

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule will not have a significant impact on a substantial number of small entities, because it makes available additional financing options for purchasers and sellers of condominium units.

*Regulatory Agenda*

This proposed rule was listed as item number 1417 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23384) under Executive Order 12866 and the Regulatory Flexibility Act.

*Public Reporting Burden*

The Department has estimated the public reporting burden involved in the

information collections contained in the proposed rule as shown below. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

## TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection	Number of respondents	Responses per respondents	Total annual responses	Hours per response	Total annual burden hours
HUD/FHA ..... Condominium "Spot Loan" Checklist & Warranty.	2,000	1	2,000	.1	200

*Catalog*

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.133.

**List of Subjects***24 CFR Part 206*

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 234*

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 206 and 234 of title 24 of the Code of Federal Regulations would be amended as follows:

**PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE**

1. The authority citation would continue to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

2. Section 206.51 would be revised to read as follows:

**§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.**

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary, except as provided in § 234.26(i) of this chapter.

**PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE**

3. The authority citation for part 234 would continue to read as follows:

**Authority:** 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1701(a).

4. In § 234.26, a new paragraph (i) would be added, to read as follows:

**§ 234.26 Project requirements.**

\* \* \* \* \*

(i) Notwithstanding the requirements of paragraphs (a) through (h) of this section, a loan on a single unit in an unapproved condominium project ("spot loan") may qualify for mortgage insurance under this part.

(1) The project must meet the following criteria:

(i) All units, common elements, and facilities—including those that are part of any master association—must have been completed, and the project cannot be subject to additional phasing or annexation. The project must provide for undivided ownership of common areas by unit owners;

(ii) Control of the owners' association must have been turned over to the unit purchasers, and the unit purchasers must have been in control for at least one year;

(iii) At least 90% of the total units in the project must have been conveyed to the unit purchasers, and at least 51% of the total units in the project must have been conveyed to purchasers who are occupying the units as their principal residences or second homes. No single entity (the same individual, investor group, partnership, or corporation) may own more than 10% of the total units in the project;

(iv) The units in the project must be owned in fee simple or be an eligible leasehold interest, as described in § 234.65, and the unit owners must have sole ownership interest in, and right to the use of, the project's facilities, common elements, and limited common elements including parking, recreational facilities, etc.;

(v) The project must be covered by hazard, flood, and liability insurance acceptable to the Commissioner;

(vi) No more than 10% of the total units in the project may be encumbered by FHA-insured mortgages. (If more than 10% of the units in the project are encumbered by FHA-insured mortgages, the condominium project must be approved under paragraphs (a) through (h) of this section); and

(vii) The assumability provisions of § 234.66 must be satisfied.

(2) Lenders must perform an underwriting analysis and certify that a project satisfies the eligibility criteria for a "spot loan" on a condominium project that has not been approved by FHA. Lenders may use information from the appraiser, the owners' association, the management company, the real estate broker, and the project developer, but the lender must ensure the accuracy of the information obtained from these sources.

Dated: May 22, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 292****National Recreation Areas; Smith River National Recreational Area****AGENCY:** Forest Service, USDA.**ACTION:** Proposed rule.

**SUMMARY:** This notice of proposed rulemaking sets forth the procedures by which the Forest Service proposes to regulate mineral operations on National Forest System lands within the Smith River National Recreation Area. Required by statute, this proposed rule would supplement existing Forest Service mineral regulations. The intended effect is to allow for mineral operations in a manner consistent with the purposes for which Congress established the Smith River National Recreation Area.

**DATES:** Comments must be received in writing by August 22, 1995.

**ADDRESSES:** Send written comments to Director, Minerals and Geology Management Staff (2800—AUD Bldg, 4 CEN), Forest Service, USDA, PO Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rule in the office of the Director, Fourth floor, Central Wing, Auditors Building, 201 Fourteenth Street SW., Washington, DC, between the hours of 8:30 am and 4:30 pm. Those wishing to inspect comments are encouraged to call (202) 205-1535 ahead of time to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Sam Hotchkiss, Minerals and Geology Management Staff, (202) 205-1535.

**SUPPLEMENTARY INFORMATION:** The Smith River National Recreation Area (SRNRA) was established by the Smith River National Recreation Area Act of 1990 (the Act) (16 U.S.C. 460bbb *et seq.*). The purposes of the Act are to ensure, “\* \* \* the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River Watershed’s outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural \* \* \*” In order to meet the purposes of the Act, Congress directed the Forest Service to administer the SRNRA to, among other things, provide for a broad range of recreation uses and improve fishery and water quality. Congress prohibited mining subject to valid existing rights and limited extraction of common

variety mineral materials within the SRNRA to situations where the material extracted is used for construction and maintenance of roads and other facilities within the SRNRA and the excluded areas.

The SRNRA consists of approximately 300,000 acres of National Forest System lands in the Six Rivers National Forest in northern California. The Act divided the SRNRA into eight distinct management areas and specified a management emphasis for each management area. One of these eight areas is the Congressionally designated Siskiyou Wilderness which the Act specifies is to be administered pursuant to the provisions of the Wilderness Act.

The Act also designated the following rivers or river segments as components of the National Wild and Scenic Rivers System: (1) The Smith River; (2) the Middle Fork of the Smith River; (3) the North Fork of the Smith River; (4) the Siskiyou Fork of the Smith River; and (5) the South Fork of the Smith River. For these wild and scenic rivers, Congress directed that they be administered in accordance with the Act and the Wild and Scenic Rivers Act. In the event of a conflict between the provisions of these two statutes, Congress specified that provisions of the more restrictive statute apply. Finally, there are four areas that lie within the boundary of the SRNRA expressly excluded from the SRNRA.

Prospecting for minerals and mining has been an important part of the history of the Smith River area since the 1850’s. Mining operations within the Smith River area have historically been small-scale placer gold exploration and recovery operations within the bed and banks of the Smith River and its main tributaries. Panning, sluicing, and dredging operations occur predominantly during the summer months. In recent years, large, low-grade nickel-cobalt resources in the uplands of the Smith River watershed have attracted attention. Currently, there are approximately 5,000 mining claims covering about 30,000 acres of National Forest System lands within the SRNRA. In addition, there are outstanding mineral rights within the SRNRA. However, as of early June 1995, there are no operators conducting operations.

In section 8 of the Act, Congress addressed to what extent mineral operations would be authorized within the SRNRA. Section 8(a) of the Act withdrew all federal lands in the SRNRA from the operation of the mining, mineral leasing, and geothermal leasing laws subject to valid existing rights. Section 8(b) of the Act precluded the issuance of patents for locations and

claims made prior to the establishment of the SRNRA. Section 8(c) of the Act prohibited all mineral operations within the SRNRA except where valid existing rights are established. Section 8(c) also prohibited the extraction of common variety minerals such as stone, sand, and gravel except if it is used in the construction and maintenance of roads and other facilities within the SRNRA and the excluded areas. Finally, section 8(d) directed the Secretary to promulgate supplementary mineral regulations to promote and protect the purposes for which the SRNRA was designated.

**Provisions of the Proposed Rule**

This proposed rule has been prepared pursuant to section 8(d) of the Act and would supplement existing Forest Service regulations pertaining to locatable mineral operations in the SRNRA and provide new regulations pertaining to outstanding mineral rights on National Forest System lands in the SRNRA. Accordingly, mineral operations in the SRNRA would not only be subject to the provisions of this rule but also to the applicable provisions of 36 CFR parts 228, 251, and 261, among others. The proposed rule clearly states that if there is a conflict or inconsistency with provision of other applicable regulations, the provisions of this rule would take precedence to the extent permitted by law.

The proposed rule divides mineral operations in the SRNRA into three categories—operations under the General Mining Laws, operations pursuant to outstanding mineral rights, and extraction of common variety mineral materials. There are no reserved mineral rights in the SRNRA, consequently, there is no need to address this category of mineral ownership in the proposed rule. In the event of a land acquisition that results in reserved mineral rights in the SRNRA, the current regulations at 36 CFR 251.15 provide sufficient direction to govern this activity and to protect the values for which the SRNRA was established.

The proposed rule is specifically designed to supplement existing locatable mineral regulations at 36 CFR part 228, subpart A, and thus to provide a greater degree of protection for the natural resources in the SRNRA than would be provided under 36 CFR part 228, subpart A, alone. This additional protection would be accomplished in several ways: (1) By the expansion of the types of mineral operations subject to the requirement for a plan of operations; (2) by setting additional reclamation standards; and (3)

providing expedited suspension procedures where harm or damage to resources or to people is imminent or is occurring. These and the other provisions of the proposed rule would enable the Forest Service to administer mineral operations in the SRNRA consistent with the purposes for which the area was established.

#### **Section-by-Section Explanation of the Proposed Rule**

This proposed rule would establish a new subpart G, Smith River National Recreation Area, in part 292 of Title 36 of the Code of Federal Regulations. A section-by-section explanation of the proposed rule follows.

##### *Section 292.60, Purpose and scope.*

Paragraph (a) of the proposed § 292.60 explains that the purpose of this rule is to establish the rules and procedures for regulating mineral operations on National Forest System lands in the SRNRA so that they are in conformance with the Act. Paragraph (b) explains that rules and procedures in this rule apply only to National Forest System lands in the SRNRA. Paragraph (c) notes that this rule supplements existing Forest Service mineral regulations and that mineral operations on National Forest System lands in the SRNRA will continue to be subject to other applicable regulations governing these activities, particularly parts 228, 251, and 261 of this chapter. Paragraph (d) provides that, to the extent provided by law, the provisions of this rule shall take precedence over the provisions of other applicable regulations if there is a conflict or inconsistency between them. Finally, the last paragraph states that mineral operations approved or determined to be acceptable before the effective date of this proposed rule would continue to operate under the conditions of approval or acceptability including the specified period of operations. While there are no known operations at the time of publication of this proposed rule, that could change by the time of adoption of a final rule; thus, a transitional provision is needed.

*Section 292.61, Definitions.* This section defines special terms used in the proposed rule, some of which have been previously established or used in other rules or directives. However, the definitions included in the proposed § 292.61 define the terms as they are used in the proposed rule.

*Section 292.62, Plan of operations requirements.* Proposed § 292.62(a) would reduce the amount of discretion that the authorized officer currently has under 36 CFR 228.4(a) in determining whether a plan of operations or a notice of intent is required for a proposed

mineral operation. In addition to the requirements of 36 CFR 228.4 for submitting a plan of operations or a notice of intent, this proposed rule would require a plan of operations for some mineral operations that in other locations have been routinely conducted under a notice of intent. For example, to operate mechanical or mechanized equipment such as a suction dredge and sluice under the proposed rule would require a plan of operations. Given the special status of the SRNRA and the special statutory management direction for the area set by Congress, further regulation of these kinds of operations is necessary in order to maintain the resource values which prompted its designation.

The information requirements specified in proposed § 292.62(b) are the same information that has been routinely gathered by the Forest Service from Bureau of Land Management records, county records, and the operator when a plan of operations is submitted for an area withdrawn from disposition under the General Mining Laws. The burden of gathering this information is now being shifted from the Forest Service to the operator since this information should be readily available to the operator if it does exist. The requirement to have the operator submit this information as part of the plan of operations should decrease the cost and the amount of time it takes for the Forest Service to collect the information, and, thereby, to make a valid existing rights determination.

Proposed § 292.62(c) outlines the minimum operating elements that must be included in a plan of operations in the SRNRA. The information requirements found at 36 CFR 228.4(c) and 228.8 that are generally applicable for a plan of operations on National Forest System lands are also applicable to a plan of operations proposed within the SRNRA. In addition to these specific information requirements, this proposed rule for the SRNRA would require an operator, who is not the claim owner, to submit a copy of the authorization granting the operator permission to conduct operations on a mining claim owned by another party. The existing regulations at 36 CFR 228.8(g) allow the authorized officer several options as to when reclamation activities can occur. These activities can take place upon depletion of the mineral deposit or sometime during the operation when it is practicable or within 1 year after the operations have concluded, unless the authorized officer allows for a longer time. In contrast, reclamation activities for mineral operations under the proposed rule would occur concurrently

with the mineral operations whenever practicable. A requirement for concurrent reclamation would restore the land to another useful productivity in the shortest possible time. This requirement is essential to meet the statutory requirements to protect and preserve the values of the SRNRA.

##### *Section 292.63, Plan of operations.*

Proposed § 292.63 establishes the procedures by which a plan of operation for mineral operations on mining claims in the SRNRA would be processed.

Proposed § 292.63(a) explains that the first item considered by the authorized officer is whether the operator has furnished the information required by § 292.62(b) to help substantiate valid existing rights. For reasons of efficiency, it is logical for the authorized officer to first determine whether the operator has discovered a valuable ore deposit before undertaking a review of that part of the plan of operations which describes in detail how the deposit is to be developed. Following the initial review, the authorized officer must notify the operator in writing whether the information required in § 292.62(b) has been provided or whether additional information still needs to be provided. Once the information required by § 292.62(b) has been provided, the authorized officer notifies the operator when the valid existing rights determination is expected to be completed.

Proposed § 292.63(b) explains that if the determination finds valid existing rights have not been established, the authorized officer must notify the operator of the determination, the reasons for such a determination, and that the development activities as contemplated in the plan of operations cannot be conducted.

Proposed § 292.63(c) explains that if the determination finds valid existing rights have been established, the authorized officer notifies the operator that this determination has been made and that the Forest Service is beginning a review of the proposed plan of operations and specifies the date when the Forest Service expects to complete the review.

Proposed § 292.63(d) directs that upon completion of the review of that part of the plan of operations that contains the operational and reclamation elements specified in proposed § 292.62(c), the authorized officer must notify the operator in writing the results of the review as specified in § 228.5(a).

Proposed § 292.63(e) would limit the maximum period for which a plan of operations is approved to five years; for operations beyond 5 years, the operator

would have to submit a new plan in accordance with the specifications of § 292.62 of this proposed rule. The 5-year limit was chosen with large projects in mind. It would provide the authorized officer a more frequent and consistent approach to reviewing and updating operating conditions and ensuring the approved plan of operations remains consistent with the purposes for which the SRNRA was established. The 5-year limit will have little to no effect on the typical small-scale operation which last only one or two years from start to finish.

Proposed § 292.63(f) explains that substantive changes to an approved plan of operations must be reviewed and approved by the authorized officer. Under this paragraph, the operator has the option to submit a modification of an approved plan of operations, as provided for in 36 CFR 228.4(e), which clearly identifies the elements that are different from the previously approved plan of operations, or to submit a supplemental plan of operations pursuant to 36 CFR 228.4(d).

*Section 292.64, Plan of operations suspension.* Proposed § 292.64 authorizes the suspension of mineral operations under an approved plan of operations by the Forest Service authorized officer, if the operator is not in compliance with applicable law, regulations, or the terms and conditions of the approved plan. If an operator is found to be in noncompliance, the authorized officer must provide the operator with the reasons why the plan of operations is not in compliance with the laws, regulations, or the approved plan of operations and a reasonable time to abate the noncompliance. Generally, the operator will have at least 30 days after the notice of noncompliance is issued to correct the noncompliance before a suspension becomes effective. However, for those instances that present an imminent threat of harm to public health, safety, or the environment or where such harm is already occurring, the authorized officer can take immediate action to alleviate the threat or damage. This immediate suspension authority would allow the authorized officer to take steps to avoid or minimize the risk of harm to persons and the environment. Only after the harm or risk of harm has been abated would the authorized officer be required to notify the operator of the suspension and provide him or her with an opportunity to respond.

*Section 292.65, Operating plan requirements.* Proposed § 292.65 establishes that operating plans are required for mineral operations involving outstanding mineral rights;

that is, mineral rights owned by a party other than the surface owner at the time the surface estate was conveyed to the Federal government.

Proposed § 292.65(a) specifies that all individuals who want to exercise outstanding mineral rights in the SRNRA must submit an operating plan to the authorized officer at least 60 days in advance of surface occupancy.

Proposed § 292.65(b) specifies the information that an operator must provide in order to conduct mineral operations involving outstanding mineral rights where the surface estate is within the SRNRA. The operating plan must include information such as: (1) Evidence of ownership of the outstanding mineral rights, (2) the name of a designated field representative, (3) a map showing the location and dimension of all improvements, (4) a plan of operations including a schedule for construction and drilling, and (5) a soil erosion and sedimentation control plan.

*Section 292.66, Operating plan acceptance.* Proposed § 292.66 establishes the procedures by which operating plans in the SRNRA would be processed.

Proposed § 292.66(a) requires the authorized officer to review that portion of the operating plan related to substantiating outstanding mineral rights and notify the operator whether the information required to substantiate ownership of outstanding mineral rights has been provided to the Forest Service. If more information must be provided by the operator, the Forest Service would specify what is needed. If no more information is necessary for the Forest Service to complete its review, the authorized officer would indicate when the review is expected to be completed.

Proposed § 292.66(b) would specify that if outstanding mineral rights have not been verified, the authorized officer would notify the operator of the finding, the reasons for such a finding, and that the proposed operation cannot be conducted.

Proposed § 292.66(c) would specify that if outstanding mineral rights have been verified, the authorized officer would notify the operator that outstanding mineral rights have been verified, that the Forest Service would begin a review of the proposed operating plan, and the date when the Forest Service would expect to complete the review.

Proposed § 292.66(d) explains that the authorized officer will focus the review of the operating plan on whether the development activities proposed are consistent with the rights granted by the

deed, consistent with the SRNRA Management Plan, and whether the development activities will utilize the least amount of surface lands necessary for the operation.

Proposed § 292.66(e) would specify that upon completion of the review of the operating plan, the authorized officer would notify the operator of the findings. If the findings indicate that the proposed operating plan is consistent with the rights granted by the deed of conveyance, consistent with the SRNRA Management Plan, and uses only that portion of the surface as is absolutely necessary, the operating plan would be determined to be acceptable to the Forest Service. If the findings indicate that the proposed operating plan does not meet all three criteria listed at § 292.66 (d)(1) through (d)(3), the authorized officer must specify the reasons why the proposed operating plan does not meet the three listed criteria, propose changes to the operating plan to make it consistent with the three criteria, and attempt to negotiate the proposed changes with the operator.

Proposed § 292.66(f) would require that another operating plan be submitted if additional operations not included in an acceptable operating plan are proposed and that the process as outlined in § 292.66 would be followed. This provision is similar to that in § 228.5(c) and § 292.63(f) of the proposed rule.

By requiring parallel information and review of operations under outstanding mineral rights, the Forest Service can ensure that the values for which the SRNRA was established are protected, and operators can be assured that requirements for negotiating modifications to an operating plan are consistent with those required of other mineral programs.

*Section 292.67, Mineral material operations.* Proposed § 292.67 states that the disposal of common variety mineral materials would be governed by the existing mineral material regulations set forth at 36 CFR part 228, subpart C, and would require that proposals for the extraction and removal of common variety mineral materials within the SRNRA would be approved only if the material is used within the SRNRA or in one of the four excluded areas identified by the Act.

*Section 292.68, Indemnification.* This section would provide a means of protecting the United States Government from liability as a result of claims, demands, losses, or judgments caused by an operator's use or occupancy. In addition, the operator would be required to pay the costs

incurred by the Forest Service or other agencies resulting from noncompliance with an approved plan of operations or an agreed to operating plan.

Operators have not had to bear any of the costs incurred by the Forest Service to administer mineral projects on National Forest System lands even if operations were not being conducted under the conditions approved or agreed upon. Proposed § 292.68(c) would require those operators who do not abide by the conditions of an approved plan of operations or agreed upon operating plan to pay the costs incurred by the Forest Service resulting from noncompliance. It is believed that if an operator was required to reimburse the Forest Service for the costs incurred by the Forest Service resulting from noncompliance, there would be less noncompliance.

### Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this regulation is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act because of its limited scope and application. Also, this proposed rule does not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in local or foreign markets.

### Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The

agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made simultaneously with adoption of the final rule.

### Controlling Paperwork Burdens on the Public

Section 292.62(b) of this proposed rule specifies that in addition to the requirements of § 228.4, an operator must provide information to support valid existing rights as part of a plan of operations. Also, proposed § 292.65(b) requires those who wish to exercise outstanding mineral rights to submit an operating plan. The provisions of the proposed rule applicable to locatable minerals are supplementary to the existing information required by 36 CFR 228.4 which still apply for plans of operations. The provisions of the proposed rule applicable to outstanding mineral rights represent new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. Although the proposed rule requires the operator to submit more information with a plan of operations than applies under part 228, subpart A, the information is readily available to the operator and does not require additional effort or information that the operator does not already have to acquire to conduct operations.

In accordance with the rules of 5 CFR part 1320 and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service is requesting Office of Management and Budget review and approval of the information required to be addressed in a plan of operations or an operating plan. The agency estimates that an operator preparing a plan of operations will spend an average of 2 hours gathering and submitting the information related to valid existing rights and another 2 hours preparing and submitting the minimal information on the proposed operation for Forest Service review and approval. The agency also estimates that an operator preparing an operating plan will spend an average of 2 hours gathering and submitting the information related to outstanding mineral rights and the operation itself for acceptability. Reviewers who wish to comment on these information requirements should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of

Management and Budget, Washington, DC 20503.

### No Takings Implications

In compliance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, the takings implication of this proposed rule have been reviewed and considered. It has been determined that there is no risk of a taking.

### Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; (3) it would not require administrative proceedings before parties could file suit in court challenging its provisions.

### List of Subjects in Part 292

Administrative practice and procedure, Environmental protection, Mineral resources, National forests, National recreation areas, and Surety bonds.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 292 of chapter II of title 36 of the Code of Federal Regulations by adding a new subpart G to read as follows:

## PART 292—NATIONAL RECREATION AREAS

### Subpart G—Smith River National Recreation Area

Sec.

292.60 Purpose and scope.

292.61 Definitions.

#### Valid Existing Rights

292.62 Plan of operations supplementary requirements.

292.63 Plan of operations approval.

292.64 Plan of operations suspension.

#### Outstanding Mineral Rights

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292.66 Operating plan acceptance.

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292.67 Mineral material operations.

#### Indemnification

292.68 Indemnification.

### Subpart G—Smith River National Recreation Area

Authority: 16 U.S.C. 460bbb et seq.

#### § 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.

(e) *Applicability to ongoing operations.* Operations under an acceptable operating plan or an approved plan of operations in effect prior to the effective date of these regulations shall be for a limited time not to exceed 5 years. If operations have a shorter specified operating time, the shorter operating time shall remain in effect.

#### § 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 substance* means any substance so classified under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601).

*Operating plan* means the document submitted in writing by the owner or lessee, or a representative acting on behalf of an owner or lessee, to exercise outstanding mineral rights for minerals underlying National Forest System lands.

*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.

*Valid existing rights* for the purposes of this subpart means all mining claims

on National Forest system lands in the SRNRA which: (1) Were properly located prior to November 16, 1990, for a mineral that was locatable at that time; (2) were properly maintained thereafter under the applicable law; (3) were supported by a discovery of a valuable mineral deposit within the meaning of the general mining law prior to November 16, 1990, which discovery has been continuously maintained since that date; and (4) continue to be valid.

#### Valid Existing Rights

##### § 292.62 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 part, a plan of operations is required when a proposed operation within the SRNRA involves mechanical or mechanized equipment, including a suction dredge and sluice.

(b) *Information to support valid existing rights.* A plan of operations within the SRNRA must include at least the following information relevant to the existence of valid existing rights for the period from November 16, 1990, to the present except as otherwise specified:

(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 the affidavit of assessment work or notice 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 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) For lode and placer mining claims—

(i) An identification of the valuable mineral that has been discovered;

(ii) An identification of the site within the claims where the deposit has been discovered and exposed;

(iii) 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

(iv) Evidence of past and present sales of the valuable mineral; and

(7) For millsite claims, information proving that the millsite is associated

with a valid mining claim and that the millsite is used or occupied for mining or milling purposes.

(c) *Minimum information on proposed operations.* A plan of operations must include the information required at 36 CFR 228.4 (c)(1) through (c)(3) 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 protection requirements of 36 CFR 228.8 which includes reclamation. In addition, when practicable, reclamation will proceed concurrently with the mineral operation.

##### § 292.63 Plan of operations approval.

(a) 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 that one of the following circumstances apply:

(1) That sufficient information on valid existing rights has been provided and the date by which the forest Service expects to complete the valid existing rights determination; or

(2) That sufficient information on valid existing rights has not been provided and the specific information that still needs to be provided.

(b) If upon receipt, review, and verification of all requested information, the authorized officer finds that there is not sufficient evidence of valid existing rights, the authorized officer shall so notify the operator in writing, providing the reasons for the determination, and advise that the proposed mineral operation cannot be conducted.

(c) If upon receipt, review, and verification of all requested information, the authorized officer finds that there is sufficient evidence of valid existing rights, the authorized officer shall so notify the operator in writing, that a review of the proposed plan of operations is underway, and the date by which the review is expected to be completed. A prior determination that there is sufficient evidence of valid existing rights shall not bar the authorized officer from requesting the Department of the Interior to file a mineral contest against a mining claim if the authorized officer has a reasonable basis to question that determination.

(d) Upon completion of the review of the plan of operations, the authorized officer shall ensure that the minimum information required by § 292.62(c) has

been addressed and, pursuant to § 228.5(b) of this chapter, notify the operator in writing whether or not the plan of operations is approved.

(e) The period for which a plan of operations is approved may not exceed five years and must be explicitly identified by the authorized officer in giving notice of approval of a plan of operations.

(f) If an operator desires to make substantive changes in the type, scope, or duration of mineral operations from those described in an approved plan of operations and 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 for review and approval of the authorized officer pursuant to § 292.62 of this proposed rule.

#### **§ 292.64 Plan of operations suspension.**

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. Except as otherwise provided in this paragraph, prior to suspending operations, the authorized officer must first notify the operator in writing of the basis for the suspension and provide the operator with a 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. Generally, the authorized officer shall notify the operator not less than thirty days prior to the date of the proposed suspension; however, 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.

#### **Outstanding Mineral Rights**

##### **§ 292.65 Operating plan requirements.**

(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 for review at least 60 days in advance of surface occupancy.

(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 substances and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation, and the 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 method or strategy for their placement, control, isolation, or removal; and

(7) A reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations.

(i) The plan should provide, to the extent practicable, that reclamation proceed concurrently with the mineral operations and must show how public health and safety are maintained.

(ii) Reclamation measures to be identified and described in the plan include, but are 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.

(iii) The area of surface disturbance must be reclaimed to a condition or use that is consistent with the SRNRA Management Plan.

##### **§ 292.66 Operating plan acceptance.**

(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 in writing that one of the following circumstances apply:

(1) That sufficient information on ownership of the outstanding mineral rights has been provided and the date by

which the review is expected to be completed; or

(2) That sufficient information on ownership of outstanding minerals rights has not been provided and the specific information that still needs to be provided.

(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, the reasons for such a finding, and that the proposed mineral operation cannot be conducted.

(c) If the review shows outstanding mineral rights have been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have been verified, that review of the proposed operating plan is underway, and the date by which the review is expected to be completed.

(d) The authorized officer shall focus review of 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 SRNRA 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 that one of the following two circumstances apply.

(1) The operating plan meets the criteria of paragraphs (d)(1) through (d)(3) of this section, and, therefore, the Forest Service has no objections to commencement of operations and that the Forest Service intends to monitor operations to ensure that operations conform to the operating plan; or

(2) The operating plan does not meet all of the criteria in paragraphs (d)(1) through (d)(3) of this section and the reasons why the operating plan does not meet the criteria. In this event, the authorized officer shall propose changes to the operating plan and attempt to negotiate modifications that will enable the operating plan to meet the criteria in paragraphs (d)(1) through (d)(3) of this section.

(f) To conduct mineral operations beyond those described in an acceptable operating plan, the owner or lessee must submit in writing an amended operating plan to the authorized officer at the earliest practicable date. The authorized officer shall have at least 60 days in which to review and respond to a proposed amendment before the new operations begin. The review will be conducted in accordance with



paragraphs (d)(1) through (d)(3) of this section.

### Mineral Materials

#### § 292.67 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 and the four areas identified by the Act that are within the exterior boundaries of the SRNRA but are not classified as part of the SRNRA.

### Indemnification

#### § 292.68 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:

(a) Injury, loss, or damage, including fire suppression costs, which the United States incurs as a result of the mineral operations;

(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 mineral operations; and

(c) Cost incurred by the United States for any action resulting from noncompliance with an approved plan of operations or activities outside a mutually agreed to operating plan.

Dated: June 9, 1995.

**David G. Unger,**  
Associate Chief.

[FR Doc. 95-15360 Filed 6-22-95; 8:45 am]

BILLING CODE 3410-11-M

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Chapter I

[FRL-5226-9]

#### Notice of Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Change in dates of FACA Committee Meeting—Negotiated

Rulemaking on Small Nonroad Engine Regulations.

**SUMMARY:** On June 9, 1995, (60 FR 30506) EPA announced the next meeting of the Advisory Committee to negotiate the Phase II rule to reduce air emissions from small nonroad engines. The meeting was originally scheduled to start on June 27, 1995 at 10:00 am. The meeting will now start the next day, on June 28, 1995. The meeting will still end at 4:00 pm on June 27, 1995.

**DATES:** The committee will now meet on June 28, 1995 from 10:00 a.m. to 5:00 p.m. and on June 29, 1995 from 8:00 a.m. to 4:00 p.m.

**ADDRESSES:** The location of the meeting will still be the Courtyard by Marriott, 3205 Broadwalk, Ann Arbor, MI 48108; phone: (313) 995-5900.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information on the substantive matters of the rule should contact Lisa Snapp, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, MI 48108; (313) 668-4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W. Washington, DC 20460, (202) 260 260-5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501 (505) 982-9805.

Dated: June 20, 1995.

**Deborah Dalton,**  
Designated Federal Official.

[FR Doc. 95-15551 Filed 6-22-95; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[IA-15-1-6829b; FRL-5210-6]

#### Approval and Promulgation of Implementation Plans; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the state of Iowa. The state's request for a revision to the SIP includes provisions for enhanced monitoring, special requirements for nonattainment areas, and adoption of EPA definitions. These revisions fulfill Federal regulations which strengthen maintenance of established air quality standards.

In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments must be received on or before July 24, 1995.

**ADDRESSES:** Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Christopher D. Hess at (913) 551-7213.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: May 2, 1995.

**Dennis Grams,**  
Regional Administrator.

[FR Doc. 95-15237 Filed 6-22-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Parts 52 and 70

[CA 147-1-6995-b; FRL-5216-4]

#### Clean Air Act Proposed Approval of Title V Operating Permits Program Revisions; Proposed Approval of Amended Synthetic Minor Operating Permit Program as a State Implementation Plan Revision; Bay Area Air Quality Management District, California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On November 29, 1994, EPA proposed to grant interim approval to the title V operating permits program and full approval to the synthetic minor operating permit program submitted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) for the purpose of complying with title V of the Clean Air Act (Act) in the case of the former, and for creating federally enforceable limits on potential to emit in the case of the latter. Bay Area has since revised the two