

(2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.

**§ 204.215 Are the information collection requirements in this subpart approved by the Office of Management and Budget?**

OMB has approved the information collection requirements contained in this subpart under 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 1010-0155. See 30 CFR part 210 for details concerning your estimated reporting burden and how you may comment on the accuracy of the burden estimate.

[FR Doc. 04-20560 Filed 9-10-04; 8:45 am]

BILLING CODE 4310-MR-P

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 292**

RIN 0596-AC00

**Sawtooth National Recreation Area—Private Lands; Increasing Residential Outbuilding Size**

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department is adopting, as final, regulations that revise the building standard for residential outbuildings within the Sawtooth National Recreation Area in Idaho. This final rule provides that not more than two outbuildings could be constructed with each residence for an aggregate square foot area of the outbuildings not to exceed 850 square feet from the current 400-square-foot standard, and limits such outbuildings to one story. This regulation also allows residents to construct two-car garages and increase indoor storage areas to protect personal property and equipment, thereby reducing the need for unprotected and unsightly outdoor storage.

**DATES:** *Effective Date:* This final rule is effective October 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Stephens, Recreation, and Heritage Resources Staff, Forest Service, USDA, (202) 205-1701; or Ed Waldapfel, Public Affairs Officer, Sawtooth National Forest (208) 737-3219.

**SUPPLEMENTARY INFORMATION:** The Sawtooth National Recreation Area (SNRA) in Idaho on the Sawtooth National Forest was created when

Congress passed Public Law 92-400 in 1972 to assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and the enhancement of recreational values. The act directed the Secretary of Agriculture to develop regulations setting standards for the use, subdivision, and development of privately owned property within the boundaries of the recreation area. The current regulations at Title 36 of the Code of Federal Regulations, part 292, subpart C (36 CFR part 292, subpart C), were adopted in 1974 (39 FR 11544) and were amended in 1976 and 1989 (41 FR 29379, 54 FR 3368). Section 292.16(e)(2)(ii) sets out a residential building standard providing that each residence on private land within the SNRA may have not more than two outbuildings at an aggregate area not to exceed 400 square feet.

The act establishing the SNRA recognizes that the Secretary may from time to time amend these regulations. The SNRA regulations at section 292.14(b) require that any amendment to the regulations shall include publication of a notice of a proposed rulemaking in the **Federal Register** to provide interested persons the opportunity to comment before adoption of a final rule. The Forest Service promulgated a proposed rule and requested public comment on April 22, 2004 (69 FR 21796).

The Forest Service proposed to increase the residential building standard for the two allowable outbuildings to 850 square feet and to limit such outbuildings to one story. The agency previously received numerous comments from the public indicating that the current residential outbuilding size standard is inadequate and supporting the need to increase this size standard. These comments were received in response to the environmental assessment prepared in 2000 for proposed revision of the Sawtooth National Forest land and resource management plan.

This increase in the standard for the maximum square footage of the two allowable residential outbuildings allows the private landowners to construct two-car garages and increase indoor storage areas to protect personal property and equipment, thereby reducing the need for unprotected and unsightly outdoor storage.

**Summary of Public Comments and the Department's Responses**

**General Comments:** The proposed rule was published in the **Federal Register** on April 22, 2004, for a 60-day public comment period (69 FR 21796).

In addition, to the **Federal Register** notice, a news release was distributed to 39 local and regional media outlets, organizations and elected officials. A personal postcard was mailed to more than 450 private landowners within the Sawtooth National Recreation Area. The Forest Service received 9 comments on the proposed rule. Comments were received by the following: 5 individuals, 2 organizations, 1 agency and 1 business. In general, all respondents were supportive of the proposed rule. Respondents recognized the need for a limited increase in the size of outbuildings within the Sawtooth National Recreation Area.

**Response:** The Department does not intend to make any revisions to the proposed rule. Therefore, the rule, as proposed, is being adopted as final.

**Comment on Enforcement of Outbuilding Standards:** One respondent expressed concern that the current regulation for outbuildings was not adequately enforced over the last 20 years.

**Response:** The Forest Service is responsible for enforcement of the new regulation. The Forest Service remains committed to enforce the new regulation to protect the scenic integrity of the Sawtooth NRA.

**Comment on working with local counties:** One respondent stated that there is a need to work with the local counties for enforcement of the new regulation.

**Response:** The Forest Service recognizes the need to work with the local communities in enforcement of the new regulation. The Forest Service will be working with the local county assessors office to inform landowners about the new regulations.

**Comment on outdoor storage for equipment:** One respondent expressed concern about storage of outdoor recreation equipment. The respondent is concerned that the new regulation will not address some additional outdoor storage needs.

**Response:** The Department believes that this new regulation will address the respondent's concern about storage of outdoor recreation equipment by providing additional space for private landowners.

**Comment on property with current scenic easements:** One respondent expressed concern about whether or not property owners with existing scenic easements will be covered under the new regulation.

**Response:** The Department believes that language used in the property owners existing scenic easement will determine whether or not these property owners with existing scenic

easements are covered by this regulation.

### Regulatory Certifications

#### *Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is not a significant rule. This final rule would 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 final rule would not interfere with an action taken or planned by another agency, nor raise new legal or policy issues. Finally, this rule would 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 final rule is not subject to OMB review under Executive Order 12866.

#### *Proper Consideration of Small Entities*

This final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final rule would not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This final rule imposes minimal additional requirements on the affected public, which includes the owners of private property and residences within the Sawtooth National Recreational Area. The increase of the allowable outbuilding size to 850 square feet is responsive to comments already received from the affected public stating that the current allowable square footage under the existing rule is inadequate. These comments were received in response to an environmental assessment prepared in 2000 for the proposed amendment of the Sawtooth National Forest land and resource management plan. The changes are necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

#### *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" that do not significantly affect the quality of the human environment. This final rule provides additional storage for residential outbuildings on private lands within the Sawtooth National Recreation Area. The agency's assessment is that this final 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. Furthermore, public comments indicating that the current 400-square-foot limit is inadequate were previously received in response to an environmental assessment prepared in 2000 for the proposed amendment of the Sawtooth National Forest land and resource management plan.

#### *No Takings Implications*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the final rule does not pose the risk of a taking of private property.

#### *Federalism*

The agency has considered this final rule under the requirements of Executive Order 13132, Federalism, and has concluded that the final rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

#### *Consultation and Coordination With Indian Tribal Governments*

This final rule, which is applicable only to private lands within the Sawtooth National Recreation Area, does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with tribes is not required.

#### *Energy Effects*

This final rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive order.

#### *Controlling Paperwork Burdens on the Public*

This final rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### *Unfunded Mandates Reform*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule does not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### *Civil Justice Reform*

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. After adoption of this rule as final, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule would be preempted, (2) no retroactive effect would be given to this rule; and (3) this final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

#### **List of Subjects in 36 CFR Part 292**

Mineral resources, Recreation and recreation areas.

■ Therefore, for the reasons set forth in the preamble, the USDA Forest Service amends 36 CFR part 292, subpart C as follows:

**PART 292—NATIONAL RECREATION AREAS****Subpart C—Sawtooth National Recreation Area—Private Lands**

■ 1. The authority citation for subpart C continues to read as follows:

**Authority:** Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

■ 2. Amend § 292.16 by revising paragraph (e)(2)(ii) to read as follows:

**§ 292.16 Standards.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(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.

\* \* \* \* \*

Dated: September 7, 2004.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 04–20592 Filed 9–10–04; 8:45 am]

**BILLING CODE 3410–11–P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency****44 CFR Parts 201 and 206**

**RIN 1660–AA17**

**Hazard Mitigation Planning and Hazard Mitigation Grant Program**

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim rule.

**SUMMARY:** This rule provides State and Indian tribal governments with a mechanism to request an extension to the date by which they must develop State Mitigation Plans as a condition of grant assistance. FEMA regulations outline the requirements for State Mitigation Plans, which must be completed by November 1, 2004 in order to receive FEMA grant assistance. This interim rule allows FEMA to grant justifiable extensions, in extraordinary circumstances, for State and Indian tribal governments of up to six months, or no later than May 1, 2005. In addition, this interim rule allows mitigation planning grants provided through the Pre-Disaster Mitigation

(PDM) program to continue to be available to State, Indian tribal, and local governments after November 1, 2004.

**DATES:** *Effective Date:* September 13, 2004.

*Comment Date:* We will accept written comments through November 12, 2004.

**ADDRESSES:** Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington DC 20472, (facsimile) 202–646–4536, or (e-mail) [FEMA-RULES@dhs.gov](mailto:FEMA-RULES@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Karen Helbrecht, Risk Reduction Branch, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472, (phone) 202–646–3358, (facsimile) 202–646–3104, or (e-mail) [karen.helbrecht@dhs.gov](mailto:karen.helbrecht@dhs.gov).

**SUPPLEMENTARY INFORMATION:****Introduction**

On February 26, 2002, FEMA published an interim rule at 67 FR 8844 implementing Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under Section 104 of the Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106–390. This identified the requirements for State, tribal, and local mitigation plans. On October 1, 2002, FEMA published a change to that rule at 67 FR 61512, extending the date that the planning requirements take effect. The October 1, 2002 interim rule stated that by November 1, 2004, FEMA approved State Mitigation Plans were required in order to receive non-emergency Stafford Act assistance, and local mitigation plans were required in order to receive mitigation project grants. The critical portion of this interim rule provides a mechanism for Governors or Indian tribal leaders to request an extension to the date that the planning requirements take effect for State level mitigation plans. This interim rule allows extensions up to May 1, 2005 to States or Indian tribal governments who submit the necessary justification.

While all States and many Indian tribal governments have been working on the required State Mitigation Plans, and many have been very successful, a few have encountered extraordinary difficulties in meeting the November 1, 2004 deadline. Due to the significant implications of not having an approved plan, FEMA has decided to provide an option for States and Indian tribal

governments that may not be able to meet the deadline, in order to allow all States to develop effective Mitigation plans. The option allows the Governor or Indian tribal leader to ask FEMA for an extension. A Governor or Indian tribal leader would be required to submit a written request to FEMA for the extension. The written request would include the justification for the extension; the reasons the plan has not been completed; the amount of additional time needed to complete the plan; and a strategy for completing the plan. FEMA would review each request, and could grant up to a six-month extension. However, the deadline would not be later than May 1, 2005. Governors or Indian tribal leaders could request this extension at any time after publication of this interim rule.

In addition, the current rule requirement states that States, or Indian tribal governments who choose to apply directly to FEMA, must have an approved mitigation plan by November 1, 2004 to be eligible for planning or project grant funding under the Pre-Disaster Mitigation (PDM) program. This rule change allows PDM planning grants to continue to be available to States and Indian tribal governments who do not have a FEMA approved mitigation plan. Local governments, and Indian tribal governments acting as subgrantees, continue to be eligible for PDM planning grants under the current requirement. Mitigation planning is the foundation to saving lives, protecting properties, and developing disaster resistant communities. The PDM program is the primary mechanism that provides grant assistance for mitigation planning. State and Indian tribal governments will be able to apply for a PDM planning grant in order to develop or update their mitigation plan which, when approved by FEMA, will maintain their eligibility for non-emergency Stafford Act assistance.

Finally, this interim rule makes technical and conforming amendments to other sections of FEMA regulations affected by the provision of Part 201 Mitigation planning, and adjusts the general major disaster allocation for the Hazard Mitigation Grant Program (HMGP) from 15 percent to 7½ percent to be consistent with a recent statutory amendment.

FEMA encourages comments on this interim rule.

**Administrative Procedure Act Statement**

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act,