherwise be limited to a road constructed by the United States primarily to service publicly owned recreation developments; (*b*) limitation of residences to single-family units situated at a density not exceeding two per acre, but any lot of less than a half-acre may be used for residential purposes if, on or before promulgation of §§ 292.11–292.13, such lot was in separate ownership or was delineated in a county-approved plat that constitutes part of a duly recorded subdivision; (*c*) use of set-backs, limitations to natural terrain, neutral exterior colors, nonglare roofing materials, and limitations of building heights fully adequate to harmonize housing development with the objective of the National Recreation Area as set forth in the act.

(3) *Signs and signing.* Only those signs may be permitted which: (i) Do not exceed 1 square foot in area for any residential use; (ii) do not exceed 40 square feet in area, 8 feet in length, and 15 feet maximum height from ground for any other use, including advertisement of the sale or rental of property; and (iii) which are not illuminated by any neon or flashing device. Commercial signs may be placed only on the property on which the advertised use occurs, or on the property which is advertised for sale or rental. Signs shall be subdued in appearance, harmonizing in design and color with the surroundings and shall not be attached to any tree or shrub. Nonconforming signs may continue for a period not to exceed 2 years from the date a zoning ordinance containing these limitations is adopted.

## Subpart C—Sawtooth National Recreation Area—Private Lands

AUTHORITY: Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

### § 292.14 Introduction.

(a) *Purpose*. In accordance with the provisions of the Act establishing the Sawtooth National Recreation Area (86 Stat. 612), the regulations of this subpart establish standards for the use, subdivision and development of privately owned property within the boundaries of the Sawtooth National Recreation Area. The standards are in furtherance of the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values of the Recreation Area. Unless, in the judgment of the Secretary, such property is being used, or is in imminent danger of being used, in a manner incompatible with such standards, the property or any interest therein may not be acquired by condemnation. However, private land or an interest therein, determined to be necessary for access to and utilization of public property, and for recreation and other facilities, may be condemned without regard to this restriction, subject however, to the limitation in § 292.15(j).

(b) *Amendment of regulations*. Amendments to these regulations shall be made in accordance with the Administrative Procedures Act (60 Stat. 238, 5 U.S.C. 553), including the publishing of the amendments as a notice of proposed rulemaking with final adoption after interested persons have been given an opportunity to participate in the rulemaking through submission of comments.

(c) *Definitions*—(1) *Cluster-type development*. Planned unit development which allows flexibility in neighborhood and subdivision lot design by dedicating or reserving the land so saved to open space.

(2) *Community development plan*. A narrative plan with maps which sets forth specific standards for desirable development of a community.

(3) *Designated community*. A populated area divided into lots, blocks and streets as platted and recorded in the official records of the county, containing residences and commercial establishments providing goods and services and retaining the atmosphere of a western frontier ranch-type town and so classified in § 292.15(a).

(4) *Dude ranching*. Development oriented to furnish an outdoor recreational or educational experience related to ranching. Facility development is compatible with the pastoral environment, rustic in nature and harmoniously colored.

(5) *Mineral operations*. All functions, work and activities in connection with exploration, development, mining or processing of mineral resources except prospecting which will not cause significant surface disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study.

(6) *Private property*. Lands or interests in lands not owned by Federal, State, or local governments but not including unpatented mining claims.

(7) *Ranch-type character*. A low profile, rambling, well-proportioned, rustic appearing, rough-sawn wood or wood and stone structure or group of structures harmoniously situated within a natural environment.

(8) *Residential outbuilding*. Nonhabitable building detached from the residence, such as a garage, woodshed or storage building.

(9) *Secretary*. Secretary of Agriculture.

(10) *Area Ranger*. The Forest Officer having administrative authority for the Sawtooth National Recreation Area.

[39 FR 11544, Mar. 29, 1974]

### § 292.15 General provisions—procedures.

(a) *Classification of private property*. For the purpose of establishing specific standards applicable to the several parcels of private land within the boundaries, such properties are classified and assigned to land use categories as shown on the Land Use Category Map, dated December 15, 1973, as amended July 16, 1976, on file and available for public inspection in the office of the Area Ranger, Sawtooth National Recreation Area, Ketchum, Idaho. The classification of private properties is

based on evaluation of scenic, natural, historic, pastoral, wildlife, and other values.

(b) *Land use categories*. Land use categories shown on the map referred to in paragraph (a) of this section are:

(1) *Designated community*. All properties inside a designated community.

(2) *Residential*. Areas for residential development outside designated communities.

(3) *Commercial*. Areas for commercial development outside designated communities.

(4) *Agriculture*. All properties outside designated communities not placed in a residential or commercial land use category.

(5) *Mineral*. Any areas in the land use in paragraphs (b) (1) through (4) of this section, used for mineral operations.

(c) *Changes in classification*. The Secretary may make changes in the classification of private lands set forth in paragraph (a) of this section by incorporating such changes in an amendment of these regulations.

(d) *Certification of compliance with standards*—(1) *Present use*. Any owner of property may request in writing the Area Ranger to examine the present use of the property and issue a certification that such present use conforms to the applicable standards established in § 292.16 for the land use category in which the property is placed. If after examination the Area Ranger determines that the present use of the property does so conform, he will issue a certification to this effect.

(2) *Planned development or change in use*. Any owner of property who proposes to change the use or develop his property for other than agricultural use may submit to the Area Ranger a use or development plan setting forth the manner in which and the time by which the property is to be developed and the use to which the property is to be put. If the Area Ranger determines that the development and use plan conforms to the applicable standards established in § 292.16 for the land use category in which the property is placed, he will issue a certification to this effect.

(3) *Notification of action*. Within 45 days after receipt of request for certification, the Area Ranger shall:

(i) Issue the certification.

(ii) Notify applicant that additional information is needed before action can be taken on the application.

(iii) Notify applicant that certification is denied, and reasons for denial.

(iv) Notify applicant that action on the request is deferred for a specified period of time for stated reasons.

(e) *Qualified certifications*. (1) Any owner of a property classified residential or commercial under paragraph (a) of this section which had been improved and was being used for residential or commercial purposes on the effective date of these regulations, but which does not conform to the standards established for properties in the land use category in which the property is placed may nevertheless be issued a certification for period not to exceed 10 years so that the improvements may be made to conform to the standards. Such certification shall specify that it is only effective so long as the property is not subdivided, and is not further improved and the improvements existing on the effective date of these regulations, are not reconstructed, altered or relocated, except to meet standards. The certification shall specify the date on which it shall terminate.

(2) If the Area Ranger determines, prior to certification, that a part or all of a property, for which a request for certification is made, is needed for access to and utilization of public property or for recreation and other facilities, he may except from the certification that part of the property needed for these purposes.

(f) *Revocation of certification*. The Area Ranger will revoke a certification when he finds that the property is being used or developed not in conformance with the terms of the certification or the applicable standards established in § 292.16 or is in imminent danger of being so used or developed. Notice of such revocation will be in writing and delivered to the owner in person or by certified mail. A partial revocation may be made when a portion of a property covered by a certification is determined to be needed for access to and utilization of public property or for recreation and other facilities.

(g) *Effect of certification*. Property for which a certification is held by the owner shall not be acquired by the Secretary by condemnation.

(h) *Effect of noncompliance with standards*. Property for which a determination has been made that it is being used or developed not in conformance with the applicable standards established in § 292.16 for the land use category in which the property is placed may be acquired by the Secretary by condemnation.

(i) *Acquisition by negotiated purchase*. (1) Any privately owned land or interest in land determined by the Secretary to be needed in furtherance of the objectives and purposes for which the Sawtooth National Recreation Area was established may be acquired by negotiated purchase subject only to the limitation in paragraph (j) of this section.

(2) Property which has been developed for use prior to the effective date of these regulations, but which is not in conformance with applicable standards may be acquired by the Secretary through negotiated purchase and the Secretary may permit the owners, their successors or assigns to retain a right of use and occupancy of the improved property for a definite term not beyond December 31, 1988.

(j) *Limitation on acquisitions*. Acquisitions of lands or interests therein for access to and utilization of public property and for recreation and other facilities shall not exceed 5 percent of the total acreage of all private property within the Sawtooth National Recreation Area on August 22, 1972. A land acquisition plan shall be prepared by the Area Ranger and approved by the Regional Forester showing those properties needed for access to and utilization of public property or for recreation and other facilities. Said plan may be revised from time to time upon approval by the Regional Forester. Said plan shall be available for inspection by the public in the office of the Area Ranger.

(k) *Land exchanges*. Some parcels of Federal lands within the Sawtooth National Recreation Area are classified or may be subsequently classified in the overall general plan for the Recreation Area as suitable for selection through land exchange. Using existing land exchange authorities, these Federal lands may be made available for selection by parties owning land within the boundaries of the National Recreation Area to resolve some existing or potential land use conflicts. The values of the properties so exchanged shall be approximately equal, or, if they are not approximately equal, they shall be equalized by the payment of cash. Federal lands which may be located within the boundaries of designated communities will be considered for exchange only after acceptable community development plans and ordinances have been implemented.

(l) *Appeals*. Denial or revocation of a certification of compliance under this subpart is subject to appeal under 36 CFR part 214.

(m) *Judicial review*. The United States District Court for the District of Idaho shall have jurisdiction to review these regulations upon a compliant filed within 6 months after the effective date of these regulations, by any affected landowner in an action for a declaratory judgment as provided in the Act of August 22, 1972 (86 Stat. 612), section 4(a).

[39 FR 11544, Mar. 29, 1974, as amended at 41 FR 29379, July 16, 1976; 54 FR 3368, Jan. 23, 1989; 78 FR 33726, June 5, 2013]

### § 292.16 Standards.

The standards established in these regulations are in furtherance of the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreation values of the Recreation Area.

(a) *Applicability*. The standards set forth in this section for each land use category shall apply to the private land in each such land use category as classified by the Secretary in accordance with § 292.15.

(b) *Changes in standards*. Changes in and addition to the standards may be made from time to time through amendment of these regulations.

(c) *General standards*. The following standards apply to properties in all land use categories.

(1) Use and development of the property will be in conformance with applicable Federal, State, and local laws, regulations and ordinances.

(2) Development, improvement and use of the property will not materially detract from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

(3) There will be adequate provision for disposal of solid and liquid waste originating on or resulting from use of the property.

(4) All new utilities will be underground.

(5) No structures or other improvements will be constructed in or encroaching upon streambeds, banks and flood plains of live or intermittent streams. Streambeds, banks, and flood plains will not be disturbed, except as may be necessary to construct, operate, and maintain irrigation, fisheries, utilities, roads, and similar facilities or improvements. Any such necessary encroachment will avoid impeding water flow, sedimentation of streams or entrance of deleterious material into streams.

(d) *Designated communities.* (1) The following standards are established until replaced as provided for in paragraph (d)(2) of this section.

(i) No buildings or structures, or part thereof, erected, constructed, reconstructed, altered, moved, or used for any purpose, except in conformance with the standards established herein.

(ii) No excavation or topographic change, except that required for foundations, utilities, or roads, that would modify or change the scenic beauty of natural hillsides or mountain slope lands.

(iii) Minimum 100-foot frontage on new building sites.

(iv) All new buildings set in 10 feet from each side of property line.

(v) All new buildings set back 20 feet from front property line.

(vi) Only one single-family dwelling for each building site or lot.

(vii) No new building to exceed two stories in height as determined from ground level.

(viii) No building or structure erected with foundation pillars or stilts that exceeds 36 inches above ground level. Pillars or stilts, if used, must be enclosed.

(ix) Minimum of 750 square feet for new residences.

(x) All new buildings constructed of logs, shakes, rough lumber, rough wood, and native stone.

(xi) Mobile or semimobile homes permitted only in existing mobile home parks.

(xii) Nonreflective roofs on new buildings.

(xiii) All new steps and walks constructed of wood.

(xiv) Paints or stains to be of earth tones common to the area.

(xv) All buildings and structures, including fences, to be maintained in a useable and serviceable condition or removed. Properties to be maintained in a clean and orderly condition.

(xvi) Existing plus new buildings or structures cannot occupy more than 30 percent of the land surface on a lot less than 20,000 square feet in area. On any lot larger than 20,000 square feet, existing plus new buildings cannot occupy more than 6,500 square feet. Existing properties exceeding this amount as of the effective date of these regulations may not be further developed.

(xvii) The standards in paragraphs (d)(1) (v), (vi), (ix), and (xvi) of this section shall not apply to properties developed for commercial purposes.

(2) The Area Ranger shall cooperate with each designated community in the preparation of a community development plan and implementing ordinances which will assure that use and development of the private properties within the community will be consistent with the purposes for which the Sawtooth National Recreation Area was established and with the overall general plan of the Recreation Area. The Secretary may then, by amendment of these regulations, replace the standards adopted pursuant to paragraph (d)(1) of this section with the standards set forth in such community development plan and implementing ordinances as the standards applicable to that designated community.

(e) *Residential.* (1) Vegetative cover and screening requirements. Any combination of vegetative screening, topography, and structure design that renders the residence inconspicuous

and not obtrusive as seen from main travel routes.

(2) *Buildings.* (i) Not more than one residence on each separately owned contiguous property as recorded in the records of the appropriate county on date of publication of these regulations.

(ii) *Not more than two outbuildings with each residence.* Aggregate square foot area of outbuildings not to exceed 850 square feet and to be limited to one story not more than 22 feet in height.

(iii) Dwelling size not less than 750 square feet of floor space.

(iv) Building architecture compatible with location and the pastoral environment, rustic in nature, harmoniously colored or natural wood finish or suitable wood substitutes, nonreflective roofs and sidings.

(v) Height of buildings to be in keeping with site characteristics and normally not exceeding on-site tree height, or 30 feet.

(vi) Sufficient setback of buildings from centerline of public roads for safety and unhampered traffic flow.

(vii) Minimum building setback from property line—10 feet.

(3) No excavation or topographic change except that required for buildings, roads, and utilities.

(4) Removal of live trees and other vegetation limited to that necessary to accommodate buildings and roads to allow installation of utilities.

(5) Roads designed, located, and constructed to minimize adverse esthetic impact and soil erosion.

(6) Owner identification and sale or rental signs not to exceed 2 square feet in size.

(7) Buildings and structures, including fences, to be maintained in a usable and serviceable condition or removed.

(8) No further reduction in size of residential ownerships except that which will not impair the objectives for which the Sawtooth National Recreation Area was established. A certification will be issued pursuant to § 292.15(d) upon application in such cases.

(f) *Commercial*—(1) *General.* Service provided must serve a need which cannot readily or adequately be provided in a designated community, and must be compatible with the purposes for which the Sawtooth National Recreation Area was established.

(2) *Buildings.* (i) Building architecture to be compatible with the pastoral environment, rustic in nature, harmoniously colored or natural wood finish or suitable wood substitutes, nonreflective roofs and sidings.

(ii) Building height to be in keeping with building size, scale, setback from roads and property boundaries, site size, setting, building design and type of use.

(iii) Sufficient setback of buildings from centerline of public roads for safety and unhampered traffic flow.

(3) Only signs identifying the commercial enterprise being conducted on the property. Signs not to exceed 20 square feet in area, 6 feet in length and 15 feet maximum height. Signs to be subdued in appearance and harmonizing in design and color with the surroundings. Signs not complying with the standard may be approved by certifications issued pursuant to § 292.15(d) in special cases.

(4) No flashing lights.

(5) No new mobile or semimobile homes and mobile home parks except where they may be located without substantially impairing or detracting from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

(g) *Agriculture.* (1) Only structures which do not substantially impair or detract from the scenic, natural, historic, pastoral, and fish and wildlife values of the area and which are necessary for ranching or dude ranching such as dwellings, barns, storage buildings, fences, corrals, irrigation facilities, roads, and utilities.

(2) Buildings to be ranch-type character with log or other rustic exterior with harmoniously colored or natural wood finish and nonreflective surfaces.

(3) Fences and other improvements to be in harmony with the western ranching atmosphere.

(4) Minimum setback of new buildings to be 150 feet from public roads where determined feasible by the Area Ranger.

(5) No further reduction in size of agricultural ownerships except that which will not impair the objectives for

which the Sawtooth National Recreation Area was established. A certification will be issued pursuant to § 292.15(d) upon application in such cases.

(6) No signs, billboards or advertising devices except a property identification sign and one sale or rental sign not to exceed 2 square feet in area, harmonious in design and color with the surroundings. Signs not complying with this standard may be approved by certifications issued pursuant to § 292.15(d) in special cases.

(7) Any tree removal and related slash disposal and soil erosion prevention measures to be conducted in a manner that will minimize detrimental effects to the site and adjoining lands.

(8) The general topography of the landscape to be unaltered except for incidental excavation or topographic change required by ranching activities.

(9) Structures and improvements, including fences, to be maintained in usable condition or removed. Those recognized as having historic or esthetic value may remain.

(10) Roads to be designed, located and constructed to minimize esthetic impact and soil movement.

(11) Agricultural practices to be limited to hay production and pasture and range grazing in a manner which does not degrade water quality or result in accelerated soil erosion.

(h) *Mineral operations.* The standards set forth in this paragraph shall apply to a private property or portion thereof in any land use category which is used for mineral operations. To aid in determining whether a planned mineral operation will conform to these standards, the owner of the property shall submit to the Area Ranger a proposed plan of operations. If the Area Ranger determines that the proposed operation conforms to the standards established herein he will approve the plan and such approval shall constitute the certification provided for in § 292.15(d).

(1) Operations will be confined to those locations where they may be conducted without substantially impairing or detracting from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

(2) The general standards set forth in paragraph (c) of this section shall apply to any mineral operations.

(3) The operations as described in the plan of operation and as they are carried out in accordance with the plan shall:

(i) Comply with Federal and State air and water quality and waste disposal standards.

(ii) Minimize adverse impacts on scenic values.

(iii) Provide for prompt stabilization and restoration of areas disturbed by the operations.

[39 FR 11544, Mar. 29, 1974, as amended at 69 FR 55094, Sept. 13, 2004]

## Subpart D—Sawtooth National Recreation Area—Federal Lands

AUTHORITY: 16 U.S.C. 460aa–10, 478, 551.

### § 292.17 General provisions.

(a) The use, management and utilization of natural resources on the Federal lands in the Sawtooth National Recreation Area (SNRA) are subject to the General Management Plan and the laws, rules, and regulations pertaining to the National Forests with the exception that part 252 of this chapter does not apply to these resources. No use or disposal of such resources shall be authorized which will result in substantial impairment of the natural values of the Recreation Area.

(b) *Definitions:*

(1) *Act* means Pub. L. 92–400 (86 Stat. 612), which established the SNRA.

(2) *Area Ranger or Superintendent* means the Forest Service officer having administrative authority for the SNRA.

(3) *General management plan* means the document setting forth the land allocation and resource decisions for management of the SNRA.

(4) *Letter of authorization* means a letter signed by the Area Ranger, or his designee, authorizing an operator to conduct operations as approved in the operating plan.

(5) *Mineral resources* means all locatable minerals.

(6) *Operator* means a person conducting or proposing to conduct operations.

(7) *Operations* means all functions works, and activities in connection with exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands, regardless of whether said operations take place on or off mining claims.

(8) *Operating plan* means a written instrument describing proposed operations on Federal lands and containing such information as required by § 292.18.

(9) *Person* means any individual, partnership, association, corporation, or other legal entity.

(10) *Substantial impairment* means that level of disturbance of the values of the SNRA which is incompatible with the standards of the General Management Plan. The proposed activities will be evaluated as to:

(i) The period of impact,

(ii) The area affected, and

(iii) The importance of the impact on the SNRA values.

(11) *Unpatented mining claims* means any mining claim or millsite claim located prior to August 22, 1972, pursuant to the Mining Law of 1872, but not patented.

[42 FR 39387, Aug. 4, 1977]

### § 292.18 Mineral resources.

(a) *Occupancy*. No unpatented mining claim may be used or occupied, except as otherwise permitted for any purpose other than exploration, mining, or processing operations and uses reasonably incident thereto.

(b) *Letter of authorization*. A letter of authorization with the posting of an appropriate bond is required prior to conducting operations in the SNRA.

(c) *Operating plan*. A proposed operating plan must be filed with the Area Ranger prior to conducting any operations and prior to construction, reconstruction, improvement or maintenance of roads and trails, bridges, or other facilities for access within the SNRA; provided, that an operating plan is not required for—

(1) Operations which only involve vehicular travel on existing roads open to public use;

(2) Marking and/or reestablishing claims corners;

(3) Sampling and exploration work which will not cause significant damage to surface resources and will not involve the removal of more than 100 pounds of material for analysis and study, provided the Area Ranger has prior notice of such activities; or

(4) The evaluation and study of existing underground mine workings not involving surface disturbances.

(d) *Operating plan—requirements*. Each operating plan shall include:

(1) The names and mailing addresses of operators and their agents, along with a statement of ownership and/or authorization under which the operation is to be conducted, and including a copy of the location notice(s), proof of assessment labor, and quit claim deeds if ownership has changed within the assessment year.

(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 and the approximate location and size of areas where surface resources will be disturbed.

(3) Information describing the nature of operations proposed and how they will be conducted, the type and standard of existing and proposed roads or access routes, the means of transportation to be used, the period during which the proposed operations will take place, and measures to be taken for protecting the values of the SNRA and reclaiming the lands.

(e) *Operating plan—approval*. (1) The Area Ranger shall promptly acknowledge receipt of any operating plan to the operator. The Area Ranger shall review the environmental effects and conduct a technical examination of each proposed operating plan.

The technical examination shall identify the resources and the land uses in the area of operations. The Area Ranger shall use the current General Management Plan of the SNRA and the Final Environmental Statement as guides in determining whether the proposed operations may result in substantial impairment of the values of the SNRA. In his review, the Area Ranger may solicit comments from the general public and/or other government agencies in analysis of environmental

effects. In his review, the Area Ranger will consider the compatibility of the proposed operating plan with the Act and the General Management Plan. The Area Ranger may not approve an operating plan for an identical claimed area to more than one operator.

(2) Within 30 working days of receipt of a proposed operating plan, the Area Ranger shall take one of the following actions:

(i) Notify the operator that the operating plan has been approved as submitted; or,

(ii) Notify the operator that the operating plan has been approved as subject to the operator accepting the changes or conditions deemed necessary by the Area Ranger; or,

(iii) Notify the operator that more time is necessary to review the plan because of the need to prepare an environmental impact statement, or conduct a cultural resource survey, or other stated reasons; in such cases, the operator will be notified of the approximate time needed to complete the review; or,

(iv) Notify the operator of an apparent conflict of ownership and that additional proof of ownership is required; or,

(v) Notify the operator that the operating plan as submitted is inadequate to support any conclusion as to substantial impairment, and that additional information will be required; or,

(vi) Notify the operator that the operating plan is not approved since such operations as specified in the plan would create substantial impairment.

(f) *Operating plans—suspension, revocation, or modification.* The authorized officer may suspend or revoke authorization to operate in whole or in part where such operations are causing substantial impairment which cannot be mitigated. At any time during operations under an approved operating plan, the operator may be required to modify the operating plan to minimize or avoid substantial impairment of the values of the SNRA.

(g) *Bond requirements.* (1) An operator shall furnish a bond, in the amount determined by the Area Ranger to be appropriate for reclamation of the disturbed surface area, prior to the commencement of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, 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 or not less than the required dollar amount of the bond.

(2) When the reclamation of the project, or portions thereof, has been completed, the operator will notify the Area Ranger who will examine the area to determine whether the reclamation is acceptable. When the Area Ranger has accepted as completed any portion of the reclamation, he shall reduce proportionately the amount of bond thereafter to be required with respect to the remaining reclamation. However, the operator will not be released from liability under the bond for the amount which may be necessary to revegetate each planting area for a minimum period of at least 5 years after the first efforts at revegetation if those initial efforts are unsuccessful.

(3) If the Area Ranger determines that revegetation is likely to occur before the expiration of such minimum period, he may release the operator from the extended liability under the bond for revegetation of planting area.

(h) *Access.* The operator shall permit free and unrestricted public access to and through lands included within an unpatented mining claim for all lawful and proper purposes. In areas where such access would unduly interfere with authorized operations or would constitute a hazard to public health and safety, public use may be restricted with prior approval of the Area Ranger.

[42 FR 39387, Aug. 4, 1977, as amended at 78 FR 33726, June 5, 2013]

## Subpart E—Hells Canyon National Recreation Area—Private Lands

AUTHORITY: 89 Stat. 1117; 16 U.S.C. 460gg–460gg–13.

SOURCE: 59 FR 30497, June 13, 1994, unless otherwise noted.

### § 292.20 Purpose and scope.

(a) *Purpose.* The Act establishing the Hells Canyon National Recreation Area (hereafter referred to as HCNRA) (16

U.S.C. 460gg–460gg–13) encourages the retention of traditional and valid uses of private land within the HCNRA, such as ranching, grazing, farming, timber harvesting, and the occupation of homes and lands associated therewith, as they existed at the time the HCNRA was established on December 31, 1975. To this end, the Act directs the Secretary of Agriculture to promulgate regulations establishing standards for the use and development of private land within the HCNRA and grants the Secretary limited condemnation authority to address situations where the standards are not met. The purpose of this subpart is to establish standards that would guide the Secretary's consideration of the use of the limited condemnation authority granted by the Act.

(b) *Scope*. The regulations in this subpart establish standards applicable to all private property within the boundaries of the HCNRA, including that within the boundaries of the Rapid, Snake, and Imnaha Wild and Scenic Rivers and the Hells Canyon Wilderness. The regulations in this subpart do not operate to restrict the use and development of private property; rather, they serve to inform the landowner of those uses that are compatible with purposes for which the HCNRA was established. Uses not compatible with these standards could result in the Secretary acquiring land or interests therein without a landowner's consent.

The regulations in this subpart, in and of themselves, do not effect a taking of private property, including valid, existing water rights, nor do the standards established in this subpart limit or restrict a private landowner's property use that is compatible with the purposes of the Act. The Responsible Official may use the regulations in this subpart solely to determine whether private land uses or developments are compatible with the purposes and direction of the Act and, if not, to determine whether the Secretary should consider initiating condemnation proceedings to acquire land or scenic easements.

### § 292.21 Definitions.

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

*Act* refers to the act of December 31, 1975, which established the Hells Canyon National Recreation Area (89 Stat. 1117; 16 U.S.C. 460gg–460gg–13).

*Archaeological sites* are those sites containing relics, artifacts, and other evidence of past human cultures including historic properties as defined by the National Historic Preservation Act.

*Commercial land* is land within the HCNRA developed for commercial purposes as of June 13, 1994 and which is assigned to the commercial land category (§ 292.22).

*Condemnation* is the acquisition of lands or interests therein by the Secretary without the consent of the owner. In the case of the Act, condemnation is a limited authority that may be exercised by the Secretary only in the event that a standard or standards set forth herein are violated for all private land categories except mining lands. Where mining lands are involved, the Secretary may exercise his or her condemnation authority notwithstanding the fact that the mining land owner has complied with the relevant standards of this section.

*Conservation easement* or *Scenic easement* as defined in Section 9(d) of the Act ''means the right to control the use of land in order to protect aesthetic values for the purposes of this Act, but shall not be acquired without the consent of the owner to preclude the continuation of any farming or pastoral use exercised by the owner as of the date of enactment of this Act.''

*Dude ranching* is a business oriented primarily towards furnishing small groups with an outdoor recreational and educational experience associated with ranching activities and perpetuates the purposes for which the HCNRA was established. Dude ranching is subservient to the primarily recognized ranching operation.

*Existing uses* are those uses of or developments to private land as of the date of enactment of the Act on December 31, 1975.

*Farm/Forest/Grazing lands* are those lands used for farm, forest, and grazing purposes, for maintaining watersheds as fish and wildlife habitat, or for providing outdoor recreational activities. All such lands are assigned to the

Farm/Forest/Grazing land category in § 292.22.

*Farm/Forest/Grazing Use* is any traditional agricultural, silvicultural, or livestock management use or combination thereof on farm/forest/grazing lands within the HCNRA. This includes, but is not limited to, truck farming, growing and harvesting of timber, grazing of livestock, horticultural use, animal husbandry use, horse, cattle, and sheep ranching, and preparation and storage of the products raised on farm/forest/grazing land for on-site use or for disposal by marketing or otherwise. Farm/forest/grazing uses may also consist of uses related to and in furtherance of the protection of watersheds, maintenance of fish and wildlife habitat, and the pursuit of recreational activities.

*Hazardous substance* includes any material so classified under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*).

*Mining lands* are lands primarily used for mining purposes as of June 13, 1994 and which are assigned to the mining land category in § 292.22.

*Outdoor recreational activities* are activities such as camping, picnicking, rafting, boating, hiking, rock climbing, fishing, hunting, horseback riding, and the viewing of wildlife or scenery.

*Parcel* as used in this subpart refers to contiguous tax lots under one ownership. For the purposes of this subpart, rights-of-way do not divide parcels into smaller units.

*Partition* is the division of land into lots, and which, under county planning ordinances, is identified by a map, drawing, or writing which contains the descriptions, locations, specifications, and dedications for roads, utilities, etc. and which has been properly filed with the County recorder.

*Private land* is land not in federal, state, or local government ownership.

*Proposed uses* are those uses of or development to a private land parcel within the HCNRA initiated after June 13, 1994.

*Ranger* is the HCNRA Area Ranger, Wallowa-Whitman National Forest, with offices located in Enterprise, Oregon, Riggins, Idaho, and Clarkston, Washington, except for the Rapid Wild and Scenic River where the term refers to the Salmon River District Ranger, Nez Perce National Forest, located in Whitebird, Idaho.

*Recreational facilities* are facilities associated with or required for outdoor recreational activities and include, but are not limited to, parks, campgrounds, hunting and fishing lodges, and interpretive displays.

*Residential lands* are lands within the HCNRA developed for residential purposes as of June 13, 1994 and which are assigned to the Residential land category in § 292.22.

*Scenic Easement*. See *Conservation Easement*.

*Screening* is the reduction or elimination of the visual impact of any structure or land modification as seen from any public travel route within the HCNRA.

*Solid waste* is discarded solid materials resulting from mining, industrial, commercial, agricultural, silvicultural, and community activities. This term does not include domestic sewage or pollutants such as silt or dissolved materials in irrigation return flows.

*Structure* is any permanent building or facility, or part thereof such as barns, outhouses, residences and storage sheds. This includes electric transmission line systems, substations, commercial radio transmitters, relays or repeater stations, antennas, and other electronic sites and associated structures.

*Traditional uses* are ranching, grazing, farming, timber harvesting and the occupation of homes and land associated therewith within the HCNRA, or other activities including outdoor recreational activities and facilities, which existed on or before December 31, 1975.

*Travel route* is a route, such as a county or National Forest system road or river or trail, that is open for use by members of the general public.

### § 292.22 Land category assignments.

(a) *Land categories*. (1) All privately owned lands within the HCNRA are to be assigned to one of the following four land categories:

(i) Farm/forest/grazing land.

(ii) Mining land.

(iii) Residential land.

(iv) Commercial land.

(2) Not later than August 12, 1994, a map or maps displaying the privately owned lands within the HCNRA and the land categories to which they have been assigned must be on file and available for public inspection at the Ranger's office. The Ranger shall give notice of the availability of this map or maps in the local newspapers of record.

(b) *Changes in land category assignment.* Lands assigned to the Commercial, Residential, or Mining category may be reclassified as farm/forest/grazing land so long as the intended use or development is consistent with the standards in § 292.23 and the Ranger has given public notice of the proposed change in the local newspaper of record and has notified adjacent landowners and the affected county government at least 30 days prior to any decision on the proposed change.

### § 292.23 Standards of compatible land use and development.

Private land use that conforms to the standards of this section is deemed to be compatible with the purpose for which the HCNRA was established.

(a) *Standards applicable to all private lands.* As of June 13, 1994, the use and development of private lands in all land categories within the HCNRA is deemed compatible with the purposes for which the HCNRA was established, if the use and development of such lands meets the following standards:

(1) Use and development conforms to applicable local, state, and federal environmental, natural resource, cultural resource, and land use development law.

(2) All new or replacement structures are screened and/or constructed of materials that blend with the natural environment, except where structures typify the architectural style and materials of a significant historic era such as pre-World War II. Screening is not required, however, for new or replacement structures that are associated with an existing unscreened structure or structures that were not screened at the time this rule became effective.

(3) No public or commercial solid waste disposal sites or hazardous substance disposal sites are located on private lands within the HCNRA.

(4) All new or replacement utility lines are placed underground where ground conditions and topography permit. This standard does not prevent or impair routine maintenance of utility lines or related structures in existence prior to June 13, 1994.

(5) No new or replacement structures are developed within the boundaries of the Hells Canyon Wilderness, provided that existing structures may be repaired and/or maintained.

(6) Significant historic, archaeologic, or paleontologic sites are protected.

(7) Sites used for the extraction of common mineral materials, such as gravel, for construction and maintenance purposes on all except designated mining lands, are screened where possible, and are not in excess of 2 acres in size.

(8) New recreational facilities enhance and are compatible with the purpose of the Act.

(b) *Farm/forest/grazing lands standards.* The following additional standards are applicable to farm/forest/grazing lands:

(1) Except as otherwise provided in this paragraph, the minimum lot size for residential development is 160 acres. Only residences associated with farm/forest/grazing uses may be developed. Partitions of less than 160 acres may be made to provide for the continuation of existing commercial agriculture, but such partitions may not be developed for residential use. Lots of less than 160 acres existing on June 13, 1994, with residences permanently affixed to a foundation or basement, are considered to be in compliance.

(2) Structures are limited to those necessary to conduct farm/forest/grazing use.

(3) Dude ranching is permitted provided it is compatible with the purpose and direction of the Act and is part of a recognized ranching operation.

(4) New or replacement structures for farm/forest/grazing use are not closer than 25 feet from a property line or 55 feet from the center line of a travel route.

(c) *Mining Lands.* (1) The following standards are applicable to mining lands:

(i) The owner of mining lands must consult with the Ranger concerning

proposed mineral development activities prior to submitting a plan of operations to the relevant state or federal agencies.

(ii) Operations comply with Federal and State mining, air quality, water quality, hazardous waste, water disposal and reclamation standards.

(iii) The type and number of structures, including but not limited to residences associated with the mining activity, are limited to the minimum necessary for the use and development of the mining lands.

(iv) No new structures are located closer than 25 feet from a property line or 55 feet from the center line of a travel route.

(v) Mining lands are not partitioned.

(2) Notwithstanding compliance with the standards of paragraph (c)(1) of this section, the Secretary may acquire mineral interests in the HCNRA without the consent of the owner, if the Secretary deems this necessary to meet the purposes for which the HCNRA was established.

### § 292.24 Determination of compliance and noncompliance.

(a) *Compliance*. Landowners may request a determination by the Forest Service as to whether an existing or a proposed use or development complies with the relevant standards set out in this subpart.

(1) Requests for a determination of compliance must be made in writing to the Ranger and include the following information:

(i) The current land category to which the land is assigned (§ 292.23);

(ii) The use of development that exists or that is proposed for the property;

(iii) A statement as to whether a change in the land category assignment will be necessary to accommodate the proposed use or development;

(iv) The timeframe for implementing the proposed use or development; and

(v) A statement as to how the proposed use or development satisfies the relevant standards of § 292.23 of this subpart.

(2) The Ranger shall review the request and notify the landowner in writing within 45 days whether the existing or proposed use or development is in compliance with § 292.23 of this subpart. The Ranger may extend the time for making a compliance determination by 30 days if additional information is needed.

(b) *Noncompliance*. (1) In the event that the Forest Service determines that an existing or proposed use of development is not in compliance with the standards of § 292.23 of this subpart, the Ranger shall give the landowner written notice of the manner and nature of noncompliance. To the extent practicable, the notice will include suggestions for achieving compliance. The notice also must include a statement that the violation of a standard or standards and the failure to cure such violation may result in the initiation of condemnation proceedings by the Secretary.

(2) The Forest Service may initiate a noncompliance determination on its own without having first received a landowner request.

(c) *Written petition*. The landowner may file a written petition with the Forest Supervisor for a review of a decision of compliance or noncompliance. The Forest Supervisor shall render a decision within 30 days of the receipt of the petition. A decision by the Forest Supervisor constitutes the final administrative determination by the Department of Agriculture. Petitions of decisions on lands within the Rapid River Wild and Scenic River Corridor should be addressed to the Forest Supervisor, Nez Perce National Forest, Route 2, P.O. Box 475, Grangeville, Idaho 83450. All other petitions should be addressed to the Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

### § 292.25 Information requirements.

The information required by § 292.24 of this subpart in order for a landowner to obtain a determination of compliance constitutes an information requirement as defined in the Paperwork Reduction Act (44 U.S.C. 3507) and has been approved for use by the Office of Management and Budget and assigned control number 0596–0135.

## Subpart F—Hells Canyon National Recreation Area—Federal Lands

AUTHORITY: 16 U.S.C. 460gg–7.

SOURCE: 59 FR 36882, July 19, 1994, unless otherwise noted.

### § 292.40 Purpose and scope.

(a) *Purpose*. The rules of this subpart establish standards and guidelines for the protection and preservation of historic, archeological, and paleontological resources, the use of motorized and mechanical equipment, the use of motorized and non-motorized rivercraft, and the management, utilization, and disposal of natural resources by timber harvesting, mining and grazing on National Forest System lands that comprise the Hells Canyon National Recreation Area located in the Wallowa-Whitman, Nez Perce, and Payette National Forests in the States of Idaho and Oregon as established by the Act of December 31, 1975, as amended (89 Stat. 1117, 16 U.S.C. 460gg *et seq.*).

(b) *Scope*. Management of National Forest System lands within the Hells Canyon National Recreation Area is subject to all laws, rules, and regulations applicable to the national Forest System, except as otherwise provided in this subpart. In the event of a conflict of inconsistency between rules of this subpart and other rules within this title, the rules of this subpart shall take precedence to the extent permitted by law.

### § 292.41 Definitions.

Special terms used in this subpart are defined as follows:

*Act* means the Act of December 31, 1975, as amended (Pub. L. 94–199, 89 Stat. 1117) which established the Hells Canyon National Recreation Area.

*Authorized Officer* is a Forest Service line officer who has been delegated the authority to take certain actions pursuant to the provisions of this subpart.

*Comprehensive Management Plan* is the document that establishes the array, levels, and manner of resource uses within the HCNRA. It is incorporated as part of the Wallowa-Whitman National Forest Land and Resource Management Plan.

*Cultural resources* means historic and archeological resources.

*HCNRA* is the abbreviation for the Hells Canyon National Recreation Area.

*Mechanical equipment* means any contrivance which travels over ground, snow or water on wheels, tracks, skids, or by flotation that is powered by a living source. This term does not include non-motorized rivercraft which is defined separately herein, wheelchairs, or other similar devices used solely to assist persons with disabilities.

*Mining* means any activity related to the discovery, extraction and exploitation of minerals under the Mining Act of 1872, 30 U.S.C. 22 *et seq.*, and the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, through the use of, among other things, hydraulic equipment, pans, ground sluicing, sluice boxes, rockers, or suction dredges.

*Motorized equipment* means any machine powered by a nonliving source. This term does not include motorized rivercraft which is defined separately herein or small, hand-held devices such as flashlights, shavers, wristwatches, and Geiger counters.

*Motorized rivercraft* means any boat capable of being mechanically propelled by propeller(s) or jet pump(s) upstream through rapids.

*Non-Motorized rivercraft* means any boat which is not a motorized rivercraft.

*Other lands* means all National Forest System lands in the HCNRA except for Wild and Scenic Rivers and Wilderness Lands.

*Paleontological resources* means any remains, trace, or imprint of a plant or animal that has been preserved in the Earth's crust prior to the Holocene epoch.

*Selective cutting* means single tree or group selection cutting and is the periodic removal of trees individually or in small groups from an uneven aged forest in order to maintain diverse stands, with the sustainability and improvement of the forest using an ecosystem approach to management being a primary consideration.

*Suitable* means it is appropriate to apply certain resource management practices to a particular area of land,

as determined by an ecological and environmental analysis of the land. A unit of land may be suitable for a variety of individual or combined management practices.

*Wild and Scenic Rivers* means the segments of the Snake, Rapid, and Imnaha Rivers designated as components of the National Wild and Scenic Rivers System and any other river or segment thereof in the HCNRA hereafter designated. Wild and Scenic Rivers include all National Forest System lands within the designated Wild and Scenic River corridor.

*Wilderness lands* means the Hells Canyon Wilderness, that portion of the Eagle Cap Wilderness in the HCNRA, and any other wilderness in the HCNRA hereafter designated as components of the National Wilderness Preservation System.

**§ 292.42 Management standards and guidelines.**

(a) In addition to existing statutory and regulatory authority governing administration of National Forest System lands and resources, the standards and guidelines in §§ 292.43 to 292.48 of this subpart prescribe the scope and extent of certain activities that may occur in the HCNRA. These standards and guidelines are consistent with the overall objective of administering the HCNRA to preserve its natural beauty, historical and archaeological values and enhance its recreational and ecological values and the public's enjoyment. The standards and guidelines may vary depending on whether the land where the proposed activity is contemplated is within the Wilderness Lands, Wild and Scenic Rivers, or the Other Lands.

(b) The standards and guidelines of this subpart govern the previous programmatic direction in the Comprehensive Management Plan that has been incorporated into the Wallowa-Whitman National Forest Land and Resource Management Plan. Site specific environmental analysis may be required even in those situations where a use or activity is permissible under the standards and guidelines set forth in this subpart.

(c) The standards and guidelines of this subpart may be enforced by the authorized officer pursuant to 36 CFR part 261.

**§ 292.43 Protection and preservation of cultural and paleontological resources.**

(a) Other Lands and Wild and Scenic Rivers. The following standards and guidelines of this section apply to the protection and preservation of cultural and paleontological resources on the Other Lands and the Wild and Scenic Rivers in the HCNRA:

(1) The primary objective of managing cultural resources is the protection of the resource from damage or destruction. To the extent consistent with protection, cultural resources may also be managed for scientific research, public education and enjoyment. Where interpretation of these sites for public benefit and knowledge is developed, it shall be compatible with the protection of cultural resources.

(2) The authorized officer shall establish priorities for management emphasis and protection of cultural resources based, in part, on whether the appropriate State Historic Preservation Office has concurred with the Forest Service's determination that a cultural resource is significant.

(3) Significant cultural resources are to be protected on-site, unless the authorized officer determines that off-site protection is preferable because adequate protection cannot be provided on-site, the resource is already adequately represented and protected on-site elsewhere, protection on-site is not consistent with the administration of Wilderness Lands, or for other good cause shown. Information about significant cultural resources shall be documented.

(4) The primary objective of managing paleontological resources is scientific research. Paleontological resources may only be disturbed or removed in conjunction with scientific research and only upon the issuance of prior written authorization of the disturbance or removal activity.

(b) *Wilderness Lands*. The following standards and guidelines apply to the protection and preservation of cultural and paleontological resources in the

Wilderness Lands category of the HCNRA.

(1) The standards and guidelines for Other Lands and Wild and Scenic Rivers in paragraph (a) of this section also apply to Wilderness Lands.

(2) Public education and information activities concerning cultural resources on Wilderness Lands may not be offered or established inside Wilderness Lands.

(3) New trails and relocations of existing trails may not be developed for the sole purpose of providing public access to cultural resource sites on Wilderness Lands.

### § 292.44 Use of motorized and mechanical equipment.

The standards and guidelines of this section apply to the use of motorized and mechanical equipment in the HCNRA. These standards and guidelines shall not be construed to impair or preclude use of such equipment in the Forest Service's administration of the HCNRA; authorized scientific and other research activities within the HCNRA; timber harvesting, mining, or grazing activities as authorized in §§ 292.46–292.48 of this subpart; responses by the Forest Service or any other Federal, state, or local agency to public health or safety emergencies; or access to private inholdings within the HCNRA.

(a) *Other Lands*. The following standards and guidelines apply to the use of motorized and mechanical equipment in the Other Lands category of the HCNRA.

(1) Motorized and mechanical equipment may be used on designated Forest Service roads, trails, and airstrips subject to terms and conditions deemed necessary by the authorized officer for the safe use of such facilities.

(2) The use of motorized and mechanical equipment is prohibited off of designated Forest Service roads, trails, and airstrips unless authorized by the authorized officer subject to terms and conditions deemed necessary by the authorized officer for the safe use of such equipment and to ensure that its use is compatible with the Act.

(b) *Wild and Scenic Rivers*. The following standards and guidelines apply to the use of motorized and mechanical equipment in the Wild and Scenic Rivers category in the HCNRA.

(1) The use of motorized and mechanical equipment on designated Forest Service roads, trails and airstrips is permissible on wild and scenic river segments classified ''scenic'' or ''recreational'' subject to terms and conditions necessary for safe use of such equipment and to ensure its use is compatible with the Wild and Scenic Rivers Act.

(2) The use of motorized and mechanical equipment on designated Forest Service roads, trails, and airstrips is prohibited on wild and scenic river segments classified ''wild'' except as provided for by the authorized officer upon a determination that such use is necessary for the administration of the river or to protect and enhance the values for which river was designated.

(c) *Wilderness Lands*. Except as provided for in Sections 4 (c) and (d) of the Wilderness Act and regulations at 36 CFR parts 261 and 293, the use of motorized and mechanical equipment is prohibited on Wilderness Lands.

### § 292.45 Use of motorized and non-motorized rivercraft.

The standards and guidelines of this section apply to the use of motorized and non-motorized rivercraft on rivers within the HCNRA.

(a) The use of non-motorized rivercraft may be permitted subject to restrictions on size, type of craft, numbers, duration, seasons, or other matters which may be deemed by the authorized officer to be necessary to ensure the safe use and enjoyment of the rivers: Provided, that where wild and scenic rivers are concerned, the authorized officer may impose such additional terms and conditions as may be necessary to protect and enhance the values for which the river was designated.

(b) The use of motorized rivercraft is prohibited except on the Snake River and that portion of the Salmon River in the HCNRA administered by the Forest Service where such activity may be permitted subject to restrictions on size, type of craft, numbers, noise limits, duration, seasons or other matters which may be deemed by the authorized officer necessary for the safe use and enjoyment of the rivers:

Provided, that where wild and scenic rivers are involved, the authorized officer may impose such additional terms and conditions as may be necessary to protect and enhance the values for which the river was designated.

(c) The use of motorized and non-motorized rivercraft is subject to all federal and state boating registration and safety laws.

(d) The use of motorized or non-motorized rivercraft on the Snake River and that portion of the Salmon River in the HCNRA administered by the Forest Service requires prior written authorization from the authorized officer.

(e) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer must reasonably accommodate both private and commercial users of each type of rivercraft.

(f) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer must ensure that the carrying capacity of the river is not exceeded.

(g) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer shall seek to minimize, where practicable, conflicts between motorized and non-motorized rivercraft users and between both types of rivercraft users and all other users of the river.

### § 292.46 Timber harvesting activities.

(a) *Other Lands*. The standards and guidelines of this section apply to timber harvesting activities in the Other Lands category of the HCNRA.

(1) Timber may be harvested only to protect and enhance ecosystem health, wildlife habitat, or recreational and scenic uses; to reduce the risk of harm posed by hazard trees; or to respond to natural events such as wildfire, flood, earthquake, volcanic eruption, high winds, and disease or insect infestation.

(2) Where authorized, trees may be harvested by selective cuttings. Openings created by the timber harvesting activity must be limited in size and number to the minimum necessary to accomplish the purpose of the harvest, and must blend with the natural landscape to the extent practicable.

(b) *Wild and Scenic Rivers*. The following standards and guidelines apply to timber harvesting activities in the Wild and Scenic Rivers category of the HNCRA.

(1) Timber may be harvested on river segments classified ''scenic'' or ''recreational'' to protect and enhance the values for which the river was designated.

(2) Timber may be harvested on river segments classified ''wild'' only when necessary to provide for recreational facilities such as trails, to reduce the risk of hazard trees, or to respond to natural events provided that the activity is consistent with the Wild and Scenic Rivers Act.

(3) Where authorized, timber harvesting activities on wild and scenic rivers may be conducted in accordance with and using the same methods as prescribed in section (a)(2) above.

(c) *Wilderness Lands*. Except as provided for in Sections 4 (c) and (d) of the Wilderness Act and regulations at 36 CFR part 293, timber harvesting is prohibited on Wilderness Lands.

### § 292.47 Mining activities.

(a) *Other Lands*. The standards and guidelines of this section apply to mining activities in the Other Lands category of the HCNRA.

(1) All mining activities are prohibited subject to valid existing rights as of December 31, 1975.

(2) The impact of mining activities including, but not limited to, drilling and the development of ingress and egress routes, must be minimized and directed away from Wilderness Lands and Wild and Scenic Rivers to the extent practicable.

(3) Mineral materials including, but not limited to common varieties of gravel, sand, or stone, may be used only within the HCNRA for the purpose of construction and maintenance of facilities including, but not limited to, roads, airfields, trails, and recreation developments.

(4) Sources of mineral materials should be located outside the HCNRA. Sources for mineral materials that may be used to benefit the HCNRA may be located inside the HCNRA if the cost of obtaining the materials outside the HCNRA adds significantly to

the costs of the materials, or the transportation of mineral materials from outside the HCNRA presents a safety hazard. When mineral materials are obtained from inside the HCNRA, the environmental effects at the source of extraction must be mitigated by site reclamation upon the termination of the extraction activity. Site reclamation may include contouring the land, re-establishing vegetation, and other measures deemed appropriate by the authorized officer to blend the site into the surrounding environment to the extent practicable. The HCNRA shall not be the source of mineral materials for use outside the HCNRA for projects that do not directly benefit the HCNRA.

(b) *Wilderness Lands and Wild and Scenic Rivers*. The standards and guidelines of this section apply to mining activities in the Wilderness Lands and Wild and Scenic Rivers categories of the HCNRA.

(1) The standards and guidelines for Other Lands in paragraphs (a)(1) and (2) of this section also apply to Wilderness Lands and Wild and Scenic Rivers.

(2) Extraction of mineral materials is prohibited on Wilderness Lands and Wild and Scenic Rivers subject to valid existing rights.

### § 292.48 Grazing activities.

The following standards and guidelines apply to domestic livestock grazing activities on Other Lands, Wild and Scenic Rivers, and Wilderness Lands in the HCNRA.

(a) Grazing may be authorized only on rangeland determined by the authorized officer to be suitable for grazing and meeting or moving towards satisfactory condition and meeting the conditions described in paragraph (b) of this section.

(b) Where domestic livestock grazing is incompatible with the protection, restoration, or maintenance of fish and wildlife or their habitats; public outdoor recreation; conservation of scenic, wilderness, and scientific values; rare combinations of outstanding ecosystems, or the protection and enhancement of the values for which a wild and scenic river was designated, the livestock use shall be modified as necessary to eliminate or avoid the incompatibility. In the event an incompatibility persists after the modification or modification is not feasible, the livestock use shall be terminated.

(c) Range improvements must be designed and located to minimize their impact on scenic, cultural, fish and wildlife, and other resources in the HCNRA.

(d) The authorization of grazing use, through a grazing permit, must provide for terms and conditions which protect and conserve riparian areas.

## Subpart G—Smith River National Recreation Area

AUTHORITY: 16 U.S.C. 460bbb *et seq*.

SOURCE: 63 FR 15059, Mar. 27, 1998, unless otherwise noted.

### § 292.60 Purpose and scope.

(a) *Purpose*. The regulations of this subpart set forth the rules and procedures by which the Forest Service regulates mineral operations on National Forest System lands within the Smith River National Recreation Area as established by Congress in the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq*.).

(b) *Scope*. The rules of this subpart apply only to mineral operations on National Forest System lands within the Smith River National Recreation Area.

(c) *Applicability of other rules*. The rules of this subpart supplement existing Forest Service regulations concerning the review, approval, and administration of mineral operations on National Forest System lands including, but not limited to, those set forth at parts 228, 251, and 261 of this chapter.

(d) *Conflicts*. In the event of conflict or inconsistency between the rules of this subpart and other parts of this chapter, the rules of this subpart take precedence, to the extent allowable by law.

### § 292.61 Definitions.

The special terms used in this subpart have the following meaning:

*Act* means the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq*.).

*Authorized officer* means the Forest Service officer to whom authority has

been delegated to take actions pursuant to the provisions of this subpart.

*Hazardous material* means any hazardous substance, pollutant, contaminant, hazardous waste, and oil or other petroleum products, as those terms are defined under any Federal, State, or local law or regulation.

*Outstanding mineral rights* means the rights owned by a party other than the surface owner at the time the surface was conveyed to the United States.

*SRNRA* is the abbreviation for the Smith River National Recreation Area, located within the Six Rivers National Forest, California.

**§ 292.62 Valid existing rights.**

(a) *Definition*. For the purposes of this subpart, valid existing rights are defined as follows:

(1) *For certain ''Wild'' River segments*. The rights associated with all mining claims on National Forest System lands within the SRNRA in ''wild'' segments of the Wild and Scenic Smith River, Middle Fork Smith River, North Fork Smith River, Siskiyou Fork Smith River, South Fork Smith River, and their designated tributaries, except Peridotite Creek, Harrington Creek, and the lower 2.5 miles of Myrtle Creek, which:

(i) Were properly located prior to January 19, 1981;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the meaning of the United States mining laws prior to January 19, 1981, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid.

(2) *For Siskiyou Wilderness*. The rights associated with all mining claims on National Forest System lands within the SRNRA in the Siskiyou Wilderness except, those within the Gasquet-Orleans Corridor addition or those rights covered by paragraph (a)(1) of this section which:

(i) Were properly located prior to September 26, 1984;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the meaning of the United States mining laws prior to September 26, 1984, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid.

(3) *For all other lands*. The rights associated with all mining claims on National Forest System lands in that portion of the SRNRA not covered by paragraph (a)(1) or (a)(2) of this section which:

(i) Were properly located prior to November 16, 1990;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the meaning of the United States mining laws prior to November 16, 1990, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid.

(b) *Operations to confirm discovery*. The authorized officer shall authorize those mineral operations that may be necessary for the purpose of gathering information to confirm or otherwise demonstrate the discovery of a valuable mineral deposit consistent with the definition in paragraph (a) of this section or to obtain evidence for a contest hearing regarding the claim's validity, upon receipt of a proposed plan of operations as defined in § 292.63 of this subpart to conduct such operations and of sufficient information from the operator to show an exposure of valuable minerals on a claim that predates the withdrawal of the federal land from the operation of the United States mining laws. The authorized officer shall authorize only those operations that may be necessary to confirm or demonstrate the discovery of a valuable mineral deposit prior to the date of withdrawal of the federal land on which the claim is situated. Pursuant to this paragraph, the authorized officer shall not authorize any operations which would constitute prospecting, exploration, or otherwise uncovering or discovering a valuable mineral deposit.

LOCATABLE MINERALS

### § 292.63 Plan of operations—supplementary requirements.

(a) *Applicability*. In addition to the activities for which a plan of operations is required under § 228.4 of this chapter, a plan of operations is required when a proposed operation within the SRNRA involves mechanical or motorized equipment, including a suction dredge and/or sluice.

(b) *Information to support valid existing rights*. A proposed plan of operations within the SRNRA must include at least the following information on the existence of valid existing rights:

(1) The mining claim recordation serial number assigned by the Bureau of Land Management;

(2) A copy of the original location notice and conveyance deeds, if ownership has changed since the date of location;

(3) A copy of affidavits of assessment work or notices of intention to hold the mining claim since the date of recordation with the Bureau of Land Management;

(4) Verification by the Bureau of Land Management that the holding or maintenance fees have been paid or have been exempted;

(5) Sketches or maps showing the location of past and present mineral workings on the claims and information sufficient to locate and define the mining claim corners and boundaries on the ground;

(6) An identification of the valuable mineral that has been discovered;

(7) An identification of the site within the claims where the deposit has been discovered and exposed;

(8) Information on the quantity and quality of the deposit including copies of assays or test reports, the width, locations of veins, the size and extent of any deposit; and

(9) Existing evidence of past and present sales of the valuable mineral.

(c) *Minimum information on proposed operations*. In addition to the requirements of paragraph (b) of this section, a plan of operations must include the information required at §§ 228.4 (c)(1) through (c)(3) of this chapter which includes information about the proponent and a detailed description of the proposed operation. In addition, if the operator and claim owner are different, the operator must submit a copy of the authorization or agreement under which the proposed operations are to be conducted. A plan of operations must also address the environmental requirements of § 228.8 of this chapter which includes reclamation. In addition, a plan of operations also must include the following:

(1) An identification of the hazardous materials and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation, and the proposed means for disposing of such substances;

(2) An identification of the character and composition of the mineral wastes that will be used or generated and a proposed method or strategy for their placement, control, isolation, or removal; and

(3) An identification of how public health and safety are to be maintained.

### § 292.64 Plan of operations—approval.

(a) *Timeframe for review*. Except as provided in paragraph (b) of § 292.62 of this subpart, upon receipt of a plan of operations, the authorized officer shall review the information related to valid existing rights and notify the operator in writing within 60 days of one of the following situations:

(1) That sufficient information on valid existing rights has been provided and the anticipated date by which the valid existing rights determination will be completed, which shall not be more than 2 years after the date of notification; unless the authorized officer, upon finding of good cause with written notice and explanation to the operator, extends the time period for completion of the valid existing rights determination.

(2) That the operator has failed to provide sufficient information to review a claim of valid existing rights and, therefore, the authorized officer has no obligation to evaluate whether the operator has valid existing rights or to process the operator's proposed plan of operations.

(b)(1) If the authorized officer concludes that there is not sufficient evidence of valid existing rights, the officer shall so notify the operator in writing of the reasons for the determination, inform the operator that the proposed mineral operation cannot be conducted, advise the operator that the Forest Service will promptly notify the Bureau of Land Management of the determination and request the initiation of a mineral contest action against the pertinent mining claim, and advise the operator that further consideration of the proposed plan of operations is suspended pending final action by the Department of the Interior on the operator's claim of valid existing rights and any final judicial review thereof.

(2) If the authorized officer concludes that there is not sufficient evidence of valid existing rights, the authorized officer also shall notify promptly the Bureau of Land Management of the determination and request the initiation of a mineral contest action against the pertinent mining claims.

(c) An authorized officer's decision pursuant to paragraph (b) of this section that there is not sufficient evidence of valid existing rights is not subject to further agency or Department of Agriculture review or administrative appeal.

(d) The authorized officer shall notify the operator in writing that the review of the remainder of the proposed plan will proceed if:

(1) The authorized officer concludes that there is sufficient evidence of valid existing rights;

(2) Final agency action by the Department of the Interior determines that the applicable mining claim constitutes a valid existing right; or

(3) Final judicial review of final agency action by the Department of the Interior finds that the applicable mining claim constitutes a valid existing right.

(e) Upon completion of the review of the plan of operations, the authorized officer shall ensure that the minimum information required by § 292.63(c) of this subpart has been addressed and, pursuant to § 228.5(a) of this chapter, notify the operator in writing whether or not the plan of operations is approved.

(f) If the plan of operations is not approved, the authorized officer shall explain in writing why the plan of operations cannot be approved.

(g) If the plan of operations is approved, the authorized officer shall establish a time period for the proposed operations which shall be for the minimum amount of time reasonably necessary for a prudent operator to complete the mineral development activities covered by the approved plan of operations.

(h) An approved plan of operations is subject to review and modification as follows:

(1) To bring the plan into conformance with changes in applicable federal law or regulation; or

(2) To respond to new information not available at the time the authorized officer approved the plan, for example, new listings of threatened or endangered species; or

(3) To correct errors or omissions made at the time the plan was approved, for example, to ensure compliance with applicable federal law or regulation; or

(4) To permit operations requested by the operator that differ in type, scope, or duration from those in an approved plan of operations but that are not subject to paragraph (i) of this section.

(i) If an operator desires to conduct operations that differ in type, scope, or duration from those in an approved plan of operations, and if those changes will result in resource impacts not anticipated when the original plan was approved, the operator must submit a supplemental plan or a modification of the plan for review and approval.

### § 292.65 Plan of operations—suspension.

(a) The authorized officer may suspend mineral operations due to an operator's noncompliance with applicable statutes, regulations, or terms and conditions of the approved plan of operations.

(1) In those cases that present a threat of imminent harm to public health, safety, or the environment, or where such harm is already occurring, the authorized officer may take immediate action to stop the threat or damage without prior notice. In such case,

written notice and explanation of the action taken shall be given the operator as soon as reasonably practicable following the suspension.

(2) In those cases that do not present a threat of imminent harm to public health, safety, or the environment, the authorized officer must first notify the operator in writing of the basis for the suspension and provide the operator with reasonably sufficient time to respond to the notice of the authorized officer or to bring the mineral operations into conformance with applicable laws, regulations, or the terms and conditions of the approved plan of operations.

(b) Except as otherwise provided in this section, the authorized officer shall notify the operator not less than 30 days prior to the date of the proposed suspension.

OUTSTANDING MINERAL RIGHTS

### § 292.66 Operating plan requirements—outstanding mineral rights.

(a) Proposals for mineral operations involving outstanding mineral rights within the SRNRA must be documented in an operating plan and submitted in writing to the authorized officer.

(b) An operating plan for operations involving outstanding mineral rights within the SRNRA must include the following:

(1) The name and legal mailing address of the operator, owner, and any lessees, assigns, and designees;

(2) A copy of the deed or other legal instrument that conveyed the outstanding mineral rights;

(3) Sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, including, but not limited to, existing and/or proposed roads or access routes identified for use, any new proposed road construction, and the approximate location and size of the areas to be disturbed, including existing or proposed structures, facilities, and other improvements to be used;

(4) A description of the type of operations which includes, at a minimum, a list of the type, size, location, and number of structures, facilities, and other improvements to be used;

(5) An identification of the hazardous materials and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation and the proposed means for disposing of such substances;

(6) An identification of the character and composition of the mineral wastes that will be used or generated and a proposed method or strategy for their placement, control, isolation, remediation, or removal; and

(7) A reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations. The plan must:

(i) Provide reclamation to the extent practicable;

(ii) Show how public health and safety are maintained;

(iii) Identify and describe reclamation measures to include, but not limited to, the following:

(A) Reduction and/or control of erosion, landslides, and water runoff;

(B) Rehabilitation of wildlife and fisheries habitat to be disturbed by the proposed mineral operation; and

(C) Protection of water quality.

(iv) Demonstrate how the area of surface disturbance will be reclaimed to a condition or use that is consistent with the Six Rivers National Forest Land and Resource Management Plan.

### § 292.67 Operating plan approval—outstanding mineral rights.

(a) Upon receipt of an operating plan, the authorized officer must review the information related to the ownership of the outstanding mineral rights and notify the operator that:

(1) Sufficient information on ownership of the outstanding mineral rights has been provided; or

(2) Sufficient information on ownership of outstanding mineral rights has not been provided, including an explanation of the specific information that still needs to be provided, and that no further action on the plan of operations will be taken until the authorized officer's receipt of the specified information.

(b) If the review shows outstanding mineral rights have not been verified, the authorized officer must notify the operator in writing that outstanding

mineral rights have not been verified, explain the reasons for such a finding, and that the proposed mineral operation cannot be conducted.

(c) If the review shows that outstanding mineral rights have been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have been verified and that review of the proposed operating plan will proceed.

(d) The authorized officer shall review the operating plan to determine if all of the following criteria are met:

(1) The operating plan is consistent with the rights granted by the deed;

(2) The operating plan is consistent with the Six Rivers National Forest Land and Resource Management Plan; and

(3) The operating plan uses only so much of the surface as is necessary for the proposed mineral operations.

(e) Upon completion of the review of the operating plan, the authorized officer shall notify the operator in writing of one of the following:

(1) The operating plan meets all of the criteria of paragraphs (d)(1) through (d)(3) of this section and, therefore, is approved;

(2) The operating plan does not meet one or more of the criteria in paragraphs (d)(1) through (d)(3) of this section. Where feasible, the authorized officer may indicate changes to the operating plan that would satisfy the criteria in paragraphs (d)(1) through (d)(3) of this section and, thus, if accepted by the operator, would result in approval of the operating plan.

(f) To conduct mineral operations beyond those described in an approved operating plan, the owner or lessee must submit, in writing, an amended operating plan to the authorized officer at the earliest practicable date. New operations covered by the proposed amendment may not begin until the authorized officer has reviewed and responded in writing to the proposed amendment. The authorized officer shall review a proposed amendment of an approved operating plan to determine that the criteria in paragraphs (d)(1) through (d)(3) of this section are met.

MINERAL MATERIALS

### § 292.68 Mineral material operations.

Subject to the provisions of part 228, subpart C, and part 293 of this chapter, the authorized officer may approve contracts and permits for the sale or other disposal of mineral materials, including but not limited to, common varieties of gravel, sand, or stone. However, such contracts and permits may be approved only if the material is not within a designated wilderness area and is to be used for the construction and maintenance of roads and other facilities within the SRNRA or the four excluded areas identified by the Act.

OTHER PROVISIONS

### § 292.69 Concurrent reclamation.

Plans of operations involving locatable minerals, operating plans involving outstanding mineral rights, and contracts or permits for mineral materials should all provide, to the maximum extent practicable, that reclamation proceed concurrently with the mineral operation.

### § 292.70 Indemnification.

The owner and/or operator of mining claims and the owner and/or lessee of outstanding mineral rights are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for the following:

(a) Costs, damages, claims, liabilities, judgments, injury and loss, including those incurred from fire suppression efforts, and environmental response actions and cleanup and abatement costs incurred by the United States and arising from past, present, and future acts or omissions of the owner, operator, or lessee in connection with the use and occupancy of the unpatented mining claim and/or mineral operation. This includes acts or omissions covered by Federal, State, and local pollution control and environmental statutes and regulations.

(b) Payments made by the United States in satisfaction of claims, demands, or judgments for an injury, loss, damage, or costs, including for

fire suppression and environmental response action and cleanup and abatement costs, which result from past, present, and future acts or omissions of the owner, operator, or lessee in connection with the use and occupancy of the unpatented mining claim and/or mineral operations.

(c) Costs incurred by the United States for any action resulting from noncompliance with an approved plan of operations or activities outside an approved operating plan.

# PART 293—WILDERNESS—PRIMITIVE AREAS

Sec.

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AUTHORITY: 16 U.S.C. 551, 1131–1136 and 92 Stat. 1649.

SOURCE: 38 FR 5855, Mar. 5, 1973, unless otherwise noted.

## § 293.1 Definition.

National Forest Wilderness shall consist of those units of the National Wilderness Preservation System which at least 30 days before the Wilderness Act of September 3, 1964, were designated as Wilderness and Wild under Secretary of Agriculture's Regulations U–1 and U–2 (§§ 251.20, 251.21), the Boundary Waters Canoe Area as designated under Regulation U–3 (§ 294.1), and such other areas of the National Forests as may later be added to the System by act of Congress. Sections 293.1 to 293.15 apply to all National Forest units now or hereafter in the National Wilderness Preservation System, including the Boundary Waters Canoe Area, Superior National Forest, except as that area is subject to § 293.16.

## § 293.2 Objectives.

Except as otherwise provided in the regulations in this part, National Forest Wilderness shall be so administered as to meet the public purposes of recreational, scenic, scientific, educational, conservation, and historical uses; and it shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. In carrying out such purposes, National Forest Wilderness resources shall be managed to promote, perpetuate, and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation. To that end:

(a) Natural ecological succession will be allowed to operate freely to the extent feasible.

(b) Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions.

(c) In resolving conflicts in resource use, wilderness values will be dominant to the extent not limited by the Wilderness Act, subsequent establishing legislation, or the regulations in this part.

## § 293.3 Control of uses.

(a) To the extent not limited by the Wilderness Act, subsequent legislation establishing a particular unit, or the regulations in this part, the Chief, Forest Service, may prescribe measures necessary to control fire, insects, and disease and measures which may be used in emergencies involving the health and safety of persons or damage to property and may require permits for, or otherwise limit or regulate, any use of National Forest land, including, but not limited to, camping, campfires, and grazing of recreation livestock.

(b) For all prohibitions in National Forest Wildernesses, see part 261 of this chapter.

[38 FR 5855, Mar. 5, 1973, as amended at 42 FR 35959, July 13, 1977]

### § 293.4 Maintenance of records.

The Chief, Forest Service, in accordance with section 3(a)(2) of the Wilderness Act, shall establish uniform procedures and standards for the maintenance and availability to the public of records pertaining to National Forest Wilderness, including maps and legal descriptions; copies of regulations governing Wilderness; and copies of public notices and reports submitted to Congress regarding pending additions, eliminations, or modifications. Copies of such information pertaining to National Forest Wilderness within their respective jurisdictions shall be available to the public in the appropriate offices of the Regional Foresters, Forest Supervisors, and Forest Rangers.

### § 293.5 Establishment, modification, or elimination.

National Forest Wilderness will be established, modified, or eliminated in accordance with the provisions of sections 3(b), (d), and (e) of the Wilderness Act. The Chief, Forest Service, shall arrange for issuing public notices, appointing hearing officers, holding public hearings, and notifying the Governors of the States concerned and the governing board of each county in which the lands involved are located.

(a) At least 30 days' public notice shall be given of the proposed action and intent to hold a public hearing. Public notice shall include publication in the FEDERAL REGISTER and in a newspaper of general circulation in the vicinity of the land involved.

(b) Public hearings shall be held at locations convenient to the area affected. If the land involved is in more than one State, at least one hearing shall be held in each State in which a portion of the land lies.

(c) A record of the public hearing and the views submitted subsequent to public notice and prior to the close of the public hearing shall be included with any recommendations to the President and to the Congress with respect to any such action.

(d) At least 30 days before the date of the public hearing, suitable advice shall be furnished to the Governor of each State and the governing board of each county or, in Alaska, the borough in which the lands are located, and Federal departments and agencies concerned; and such officers or Federal agencies shall be invited to submit their views on the proposed action at the hearing or in writing by not later than 30 days following the date of the hearing. Any views submitted in response to such advice with respect to any proposed Wilderness action shall be included with any recommendations to the President and to the Congress with respect to any such action.

### § 293.6 Commercial enterprises, roads, motor vehicles, motorized equipment, motorboats, aircraft, aircraft landing facilities, airdrops, structures, and cutting of trees.

Except as provided in the Wilderness Act, subsequent legislation establishing a particular Wilderness unit, or §§ 294.2(b), 294.2(c), and 294.2(e), paragraphs (c) and (d) of this section, and §§ 293.7, 293.8, and 293.12 through 293.16, inclusive, and subject to existing rights, there shall be in National Forest Wilderness no commercial enterprises; no temporary or permanent roads; no aircraft landing strips; no heliports or helispots, no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; no landing of aircraft; no dropping of materials, supplies, or persons from aircraft; no structures or installations; and no cutting of trees for nonwilderness purposes.

(a) *Mechanical transport*, as herein used, shall include any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by floatation and is propelled by a nonliving power source contained or carried on or within the device.

(b) *Motorized equipment*, as herein used, shall include any machine activated by a nonliving power source, except that small battery-powered, hand-carried devices such as flashlights, shavers, and Geiger counters are not classed as motorized equipment.

(c) The Chief, Forest Service, may authorize occupancy and use of National Forest land by officers, employees, agencies, or agents of the Federal, State, and county governments to carry out the purposes of the Wilderness Act and will prescribe conditions under which motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations, or structures may be used, transported, or installed by the Forest Service and its agents and by other Federal, State, or county agencies or their agents, to meet the minimum requirements for authorized activities to protect and administer the Wilderness and its resources. The Chief may also prescribe the conditions under which such equipment, transport, aircraft, installations, or structures may be used in emergencies involving the health and safety of persons, damage to property, or other purposes.

(d) The Chief, Forest Service, may permit, subject to such restrictions as he deems desirable, the landing of aircraft and the use of motorboats at places within any Wilderness where these uses were established prior to the date the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System. The Chief may also permit the maintenance of aircraft landing strips, heliports, or helispots which existed when the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System.

### § 293.7 Grazing of livestock.

(a) The grazing of livestock, where such use was established before the date of legislation which includes an area in the National Wilderness Preservation System, shall be permitted to continue under the general regulations covering grazing of livestock on the National Forests and in accordance with special provisions covering grazing use in units of National Forest Wilderness which the Chief of the Forest Service may prescribe for general application in such units or may arrange to have prescribed for individual units.

(b) The Chief, Forest Service, may permit, subject to such conditions as he deems necessary, the maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a Wilderness when it was incorporated into the National Wilderness Preservation System. Additional improvements or structures may be built when necessary to protect wilderness value.

### § 293.8 Permanent structures and commercial services.

Motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures and uses are prohibited in National Forest Wilderness. The Chief, Forest Service, may permit temporary structures and commercial services within National Forest Wilderness to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides.

### § 293.9 [Reserved]

### § 293.10 Jurisdiction over wildlife and fish.

Nothing in the regulations in this part shall be construed as affecting the jurisdiction or responsibility of the several States with respect to wildlife and fish in the National Forests.

### § 293.11 Water rights.

Nothing in the regulations in this part constitutes an expressed or implied claim or denial on the part of the Department of Agriculture as to exemption from State water laws.

### § 293.12 Access to surrounded State and private lands.

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given access as provided in subpart D of part 251 of this chapter.

[56 FR 27419, June 14, 1991]

### § 293.13 Access to valid occupancies.

Persons with valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have

been or are being customarily used with respect to other such occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

[39 FR 31321, Aug. 28, 1974]

### § 293.14 Mineral leases and mineral permits.

(a) All laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or 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. 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 laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(c) Permits shall not be issued for the removal of mineral materials commonly known as *common varieties* under the Minerals Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601–604).

[39 FR 31321, Aug. 28, 1974]

### § 293.15 Gathering information about resources other than minerals.

(a) The Chief, Forest Service, shall allow any activity, for the purposes of gathering information about resources, other than 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. Prospecting for minerals or any activity for the purpose of gathering information about minerals in National Forest Wilderness is subject to the regulations in part 252 of this chapter.

(b) [Reserved]

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about resources, other than minerals, shall apply in writing to the Office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Excavations shall be considered *substantial* which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section (4)(d)(4)(1) of the Wilderness Act, will be permitted when and as authorized by the President.

[39 FR 31321, Aug. 28, 1974, as amended at 42 FR 35960, July 13, 1977]

### § 293.16 Special provisions governing the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

(a) *Motorboat use.* (1) For purposes of this section, motorboats permitted to operate in the BWCA Wilderness are defined as watercraft propelled by a gasoline or electric powered motor with the propeller below the waterline.

(2) Motorboats may operate without restrictions on motor size or number of motors on Sand Point Lake, Little Vermilion Lake, Loon Lake, Loon

River, and that portion of Lac La Croix which lies south of Snow Bay and east of Wilkins Bay, all in Saint Louis County.

(3) Motorboats with a motor or combination of motors totaling no more than 25 horsepower may operate on Trout Lake in Saint Louis County, Fall Lake, Moose Lake, Newfound Lake, Newton Lake, Sucker Lake, Snowbank Lake, South Farm Lake, and Basswood Lake, except that portion of Basswood Lake generally north of the narrows at the north end of Jackfish Bay and north of a point on the International Boundary between Ottawa Island and Washington Island, all in Lake County, and East Bearskin Lake and Saganaga Lake, except that portion west of American Point in Cook County.

(4) Motorboats with a motor or combination of motors totaling no more than 10 horsepower may operate on Clearwater Lake, North Fowl Lake, South Fowl Lake, Alder Lake, Canoe Lake, Sea Gull Lake, and Island River east of Lake Isabella, all in Lake County, except that motorboats may not operate—

(i) After January 1, 1999 on that portion of Sea Gull Lake west of Threemile Island, and

(ii) After January 1, 1994, on Brule Lake in Cook County or until the termination of the operation of the resort adjacent to Brule Lake in operation as of 1977, whichever occurs first.

(5) Motorboats with a combination of motors that exceed 25 horsepower may travel on that portion of Saganaga Lake in Cook County described as the Saganaga Corridor extending from the Saganaga Narrows north to the International Boundary east of Campers, Clark and Horseshoe Islands and west of Oskenonton Island; provided that the motor or motors in operation at one time do not exceed 25 horsepower.

(b) *Mechanical and mechanized portages.* (1) BWCA visitors may use portage wheels and other non-motorized devices to transport watercraft over the following routes:

(i) The portages along the International Boundary.

(ii) Four Mile Portage from Fall Lake to Hoist Bay of Basswood Lake.

(iii) The portage from Back Bay to Pipestone Bay of Basswood Lake.

(iv) The portages from Fall Lake to Newton Lake to Pipestone Bay of Basswood Lake.

(v) The portage from Vermilion Lake to Trout Lake.

(2) The Forest Service may authorize, by special use permit, the use of motor vehicles to transport watercraft over the following portages:

(i) Four Mile Portage From Fall Lake to Hoist Bay of Basswood Lake.

(ii) Vermilion Lake to Trout Lake.

(iii) Prairie Portage from Sucker Lake to Basswood Lake

(iv) Loon River to Loon Lake and from Loon Lake to Lac La Croix.

(c) *Snowmobile use.* (1) A snowmobile is defined as a self-propelled, motorized vehicle not exceeding forty inches in width designed to operate on ice and snow, having a ski or skiis in contact with the snow and driven by a track or tracks.

(2) The Forest Service permits use of snowmobiles only on the following routes:

(i) The overland portages in Saint Louis County from Crane Lake to Little Vermilion Lake in Canada.

(ii) The route in Cook County from Sea Gull River along the eastern portion of Saganage Lake to Canada.

(3) The Forest Service may issue special-use authorizations to use snowmobiles for the grooming of specified cross-country ski trails near existing resorts.

[50 FR 16231, Apr. 25, 1985]

### § 293.17 National Forest Primitive Areas.

(a) Within those areas of National Forests classified as *Primitive* on the effective date of the Wilderness Act, September 3, 1964, there shall be no roads or other provision for motorized transportation, no commercial timber cutting, and no occupancy under special-use permit for hotels, stores, resorts, summer homes, organization camps, hunting and fishing lodges, or similar uses: *Provided,* That existing roads over National Forest lands reserved from the public domain and roads necessary for the exercise of a statutory right of ingress and egress may be allowed

under appropriate conditions determined by the Chief, Forest Service.

(b) Grazing of domestic livestock, development of water storage projects which do not involve road construction, and improvements necessary for the protection of the National Forests may be permitted, subject to such restrictions as the Chief, Forest Service, deems desirable. Within Primitive Areas, when the use is for other than administrative needs of the Forest Service, use by other Federal agencies when authorized by the Chief, and in emergencies, the landing of aircraft and the use of motorboats are prohibited on National Forest land or water unless such use by aircraft or motorboats has already become well established, the use of motor vehicles is prohibited, and the use of other motorized equipment is prohibited except as authorized by the Chief. These restrictions are not intended as limitations on statutory rights of ingress and egress or of prospecting, locating, and developing mineral resources.

(c) All prohibitions for those areas of National Forest classified as *Primitive* on the effective date of the Wilderness Act, September 3, 1964, are in part 261.

(78 Stat. 890, 16 U.S.C. 1131–1136; 74 Stat. 215, 16 U.S.C. 528–531)

[38 FR 5855, Mar. 5, 1973, as amended at 42 FR 35960, July 13, 1977]

# PART 294—SPECIAL AREAS

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SOURCE: 38 FR 5852, Mar. 5, 1973, unless otherwise noted.

## Subpart A—Miscellaneous Provisions

AUTHORITY: 16 U.S.C. 472, 551, and 1131.

### § 294.1 Recreation areas.

Suitable areas of national forest land, other than wilderness or wild areas, which should be managed principally for recreation use may be given special classification as follows:

(a) Areas which should be managed principally for recreation use substantially in their natural condition and on which, in the discretion of the officer making the classification, certain other uses may or may not be permitted may be approved and classified

by the Chief of the Forest Service or by such officers as he may designate if the particular area is less than 100,000 acres. Areas of 100,000 acres or more will be approved and classified by the Secretary of Agriculture.

(b) Areas which should be managed for public recreation requiring development and substantial improvements may be given special classification as public recreation areas. Areas in single tracts of not more than 160 acres may be approved and classified by the Chief of the Forest Service or by such officers as he may designate. Areas in excess of 160 acres will be classified by the Secretary of Agriculture. Classification hereunder may include areas used or selected to be used for the development and maintenance as camp grounds, picnic grounds, organization camps, resorts, public service sites (such as for restaurants, filling stations, stores, horse and boat liveries, garages, and similar types of public service accommodations), bathing beaches, winter sports areas, lodges, and similar facilities and appurtenant structures needed by the public to enjoy the recreation resources of the national forests. The boundaries of all areas so classified shall be clearly marked on the ground and notices of such classification shall be posted at conspicuous places thereon. Areas classified under this section shall thereby be set apart and reserved for public recreation use and such classification shall constitute a formal closing of the area to any use or occupancy inconsistent with the classification.

[38 FR 5859, Mar. 5, 1973, as amended at 66 FR 3272, Jan. 12, 2001]

### § 294.2 Navigation of aircraft within airspace reservation over the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

(a) *Description of areas.* Sections 294.2(b) to 294.2(f), inclusive, apply to those areas of land and water in the Counties of Cook, Lake, and St. Louis, State of Minnesota, within the exterior boundaries of the Superior National Forest, which have heretofore been designated by the Secretary of Agriculture as the Superior Roadless Area, the Little Indian Sioux Roadless Area, and the Caribou Roadless Area, respectively, and to the airspace over said areas and below the altitude of 4,000 feet above sea level. Said areas are more particularly described in the Executive order setting apart said airspace as an airspace reservation (E.O. 10092, Dec. 17, 1949; 3 CFR 1949 Supp.). Copies of said Executive order may be obtained on request from the Forest Supervisor, Superior National Forest, Duluth, Minnesota (hereinafter called *Forest Supervisor*).

(b) *Emergency landing and rescue operations.* The pilot of any aircraft landing within any of said areas for reasons of emergency or for conducting rescue operations, shall inform the Forest Supervisor within seven days after the termination of the emergency or the completion of the rescue operation as to the date, place, and duration of landing, and the type and registration number of the aircraft.

(c) *Low flights.* Any person making a flight within said airspace reservation for reasons of safety or for conducting rescue operations shall inform the Forest Supervisor within seven days after the completion of the flight or the rescue operation as to the date, place, and duration of flight, and the type and registration number of the aircraft.

(d) *Official flights.* The provisions of §§ 294.2(b) and 294.2(c) do not apply to flights made for conducting or assisting in the conduct of official business of the United States, of the State of Minnesota or of Cook, St. Louis, or Lake Counties, Minnesota.

(e) *Conformity with law.* Nothing in these regulations shall be construed as permitting the operation of aircraft contrary to the provisions of the Civil Aeronautics Act of 1938 (52 Stat. 973), as amended, or any rule, regulation or order issued thereunder.

[38 FR 5859, Mar. 5, 1973, as amended at 50 FR 16232, Apr. 25, 1985; 66 FR 3272, Jan. 12, 2001]

### §§ 294.3–294.9 [Reserved]

## Subpart B—State Petitions for Inventoried Roadless Area Management

AUTHORITY: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

SOURCE: 70 FR 25661, May 13, 2005, unless otherwise noted.

### § 294.10 Purpose.

The purpose of these administrative procedures is to set forth a process for State-specific rulemaking to address the management of inventoried roadless areas in areas where the Secretary determines that regulatory direction is appropriate based on a petition from the affected Governor.

### § 294.11 Definition.

*Inventoried roadless areas*—Areas identified in a set of inventoried roadless area maps, contained in the Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, and any subsequent update or revision of those maps through the land management planning process.

### § 294.12 State petitions.

The Governor of any State or territory that contains National Forest System lands may petition the Secretary of Agriculture to promulgate regulations establishing management requirements for all or any portion of National Forest System inventoried roadless areas within that State or territory. Any such petition must be submitted to the Secretary of Agriculture not later than November 13, 2006.

### § 294.13 Petition process.

(a) Review and consideration of petitions made pursuant to § 294.12 shall be accomplished as follows:

(1) *Review*. The Secretary shall review petitions and may request additional information from a petitioner before deciding whether to accept the petition. If the Secretary requests additional information from a petitioner, the petition will be considered complete when the petitioner provides the additional information.

(2) *Disposition*. The Secretary or the Secretary's designee shall respond to the petition within 180 days of receipt of a completed petition. The response shall accept or decline the petition to initiate a State-specific rulemaking.

### § 294.14 Petition contents.

(a) Any petition made pursuant to § 294.12 shall provide the following:

(1) The location and description of the particular lands for which the petition is being made, including maps and other appropriate resources in sufficient detail to enable consideration of the petition;

(2) The particular management requirements recommended for the lands and any exceptions;

(3) The identification of the circumstances and needs intended to be addressed by the petition, including conserving roadless area values and characteristics; protecting human health and safety; reducing hazardous fuels and restoring essential wildlife habitats; maintaining existing facilities such as dams, or providing reasonable access to public and private property or public and privately owned facilities; and technical corrections to existing maps such as boundary adjustments to remove existing roaded areas;

(4) A description of how the recommended management requirements identified in paragraph (a)(2) of this section differ from existing applicable land management plan(s) or policies related to inventoried roadless area management, and how they would comply with applicable laws and regulations;

(5) A description of how the recommended management requirements identified in paragraph (a)(2) of this section compare to existing State or local land conservation policies and direction set forth in any applicable State or local land and resource management plan(s);

(6) A description of how the recommended management requirements identified in paragraph (a)(2) of this section would affect the fish and wildlife that utilize the particular lands in question and their habitat;

(7) A description of any public involvement efforts undertaken by the petitioner during development of the petition, including efforts to engage Tribal and local governments, and persons with expertise in fish and wildlife biology, fish and wildlife management, forest management, outdoor recreation, and other important disciplines; and

(8) A commitment by the petitioner to participate as a cooperating agency in any environmental analysis for a rulemaking process.

(b) The petition contents described in paragraphs (a)(1) through (a)(8) of this section constitute an information collection requirement as defined by 5 CFR part 1320 and have been assigned Office of Management and Budget control number 0596–0178.

### § 294.15 Advisory committee review.

A National Advisory Committee shall review each petition and provide advice and recommendations to the Secretary within 90 days of receipt of a completed petition. The committee will also provide advice and recommendations to the Secretary on any subsequent State-specific rulemakings.

### § 294.16 State-specific rulemaking.

If the Secretary or the Secretary's designee accepts a petition, the Forest Service shall be directed to initiate notice and comment rulemaking to address the petition. The Forest Service shall coordinate development of the proposed rule with the petitioner. The Secretary or the Secretary's designee shall make the final decision for any State-specific inventoried roadless area management rule.

### § 294.17 Scope and applicability.

(a) The provisions of this subpart apply exclusively to the development and review of petitions made pursuant to this subpart.

(b) Nothing in this subpart shall be construed to provide for the transfer to, or administration by, a State or local authority of any Federally owned lands.

(c) Nothing in this subpart, nor any regulation promulgated pursuant to this petitioning process, shall prohibit the exercise of any valid existing rights.

### § 294.18 Severability.

In the event that any provision, section, subsection, or phrase of this subpart is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, the remaining provisions, sections, subsections, or phrases shall remain in full force and effect.

## Subpart C—Idaho Roadless Area Management

AUTHORITY: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

SOURCE: 73 FR 61489, Oct. 16, 2008, unless otherwise noted.

### § 294.20 Purpose.

The purpose of this subpart is to provide, in the context of multiple-use management, State-specific direction for the conservation of inventoried roadless areas in the national forests within the State of Idaho. This subpart sets forth the procedures for management of Idaho Roadless Areas consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531).

### § 294.21 Definitions.

The following terms and definitions apply to this subpart.

*At-risk community:* As defined under section 101 of the Healthy Forests Restoration Act (HFRA).

*Community protection zone:* An area extending one-half mile from the boundary of an at-risk community or an area within one and a half miles of the boundary of an at-risk community, where any land:

(1) Has a sustained steep slope that creates the potential for wildfire behavior endangering the at-risk community;

(2) Has a geographic feature that aids in creating an effective fire break, such as a road or a ridge top; or

(3) Is in condition class 3 as defined by HFRA.

*Fire hazard and risk:* The fuel conditions on the landscape.

*Fire occurrence:* The probability of wildfire ignition based on historic fire occurrence records and other information.

*Forest Plan Special Area:* Certain lands identified on the Idaho Roadless Area Maps, § 294.22(c) and listed in § 294.29 shall be managed pursuant to applicable land management components. These lands include areas such as research natural areas, designated

and eligible wild and scenic river corridors, developed recreation sites, or other specified management purposes, as described in the Roadless Area Conservation; National Forest System Lands in Idaho, Final Environmental Impact Statement, Appendix Q.

*Forest road:* As defined at 36 CFR 212.1, the term means a road wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and use of the National Forest System and the use and development of its resources.

*Forest type:* A forest stand that is essentially similar throughout its extent in composition under generally similar environmental conditions, including temporary, permanent, climax, and cover types.

*Hazardous fuels:* Excessive live or dead wildland fuel accumulations that increase the potential for uncharacteristically intense wildland fire and decrease the capability to protect life, property, and natural resources.

*Idaho Roadless Areas:* Areas designated pursuant to this rule and identified in a set of maps maintained at the national headquarters office of the Forest Service.

*Municipal water supply system:* As defined under section 101 of the Healthy Forests Restoration Act, the term means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, and other surface facilities and systems constructed or installed for the collection, impoundment, storage, transportation, or distribution of drinking water.

*Responsible official:* The Forest Service line officer with the authority and responsibility to make decisions about protection and management of Idaho Roadless Areas pursuant to this subpart.

*Road:* As defined at 36 CFR 212.1, the term means a motor vehicle route over 50 inches wide, unless identified and managed as a trail.

*Road construction and reconstruction:* As defined at 36 CFR 212.1, the terms mean supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.

*Road decommissioning:* As defined at 36 CFR 212.1, the term means activities that result in the stabilization and restoration of unneeded roads to a more natural state.

*Road maintenance:* The ongoing upkeep of a road necessary to retain or restore the road to the approved road management objective.

*Road realignment:* Activity that results in a new location of an existing road or portions of an existing road, and treatment of the old roadway.

*Roadless characteristics:* Resources or features that are often present in and characterize Idaho Roadless Areas, including:

(1) High quality or undisturbed soil, water, and air;

(2) Sources of public drinking water;

(3) Diversity of plant and animal communities;

(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;

(5) Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation;

(6) Reference landscapes;

(7) Natural appearing landscapes with high scenic quality;

(8) Traditional cultural properties and sacred sites; and

(9) Other locally identified unique characteristics.

*Substantially altered portion:* An area within an Idaho Roadless Area where past road construction, timber cutting, or other uses have materially diminished the area's roadless characteristics.

*Temporary road:* As defined at 36 CFR 212.1, the term means a road necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road and that is not included in a forest transportation atlas. Temporary roads are available for administrative use until decommissioned.

*Uncharacteristic wildland fire effects:* An increase in wildland fire size, severity, and resistance to control; and the associated impact on people, property, and fire fighter safety compared to

that which occurred in the native system.

### § 294.22 Idaho Roadless Areas.

(a) *Designations*. All National Forest System lands within the State of Idaho listed in § 294.29 are hereby designated as Idaho Roadless Areas.

(b) *Management classifications*. Management classifications for Idaho Roadless Areas express a management continuum. The following management classifications are established:

(1) Wild Land Recreation;

(2) Special Areas of Historic or Tribal Significance;

(3) Primitive;

(4) Backcountry/Restoration; and

(5) General Forest, Rangeland, and Grassland.

(c) *Maps*. The Chief shall maintain and make available to the public a map of each Idaho Roadless Area, including records regarding any corrections or modifications of such maps pursuant to § 294.27.

(d) Activities in Idaho Roadless Areas shall be consistent with the applicable management classification listed for each area under § 294.29.

### § 294.23 Road construction and reconstruction in Idaho Roadless Areas.

(a) *Wild Land Recreation, Special Areas of Historic or Tribal Significance, or Primitive*. Road construction and reconstruction are prohibited in Idaho Roadless Areas designated as Wild Land Recreation, Special Areas of Historic or Tribal Significance, or Primitive. However, the Regional Forester may authorize a road to be constructed or reconstructed in an area designated as Wild Land Recreation, Special Area of Historic or Tribal Significance, or Primitive if pursuant to statute, treaty, reserved or outstanding rights, or other legal duty of the United States.

(b) *Backcountry/Restoration*. (1) Road construction and reconstruction are only permissible in Idaho Roadless Areas designated as Backcountry/Restoration where the Regional Forester determines:

(i) A road is needed to protect public health and safety in cases of an imminent threat of flood, wildland fire, or other catastrophic event that, without intervention, would cause the loss of life or property;

(ii) A road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA, section 311 of the Clean Water Act, or the Oil Pollution Act;

(iii) A road is needed pursuant to statute, treaty, reserved or outstanding rights, or other legal duty of the United States;

(iv) A road realignment is needed to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a road and cannot be mitigated by road maintenance. Road realignment may occur under this subsection only if the road is deemed essential for public or private access, natural resource management, or public health and safety;

(v) Road reconstruction is needed to implement a road safety improvement project on a road determined to be hazardous based on accident experience or accident potential on that road; or

(vi) The Secretary of Agriculture determines that a Federal Aid Highway project, authorized pursuant to Title 23 of the United States Code, is in the public interest or is consistent with the purpose for which the land was reserved or acquired and no other reasonable and prudent alternative exists.

(2) A responsible official may authorize temporary road construction or road reconstruction for community protection zone activities pursuant to § 294.24(c)(1)(i) if in the official's judgment the community protection objectives cannot be reasonably accomplished without a temporary road.

(3) The Regional Forester may approve temporary road construction or road reconstruction to reduce hazardous fuel conditions outside a community protection zone where in the Regional Forester's judgment the circumstances set out below exist. Temporary road construction or road reconstruction to reduce hazardous fuel conditions under this provision will be dependent on forest type and is expected to be infrequent.

(i) There is a significant risk that a wildland fire disturbance event could

adversely affect an at-risk community or municipal water supply system pursuant to § 294.24(c)(1)(ii). A significant risk exists where the history of fire occurrence, and fire hazard and risk, indicate a serious likelihood that a wildland fire disturbance event would present a high risk of threat to an at-risk community or municipal water supply system.

(ii) The activity cannot be reasonably accomplished without a temporary road.

(iii) The activity will maintain or improve one or more roadless characteristics over the long-term.

(c) *General Forest, Rangeland, and Grassland*. (1) A forest road may be constructed or reconstructed or a temporary road may be constructed in Idaho Roadless Areas designated as General Forest, Rangeland, and Grassland, unless prohibited in § 294.25(e).

(2) Forest roads constructed or reconstructed pursuant to § 294.23(c)(1) must be conducted in a way that minimizes effects on surface resources and must be consistent with land management plan components as provided for in § 294.28(d).

(d) *Temporary roads*. (1) Temporary road construction must be conducted in a way that minimizes effects on surface resources, is consistent with land management plan components as provided for in § 294.28(d), and may only be used for the specified purpose(s).

(2) Temporary roads must be decommissioned upon completion of the project or expiration of the contract or permit, whichever is sooner. A road decommissioning provision will be required in all such contracts or permits and may not be waived.

(e) *Road maintenance*. Maintenance of temporary and forest roads is permissible in Idaho Roadless Areas.

(f) *Roads associated with mineral activities*. Road construction or reconstruction associated with mineral activities is provided for in § 294.25.

### § 294.24 Timber cutting, sale, or removal in Idaho Roadless Areas.

(a) *Wild Land Recreation*. The cutting, sale, or removal of timber is prohibited in Idaho Roadless Areas designated as Wild Land Recreation under this subpart, except:

(1) For personal or administrative use, as provided for in 36 CFR part 223; or

(2) Where incidental to the implementation of a management activity not otherwise prohibited by this subpart.

(b) *Special Areas of Historic or Tribal Significance and Primitive*. (1) The cutting, sale, or removal of timber is prohibited in Idaho Roadless Areas designated as a Special Area of Historic or Tribal Significance or as Primitive under this subpart, except:

(i) To improve threatened, endangered, proposed, or sensitive species habitat;

(ii) To maintain or restore the characteristics of ecosystem composition, structure, and processes;

(iii) To reduce the risk of uncharacteristic wildland fire effects to an at-risk community or municipal water supply system;

(iv) For personal or administrative use, as provided for in 36 CFR part 223; or

(v) Where such cutting, sale or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart.

(2) Any action authorized pursuant to paragraphs § 294.24(b)(1)(i) through (iii) shall be limited to situations that:

(i) Maintain or improve one or more of the roadless characteristics over the long-term;

(ii) Use existing roads or aerial harvest systems;

(iii) Maximize the retention of large trees as appropriate for the forest type, to the extent the trees promote fire-resilient stands;

(iv) Are consistent with land management plan components as provided for in § 294.28(d); and

(v) Is approved by the regional forester.

(c) *Backcountry/Restoration*. (1) The cutting, sale, or removal of timber is permissible in Idaho Roadless Areas designated as Backcountry/Restoration only:

(i) To reduce hazardous fuel conditions within the community protection zone if in the responsible official's judgment the project generally retains large trees as appropriate for the forest

type and is consistent with land management plan components as provided for in § 294.28(d);

(ii) To reduce hazardous fuel conditions outside the community protection zone where there is significant risk that a wildland fire disturbance event could adversely affect an at-risk community or municipal water supply system. A significant risk exists where the history of fire occurrence, and fire hazard and risk, indicate a serious likelihood that a wildland fire disturbance event would present a high risk of threat to an at-risk community or municipal water supply system;

(iii) To improve threatened, endangered, proposed, or sensitive species habitat;

(iv) To maintain or restore the characteristics of ecosystem composition, structure, and processes;

(v) To reduce the risk of uncharacteristic wildland fire effects;

(vi) For personal or administrative use, as provided for in 36 CFR part 223;

(vii) Where incidental to the implementation of a management activity not otherwise prohibited by this subpart; or

(viii) In a portion of an Idaho Roadless Area designated as Backcountry/Restoration that has been substantially altered due to the construction of a forest road and subsequent timber cutting. Both the road construction and subsequent timber cutting must have occurred prior to October 16, 2008.

(2) Any action authorized pursuant to paragraphs § 294.24(c)(1)(ii) through (v) shall be approved by the Regional Forester and limited to situations that, in the Regional Forester's judgment:

(i) Maintains or improves one or more of the roadless characteristics over the long-term;

(ii) Maximizes the retention of large trees as appropriate for the forest type to the extent the trees promote fire-resilient stands; and

(iii) Is consistent with land management plan components as provided for in § 294.28(d).

(3) The activities in paragraph § 294.24(c)(1) may use any forest roads or temporary roads, including those authorized under § 294.23(b)(2 and 3) until decommissioned.

(d) *General Forest, Rangeland, and Grassland*. Timber may be cut, sold, or removed within Idaho Roadless Areas designated as General Forest, Rangeland, and Grassland but shall be consistent with the land management plan components as provided for in § 294.28(d).

**§ 294.25 Mineral activities in Idaho Roadless Areas.**

(a) Nothing in this subpart shall be construed as restricting mineral leases, contracts, permits, and associated activities authorized prior to October 16, 2008.

(b) Nothing in this subpart shall affect mining activities conducted pursuant to the General Mining Law of 1872.

(c) *Wild Land Recreation, Special Areas of Historic or Tribal Significance, or Primitive*. (1) For mineral leases, contracts, permits, and other associated activities authorized after the effective date of this subpart the Forest Service will not recommend, authorize, or consent to road construction, road reconstruction, or surface occupancy associated with mineral leases in Idaho Roadless Areas designated as Wild Land Recreation, Special Areas of Historic or Tribal Significance, or Primitive themes.

(2) After October 16, 2008, the Forest Service will not authorize sale of common variety mineral materials in Idaho Roadless Areas designated as Wild Land Recreation, Special Areas of Historic or Tribal Significance, or Primitive themes.

(d) *Backcountry/Restoration*. (1) For mineral leases, contracts, permits, and other associated activities authorized after the effective date of this subpart, the Forest Service will not recommend, authorize, or consent to road construction or road reconstruction associated with mineral leases in Idaho Roadless Areas designated as Backcountry/Restoration. Surface use or occupancy without road construction or reconstruction is permissible for all mineral leasing unless prohibited in the applicable land management plan.

(2) After October 16, 2008, the Forest Service may authorize the use or sale of common variety mineral materials,

and associated road construction or reconstruction to access these mineral materials, in Idaho Roadless Areas designated as Backcountry/Restoration only if the use of these mineral materials is incidental to an activity otherwise permissible in backcountry/restoration under this subpart.

(e) *General Forest, Rangeland, and Grassland.* (1) For mineral leases, contracts, permits, and other associated activities authorized after October 16, 2008, the Forest Service will not recommend, authorize, or consent to road construction or reconstruction associated with mineral leases in Idaho Roadless Areas designated as General Forest, Rangeland, and Grassland theme; except such road construction or reconstruction may be authorized by the responsible official in association with phosphate deposits as described in Figure 3–20 in section 3.15 Minerals and Energy in the Roadless Area Conservation; National Forest System Lands in Idaho Final Environmental Impact Statement. Surface use or occupancy without road construction or reconstruction is permissible for all mineral leasing unless prohibited in the land management plan components.

(2) After October 16, 2008, the Forest Service may authorize the use or sale of common variety mineral materials, and associated road construction or reconstruction to access these mineral materials, in Idaho Roadless Areas designated as General Forest, Rangeland, and Grassland only if the use of these mineral materials is incidental to an activity otherwise permissible in General Forest, Rangeland, and Grassland under this subpart.

(3) Road construction or reconstruction associated with mining activities permissible under this subsection may only be approved after evaluating other access options.

(4) Road construction or reconstruction associated with mining activities permissible under this subsection must be conducted in a manner that minimizes effects on surface resources and must be consistent with land management plan components as provided for in § 294.28(d). Roads constructed or reconstructed must be decommissioned upon completion of the project, or expiration of the lease, or permit, or other authorization, whichever is sooner.

### § 294.26 Other activities in Idaho Roadless Areas.

(a) *Motorized travel.* Nothing in this subpart shall be construed as affecting existing roads or trails in Idaho Roadless Areas. Decisions concerning the future management of existing roads or trails in Idaho Roadless Areas shall be made during the applicable travel management process.

(b) *Grazing.* Nothing in this subpart shall be construed as affecting existing grazing permits in Idaho Roadless Areas. Future road construction associated with livestock operations shall conform to this subpart.

(c) *Motorized equipment and mechanical transport.* Nothing in this subpart shall be construed as affecting the use of motorized equipment and mechanical transport in Idaho Roadless Areas.

### § 294.27 Corrections and modifications.

Correction or modification of designations made pursuant to this subpart may occur under the following circumstances:

(a) *Administrative corrections.* Administrative corrections to the maps of lands identified in § 294.22(c) include, but are not limited to, adjustments that remedy clerical errors, typographical errors, mapping errors, or improvements in mapping technology. The Chief may issue administrative corrections after a 30-day public notice and opportunity to comment.

(b) *Modifications.* The Chief may add to, remove from, or modify the designations and management classifications listed in § 294.29 based on changed circumstances or public need. The Chief shall provide at least a 45-day public notice and opportunity to comment for all modifications.

### § 294.28 Scope and applicability.

(a) After October 16, 2008 subpart B of this part shall have no effect within the State of Idaho.

(b) This subpart does not revoke, suspend, or modify any permit, contract, or other legal instrument authorizing the occupancy and use of National Forest System land issued prior to October 16, 2008.

(c) This subpart does not revoke, suspend, or modify any project or activity decision made prior to October 16, 2008.

(d) The provisions set forth in this subpart shall take precedence over any inconsistent land management plan component. Land management plan components that are not inconsistent with this subpart will continue to provide guidance for projects and activities within Idaho Roadless Areas; as shall those related to protection of threatened and endangered species. This subpart does not compel the amendment or revision of any land management plan.

(e) The prohibitions and permissions set forth in the subpart are not subject to reconsideration, revision, or rescission in subsequent project decisions or land and resource management plan amendments or revisions undertaken pursuant to 36 CFR part 219.

(f) This subpart shall not apply to Forest Plan Special Areas within Idaho Roadless Areas.

(g) Nothing in this subpart waives any applicable requirements regarding site-specific environmental analysis, public involvement, consultation with Tribes and other agencies, or compliance with applicable laws.

(h) This subpart does not modify the unique relationship between the United States and Indian Tribes that requires the Federal Government to work with federally recognized Indian Tribes government-to-government as provided for in treaties, laws or Executive orders. Nothing herein limits or modifies prior existing tribal rights, including those involving hunting, fishing, gathering, and protection of cultural and spiritual sites.

(i) If any provision of the rules in this subpart or its application to any person or to certain circumstances is held invalid, the remainder of the regulations in this subpart and their application remain in force.

### § 294.29 List of designated Idaho Roadless Areas.

The acronyms used in the list are Wild Land Recreation (WLR), Backcountry/Restoration (BCR), General Forest, Rangeland, and Grassland (GFRG), Special Areas of Historic or Tribal Significance (SAHTS) and Forest Plan Special Areas (FPSA).

| Forest | Idaho roadless area | # | WLR | Primitive | BCR | GFRG | SAHTS | FPSA |
|---|---|---|---|---|---|---|---|---|
| Boise | Bald Mountain | 019 | | | X | | | X |
| Boise | Bear Wallow | 125 | | X | | | | X |
| Boise | Bernard | 029 | | | X | | | X |
| Boise | Black Lake | 036 | | | X | | | X |
| Boise | Blue Bunch | 923 | | | X | | | X |
| Boise | Breadwinner | 006 | | | X | | | X |
| Boise | Burnt Log | 035 | | | X | | | X |
| Boise | Cathedral Rocks | 038 | | X | | | | X |
| Boise | Caton Lake | 912 | | | X | X | | X |
| Boise | Cow Creek | 028 | | X | | | | |
| Boise | Danskin | 002 | | X | | | | X |
| Boise | Deadwood | 020 | | X | X | | | X |
| Boise | Elk Creek | 022 | | | X | | | X |
| Boise | Grand Mountain | 007 | | | X | | | X |
| Boise | Grimes Pass | 017 | | | X | X | | X |
| Boise | Hanson Lakes | 915 | X | X | | | | X |
| Boise | Hawley Mountain | 018 | | X | | | | |
| Boise | Horse Heaven | 925 | | | X | X | | |
| Boise | House Mountain | 001 | | X | | | | X |
| Boise | Lime Creek | 937 | | X | | | | |
| Boise | Lost Man Creek | 041 | | X | | | | X |
| Boise | Meadow Creek | 913 | | | X | X | | X |
| Boise | Mt Heinen | 003 | | X | | | | |
| Boise | Nameless Creek | 034 | | | X | | | |
| Boise | Needles | 911 | X | X | X | X | | X |
| Boise | Peace Rock | 026 | | X | X | | | X |
| Boise | Poison Creek | 042 | | | X | | | |
| Boise | Poker Meadows | 032 | | | X | | | X |
| Boise | Rainbow | 008 | | X | | | | X |
| Boise | Red Mountain | 916 | X | X | X | X | | X |
| Boise | Reeves Creek | 010 | | | X | | | |
| Boise | Sheep Creek | 005 | | X | | | | X |
| Boise | Smoky Mountains | 914 | | X | | | | X |
| Boise | Snowbank | 924 | | X | | | | |
| Boise | Steel Mountain | 012 | | X | | | | X |

| Forest | Idaho roadless area | # | WLR | Primitive | BCR | GFRG | SAHTS | FPSA |
|---|---|---|---|---|---|---|---|---|
| Boise | Stony Meadows | 027 | | X | X | | | |
| Boise | Ten Mile/Black Warrior | 013 | X | X | | X | | X |
| Boise | Tennessee | 033 | | | X | | | X |
| Boise | Whiskey | 031 | | | X | | | |
| Boise | Whiskey Jack | 009 | | X | | | | |
| Boise | Whitehawk Mountain | 021 | | | X | X | | |
| Boise | Wilson Peak | 040 | | X | | | | |
| Caribou | Bear Creek | 615 | | X | X | X | | X |
| Caribou | Bonneville Peak | 154 | | | X | X | | X |
| Caribou | Caribou City | 161 | X | | X | | | X |
| Caribou | Clarkston Mountain | 159 | | | X | X | | |
| Caribou | Deep Creek | 158 | | | X | X | | X |
| Caribou | Dry Ridge | 164 | | | X | X | | |
| Caribou | Elkhorn Mountain | 156 | | | X | X | | |
| Caribou | Gannett-Spring Creek | 111 | | X | X | X | | X |
| Caribou | Gibson | 181 | | | X | X | | |
| Caribou | Hell Hole | 168 | | | | X | | X |
| Caribou | Huckleberry Basin | 165 | | | X | X | | |
| Caribou | Liberty Creek | 175 | | | X | X | | X |
| Caribou | Meade Peak | 167 | | X | X | X | | X |
| Caribou | Mink Creek | 176 | | | X | X | | X |
| Caribou | Mount Naomi | 758 | X | | X | X | | X |
| Caribou | North Pebble | 155 | | | X | X | | |
| Caribou | Oxford Mountain | 157 | | | X | X | | X |
| Caribou | Paris Peak | 177 | | | X | X | | |
| Caribou | Pole Creek | 160 | | | X | X | | |
| Caribou | Red Mountain | 170 | | X | X | | | |
| Caribou | Sage Creek | 166 | | | X | X | | |
| Caribou | Schmid Peak | 163 | | | X | X | | |
| Caribou | Scout Mountain | 152 | | | X | X | | X |
| Caribou | Sherman Peak | 172 | | | X | X | | |
| Caribou | Soda Point | 171 | | | X | X | | X |
| Caribou | Station Creek | 178 | | | X | X | | |
| Caribou | Stauffer Creek | 173 | | | X | | | |
| Caribou | Stump Creek | 162 | | X | X | X | | X |
| Caribou | Swan Creek | 180 | | | X | | | |
| Caribou | Telephone Draw | 169 | | | X | X | | X |
| Caribou | Toponce | 153 | | X | X | | | |
| Caribou | West Mink | 151 | | | X | X | | X |
| Caribou | Williams Creek | 174 | | | X | X | | X |
| Caribou | Worm Creek | 170 | | | X | X | | X |
| Challis | Blue Bunch Mountain | 923 | | | X | | | |
| Challis | Borah Peak | 012 | X | | X | | | X |
| Challis | Boulder-White Clouds | 920 | X | | X | | | |
| Challis | Camas Creek | 901 | | | X | | | |
| Challis | Challis Creek | 004 | | | X | | | |
| Challis | Cold Springs | 026 | | | X | | | |
| Challis | Copper Basin | 019 | | | X | | | |
| Challis | Diamond Peak | 601 | | | X | | | X |
| Challis | Greylock | 007 | | | X | | | |
| Challis | Grouse Peak | 010 | | | X | | | |
| Challis | Hanson Lake | 915 | | | X | | | |
| Challis | Jumpoff Mountain | 014 | | | X | | | |
| Challis | King Mountain | 013 | | | X | | | |
| Challis | Lemhi Range | 903 | | | X | | | X |
| Challis | Loon Creek | 908 | | | X | | | |
| Challis | Pahsimeroi Mountain | 011 | | | X | | | |
| Challis | Pioneer Mountains | 921 | X | | X | | | X |
| Challis | Prophyry Peak | 017 | | | X | | | |
| Challis | Railroad Ridge | 922 | | | X | | | |
| Challis | Red Hill | 027 | | | X | | | |
| Challis | Red Mountain | 916 | | | X | | | |
| Challis | Seafoam | 009 | | | X | | | |
| Challis | Spring Basin | 006 | | | X | | | |
| Challis | Squaw Creek | 005 | | | X | | | |
| Challis | Taylor Mountain | 902 | | | X | | | |
| Challis | Warm Creek | 024 | | | X | | | |
| Challis | White Knob | 025 | | | X | | | |
| Challis | Wood Canyon | 028 | | | X | | | |
| Clearwater | Bighorn-Weitas | 306 | | | X | | X | X |
| Clearwater | Eldorado Creek | 312 | | | X | | X | |
| Clearwater | Hoodoo | 301 | X | | | | X | |
| Clearwater | Lochsa Face | 311 | | X | X | | X | X |
| Clearwater | Lolo Creek (LNF) | 805 | | | X | | | |

| Forest | Idaho roadless area | # | WLR | Primitive | BCR | GFRG | SAHTS | FPSA |
|---|---|---|---|---|---|---|---|---|
| Clearwater | Mallard-Larkins | 300 | X | X | X | | | |
| Clearwater | Meadow Creek—Upper North Fork. | 302 | | X | X | | | |
| Clearwater | Moose Mountain | 305 | | X | X | | | |
| Clearwater | North Fork Spruce—White Sand. | 309 | X | X | X | | | |
| Clearwater | North Lochsa Slope | 307 | | X | X | | X | X |
| Clearwater | Pot Mountain | 304 | | | X | | | X |
| Clearwater | Rackliff-Gedney | 841 | | | X | | | X |
| Clearwater | Rawhide | 313 | | X | X | | | |
| Clearwater | Siwash | 303 | | | X | | | |
| Clearwater | Sneakfoot Meadows | 314 | X | X | X | | | X |
| Clearwater | Weir-Post Office Creek | 308 | | | X | | X | X |
| Idaho Panhandle | Beetop | 130 | | | X | | | |
| Idaho Panhandle | Big Creek | 143 | | | X | | | |
| Idaho Panhandle | Blacktail Mountain | 122 | | | X | | | X |
| Idaho Panhandle | Blacktail Mountain | 161 | | | X | | | |
| Idaho Panhandle | Buckhorn Ridge | 661 | | | X | | | |
| Idaho Panhandle | Continental Mountain | 004 | | | X | | | |
| Idaho Panhandle | East Cathedral Peak | 131 | | | X | | | X |
| Idaho Panhandle | East Fork Elk | 678 | | | | X | | |
| Idaho Panhandle | Gilt Edge-Silver Creek | 792 | | | X | | | |
| Idaho Panhandle | Graham Coal | 139 | | | X | | | X |
| Idaho Panhandle | Grandmother Mountain | 148 | X | | X | X | | X |
| Idaho Panhandle | Hammond Creek | 145 | | | X | | | |
| Idaho Panhandle | Hellroaring | 128 | | | | X | | |
| Idaho Panhandle | Katka Peak | 157 | | | X | X | | |
| Idaho Panhandle | Kootenai Peak | 126 | | | | X | | |
| Idaho Panhandle | Little Grass Mountain | 121 | | | X | | | |
| Idaho Panhandle | Lost Creek | 137 | | | X | | | X |
| Idaho Panhandle | Magee | 132 | | | X | | | |
| Idaho Panhandle | Mallard-Larkins | 300 | X | | X | | | X |
| Idaho Panhandle | Maple Peak | 141 | | | X | | | |
| Idaho Panhandle | Meadow Creek-Upper N. Fork. | 302 | | | X | | | X |
| Idaho Panhandle | Midget Peak | 151 | | | X | | | X |
| Idaho Panhandle | Mosquito-Fly | 150 | | | X | | | X |
| Idaho Panhandle | Mt. Willard-Lake Estelle | 173 | | | X | | | X |
| Idaho Panhandle | North Fork | 147 | | | X | | | X |
| Idaho Panhandle | Packsaddle | 155 | | | X | | | |
| Idaho Panhandle | Pinchot Butte | 149 | | | X | | | |
| Idaho Panhandle | Roland Point | 146 | | | X | | | |
| Idaho Panhandle | Saddle Mountain | 154 | | | X | | | |
| Idaho Panhandle | Salmo-Priest | 981 | X | | | | | X |
| Idaho Panhandle | Schafer Peak | 160 | | | X | X | | |
| Idaho Panhandle | Scotchman Peaks | 662 | X | | X | | | X |
| Idaho Panhandle | Selkirk | 125 | X | | X | X | | X |
| Idaho Panhandle | Sheep Mountain-State Line. | 799 | | | X | | | X |
| Idaho Panhandle | Skitwish Ridge | 135 | | | X | | | |
| Idaho Panhandle | Spion Kop | 136 | | | X | | | X |
| Idaho Panhandle | Stevens Peak | 142 | | | X | | | |
| Idaho Panhandle | Storm Creek | 144 | | | X | | | |
| Idaho Panhandle | Tepee Creek | 133 | | | X | | | |
| Idaho Panhandle | Trestle Peak | 129 | | | X | | | |
| Idaho Panhandle | Trouble Creek | 138 | | | X | | | X |
| Idaho Panhandle | Trout Creek | 664 | | | X | | | X |
| Idaho Panhandle | Upper Priest | 123 | | | X | | | X |
| Idaho Panhandle | White Mountain | 127 | | | X | X | | |
| Idaho Panhandle | Wonderful Peak | 152 | | | X | | | |
| Kootenai | Buckhorn Ridge | 661 | | | X | | | |
| Kootenai | Mt. Willard-Lake Estelle | 173 | | | X | | | X |
| Kootenai | Roberts | 691 | | | X | | | |
| Kootenai | Scotchman Peaks | 662 | | | X | | | |
| Kootenai | West Fork Elk | 692 | | | X | | | |
| Nez Perce | Clear Creek | 844 | | | X | | | |
| Nez Perce | Dixie Summit—Nut Hill | 235 | | | X | | | X |
| Nez Perce | East Meadow Creek | 845 | | X | | | | X |
| Nez Perce | Gospel Hump | 921 | | | X | | | |
| Nez Perce | Gospel Hump Adjacent to Wilderness. | | | | X | | | |
| Nez Perce | John Day | 852 | | | X | | | |
| Nez Perce | Lick Point | 227 | | | X | | | |
| Nez Perce | Little Slate Creek | 851 | | | X | | | |

| Forest | Idaho roadless area | # | WLR | Primitive | BCR | GFRG | SAHTS | FPSA |
|---|---|---|---|---|---|---|---|---|
| Nez Perce | Little Slate Creek North | 856 | | | X | | | X |
| Nez Perce | Mallard | 847 | | | X | | | |
| Nez Perce | North Fork Slate Creek | 850 | | | X | | | |
| Nez Perce | O'Hara—Falls Creek | 226 | | | X | | | X |
| Nez Perce | Rackliff—Gedney | 841 | | | X | | | X |
| Nez Perce | Rapid River | 922 | X | | | | | X |
| Nez Perce | Salmon Face | 855 | | | X | | | |
| Nez Perce | Selway Bitterroot | | | X | | | | |
| Nez Perce | Silver Creek—Pilot Knob | 849 | | | | | X | |
| Nez Perce | West Fork Crooked River. | | | | X | | | |
| Nez Perce | West Meadow Creek | 845 | | | X | | | X |
| Payette | Big Creek Fringe | 009 | | | X | | | |
| Payette | Caton Lake | 912 | | | X | | | X |
| Payette | Chimney Rock | 006 | | | X | | | X |
| Payette | Cottontail Point/Pilot Peak. | 004 | | X | X | | | X |
| Payette | Council Mountain | 018 | | X | | | | X |
| Payette | Crystal Mountain | 005 | | | X | | | X |
| Payette | Cuddy Mountain | 016 | | X | | X | | X |
| Payette | French Creek | 026 | | X | X | X | | X |
| Payette | Hells Canyon/7 Devils Scenic. | 001 | | X | | | | X |
| Payette | Horse Heaven | 925 | | | X | | | |
| Payette | Indian Creek | 019 | | X | | | | |
| Payette | Meadow Creek | 913 | | | X | | | |
| Payette | Needles | 911 | X | X | X | | | X |
| Payette | Patrick Butte | 002 | | X | X | | | X |
| Payette | Placer Creek | 008 | | X | X | | | |
| Payette | Poison Creek | 042 | | | X | | | |
| Payette | Rapid River | 922 | X | | | | | X |
| Payette | Secesh | 010 | X | X | X | | | X |
| Payette | Sheep Gulch | 017 | | | X | | | |
| Payette | Smith Creek | 007 | | X | | | | |
| Payette | Snowbank | 924 | | X | | | | |
| Payette | Sugar Mountain | 014 | | | X | | | |
| Salmon | Agency Creek | 512 | | | X | X | | |
| Salmon | Allan Mountain | 946 | | | X | | | X |
| Salmon | Anderson Mountain | 942 | | | X | | | |
| Salmon | Blue Joint Mountain | 941 | | X | | | | |
| Salmon | Camas Creek | 901 | | | X | | | |
| Salmon | Deep Creek | 509 | | | | X | | |
| Salmon | Duck Peak | 518 | | | X | | | X |
| Salmon | Goat Mountain | 944 | | | X | | | |
| Salmon | Goldbug Ridge | 903 | | | X | | | |
| Salmon | Haystack Mountain | 507 | | | X | X | | |
| Salmon | Italian Peak | 945 | | | X | | | |
| Salmon | Jesse Creek | 510 | | | X | | | |
| Salmon | Jureano | 506 | | | X | X | | |
| Salmon | Lemhi Range | 903 | | | X | | | X |
| Salmon | Little Horse | 514 | | | X | | | |
| Salmon | Long Tom | 521 | | | X | | | X |
| Salmon | McEleny | 505 | | | X | | | |
| Salmon | Musgrove | 517 | | | X | X | | |
| Salmon | Napias | 515 | | | | X | | |
| Salmon | Napoleon Ridge | 501 | | | X | X | | X |
| Salmon | Oreana | 516 | | | X | | | |
| Salmon | Perreau Creek | 511 | | | | X | | |
| Salmon | Phelan | 508 | | | | X | | |
| Salmon | Sal Mountain | 513 | | | X | | | |
| Salmon | Sheepeater | 520 | | | X | X | | X |
| Salmon | South Deep Creek | 509 | | | X | X | | |
| Salmon | South Panther | 504 | | | X | | | |
| Salmon | Taylor Mountain | 902 | | | X | | | |
| Salmon | West Big Hole | 943 | | X | X | X | | X |
| Salmon | West Panther Creek | 504 | | | X | | | |
| Sawtooth | Black Pine | 003 | | | X | | | X |
| Sawtooth | Blackhorse Creek | 039 | | X | | | | |
| Sawtooth | Boulder-White Clouds | 920 | X | X | X | | | X |
| Sawtooth | Buttercup Mountain | 038 | | X | | | | X |
| Sawtooth | Cache Peak | 007 | | | X | X | | |
| Sawtooth | Cottonwood | 010 | | | X | | | |
| Sawtooth | Elk Ridge | 019 | | X | | | | |
| Sawtooth | Fifth Fork Rock Creek | 023 | | X | | X | | |

| Forest | Idaho roadless area | # | WLR | Primitive | BCR | GFRG | SAHTS | FPSA |
|---|---|---|---|---|---|---|---|---|
| Sawtooth | Hanson Lakes | 915 | X | X | X | | | X |
| Sawtooth | Huckleberry | 016 | | | X | | | X |
| Sawtooth | Liberal Mountain | 040 | | X | | X | | |
| Sawtooth | Lime Creek | 937 | | X | | | | X |
| Sawtooth | Lone Cedar | 011 | | | | X | | |
| Sawtooth | Loon Creek | 908 | | | X | | | |
| Sawtooth | Mahogany Butte | 012 | | | | X | | |
| Sawtooth | Mount Harrison | 006 | | X | X | X | | X |
| Sawtooth | Pettit | 017 | | | X | | | X |
| Sawtooth | Pioneer Mountains | 921 | X | X | X | | | X |
| Sawtooth | Railroad Ridge | 922 | | | X | | | X |
| Sawtooth | Smoky Mountains | 914 | | X | X | | | X |
| Sawtooth | Sublett | 005 | | X | | | | |
| Sawtooth | Third Fork Rock Creek | 009 | | X | | X | | |
| Sawtooth | Thorobred | 013 | | | X | | | |
| Targhee | Bald Mountain | 614 | | | X | X | | |
| Targhee | Bear Creek | 615 | | | X | X | | X |
| Targhee | Caribou City | 161 | | | X | X | | |
| Targhee | Diamond Peak | 601 | X | X | X | X | | X |
| Targhee | Garfield Mountain | 961 | | X | X | X | | X |
| Targhee | Garns Mountain | 611 | | | X | X | | X |
| Targhee | Italian Peak | 945 | X | | X | | | X |
| Targhee | Lionhead | 963 | X | | X | | | X |
| Targhee | Mt. Jefferson | 962 | | X | X | X | | X |
| Targhee | Palisades | 613 | X | | X | | | X |
| Targhee | Poker Peak | 616 | | X | | | | X |
| Targhee | Pole Creek | 160 | | | X | | | |
| Targhee | Raynolds Pass | 603 | | | X | | | |
| Targhee | Two Top | 604 | | X | | | | |
| Targhee | West Slope Tetons | 610 | | | X | | | X |
| Targhee | Winegar Hole | 347 | | X | X | | | X |
| Wallowa-Whitman | Big Canyon Id | 853 | | | X | | | |
| Wallowa-Whitman | Klopton Creek—Corral Creek Id. | 854 | | | X | | | |

[73 FR 61489, Oct. 16, 2008, as amended at 76 FR 17342, Mar. 29, 2011; 79 FR 33437, June 11, 2014]

## Subpart D—Colorado Roadless Area Management

AUTHORITY: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

SOURCE: 77 FR 39602, July 3, 2012, unless otherwise noted.

### § 294.40 Purpose.

The purpose of this subpart is to provide, within the context of multiple use management, State-specific direction for the protection of roadless areas on National Forest System lands in Colorado. The intent of this regulation is to protect roadless values by restricting tree cutting, sale, and removal; road construction and reconstruction; and linear construction zones within Colorado Roadless Areas (CRAs), with narrowly focused exceptions. Activities must be designed to conserve the roadless area characteristics listed in § 294.41, although applying the exceptions in § 294.42, § 294.43, and § 294.44 may have effects to some roadless area characteristics.

### § 294.41 Definitions.

The following terms and definitions apply to this subpart.

*At-Risk Community:* As defined under section 101 of the Healthy Forests Restoration Act (HFRA).

*Catchment:* A watershed delineation beginning at the downstream point of occupation of native cutthroat trout and encompassing the upstream boundary of waters draining in the stream system.

*Colorado Roadless Areas:* Areas designated pursuant to this subpart and identified in a set of maps maintained at the national headquarters office of the Forest Service. Colorado Roadless Areas established by this subpart shall constitute the exclusive set of National Forest System lands within the State of Colorado to which the provisions 36 CFR 220.5(a)(2) shall apply.

*Colorado Roadless Areas Upper Tier Acres:* A subset of Colorado Roadless Areas identified in a set of maps maintained at the national headquarters office of the Forest Service which have limited exceptions to provide a high-level of protection for these areas.

*Community Protection Zone:* An area extending one-half mile from the boundary of an at-risk community; or an area within one and a half miles from the boundary of an at-risk community, where any land:

(1) Has a sustained steep slope that creates the potential for wildfire behavior endangering the at-risk community;

(2) Has a geographic feature that aids in creating an effective fire break, such as a road or a ridge top; or

(3) Is in condition class 3 as defined by HFRA.

*Community Wildfire Protection Plan:* As defined under section 101 of the HFRA, and used in this subpart, the term ''community wildfire protection plan'' means a plan for an at-risk community that:

(1) Is developed within the context of the collaborative agreements and the guidance established by the Wildland Fire Leadership Council and agreed to by the applicable local government, local fire department, and State agency responsible for forest management, in consultation with interested parties and the Federal land management agencies managing land in the vicinity of the at-risk community;

(2) Identifies and prioritizes areas for hazardous fuel reduction treatments and recommends the types and methods of treatment on Federal and non-Federal land that will protect one or more at-risk communities and essential infrastructure; and

(3) Recommends measures to reduce structural ignitability throughout the at-risk community.

*Condition Class 3:* As defined under section 101 of the HFRA the term ''condition class 3'' means an area of Federal land, under which:

(1) Fire regimes on land have been significantly altered from historical ranges;

(2) There exists a high risk of losing key ecosystem components from fire;

(3) Fire frequencies have departed from historical frequencies by multiple return intervals, resulting in dramatic changes to:

(i) The size, frequency, intensity, or severity of fires; or

(ii) Landscape patterns; and

(4) Vegetation attributes have been significantly altered from the historical range of the attributes.

*Fire Hazard:* A fuel complex defined by volume, type, condition, arrangement and location that determines the ease of ignition and the resistance to control; expresses the potential fire behavior for a fuel type, regardless of the fuel type's weather influenced fuel moisture condition.

*Fire Occurrence:* One fire event occurring in a specific place within a specific period of time; a general term describing past or current wildland fire events.

*Fire Risk:* The probability or chance that a fire might start, as affected by the presence and activities of causative agents.

*Forest Road:* As defined at 36 CFR 212.1, the term means a road wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

*Hazardous Fuels:* Excessive live or dead wildland fuel accumulations that increase the potential for intense wildland fire and decrease the capability to protect life, property and natural resources.

*Linear Construction Zone:* A temporary linear area of surface disturbance over 50-inches wide that is used for construction equipment to install or maintain a linear facility. The sole purpose of the linear disturbance is to accommodate equipment needed to construct and transport supplies and personnel needed to install or maintain the linear facility. It is not a road, not used as a motor vehicle route, not open for public use, and is not engineered to road specifications.

*Linear Facility:* Linear facilities include pipelines, electrical power lines, telecommunications lines, ditches, canals, and dams.

*Municipal Water Supply System:* As defined under Section 101 of the HFRA, and used in this subpart, the term means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, and other surface facilities and systems constructed or installed for the collection, impoundment, storage, transportation, or distribution of drinking water.

*Native Cutthroat Trout:* Collectively, all the native subspecies of cutthroat trout historically occurring in Colorado before European settlement which includes yellowfin, Rio Grande, Greenback, and Colorado River Trout.

*Permanent Road:* Roads that are either a forest road; private road (a road under private ownership authorized by an easement granted to a private party or a road that provides access pursuant to a reserved or outstanding right); or public road (a road under the jurisdiction of and maintained by a public road authority and open to public travel).

*Pre-Existing Water Court Decree:* An adjudicated conditional or absolute decree issued by a Colorado Court, the initial application for which was filed prior to July 3, 2012, adjudicating as the point of a diversion or the place of use a location within a Colorado Roadless Area. A pre-existing water court decree does not include decrees for water rights with a point of diversion and place of use outside of a Colorado Roadless Area, the holder of which proposes to change the point of diversion or place of use to within a Colorado Roadless Area, except for a change in location of a head gate and associated ditch pursuant to Colorado Revised Statute 2011 § 37–86–111.

*Responsible Official:* The Forest Service line officer with the authority and responsibility to make decisions about protection and management of Colorado Roadless Areas pursuant to this subpart.

*Road:* As defined at 36 CFR 212.1, the term means a motor vehicle route over 50 inches wide, unless identified and managed as a trail.

*Roadless Area Characteristics:* Resources or features that are often present in and characterize Colorado Roadless Areas, including:

(1) High quality or undisturbed soil, water, and air;

(2) Sources of public drinking water;

(3) Diversity of plant and animal communities;

(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;

(5) Primitive, semi-primitive non-motorized and semi-primitive motorized classes of dispersed recreation;

(6) Reference landscapes;

(7) Natural-appearing landscapes with high scenic quality;

(8) Traditional cultural properties and sacred sites; and

(9) Other locally identified unique characteristics.

*Temporary Road:* As defined at 36 CFR 212.1, the term means a road necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road and that is not included in a forest transportation atlas.

*Water Conveyance Structures:* Facilities associated with the transmission, storage, impoundment, and diversion of water on and across National Forest System lands. Water conveyance structures include, but are not limited to: Reservoirs and dams, diversion structures, headgates, pipelines, ditches, canals, and tunnels.

*Water Influence Zone:* The land next to water bodies where vegetation plays a major role in sustaining long-term integrity of aquatic systems. It includes the geomorphic floodplain (valley bottom), riparian ecosystem, and inner gorge. Its minimum horizontal width (from top of each bank) is 100 feet or the mean height of mature dominant late-seral vegetation, whichever is greater.

*Watershed Conservation Practice:* The watershed conservation practices are stewardship actions based upon scientific principles and legal requirements to protect soil, aquatic and riparian resources. Each watershed conservation practice consists of a management measure, a set of design criteria used to achieve the management measure, and guidance for monitoring and restoration. For specific information, refer to Forest Service Manual 2509.25.

**§ 294.42 Prohibition on tree cutting, sale, or removal.**

(a) *General.* Trees may not be cut, sold, or removed in Colorado Roadless Areas, except as provided in paragraph (b) and (c) of this section.

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in Colorado Roadless Areas upper tier acres if the responsible official determines the activity is consistent with the applicable land management plan, and:

(1) Tree cutting, sale, or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart; or

(2) Tree cutting, sale, or removal is needed and appropriate for personal or administrative use, as provided for in 36 CFR part 223, subpart A.

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in Colorado Roadless Areas outside upper tier acres if the responsible official, unless otherwise noted, determines the activity is consistent with the applicable land management plan, one or more of the roadless area characteristics will be maintained or improved over the long-term with the exception of paragraph (5) and (6) of this section, and one of the following circumstances exists:

(1) The Regional Forester determines tree cutting, sale, or removal is needed to reduce hazardous fuels to an at-risk community or municipal water supply system that is:

(i) Within the first one-half mile of the community protection zone, or

(ii) Within the next one-mile of the community protection zone, and is within an area identified in a Community Wildfire Protection Plan.

(iii) Projects undertaken pursuant to paragraphs (c)(1)(i) and (ii) of this section will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

(2) The Regional Forester determines tree cutting, sale, or removal is needed outside the community protection zone where there is a significant risk that a wildland fire disturbance event could adversely affect a municipal water supply system or the maintenance of that system. A significant risk exists where the history of fire occurrence, and fire hazard and risk indicate a serious likelihood that a wildland fire disturbance event would present a high risk of threat to a municipal water supply system.

(i) Projects will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

(ii) Projects are expected to be infrequent.

(3) Tree cutting, sale, or removal is needed to maintain or restore the characteristics of ecosystem composition, structure and processes. These projects are expected to be infrequent.

(4) Tree cutting, sale, or removal is needed to improve habitat for federally threatened, endangered, proposed, or Agency designated sensitive species; in coordination with the Colorado Department of Natural Resources, including the Colorado Division of Parks and Wildlife.

(5) Tree cutting, sale, or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart.

(6) Tree cutting, sale, or removal is needed and appropriate for personal or administrative use, as provided for in 36 CFR part 223, subpart A.

**§ 294.43 Prohibition on road construction and reconstruction.**

(a) *General.* A road may not be constructed or reconstructed in a Colorado Roadless Area except as provided in paragraphs (b) and (c) of this section.

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a road may only be constructed or reconstructed in Colorado Roadless Area upper tier acres if the responsible official determines that the conditions in subsection 1 or 2 are met.

(1) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty, or

(2) A road is needed to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic event that, without intervention, would cause the loss of life or property.

(3) For any road construction/reconstruction authorized pursuant to this provision, subject to the legal rights identified in 36 CFR 294.43(b)(1), the responsible official must determine:

(i) Motorized access, without road construction is not feasible;

(ii) When proposing to construct a forest road, that a temporary road would not provide reasonable access;

(iii) Road construction is consistent with the applicable land management plan direction;

(iv) Within a native cutthroat trout catchment or identified recovery watershed, road construction will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat; and

(v) That watershed conservation practices will be applied to all projects occurring in native cutthroat trout habitat.

(c) *Non-Upper Tier Acres*. Notwithstanding the prohibition in paragraph (a) of this section, a road or temporary road may only be constructed or reconstructed in Colorado Roadless Areas outside upper tier acres if the responsible official determines:

(1) That one of the following exceptions exists:

(i) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;

(ii) Road realignment is needed to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a forest road and that cannot be mitigated by road maintenance. Road realignment may occur under this paragraph only if the road is deemed essential for administrative or public access, public health and safety, or uses authorized under permit, easement or other legal instrument;

(iii) Road reconstruction is needed to implement a road safety improvement project on a forest road determined to be hazardous on the basis of accident experience or accident potential on that road;

(iv) The Regional Forester determines a road or temporary road is needed to allow for the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree with the use of the road limited to the water right identified in the pre-existing water court decree (see also § 294.44(b)(2));

(v) A temporary road is needed to protect public health and safety in cases of imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property;

(vi) The Regional Forester determines a temporary road is needed to facilitate tree cutting, sale, or removal (§ 294.42(c)(1)) within the first one-half mile of the community protection zone to reduce the wildfire hazard to an at-risk community or municipal water supply system;

(vii) The Regional Forester determines a temporary road is needed to facilitate tree cutting, sale, or removal (§ 294.42(c)(3)) within the first one-half mile of the community protection zone to maintain or restore characteristics of ecosystem composition, structure and processes;

(viii) A temporary road is needed within a Colorado Roadless Area pursuant to the exploration or development of an existing oil and gas lease that does not prohibit road construction or reconstruction, including the construction of infrastructure necessary to transport the product, on National Forest System lands that are under lease issued by the Secretary of the Interior as of July 3, 2012. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in any road construction within a Colorado Roadless Area beyond that which was authorized by the terms and conditions of the lease at the time of issuance; or

(ix) A temporary road is needed for coal exploration and/or coal-related surface activities for certain lands with Colorado Roadless Areas within the North Fork Coal Mining Area of the

Grand Mesa, Uncompahgre, and Gunnison National Forests as defined by the North Fork Coal Mining Area displayed on the final Colorado Roadless Areas map. Such roads may also be used for collecting and transporting coal mine methane. Any buried infrastructure, including pipelines, needed for the capture, collection, and use of coal mine methane, will be located within the rights-of-way of temporary roads that are otherwise necessary for coal-related surface activities including the installation and operation of methane venting wells.

(2) If proposed road construction/reconstruction meets one of the exceptions, subject to the legal rights identified in § 294.43(c)(1), the responsible official must determine:

(i) Motorized access, without road construction is not feasible;

(ii) When proposing to construct a forest road, that a temporary road would not provide reasonable access;

(iii) Road construction is consistent with the applicable land management plan direction;

(iv) Within a native cutthroat trout catchment or identified recovery watershed, road construction will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat; and

(v) That watershed conservation practices will be applied to all projects occurring in native cutthroat trout habitat.

(d) *Road construction/reconstruction/decommissioning project implementation and management*. The following elements will be incorporated into any road construction/reconstruction projects implemented within Colorado Roadless Areas.

(1) *Road construction/reconstruction*. If it is determined that a road is authorized in a Colorado Roadless Area, conduct construction in a manner that reduces effects on surface resources, and prevents unnecessary or unreasonable surface disturbance.

(2) *Road decommissioning*. Decommission any road and restore the affected landscape when it is determined that the road is no longer needed for the established purpose prior to, or upon termination or expiration of a contract, authorization, or permit, if possible; or upon termination or expiration of a contract, authorization, or permit, whichever is sooner. Require the inclusion of a road decommissioning provision in all contracts or permits. Design decommissioning to stabilize, restore, and revegetate unneeded roads to a more natural state to protect resources and enhance roadless area characteristics. Examples include obliteration, denial of use, elimination of travelway functionality, and removal of the road prism (restoration of the road corridor to the original contour and hydrologic function).

(3) *Road designations*. The designation of a temporary road constructed or reconstructed pursuant to this subpart may not be changed to forest road except where a forest road is allowed under paragraphs (b) and (c) of this section.

(4) *Road use*. Use of motor vehicles for administrative purposes by the Forest Service and by fire, emergency, or law enforcement personnel is allowed. All roads constructed pursuant to paragraphs (b) and (c) of this section shall prohibit public motorized vehicles (including off-highway vehicles) except:

(i) Where specifically used for the purpose for which the road was established; or

(ii) Motor vehicle use that is specifically authorized under a Federal law or regulation.

(5) *Road maintenance*. Maintenance of roads is permissible in Colorado Roadless Areas.

[77 FR 39602, July 3, 2012, as amended at 81 FR 91821, Dec. 19, 2016]

### § 294.44 Prohibition on linear construction zones.

(a) *General*. A linear construction zone may not be authorized in Colorado Roadless Areas except as provided in paragraph (b) and (c) of this section and § 294.48 (a).

(b) *Upper Tier Acres*. Notwithstanding the prohibition in paragraph (a) of this section, a linear construction zone may only be authorized within Colorado Roadless Area upper tier acres if the Regional Forester determines the LCZ is needed:

(1) Pursuant to reserved or outstanding rights, or as provided for by statute or treaty.

(2) For the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree (see § 294.43(c)(1)(iv));

(c) *Non-Upper Tier Acres*. Notwithstanding the prohibition in paragraph (a) of this section, a linear construction zone may only be authorized within Colorado Roadless Area non-upper tier acres if the Regional Forester determines the LCZ is needed:

(1) Pursuant to reserved or outstanding rights, or as provided for by statute or treaty.

(2) For the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree (see § 294.43(c)(1)(iv));

(3) For the construction, reconstruction, or maintenance of existing or future authorized electrical power lines or telecommunication lines. Electrical power lines or telecommunication lines within Colorado Roadless Areas will only be authorized if there is no opportunity for the project to be implemented outside of a Colorado Roadless Area without causing substantially greater environmental damage; or

(4) For the construction, reconstruction or maintenance of a pipeline associated with operation of an oil and gas lease that allows surface use within a Colorado Roadless Area or the construction, reconstruction or maintenance of a pipeline needed to connect to infrastructure within a Colorado Roadless Area from outside a Colorado Roadless Area where such a connection would cause substantially less environmental damage than alternative routes. The construction of pipelines for the purposes of transporting oil or natural gas through a Colorado Roadless Area, where the source(s) and destination(s) of the pipeline are located exclusively outside of a Colorado Roadless Area, shall not be authorized.

(d) *Proposed Linear Construction Zones*. If a proposed linear construction zone meets one of the above exceptions, then the following must be determined:

(1) Motorized access, without a linear construction zone, is not feasible;

(2) A linear construction zone is consistent with the applicable land management plan direction;

(3) A linear construction zone is no wider than its intended use;

(4) Within a native cutthroat trout catchment or identified recovery watershed, a linear construction zone will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat;

(5) Reclamation of a linear construction zone will not diminish, over the long-term, roadless area characteristics; and

(6) That watershed conservation practices will be applied to all projects occurring in catchments with occupied native cutthroat trout habitat.

(e) *Linear construction zone decommissioning*. Where a linear construction zone is authorized in a Colorado Roadless Area, installation of the linear facility will be done in a manner that minimizes ground disturbance, including placement within existing right-of-ways where feasible. All authorizations approving the installation of linear facilities through the use of a linear construction zone shall include a responsible official approved reclamation plan for reclaiming the affected landscape while conserving roadless area characteristics over the long-term. Upon completion of the installation of a linear facility via the use of a linear construction zone, all areas of surface disturbance shall be reclaimed as prescribed in the authorization and the approved reclamation plan and may not be waived.

### § 294.45 Environmental documentation.

(a) Environmental documentation will be prepared pursuant to Section 102 of the National Environmental Policy Act, 40 CFR part 1500, and 36 CFR part 220 for any proposed action within a Colorado Roadless Area. Proposed actions that would significantly alter the undeveloped character of a Colorado Roadless Area require an Environmental Impact Statement (EIS).

(b) The Forest Service will offer cooperating agency status to the State of

Colorado, for all proposed projects and planning activities subject to this rule that would be implemented on lands within Colorado Roadless Areas. Where the Forest Service does not have the authority to offer formal cooperating agency status, the Forest Service shall offer to coordinate with the State.

**§ 294.46 Other activities.**

(a) *Water Rights*. This subpart in no manner restricts any party from seeking modification of a pre-existing water court decree, but after July 3, 2012 any Forest Service authorization required for road construction, road reconstruction, tree cutting, or linear construction zones associated with a modified water court decree must conform to the requirements in this subpart; provided that road construction or reconstruction may be authorized where necessary to change the location of a headgate and associated ditch, pursuant to Colorado Revised Statute 2011 § 37–86–111.

(b) *Oil and Gas Leases*. Oil and gas leases issued within a Colorado Roadless Area after July 3, 2012 will prohibit road construction/reconstruction. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in any road construction within a Colorado Roadless Area. For oil and gas leases issued in a Colorado Roadless Area prior to July 3, 2012, the rule preserves any existing leases and surface development rights. The rule also preserves any existing limitations on surface development rights arising from lease terms, lease stipulations, conditions of approval, 36 CFR 228.100, and Onshore Oil and Gas Orders.

(c) *Oil and Gas Leases on Upper Tier Acres*. Oil and gas leases issued within upper tier acres after July 3, 2012 will require a no surface occupancy stipulation. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in surface occupancy within an upper tier area.

(d) *Oil and Gas Surface Use Plans of Operation*. Where applicable and consistent with lease rights, during the review of any application for a surface use plan of operations affecting lands within a Colorado Roadless Area, the responsible official will:

(1) Locate, without compromising health and safety standards, roads, well sites, and facilities on pre-existing areas of surface disturbance. Project design shall minimize the amount of necessary temporary road construction or reconstruction.

(2) Consider an alternative for proposed operations that addresses locating directional drilling of multi-well sites on pre-existing areas of surface disturbance. Such an alternative can be dismissed from detailed analysis with clear justification.

(3) Restrict road construction for leases partially within Colorado Roadless Areas to portions of the lease outside of Colorado Roadless Areas except when doing so will be substantially more environmentally damaging, compromise safety standards, or is unfeasible due to surface and/or operational conditions.

(4) Perform reclamation of surface disturbances incrementally, to minimize the total area of disturbance at any given point in time during the exploration or development of a lease.

(5) Design temporary roads and facilities to blend with the terrain to minimize visual impacts and to facilitate restoration when the road is no longer needed.

(6) Co-locate, consistent with health and safety standards, power lines, flow lines and pipelines within the right-of-way of roads or other LCZs to minimize the area of surface disturbance.

(7) Consider new and developing low impact techniques and technologies and either apply or dismiss with justification.

(8) Consider the best available technology to minimize noise and air emissions.

(e) *Trails*. Nothing in this subpart shall affect the current or future management of motorized and non-motorized trails in Colorado Roadless Areas. Decisions concerning the management or status of motorized and non-motorized trails within Colorado Roadless Areas under this subpart shall be made

during the applicable forest travel management processes.

(f) *Motorized access*. Nothing in this subpart shall be construed as limiting the authority of the responsible official to approve existing and future motorized access not requiring road construction or reconstruction in Colorado Roadless Areas associated with grazing permits, special use authorizations, and other authorizations.

(g) *Livestock grazing*. The authority to issue livestock grazing permits on national forest system lands within a Colorado Roadless Area is not affected by this subpart; however, no new temporary or forest roads shall be authorized through grazing permits issued after July 3, 2012.

### § 294.47 Modifications and administrative corrections.

Modifications and administrative corrections pursuant to this subpart, after coordination with the State, may be made under the following circumstances:

(a) *Modifications to boundaries*. The Chief of the Forest Service may modify the boundaries of any designated Colorado Roadless Area identified in § 294.49 or add new Colorado Roadless Areas based on changed circumstances. Modifications and additions will be reflected in the set of maps maintained at the national headquarters office of the Forest Service. The construction or reconstruction of a temporary road or tree cutting, sale, or removal will not result in any boundary modification of a Colorado Roadless Area. Public notice with a minimum 90-day comment period will be provided for any proposed Colorado Roadless Area boundary modifications or additions.

(b) *Administrative corrections to boundaries*. The Chief of the Forest Service may issue administrative corrections after public notice and a 30-day comment period. Administrative corrections to the maps of any designated Colorado Roadless Areas identified in § 294.49, including upper tier acres are adjustments to remedy errors such as clerical or improvements in mapping technology. Other than clerical errors, an administrative correction is based on improved field data due to updated imagery, global positioning system data, or other collected field data.

(c) *Amendments to rule language*. Any amendment of this subpart will include coordination with the State and the appropriate level of NEPA analysis. A minimum 90-day comment period will be provided.

### § 294.48 Scope and applicability.

(a) This subpart does not revoke, suspend, or modify any permit, contract, lease, or other legal instrument authorizing or granting rights to the occupancy and use of National Forest system land issued prior to July 3, 2012 nor does it affect the authority or the discretion of the responsible official to reissue any such permit, contract, or other legal instrument upon its expiration or termination.

(b) This subpart does not revoke, suspend, or modify any project or activity decision made prior to July 3, 2012.

(c) The provisions set forth in this subpart provide the maximum level of tree cutting, sale and removal, and road construction and reconstruction activity allowed within Colorado Roadless Areas. Land management plan components can be more restrictive than this subpart and will continue to provide direction and guidance for projects and activities within Colorado Roadless Areas. Nothing in this subpart shall prohibit a responsible official from further restricting activities allowed within Colorado Roadless Areas. This subpart does not compel the amendment or revision of any land management plan.

(d) The prohibitions and restrictions established in this subpart are not subject to reconsideration, revision, or rescission in subsequent project decisions or land management plan amendments or revisions undertaken pursuant to 36 CFR part 219.

(e) Nothing in this subpart waives any applicable requirements regarding site specific environmental analysis, public involvement, consultation with Tribes and other agencies, or compliance with applicable laws.

(f) If any provision in this subpart or its application to any person or to certain circumstances is held to be invalid, the remainder of the regulations

in this subpart and their application remain in force.

(g) After July 3, 2012 36 CFR 294.10 through 294.14 shall have no effect within the State of Colorado.

### § 294.49 List of designated Colorado Roadless Areas.

All National Forest System lands within the State of Colorado listed in this section are hereby designated as Colorado Roadless Areas. An ''X'' in the third column indicates that some or all of that CRA contains upper tier acres.

| Line No. | Colorado roadless area name | Includes upper tier acres |
|---|---|---|
| | **Arapaho-Roosevelt National Forest** | |
| 1 | Bard Creek | X |
| 2 | Byers Peak | X |
| 3 | Cache La Poudre Adjacent Areas | X |
| 4 | Cherokee Park. | |
| 5 | Comanche Peak Adjacent Areas | X |
| 6 | Copper Mountain. | |
| 7 | Crosier Mountain. | |
| 8 | Gold Run | X |
| 9 | Green Ridge -East | X |
| 10 | Green Ridge -West | X |
| 11 | Grey Rock. | |
| 12 | Hell Canyon. | |
| 13 | Indian Peaks Adjacent Areas | X |
| 14 | James Peak. | |
| 15 | Kelly Creek | X |
| 16 | Lion Gulch. | |
| 17 | Mount Evans Adjacent Areas | X |
| 18 | Mount Sniktau | X |
| 19 | Neota Adjacent Area | X |
| 20 | Never Summer Adjacent Area. | |
| 21 | North Lone Pine | X |
| 22 | North St. Vrain | X |
| 23 | Rawah Adjacent Areas | X |
| 24 | Square Top Mountain | X |
| 25 | Troublesome | X |
| 26 | Vasquez Adjacent Area | X |
| 27 | White Pine Mountain. | |
| 28 | Williams Fork | X |
| | **Grand Mesa, Uncompahgre, Gunnison National Forest** | |
| 29 | Agate Creek. | |
| 30 | American Flag Mountain. | |
| 31 | Baldy. | |
| 32 | Battlements. | |
| 33 | Beaver | X |
| 34 | Beckwiths. | |
| 35 | Calamity Basin. | |
| 36 | Cannibal Plateau. | |
| 37 | Canyon Creek-Antero. | |
| 38 | Canyon Creek. | |
| 39 | Carson | X |
| 40 | Castle. | |
| 41 | Cataract | X |
| 42 | Cimarron Ridge. | |
| 43 | Clear Fork. | |
| 44 | Cochetopa | X |
| 45 | Cochetopa Hills. | |
| 46 | Cottonwoods. | |
| 47 | Crystal Creek. | |
| 48 | Crystal Peak | X |
| 49 | Curecanti | X |
| 50 | Currant Creek. | |
| 51 | Deer Creek. | |
| 52 | Dominguez. | |
| 53 | Double Top. | |
| 54 | East Elk. | |
| 55 | Electric Mountain. | |
| 56 | Failes Creek-Soldier Creek | X |
| 57 | Flatirons. | |
| 58 | Flattop Mountain. | |
| 59 | Flattops-Elk Park. | |
| 60 | Gothic. | |
| 61 | Granite Basin | X |
| 62 | Hightower. | |
| 63 | Hope Lake | X |
| 64 | Horse Ranch Park. | |
| 65 | Horsefly Canyon | X |
| 66 | Huntsman Ridge. | |
| 67 | Italian Mountain. | |
| 68 | Johnson Basin | X |
| 69 | Kannah Creek. | |
| 70 | Kelso Mesa. | |
| 71 | Last Dollar-Sheep Creek. | |
| 72 | Little Cimarron | X |
| 73 | Long Canyon. | |
| 74 | Matchless Mountain. | |
| 75 | Matterhorn | X |
| 76 | McClure Pass. | |
| 77 | Mendicant | X |
| 78 | Mineral Mountain | X |
| 79 | Mirror Lake. | |
| 80 | Mount Lamborn | X |
| 81 | Munsey-Erickson | X |
| 82 | Naturita Canyon | X |
| 83 | North Henson. | |
| 84 | Pilot Knob. | |
| 85 | Poverty Gulch | X |
| 86 | Salt Creek. | |
| 87 | Sanford Basin | X |
| 88 | Sawtooth | X |
| 89 | Schofield Pass. | |
| 90 | Soap Creek | X |
| 91 | Steuben. | |
| 92 | Sunnyside. | |
| 93 | Sunset. | |
| 94 | Texas Creek. | |
| 95 | Tomahawk. | |
| 96 | Turner Creek. | |
| 97 | Turret Ridge | X |
| 98 | Unaweep | X |
| 99 | Union. | |
| 100 | Whetstone. | |
| 101 | Whitehouse Mountain | X |
| 102 | Willow Creek. | |
| 103 | Wilson | X |
| 104 | Windy Point. | |
| | **Manti-La Sal National Forest** | |
| 105 | Roc Creek | X |
| | **Pike-San Isabel National Forest** | |
| 106 | Antelope Creek. | |
| 107 | Aspen Ridge | X |
| 108 | Babcock Hole. | |
| 109 | Badger Creek | X |
| 110 | Boreas. | |
| 111 | Buffalo Peaks East | X |
| 112 | Buffalo Peaks South. | |
| 113 | Buffalo Peaks West | X |
| 114 | Burning Bear | X |
| 115 | Chicago Ridge. | |

| Line No. | Colorado roadless area name | Includes upper tier acres |
|---|---|---|
| 116 | Chipeta. | |
| 117 | Cuchara North. | |
| 118 | Cuchara South. | |
| 119 | Elk Mountain-Collegiate North | X |
| 120 | Elk Mountain-Collegiate South. | |
| 121 | Elk Mountain-Collegiate West | X |
| 122 | Farnum. | |
| 123 | Green Mountain. | |
| 124 | Greenhorn Mountain: Badito Cone to Dry Creek. | X |
| 125 | Greenhorn Mountain: Cisneros Creek to Upper Turkey Creek. | |
| 126 | Greenhorn Mountain: Graneros Creek to Section 10. | X |
| 127 | Greenhorn Mountain: Little Saint Charles Creek to Greenhorn Creek. | |
| 128 | Gunbarrel. | |
| 129 | Hardscrabble. | |
| 130 | Highline. | |
| 131 | Holy Cross | X |
| 132 | Hoosier Ridge | X |
| 133 | Jefferson. | |
| 134 | Kaufman Ridge. | |
| 135 | Kreutzer-Princeton | X |
| 136 | Little Fountain Creek | X |
| 137 | Lost Creek East. | |
| 138 | Lost Creek South. | |
| 139 | Lost Creek West. | |
| 140 | Methodist Mountain. | |
| 141 | Mount Antero. | |
| 142 | Mount Elbert. | |
| 143 | Mount Evans | X |
| 144 | Mount Massive | X |
| 145 | Pikes Peak East. | |
| 146 | Pikes Peak West. | |
| 147 | Porphyry Peak. | |
| 148 | Puma Hills. | |
| 149 | Purgatoire | X |
| 150 | Rampart East | X |
| 151 | Rampart West. | |
| 152 | Reveille Canyon. | |
| 153 | Romley | X |
| 154 | Saint Charles Peak. | |
| 155 | Sangre de Cristo: Alvarado Campground to Music Pass. | X |
| 156 | Sangre de Cristo: Blanca Peak to Slide Mountain. | X |
| 157 | Sangre de Cristo: Lake Creek to Hermit Creek. | X |
| 158 | Sangre de Cristo: Medano Pass to Carbonate Mountain. | X |
| 159 | Sangre de Cristo: Silverheels Gulch to Hunts Creek. | |
| 160 | Sangre de Cristo: West Creek to Big Cottonwood. | |
| 161 | Schoolmarm Mountain. | |
| 162 | Scraggy Peaks. | |
| 163 | Sheep Rock. | |
| 164 | Silverheels | X |
| 165 | Spanish Peaks | X |
| 166 | Square Top Mountain | X |
| 167 | Starvation Creek. | |
| 168 | Tanner Peak | X |
| 169 | Thirtynine Mile Mountain | X |
| 170 | Thunder Butte. | |
| 171 | Weston Peak | X |
| | **Rio Grande National Forest** | |
| 172 | Alamosa River | X |
| 173 | Antora Meadows-Bear Creek | X |
| 174 | Beartown | X |
| 175 | Beaver Mountain | X |
| 176 | Bennet Mountain-Blowout-Willow Creek-Lion Point-Greenie Mountain. | X |
| 177 | Big Buck-Kitty-Ruby | X |
| 178 | Box-Road Canyon | X |
| 179 | Bristol Head | X |
| 180 | Butterfly. | |
| 181 | Chama Basin | X |
| 182 | Conejos River-Lake Fork. | |
| 183 | Copper Mountain-Sulphur | X |
| 184 | Cotton Creek. | |
| 185 | Crestone. | |
| 186 | Cumbres | X |
| 187 | Deep Creek-Boot Mountain | X |
| 188 | Dorsey Creek | X |
| 189 | Elkhorn Peak | X |
| 190 | Four Mile Creek | X |
| 191 | Fox Creek | X |
| 192 | Fox Mountain | X |
| 193 | Gibbs Creek. | |
| 194 | Gold Creek-Cascade Creek | X |
| 195 | Hot Springs. | |
| 196 | Indian Ridge | X |
| 197 | Kitty Creek. | |
| 198 | La Garita | X |
| 199 | Lake Fork | X |
| 200 | Lower East Bellows | X |
| 201 | Middle Alder | X |
| 202 | Miller Creek. | |
| 203 | Pole Creek. | |
| 204 | Pole Mountain-Finger Mesa | X |
| 205 | Red Mountain | X |
| 206 | Ruby Lake | X |
| 207 | Sawlog | X |
| 208 | Sheep Mountain | X |
| 209 | Silver Lakes-Stunner | X |
| 210 | Snowshoe Mountain | X |
| 211 | Spectacle Lake. | |
| 212 | Spruce Hole-Sheep Creek | X |
| 213 | Stunner Pass-Dolores Canyon | X |
| 214 | Sulphur Tunnel. | |
| 215 | Summit Peak-Elwood Pass | X |
| 216 | Taylor Canyon | X |
| 217 | Tewksberry | X |
| 218 | Tobacco Lakes | X |
| 219 | Trout Mountain-Elk Mountain | X |
| 220 | Ute Pass | X |
| 221 | Wason Park | X |
| 222 | Wightman Fork-Upper Burro | X |
| 223 | Wightman Fork -Lookout | X |
| 224 | Willow Mountain | X |
| | **Routt National Forest** | |
| 225 | Barber Basin. | |
| 226 | Black Mountain. | |
| 227 | Bunker Basin | X |
| 228 | Bushy Creek. | |
| 229 | Chatfield | X |
| 230 | Chedsey Creek. | |
| 231 | Dome. | |
| 232 | Dome Peak | X |
| 233 | Elkhorn. | |
| 234 | Gold Creek. | |
| 235 | Grizzly Helena. | |
| 236 | Kettle Lakes | X |
| 237 | Little Green Creek. | |
| 238 | Long Park. | |
| 239 | Mad Creek. | |
| 240 | Morrison Creek. | |
| 241 | Never Summer North. | |
| 242 | Never Summer South. | |

| Line No. | Colorado roadless area name | Includes upper tier acres |
|---|---|---|
| 243 | Nipple Peak North | X |
| 244 | Nipple Peak South | X |
| 245 | Pagoda Peak | X |
| 246 | Shield Mountain | X |
| 247 | South Fork | X |
| 248 | Sugarloaf North. | |
| 249 | Sugarloaf South | X |
| 250 | Troublesome North | X |
| 251 | Troublesome South | X |
| 252 | Walton Peak. | |
| 253 | Whalen Creek. | |
| | **San Juan National Forest** | |
| 254 | Baldy. | |
| 255 | Blackhawk Mountain. | |
| 256 | East Animas | X |
| 257 | Fish Creek. | |
| 258 | Florida River. | |
| 259 | Graham Park | X |
| 260 | HD Mountains. | |
| 261 | Hermosa | X |
| 262 | Lizard Head Adjacent | X |
| 263 | Piedra Area Adjacent | X |
| 264 | Runlett Park. | |
| 265 | Ryman | X |
| 266 | San Miguel | X |
| 267 | South San Juan Adjacent | X |
| 268 | Storm Peak. | |
| 269 | Treasure Mountain | X |
| 270 | Turkey Creek | X |
| 271 | Weminuche Adjacent | X |
| 272 | West Needles | X |
| 273 | Winter Hills/Serviceberry Mountain. | |
| | **White River National Forest** | |
| 274 | Adam Mountain. | |
| 275 | Ashcroft. | |
| 276 | Assignation Ridge | X |
| 277 | Baldy Mountain. | |
| 278 | Basalt Mountain A. | |
| 279 | Basalt Mountain B. | |
| 280 | Berry Creek. | |
| 281 | Big Ridge to South Fork A | X |
| 282 | Big Ridge to South Fork B | X |
| 283 | Black Lake East. | |
| 284 | Black Lake West. | |
| 285 | Blair Mountain. | |
| 286 | Boulder. | |
| 287 | Budges. | |
| 288 | Buffer Mountain. | |
| 289 | Burnt Mountain. | |
| 290 | Chicago Ridge | X |
| 291 | Corral Creek | X |
| 292 | Crystal River. | |
| 293 | Deep Creek | X |
| 294 | Dome Peak | X |
| 295 | East Divide-Four Mile Park. | |
| 296 | East Vail. | |
| 297 | East Willow. | |
| 298 | Elk Creek B. | |
| 299 | Elliot Ridge | X |
| 300 | Fawn Creek-Little Lost Park. | |
| 301 | Freeman Creek | X |
| 302 | Gallo Hill. | |
| 303 | Game Creek. | |
| 304 | Grizzly Creek. | |
| 305 | Gypsum Creek | X |
| 306 | Hardscrabble. | |
| 307 | Hay Park. | |
| 308 | Holy Cross City. | |
| 309 | Homestake. | |
| 310 | Hoosier Ridge | X |
| 311 | Housetop Mountain. | |
| 312 | Hunter | X |
| 313 | Little Grand Mesa | X |
| 314 | Lower Piney. | |
| 315 | Mamm Peak. | |
| 316 | Maroon East. | |
| 317 | Maryland Creek. | |
| 318 | McClure Pass. | |
| 319 | McFarlane. | |
| 320 | Meadow Mountain A. | |
| 321 | Meadow Mountain B. | |
| 322 | Morapos A. | |
| 323 | Morapos B. | |
| 324 | Mormon Creek | X |
| 325 | No Name. | |
| 326 | North Elk. | |
| 327 | North Independent A | X |
| 328 | North Independent B. | |
| 329 | North Woody. | |
| 330 | Pagoda Peak. | |
| 331 | Piney Lake. | |
| 332 | Porcupine Peak | X |
| 333 | Ptarmigan A. | |
| 334 | Ptarmigan B | X |
| 335 | Ptarmigan C | X |
| 336 | Ptarmigan Hill A. | |
| 337 | Ptarmigan Hill B. | |
| 338 | Red Dirt A. | |
| 339 | Red Dirt B. | |
| 340 | Red Mountain. | |
| 341 | Red Table | X |
| 342 | Reno Mountain. | |
| 343 | Ripple Creek Pass-Trappers Lake | X |
| 344 | Ryan Gulch. | |
| 345 | Salt Creek. | |
| 346 | Sloan Peak | X |
| 347 | Spraddle Creek A | X |
| 348 | Spraddle Creek B. | |
| 349 | Sweetwater A | X |
| 350 | Sweetwater B. | |
| 351 | Tenderfoot Mountain | X |
| 352 | Tenmile. | |
| 353 | Thompson Creek. | |
| 354 | Tigiwon | X |
| 355 | Treasure Mountain | X |
| 356 | West Brush Creek. | |
| 357 | West Lake Creek. | |
| 358 | Wildcat Mountain. | |
| 359 | Wildcat Mountain B. | |
| 360 | Wildcat Mountain C. | |
| 361 | Williams Fork. | |
| 362 | Willow. | |
| 363 | Woods Lake | X |

## Subpart E—Alaska Roadless Areas Management

AUTHORITY: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

SOURCE: 85 FR 68702, Oct. 29, 2020, unless otherwise noted.

### § 294.50 Tongass National Forest.

Subpart B of this part, revised as of July 1, 2001, shall not apply to the Tongass National Forest.

### § 294.51 Transition.

The Tongass Forest Supervisor shall issue a ministerial Notice of Administrative Change pursuant to 36 CFR 219.13(c) identifying plan changes made in conformance with the regulatory determinations of this subpart; specifically, the portion of the December 9, 2016, Record of Decision concerning suitable timber lands attributed exclusively to implementation of the January 12, 2001, Roadless Area Conservation Rule (see 36 CFR part 294, revised as of July 1, 2001) shall be designated as suitable.

## PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

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296.18 Confidentiality of archaeological resource information.
296.19 Report.
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296.21 Surveys and schedules.

AUTHORITY: Pub. L. 96–95, 93 Stat. 721, as amended, 102 Stat. 2983 (16 U.S.C. 470aa–mm)(Sec. 10(a). Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

SOURCE: 49 FR 1027, Jan. 6, 1984, unless otherwise noted.

### § 296.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa–mm) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, Jan. 26, 1995]

### § 296.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.

(b) In addition to the regulations in this part, section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in

this part, as may be necessary for carrying out the purposes of the Act.

**§ 296.3 Definitions.**

As used for purposes of this part:

(a) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal land manager may determine that certain material remains, in specified areas under the Federal land manager's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

(6) For the disposition following lawful removal or excavations of Native American human remains and ''cultural items'', as defined by the Native American Graves Protection and Repatriation Act (NAGPRA; Pub. L. 101–601; 104 Stat. 3050; 25 U.S.C. 3001–13), the Federal land manager is referred to NAGPRA and its implementing regulations.

(b) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(c) *Federal land manager* means:

(1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respect to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act and with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) *Public lands* means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) *Indian lands* means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) *Indian tribe* as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, *Indian tribe* means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the FEDERAL REGISTER by the Secretary of the Interior pursuant to 25 CFR part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(h) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–mm).

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984; 60 FR 5260, Jan. 26, 1995]

### § 296.4 Prohibited acts and criminal penalties.

(a) Under section 6(a) of the Act, no person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 296.8 or exempted by § 296.5(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) Under section (d) of the Act, any person who knowingly violates or counsels, procures, solicits, or employs any other person to violate any prohibition contained in section 6 (a), (b), or (c) of the Act will, upon conviction, be fined not more than $10,000.00 or imprisoned not more than one year, or both: provided, however, that if the

commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500.00, such person will be fined not more than $20,000.00 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person will be fined not more than $100,000.00, or imprisoned not more than five years, or both.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, Jan. 26, 1995]

### § 296.5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 296.8(a) of this part.

(b) *Exceptions:* (1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal or archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 296.6. However, the Federal land manager shall insure that provisions of §§ 296.8 and 296.9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal land manager, have been the subject of consideration under § 296.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of §§ 296.5(b)(5), 296.7, 296.8(a) (3), (4), (5), (6), and (7), 296.9, 296.10, 296.12, and 296.13(a) to such Governor or to such

designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal land manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

### § 296.6 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in § 296.8(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) *Paperwork Reduction Act*. The information collection requirement contained in § 296.6 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq*. and assigned clearance number 1024–0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological

knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

**§ 296.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.**

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 296.9.

(4) When the Federal land manager determines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w–3).

(2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

(4) The Federal land manager should also seek to determine, in consultation with official representatives of Indian tribes or other Native American groups, what circumstances should be the subject of special notification to the tribe or group after a permit has been issued. Circumstances calling for notification might include the discovery of human remains. When circumstances for special notification have been determined by the Federal land manager, the Federal land manager will include a requirement in the terms and conditions of permits, under § 296.9(c), for permittees to notify the Federal land manger immediately upon the occurrence of such circumstances. Following the permittee's notification, the Federal land manager will notify and consult with the tribe or group as appropriate. In cases involving Native

American human remains and other ''cultural items'', as defined by NAGPRA, the Federal land manager is referred to NAGPRA and its implementing regulations.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, 5261, Jan. 26, 1995]

### § 296.8 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a) (2) and (3) shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the

permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

### § 296.9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to § 296.7.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal land manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal land manager, at least annually.

### § 296.10 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 296.4. The Federal land manager shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal land manager may revoke a permit upon assessment of a civil penalty under § 296.15 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal land manager may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal land manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

### § 296.11 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures

which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

### § 296.12 Relationship to Section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

### § 296.13 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, the Federal land manager will follow the procedures required by NAGPRA and its implementing regulations for determining the disposition of Native American human remains and other ''cultural items'', as defined by NAGPRA, that have been excavated, removed, or discovered on public lands.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, 5261, Jan. 26, 1995]

### § 296.14 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 296.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 296.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

**§ 296.15 Assessment of civil penalties.**

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in § 296.4 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation*. The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal land manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal land manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief*. The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty*. (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify

the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with § 296.16.

(f) *Notice of assessment.* The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 296.16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. section 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a United States District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

### § 296.16 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 296.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological

resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 296.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal land manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

[49 FR 1027, Jan. 6, 1984, as amended at 52 FR 47721, Dec. 16, 1987]

### § 296.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under § 296.16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

### § 296.18 Confidentiality of archaeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other

provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469–469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

### § 296.19 Report.

(a) Each Federal land manager, when requested by the Secretary of the Interior, will submit such information as is necessary to enable the Secretary to comply with section 13 of the Act and comprehensively report on activities carried out under provisions of the Act.

(b) The Secretary of the Interior will include in the annual comprehensive report, submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate under section 13 of the Act, information on public awareness programs submitted by each Federal land manager under § 296.20(b). Such submittal will fulfill the Federal land manager's responsibility under section 10(c) of the Act to report on public awareness programs.

(c) The comprehensive report by the Secretary of the Interior also will include information on the activities carried out under section 14 of the Act. Each Federal land manager, when requested by the Secretary, will submit any available information on surveys and schedules and suspected violations in order to enable the Secretary to summarize in the comprehensive report actions taken pursuant to section 14 of the Act.

[60 FR 5260, 5261, Jan. 26, 1995]

### § 296.20 Public Awareness Programs.

(a) Each Federal land manager will establish a program to increase public awareness of the need to protect important archaeological resources located on public and Indian lands. Educational activities required by section 10(c) of the Act should be incorporated into other current agency public education and interpretation programs where appropriate.

(b) Each Federal land manager annually will submit to the Secretary of the Interior the relevant information on public awareness activities required by section 10(c) of the Act for inclusion in the comprehensive report on activities required by section 13 of the Act.

[60 FR 5260, 5261, Jan. 26, 1995]

### § 296.21 Surveys and Schedules.

(a) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority will develop plans for surveying lands under each agency's control to determine the nature and extent of archaeological resources pursuant to section 14(a) of the Act. Such activities should be consistent with Federal agency planning policies and other historic preservation program responsibilities required by 16 U.S.C. 470 *et seq*. Survey plans prepared under this section will be designed to comply with the purpose of the Act regarding the protection of archaeological resources.

(b) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will prepare schedules for surveying lands under each agency's control that are likely to contain the most scientifically valuable archaeological resources pursuant to section 14(b) of

the Act. Such schedules will be developed based on objectives and information identified in survey plans described in paragraph (a) of this section and implemented systematically to cover areas where the most scientifically valuable archaeological resources are likely to exist.

(c) Guidance for the activities undertaken as part of paragraphs (a) through (b) of this section is provided by the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

(d) Other Federal land managing agencies are encouraged to develop plans for surveying lands under their jurisdictions and prepare schedules for surveying to improve protection and management of archaeological resources.

(e) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will develop a system for documenting and reporting suspected violations of the various provisions of the Act. This system will reference a set of procedures for use by officers, employees, or agents of Federal agencies to assist them in recognizing violations, documenting relevant evidence, and reporting assembled information to the appropriate authorities. Methods employed to document and report such violations should be compatible with existing agency reporting systems for documenting violations of other appropriate Federal statutes and regulations. Summary information to be included in the Secretary's comprehensive report will be based upon the system developed by each Federal land manager for documenting suspected violations.

[60 FR 5260, 5261, Jan. 26, 1995]

# PART 297—WILD AND SCENIC RIVERS

## Subpart A—Water Resources Projects

Sec.
297.1 General.
297.2 Scope and application.
297.3 Definitions.
297.4 Requirements for Federal agencies.
297.5 Determination.
297.6 Environmental analysis requirements.

## Subpart B [Reserved]

AUTHORITY: 16 U.S.C. 551, 1278(c), 1281(d).

SOURCE: 49 FR 1902, Jan. 16, 1984, unless otherwise noted. Correctly designated at 49 FR 6896, Feb. 24, 1984.

## Subpart A—Water Resources Projects

### § 297.1 General.

Section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1278), as amended, provides for the protection of the free-flowing, scenic, and natural values of rivers designated as components or potential components of the National Wild and Scenic Rivers System from the effects of construction of any water resources project.

### § 297.2 Scope and application.

These rules apply to Federal assistance in the construction of water resources projects affecting Wild and Scenic Rivers or Study Rivers administered in whole or part by the Secretary of Agriculture.

### § 297.3 Definitions.

*Act* means the Wild and Scenic Rivers Act (82 Stat. 906, as amended; 16 U.S.C. 1271–1288).

*Construction* means any action carried on with Federal assistance affecting the free-flowing characteristics or the scenic or natural values of a Wild and Scenic River or Study River.

*Federal assistance* means any assistance by an authorizing agency including, but not limited to, the following:

(a) A license, permit, preliminary permit, or other authorization granted by the Federal Energy Regulatory Commission pursuant to sections 4(e) and 4(f) of the Federal Power Act, 16 U.S.C. 797;

(b) A license, permit, or other authorization granted by the Corps of Engineers, Department of the Army, pursuant to the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), and section 404 of the Clean Water Act (33 U.S.C. 1344); and,

(c) Any other license, permit, or authorization which may be required by an agency or Department of the Federal Government before, during, or

after construction of a water resources project.

*Free-flowing* is defined by section 16(b) of the Act as ''existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway'' (16 U.S.C. 1287(b)).

*Study period* means the time during which a river is being studied as a potential component of the Wild and Scenic Rivers System and such additional time as provided in section 7(b)(ii) of the Act not to exceed 3 additional years during which a report recommending designation is before the Congress, or such additional time as may be provided by statute.

*Study river* means a river and the adjacent area within one quarter mile of the banks of the river which is designated for study as a potential addition to the National Wild and Scenic Rivers System pursuant to section 5(a) of the Act.

*Water resources project* means any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063) as amended, or other construction of developments which would affect the free-flowing characteristics of a Wild and Scenic River or Study River.

*Wild and scenic river* means a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System pursuant to section 3(a) or 2(a)(ii) of the Act.

### § 297.4 Requirements for Federal agencies.

(a) No license, permit, or other authorization can be issued for a Federally assisted water resources project on any portion of a Wild and Scenic River or Study River nor can appropriations be requested to begin construction of such projects, without prior notice to the Secretary of Agriculture, and a determination in accordance with section 7 of the Act.

(b) As soon as practicable, but no less than 60 days prior to the date of proposed action, the Federal agency shall provide a notice of intent to issue such license, permit, or other authorization to the Chief, Forest Service, U.S. Department of Agriculture, P.O. Box 2417, Washington, DC 20013. The Secretary will, to the extent possible, give expedited consideration to a notice of intent for a project needed to address an emergency situation.

(c) The notice shall include the following information:

(1) Name and location of affected river;

(2) Location of the project;

(3) Nature of the permit or other authorization proposed for issuance;

(4) A description of the proposed activity; and

(5) Any relevant information, such as plans, maps, and environmental studies, assessments, or environmental impact statements.

### § 297.5 Determination.

(a) The Secretary of Agriculture will consent to the issuance of any Federal license, permit, or other authorization if, as a finding of fact, it is determined that:

(1) The water resources project will not have a direct and adverse effect on the values for which a Wild and Scenic River or Study River was designated, when any portion of the project is within the boundaries of said river, or;

(2) The effects of the water resources project will neither invade nor unreasonably diminish the scenic, recreational, and fish wildlife values of a Wild and Scenic River, when any portion of the project is located above, below, or outside the Wild and Scenic River, or;

(3) The effects of the water resources project will neither invade nor diminish the scenic, recreational, and fish and wildlife values of a Study River when the project is located above, below, or outside the Study River during the study period.

(b) If consent is denied, the Secretary may recommend measures to eliminate adverse effects, and the authorizing agencies may submit revised plans for consideration.

### § 297.6 Environmental analysis requirements.

(a) The determination of the effects of a proposed water resources project shall be made in compliance with the National Environmental Policy Act

(NEPA). To the extent possible, authorizing agencies should ensure that any environmental studies, assessments, or environmental impact statements prepared for a water resources project adequately address the environmental effects on resources protected by the Wild and Scenic Rivers Act, and that the Department of Agriculture is apprised of ongoing analyses so as to facilitate coordination and identification of Wild and Scenic River related issues.

(b) To the extent practicable, impacts on Wild and Scenic River values will be considered in the context of other review procedures provided by law. Authorizing agencies are encouraged to consult with the Forest Service in order to identify measures which could eliminate any direct and adverse effects, thereby increasing the likelihood of securing consent.

## Subpart B [Reserved]

## PARTS 298–299 [RESERVED]

# FINDING AIDS

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