36
Parts 200 to 299
Revised as of July 1, 2009

Parks, Forests, and Public Property

Containing a codification of documents of general applicability and future effect

As of July 1, 2009

With Ancillaries

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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.
Explanation

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.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 2009), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

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.

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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.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 2001, consult either the List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, or 1986–2000, published in eleven separate volumes. For the period beginning January 1, 2001, a “List of CFR Sections Affected” is published at the end of each CFR volume.

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

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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.
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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.
July 1, 2009.
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, 2009.

For this volume, Bonnie Fritts was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.
Title 36—Parks, Forests, and Public Property

(This book contains parts 200 to 299)

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ABBREVIATIONS USED IN THIS CHAPTER:
CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

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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. 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.

(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 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, watersheds, 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
- 8 Land Utilization Projects
- 20 Research and Experimental Areas
- 33 Other Areas

The National Forest System includes:

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

(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 Service-wide management of systems and computer applications.


§ 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

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<td>Sansome St., San Francisco, CA</td>
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<td>California</td>
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<td></td>
<td>Angeles</td>
<td>Arcadia</td>
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<tr>
<td></td>
<td>Cleveland</td>
<td>San Diego</td>
</tr>
<tr>
<td></td>
<td>Eldorado, except the Lake Tahoe</td>
<td>Placerville</td>
</tr>
<tr>
<td></td>
<td>management unit</td>
<td></td>
</tr>
</tbody>
</table>
### NATIONAL FORESTS BY REGION—Continued

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

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§ 200.2
Forest Service, USDA § 200.3

NATIONAL FORESTS BY REGION—Continued

<table>
<thead>
<tr>
<th>State in which forest is located</th>
<th>National forest administration unit</th>
<th>Headquarters location of forest supervisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnesota</td>
<td>Ottawa</td>
<td>Ironwood</td>
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<tr>
<td></td>
<td>Chippewa</td>
<td>Cass Lake</td>
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<td></td>
<td>Superior</td>
<td>Duluth</td>
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<td></td>
<td>Mark Twain</td>
<td>Rolla</td>
</tr>
<tr>
<td>Missouri</td>
<td>White Mountain</td>
<td>Laconia, NH</td>
</tr>
<tr>
<td>New Hampshire and Maine</td>
<td>Allegheny</td>
<td>Warren</td>
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<tr>
<td>Vermont</td>
<td>Green Mountain</td>
<td>Rutland</td>
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<td>West Virginia</td>
<td>Monongahela</td>
<td>Elkins</td>
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<td></td>
<td>Chequamegon</td>
<td>Park Falls</td>
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<td></td>
<td>Nicolet</td>
<td>Rhinelander</td>
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<tr>
<td>Region 10, Alaska Region</td>
<td>Chugach</td>
<td>Anchorage</td>
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<td>Tongass:</td>
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<tr>
<td></td>
<td>Chatham area</td>
<td>Silka</td>
</tr>
<tr>
<td></td>
<td>Ketchikan area</td>
<td>Ketchikan</td>
</tr>
<tr>
<td></td>
<td>Sitkine area</td>
<td>Petersburg</td>
</tr>
</tbody>
</table>

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, S Radnor Corporate Center, Suite 200, P.O. Box 6775, Radnor, PA 19067-4665.
Pacific Northwest Research Station—333 S.W. 1st Avenue, P.O. Box 3800, 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 80526-2036.
Southern Research Station—200 Weaver Boulevard, P.O. Box 2690, 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 00926-2500.

STATE AND PRIVATE FORESTRY AREA OFFICE
Director, Northeastern Area—100 Matsonford Road, P.O. Box 6775, Radnor, PA 19067-4665.

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


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.

(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
§ 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.


§ 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.

§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).

§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.

§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 and legal use restrictions, encumbrances, and access rights on land or interests in land in the National Forest System.

(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).


Forest Service, USDA

(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 as are held at an administrative unit shall be available for public inspection.

<table>
<thead>
<tr>
<th>§ 211.5</th>
<th>PART 211—ADMINISTRATION</th>
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</thead>
<tbody>
<tr>
<td>Subpart A—Cooperation</td>
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§ 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:

(i) 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.


Subpart B [Reserved]

PART 212—TRAVEL MANAGEMENT

Subpart A—Administration of the Forest Transportation System

Sec. 212.1 Definitions.
§ 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 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.

Designated road, trail, or area. A National Forest System road, a National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to §212.51 on a motor vehicle use map.


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.
§ 212.1  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 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 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.

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 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...
§ 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.

§ 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.

§ 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.

§ 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 forest 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.
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 practical 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.

§ 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 lands and easements 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.
§ 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
§ 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.


(i) By consent of the owner of the easement,

(ii) By condemnation, or

(iii) Upon abandonment after nonuse by the owner of the easement for a period of 5 years. Before any easement is terminated for nonuse or abandonment, the owner of the easement must be given notice and, upon his request made within 60 days after receipt of the notice, a hearing in accordance with the provisions of 36 CFR part 211, subpart B.

§ 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 co-operative 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 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 covenants unrelated to the road use, or which seek or might
§ 212.10

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


§ 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.


§§ 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


S O U R C E : 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
§ 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

§ 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]
§212.53 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 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—Use by Over-Snow Vehicles


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

§ 212.80 Purpose, scope, and definitions.

The purpose of this subpart is to provide for regulation of use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands. For definitions of terms used in this subpart, refer to §212.1 in subpart A of this part.

§ 212.81 Use by over-snow vehicles.

(a) General. Use by over-snow vehicles on National Forest System roads and National Forest System trails in areas on National Forest System lands may be allowed, restricted, or prohibited.

(b) Exemptions from restrictions and prohibitions. The following uses are exempted from restrictions and prohibitions on use by over-snow vehicles:

(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) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations.

(c) Establishment of restrictions and prohibitions. If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions. In establishing restrictions or prohibitions on use by over-snow vehicles, 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).

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:

<table>
<thead>
<tr>
<th>State in which grassland is located</th>
<th>National grassland</th>
<th>Counties where located</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>Butte Valley</td>
<td>Siskiyou.</td>
</tr>
<tr>
<td>Colorado</td>
<td>Pawnee</td>
<td>Baca, La Animas, Otero.</td>
</tr>
<tr>
<td>Idaho</td>
<td>Curlew</td>
<td>Oneyda, Power.</td>
</tr>
<tr>
<td>Kansas</td>
<td>Comanche</td>
<td>Morton, Stevens.</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Ogallla</td>
<td>Dawes, Sioux.</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Kiowa</td>
<td>Collins, Harding, Mora, Union.</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Cedar River</td>
<td>Grant, Sioux.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Sheyenne</td>
<td>Ransom, Richland.</td>
</tr>
<tr>
<td>Texas</td>
<td>Little Missouri</td>
<td>Billings, Golden Valley, McKenize, Slipher.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Oklahoma - Texas.</td>
<td>Cimarron.</td>
</tr>
<tr>
<td>Oregon</td>
<td>Rita Blanca</td>
<td>Roger Mills (Okla.), Hemphill (Tex.).</td>
</tr>
<tr>
<td>Oregon</td>
<td>Black Kettle</td>
<td>Custer, Fall River, Jackson, Pennington.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Crooked River</td>
<td>Jefferson.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Grand River</td>
<td>Jones, Lyman, Stanley.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Fort Pierre</td>
<td>Montague, Wise.</td>
</tr>
<tr>
<td>Texas</td>
<td>Lyndon B. Johnson</td>
<td>Dallas.</td>
</tr>
<tr>
<td>Texas</td>
<td>Rita Blanca</td>
<td>Fannin.</td>
</tr>
<tr>
<td>Texas</td>
<td>Caddo</td>
<td>Gray.</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Thunder Basin</td>
<td>Campbell, Converse, Crook, Nodrara, Weston.</td>
</tr>
</tbody>
</table>

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 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

§ 215.1 Purpose and scope.

(a) Purpose. The rules of this part have two purposes. First, this part establishes a process by which the public receives notice and is provided an opportunity to comment on proposed actions for projects and activities implementing a land and resource management plan prior to a decision by the Responsible Official. Second, this part establishes an appeal process and identifies the decisions that may be appealed, who may appeal those decisions, the responsibilities of the participants in an appeal, and the procedures that apply for the prompt disposition of the appeal.

(b) Scope. The notice of proposed actions and opportunity to comment provides an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land and resource management plans. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence the agency’s project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA) implementing regulations and procedures at 40 CFR parts 1500-1508, the National Forest Management Act (NFMA) implementing regulations at part 219, and the pertinent requirements at part 216 regarding notice and comment for certain Forest Service Manual (FSM) directives. The appeal process is available to those who submit substantive comments during the comment period. Appeal disposition constitutes the final administrative determination of the United States Department of Agriculture. Throughout this part, references to decisions which affect an authorized use or occupancy of National Forest System lands and meet all other applicable requirements of this part, are subject to appeal by the holders of such authorizations under either this part or part 251, subpart C, but not under both parts. In addition, certain other parties meeting requirements of §251.86 may also be eligible to appeal projects under either this part or part 251, subpart C, but not under both parts.

§ 215.2 Definitions.

Address—An individual’s or organization’s current physical mailing address. An e-mail address is insufficient for identification.

Appeal—The written document filed with an Appeal Deciding Officer by someone seeking review of a decision.

Appeal Deciding Officer—The Secretary of Agriculture (USDA) or the USDA or Forest Service designee having the delegated authority and responsibility to render a decision on an appeal filed under this part. The Appeal Deciding Officer is the next higher-level supervisor of the Responsible Official.
§ 215.2

Appeal disposition—Either a written appeal decision or written notification in cases where the original decision is the final agency action and no appeal decision is issued.

Appeal period—The 45-calendar-day period following publication of the legal notice in the newspaper of record of a decision during which an appeal may be filed with the Appeal Deciding Officer.

Appeal record—The information upon which review of an appeal is conducted, consisting of the transmittal letter, the appeal, decision documentation, the legal notice of decision, the Responsible Official’s documentation of the informal disposition meeting, and the Appeal Reviewing Officer’s recommendation.

Appeal Reviewing Officer—A Forest Service line officer or USDA official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on disposition of the appeal.

Appellant—An individual or organization filing an appeal who submitted substantive oral or written comments during the comment period on a specific project or activity.

Categorically excluded (CE)—Proposed actions, which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; FSH 1909.15, Chapter 30).

Comment period—The 30-calendar-day period following publication of the legal notice in the newspaper of record of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part, except for projects requiring an EIS which follow CEQ procedures for notice and comment (40 CFR parts 1503 and 1506.30; FSH 1909.15, Chapter 30). 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.

Decision documentation—The Decision Notice (DN) or Record of Decision (ROD) and all relevant environmental and other analysis documentation and records, including all comment letters received, on which the Responsible Official bases a decision under appeal.

Decision Notice (DN)—A concise written record of a Responsible Official’s decision based on an environmental assessment and a Finding of No Significant Impact (FONSI) (40 CFR 1508.13; FSH 1909.15, Chapter 40).

Emergency situation—A situation on National Forest System (NFS) lands for which immediate implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety or natural resources on those NFS or adjacent lands; or that would result in substantial loss of economic value to the Federal Government if implementation of the decision were delayed.

Environmental Assessment (EA)—A concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (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 of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Finding of No Significant Impact (FONSI)—A document prepared by a Federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR 1508.13; FSH 1909.15, Chapter 40).

Forest Service line officer—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part.
Lead appellant—For appeals submitted with multiple names, or having multiple organizations listed, the appellant identified to represent all other appellants for the purposes of communication, written or otherwise, regarding the appeal. The use of the generic term “appellant” applies to lead appellant also.

Name—The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

National Forest System land—All lands, waters or interests therein administered by the Forest Service (§ 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 and resource management plans.

Projects and activities implementing a land and resource management plan—Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice (DN) or Record of Decision (ROD) by a Forest Service official.

Proposed action—A proposal made by the Forest Service that is a project or activity implementing a land and resource management plan on National Forest System lands and is subject to the notice and comment provisions of this part.

Record of Decision (ROD)—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

Responsible Official—The Forest Service employee who has the delegated authority to make and implement a decision subject to this part.

Substantive comments—Comments that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action and include supporting reasons for the Responsible Official to consider.

Transmittal letter—The Responsible Official’s letter transmitting the decision documentation. The letter shall include only an index of the transmitted documents and identification of those portions of the record that relate to the issues raised.

§ 215.3 Proposed actions subject to legal notice and opportunity to comment.

The legal notice (§ 215.5) and opportunity to comment procedures (§ 215.6) apply only to:

(a) Proposed projects and activities implementing land management plans (§ 215.2) for which an environmental assessment (EA) is prepared, except hazardous fuel reduction projects conducted under provisions of the Healthy Forests Restoration Act (HFRA), as set out at part 218, subpart A, of this title.

(b) Proposed projects and activities described in a draft environmental impact statement (DEIS) for which notice and comment procedures are governed by 40 CFR parts 1500 through 1508, except hazardous fuel reduction projects conducted under provisions of the HFRA, as set out at part 218, subpart A, of this title.

(c) Proposed non-significant amendments to a land and resource management plan (pursuant to the 1982 planning regulations) that are included as part of a decision on a proposed action for which an EA is prepared;

(d) A proposed action resulting in a revision of an EA based on consideration of new information or changed circumstances (FSH 1909.15, Chapter 10, section 18) as provided for in § 215.18(b)(1); and

(e) Proposed research activities to be conducted on National Forest System lands.


§ 215.4 Actions not subject to legal notice and opportunity to comment.

The procedures for legal notice (§ 215.5) and opportunity to comment (§ 215.6) do not apply to:

(a) Projects and activities which are categorically excluded from documentation in an environmental impact
§ 215.5 Legal notice of proposed actions.

(a) Responsible Official. The Responsible Official shall:

(1) Provide notice of the opportunity to comment on a proposed action implementing the land and resource management plan.

(2) Determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment.

(3) Promptly mail notice about the proposed action to any individual or organization who has requested it and to those who have participated in project planning.

(4) Publish a legal notice of the opportunity to comment on a proposed action as provided for in paragraph (b)(2).

(5) Accept all written and oral comments on the proposed action as provided for in §215.6(a)(4).

(6) Identify all substantive comments.

(b) Content of legal notice—(1) Proposed amendments to, revision of, or adoption of land and resource management plans that are made separately from any proposed actions, and which are therefore subject to either the objection process of §219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(2) Proposed amendments to, revision of, or adoption of land and resource management plans that are made separately from any proposed actions, and which are therefore subject to either the objection process of §219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(3) Projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500–1508 and the National Forest Management Act and the implementing regulations at 36 CFR part 219;

(4) Determinations by the Responsible Official, after consideration of new information or changed circumstances, that a revision of the EA is not required (1909.15, Chapter 10, section 18); and

(5) 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 (part 216).

(f) Hazardous fuel reduction projects conducted under the provisions of section 105 of the HFRA, except as provided in part 218, subpart A, of this title.

(g) Determinations by the Responsible Official, after consideration of new information or changed circumstances, that a revision of the EA is not required (1909.15, Chapter 10, section 18); and

(h) 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 (part 216).

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must either sign the comments or verify identity upon request.

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

(ii) Instructions on how to obtain additional information on the proposed action.

(b)(2) Publication. (i) Through notice published annually in the FEDERAL REGISTER, each Regional Forester shall advise the public of the newspaper(s) of record utilized for publishing legal notices required by this part.

(ii) Legal notice of the opportunity to comment on a proposed action shall be published in the applicable newspaper of record identified in paragraph (b)(2)(i) 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 comments on a proposed action 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 comments on a proposed action that is analyzed and documented in a draft EIS.

§ 215.6 Comments on proposed actions.

(a) Opportunity to comment—(1) Time period for submission of comments. (i) Environmental Assessment. Comments on the proposed action shall be accepted for 30 days following the date of publication of the legal notice.

(ii) Draft Environmental Impact Statement. Comments on the proposed action shall be accepted for 45 days following the date of publication in the FEDERAL REGISTER pursuant to 40 CFR parts 1500-1508.

(iii) 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).

(iv) The time period for the opportunity to comment on environmental assessments shall not be extended.

(ii) 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.).

(i) Environmental Assessment (EA). The 30-day comment period for proposed actions to be analyzed and documented in an EA begins on the first day after publication of the legal notice.

(ii) Draft Environmental Impact Statement (EIS). The 45-day comment period for proposed actions that are analyzed and documented in a draft EIS begins on the first day after publication of the NOA in the FEDERAL REGISTER.

(3) Requirements. Individuals and organizations wishing to be eligible to appeal must provide the following:

(i) Name and address.

(ii) Title of the proposed action.

(iii) Specific substantive comments (§ 215.2) on the proposed action, along with supporting reasons that the Responsible Official should consider in reaching a decision.

(iv) Signature or other verification of identity upon request; identification of the individual or organization who authored the comment(s) is necessary for appeal eligibility.

(A) For appeals listing multiple organizations or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each organization and for each individual in the case of multiple names, to meet appeal eligibility requirements.

(B) Those using electronic means may submit a scanned signature. Otherwise another means of verifying the identity of the individual or organizational representative may be necessary for electronically submitted comments or comments received by telephone.

(v) Individual members of an organization must submit their own substantive comments to meet the requirements of appeal eligibility; comments received on behalf of an organization are considered as those of the organization only.

(vi) Oral comments must be provided at the Responsible Official’s office during normal business hours via telephone or in person, or if during non-business hours, must be at an official
agency function (such as a public meeting) which is designed to elicit public comment.

(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, e-mailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. on the 30th calendar day following publication of the legal notice for proposed actions 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 actions 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 electronically mailed 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 substantive written and oral comments submitted in compliance with paragraph (a).

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

(3) The Responsible Official shall document and date all oral comments received in response to the legal notice (§215.5) and place them in the project file.

§ 215.7 Legal notice of decision.

(a) The Responsible Official shall promptly mail the Record of Decision (ROD) or the Decision Notice (DN) and Finding of No Significant Impact (FONSI) to those who requested the decision document and those who submitted substantive comments during the comment period (§215.6).

(b) The Responsible Official shall publish a legal notice of any decision documented in a ROD or DN in the applicable newspaper of record (§215.5(b)(2)). The legal notice shall:

(1) Include the title of the project or activity and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the DN and FONSI or ROD.

(2) State that the decision is subject to appeal pursuant to 36 CFR part 215 and include the following:

(i) Name and address of the Appeal Deciding Officer with whom an appeal is to be filed. The notice shall specify a street, postal, fax, and e-mail address, the acceptable format(s) for appeals electronically filed, and the Appeal Deciding Officer's office business hours for those filing hand-delivered appeals.

(ii) A statement that the publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an appeal (§215.15(a)) and that those wishing to appeal should not rely upon dates or timeframe information provided by any other source. An actual date shall not be included in the legal notice.

(iii) A statement that an appeal, including attachments, must be filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate Appeal Deciding Officer (§215.8) within 45 days following the date of publication of the legal notice.

(iv) A statement indicating that individuals or organizations who submitted substantive comments during the comment period (§215.6) may appeal.

(v) A statement specifying, when applicable, that the Chief of the Forest Service, or a designee, has determined that an emergency situation exists (§215.10), and which portion of the project is covered by that determination as provided for in §215.10.

(vi) A statement indicating how many days following publication of the decision that implementation may begin (§215.9), including those portions covered by an emergency situation determination, if applicable (§215.10).
§ 215.9 Decision implementation.
(a) When no appeal is filed within the 45-day time period, implementation of the decision may begin on, but not before, the 15th business day following the date of appeal disposition (§215.2).
(b) Except for emergency situations (§215.10(c)), when an appeal is filed, implementation may occur on, but not before, the 15th business day following the date of appeal disposition (§215.2).
(c) In the event of multiple appeals of the same decision, the implementation date is controlled by the date of the last appeal disposition.

§ 215.10 Emergency situations.
(a) Authority. The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation (§215.2) exists, and they may delegate this authority only to the Deputy Chief for National Forest System and to the Regional Foresters. Persons acting in these positions may exercise this authority only when they are filling vacant positions and they have been formally delegated full acting authority for the positions. Persons acting in positions during temporary absences of the incumbents shall not be delegated this authority to make emergency situation determinations.
(b) Determination. The determination that an emergency situation exists shall be based on an examination of the relevant information. During the review, additional information may be requested.
(c) Implementation. When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:
(1) Immediately after publication (§215.7(b)) of a decision documented in a Decision Notice, for that portion of the decision determined to be an emergency.
(2) Immediately when documented in a Record of Decision, after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2), for that portion of the decision determined to be an emergency.
§ 215.11 Notification. The Responsible Official shall notify the public in the legal notice of the decision (§ 215.7) that the Forest Service made a determination that all or part of a project decision is an emergency situation.

§ 215.11 Decisions subject to appeal.

The following decisions are subject to appeal under this part:

(a) Decisions for projects and activities implementing land and resource management plans (§ 215.2) documented in a Record of Decision (ROD) or Decision Notice (DN), including those which contain a non-significant amendment to a land and resource management plan as a part of the decision;

(b) A new DN after revision of an environmental assessment (EA), or a new ROD after supplementation or revision of an environmental impact statement (EIS), pursuant to FSH 1909.15, Chapter 10, section 18. However, only that portion of the decision that is changed is subject to appeal.

(c) Decisions made in conjunction with other Federal agencies and meeting the requirements of preceding paragraph (a). However, only that portion of the decision made by the Forest Service affecting National Forest System lands (§ 215.2) is subject to appeal under this part.

(d) Decisions which affect the holders of a special use authorization or certain applicants for special use authorizations for use or occupancy of National Forest System lands (§ 215.2) is subject to appeal under this part.

(e) Projects or activities for which notice of the proposed action and opportunity to comment is published (§ 215.5) and

(1) No substantive comments expressing concerns or only supportive comments are received during the comment period for a proposed action analyzed and documented in an EA (§ 215.6); or

(2) No substantive comments expressing concerns or only supportive comments are received during the comment period for a draft EIS (40 CFR 1502.19), and the Responsible Official’s decision does not modify the preferred alternative identified in the draft EIS.

(f) Decisions for actions that have been categorically excluded from documentation in an EA or EIS pursuant to FSH 1909.15, Chapter 30, section 31.

(g) An amendment, revision, or adoption of a land and resource management plan that is made independent of a project or activity (subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000));

(b) Determination, with documentation, that a new decision is not needed following supplementation of an environmental impact statement (EIS) or revision of an environmental assessment (EA) pursuant to FSH 1909.15, Chapter 10, section 18.

(c) Preliminary findings made during planning and/or analysis processes on a project or activity. Such findings are appealable only upon issuance of a decision document.

(d) Subsequent implementing actions that result from the initial project decision that was subject to appeal.

(e) Projects or activities for which notice of the proposed action and opportunity to comment is published (§ 215.5) and

(1) No substantive comments expressing concerns or only supportive comments are received during the comment period for a proposed action analyzed and documented in an EA (§ 215.6); or

(2) No substantive comments expressing concerns or only supportive comments are received during the comment period for a draft EIS (40 CFR 1502.19), and the Responsible Official’s decision does not modify the preferred alternative identified in the draft EIS.

§ 215.12 Decisions and actions not subject to appeal.

The following decisions and actions are not subject to appeal under this part, except as noted:

(a) The amendment, revision, or adoption of a land and resource management plan that includes a project decision, except that the project portion of the decision is subject to this part. The amendment, revision, or adoption portion of a decision is subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000));

(h) Concurrences and recommendations to other Federal agencies.

(i) Hazardous fuel reduction projects conducted under provisions of the HFRA, as set out at part 218, subpart A, of this title.

§ 215.13 Who may appeal.

(a) Individuals and organizations who submit substantive written or oral comments during the 30-day comment period for an environmental assessment, or 45-day comment period for a draft environmental impact statement (§ 215.6, 40 CFR 1506.10; FSH 1909.15, Chapter 20), except as provided for in paragraph (c) of this section, may file an appeal. Comments received from an authorized representative(s) of an organization are considered those of the organization only; individual members of that organization do not meet appeal eligibility solely on the basis of membership in an organization; the member(s) must submit substantive comments as an individual in order to meet appeal eligibility.

(b) When an appeal lists multiple individuals or organizations, each shall meet the requirements of paragraph (a) of this section. Individuals or organizations that do not meet the requirements of paragraph (a) shall not be accepted as appellants.

(c) Federal agencies may not appeal.

(d) Federal employees, who otherwise meet the requirements of this part for filing appeals in a non-official capacity, shall 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 shall not be on official duty nor use government property or equipment in the preparation or filing of an appeal. Further, employees shall not incorporate information unavailable to the public, i.e. Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

§ 215.14 Appeal content.

(a) It is the appellant’s responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official’s decision should be reversed (paragraph (b)(6–9)).

(b) The appeal must be filed with the Appeal Deciding Officer § 215.8 in writing. At a minimum, an appeal must include the following:

1. Appellant’s name and address (§ 215.2), 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 appeal);

3. When multiple names are listed on an appeal, identification of the lead appellant (§ 215.2) and verification of the identity of the lead appellant upon request;

4. The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;

5. The regulation under which the appeal is being filed, when there is an option to appeal under either this part or part 251, subpart C (§ 215.11(d));

6. Any specific change(s) in the decision that the appellant seeks and rationale for those changes;

7. Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;

8. Why the appellant believes the Responsible Official’s decision failed to consider the substantive comments; and

9. How the appellant believes the decision specifically violates law, regulation, or policy.

(c) The Appeal Deciding Officer shall not process an appeal when one or more of the following applies:

1. An appellant’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.

2. The appellant has not provided a reasonable means of contact.

3. The decision cannot be identified.

4. The appeal is illegible for any reason, including those submitted electronically in a format different from that specified in the legal notice.

§ 215.15 Appeal time periods and process.

(a) Time to file an appeal. Written appeals, including any attachments, must be filed with the Appeal Deciding Officer within 45 days following the publication date of the legal notice of the decision in the newspaper of record (§ 215.7). It is the responsibility of appellants to ensure that their appeal is received in a timely manner.
§ 215.16 Computation of time periods.

(b) 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 (11:59 p.m.).

(2) The day after the publication of the legal notice of the decision in the newspaper of record (§ 215.7) is the first day of the appeal-filing period.

(3) The publication date of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file an appeal. Appellants should not rely on dates or timeframe information provided by any other source.

(c) Evidence of timely filing. When there is a question about timely filing of an appeal, timeliness shall be determined by:

(1) The date of the postmark, e-mail, fax, or other means of filing (for example, express delivery service) an appeal and any attachment;

(2) The time and date imprint at the correct Appeal Deciding Officer’s office on a hand-delivered appeal and any attachments; or

(3) When an appeal is electronically mailed, the appellant should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the appellant does not receive an automated acknowledgment of the receipt of the appeal, it is the appellant’s responsibility to ensure timely receipt by other means.

(d) Extensions. Time extensions, except as noted in paragraph (b) of this section, are not permitted.

(e) Other timeframes. Unless an appeal is resolved through the informal disposition process (§ 215.17), the following timeframes and processes shall apply:

(1) Transmittal of decision documentation. Within 15 days of the close of the appeal-filing period, the Responsible Official shall transmit the decision documentation to the Appeal Reviewing Officer including a list of those individuals or organizations who submitted substantive comments.

(2) Appeal disposition. Within 45 days following the end of the appeal-filing period, the Appeal Deciding Officer should render a written decision to the appellant(s) concerning their appeal. When an appeal decision is not rendered by day 45, the Appeal Deciding Officer shall notify the appellant(s) in writing that an appeal decision will not be issued (§ 215.18(b)).

(3) When an appeal decision is not issued within 45 days, the Responsible Official's decision is deemed the final agency action.

§ 215.16 Dismissal of appeal without review.

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

(1) The postmark on an appeal mailed or otherwise filed (for example, express mail service) or the evidence of the date sent on an e-mailed or faxed appeal is not within the 45-day appeal-filing period (§ 215.15).

(2) The time and date imprint at the correct Appeal Deciding Officer’s office on a hand-delivered appeal is not within the 45-day appeal-filing period (§ 215.15).

(3) The requested relief or change cannot be granted under law or regulation.

(4) The appellant has appealed the same decision under part 251 (§ 215.11(d)).

(5) The decision is not subject to appeal (§ 215.12).

(6) The individual or organization did not submit substantive comments during the comment period (§ 215.6).

(7) The Responsible Official withdraws the decision.

(8) The appeal does not provide sufficient information in response to § 215.14(b)(6) through (b)(9) for the Appeal Deciding Officer to render a decision.

(9) The appellant withdraws the appeal.

(b) Any additional information or attachment to an appeal that is not filed within the 45-day appeal-filing period shall not be considered with the appeal.

(c) The Appeal Deciding Officer shall give written notice to the appellant and the Responsible Official when an appeal is dismissed and shall give the reasons for dismissal.
§ 215.17 Informal disposition.

(a) Offer to meet. When an appeal is received, the Responsible Official, or designee, must contact the appellant and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after the Appeal Deciding Officer receives the appeal and the Responsible Official is notified. In the case of multiple names or organizations, it is the responsibility of the lead appellant (§215.2) to contact any other persons named in their appeal who may desire to participate in the informal disposition meeting. If the appellant(s) decline to meet, the Responsible Official shall so advise the Appeal Deciding Officer.

(b) Time and location of meeting. When an appellant agrees to meet, the initial meeting shall take place within 15 days after the closing date for filing an appeal (§215.15). The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor, Regional Forester, or the Chief is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) Meeting structure. Generally, the appellant(s) should be physically present at informal disposition meetings. If the appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. All meetings are open to the public.

(d) Outcome. After the informal disposition meeting, the Responsible Official shall notify the Appeal Deciding Officer in writing of the meeting participants and which of the following three outcomes occurred.

(1) An appellant and the Responsible Official reach agreement on disposition of all or a portion of an appeal. The appellant shall withdraw all or the agreed upon portion of the appeal by letter to the Appeal Deciding Officer within 15 days of the agreement. When the appellant does not withdraw the appeal in writing, formal review and disposition of the appeal shall continue.

(2) As a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original decision or environmental analysis are proposed. The Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18, and §§215.3 and 215.4.

(3) An appeal is not entirely resolved through informal disposition. Formal review and disposition of the unresolved portion of the appeal shall continue (§215.18).

§ 215.18 Formal review and disposition procedures.

(a) Scope of review. The Appeal Deciding Officer shall complete a review based on the appeal record (§215.2) and the Appeal Reviewing Officer’s recommendation (§215.19(b)).

(b) Disposition. The Appeal Deciding Officer shall either:

(1) Issue a written appeal decision within 45 days following the end of the appeal-filing period, which affirms or reverses the Responsible Official’s decision, either in whole or in part, and which may include instructions for further action. When an appeal decision involves instructions concerning new information or changed circumstances, the Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18 and §§215.3, 215.4, 215.11, and 215.12. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant(s), the Appeal Reviewing Officer, and the Responsible Official within 5 days; or

(2) Not issue an appeal decision and so notify the appellant(s) in writing that an appeal decision will not be issued and that the Responsible Official’s decision constitutes the final agency action of the Department of Agriculture (§215.15(e)(2)). Notification shall be sent no sooner than 46 days nor later than 50 days following the end of the appeal-filing period.
§ 215.19  Final administrative determination. The Appeal Deciding Officer’s appeal disposition constitutes the final administrative determination of the Department of Agriculture.

§ 215.19  Appeal Reviewing Officer.

(a) Designation. The Appeal Reviewing Officer shall be:
(1) Designated by the Chief or designee, and shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided; or
(2) Designated by the Secretary in the case of Chief’s decisions.

(b) Review and recommendation. The Appeal Reviewing Officer shall review an appeal and the decision documentation and make a written recommendation to the Appeal Deciding Officer on the disposition of the appeal. That recommendation shall be released only upon issuance of an appeal decision.

(c) Multiple appeals. In cases involving more than one appeal of a decision, the Appeal Reviewing Officer may consolidate appeals and issue one or more recommendations.

§ 215.20  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) Decisions of the Secretary of Agriculture or Under Secretary, Natural Resources and Environment are not subject to the notice, comment, and appeal procedures set forth in this part. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

§ 215.21  Judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to appeal is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the appeal procedures in this part (7 U.S.C. 6912 (e)).

§ 215.22  Applicability and effective date.

(a) The notice, comment, and appeal procedures set out in this part, except as noted in paragraph (b) below, apply to all projects and activities for which legal notice is published pursuant to § 215.5 on or after June 4, 2003.

(b) The provisions concerning electronic comments (§§ 215.5(b)(vi-vii) and 215.6(a)(4)(iii)) and electronic appeals (§§ 215.7(b)(2)(i) and (iii) and 215.15(c)(1) and (3)) are effective July 7, 2003.

(c) The notice, comment, and appeal procedures of part 215 in effect prior to June 4, 2003 remain in effect for those projects and activities for which legal notice (§§ 215.5 or 215.7) is published prior to June 4, 2003 (see 36 CFR parts 200 to 299, Revised as of July 1, 2002).

PART 216—INVOLVING THE PUBLIC IN THE FORMULATION OF FOREST SERVICE DIRECTIVES

Sec. 216.1  Purpose.
216.2  Definitions.
216.3  Applicability; relationship to other public participation opportunities.
216.4  Determining the need for formal public review on proposed Manual directives.
216.5  Documentation.
216.6  Notice and comment procedures for proposed Manual directives identified for formal public review.
216.7  Exemption of proposed Manual directives from normal procedures.
216.8  Availability of proposed Manual directives identified for formal public review.


SOURCE: 49 FR 16993, Apr. 23, 1984, unless otherwise noted.

§ 216.1  Purpose.

This part establishes procedures to ensure that Federal, State, and local governments and the public have adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.
§ 216.2 Definitions.

(a) The Forest Service Manual consists of numerous volumes organized by numerically coded subject matter. The volumes contain legal authorities, responsibilities, delegations, and general instruction and direction needed on a continuous basis by Forest Service officers at more than one unit to plan and execute programs. The parent text is issued by the national headquarters and sets forth the policies, and other guidance applicable Service-wide. National directives are supplemented, as necessary, by Forest Service field offices. Supplements to the Forest Service Manual are applicable only within the Forest Service organizational jurisdiction for which they are issued. The Forest Service Manual is revised to conform to changing law, orders, regulations, or management needs.

(b) Public participation activities are actions initiated by the Forest Service to facilitate an exchange of information with the public. These actions include, but are not limited to, oral and written measures such as public notices, letters, discussion papers, and gatherings such as meetings, workshops, and hearings.

(c) Standards, criteria, and guidelines means those written policies, instructions, and orders, originated by the Forest Service and issued in the Forest Service Manual which establish the general framework for the management and conduct of Forest Service programs.

§ 216.3 Applicability; relationship to other public participation opportunities.

(a) The requirements described in this part do not apply to—

1. Rules or regulations promulgated according to the requirements of the Administrative Procedure Act, 5 U.S.C. 553;
2. Instructions, procedures, and other material issued in Forest Service Handbooks; and
3. Proposed Manual directives which provide guidance and procedures on administrative support activities such as personnel matters, procurement, service contracting, and other routine business operations of the agency.

(b) This part does not supersede or replace the requirements of the National Environmental Policy Act as set forth in 40 CFR part 1500 and chapter 1950 of the Forest Service Manual. The requirements described in this part do not apply where equivalent public notice and opportunity for comment on the contents of a proposed Manual directive are provided during compliance with NEPA procedures.

(c) The direction for management of many Forest Service programs is developed with public participation during land and resource management planning part 219, and other activities. The relevant results of such public participation shall be used in formulation of Forest Service Manual directives to avoid duplicating public participation efforts.

(d) In addition to the opportunity for formal public review and comment offered in this part, the public may informally review and comment on Manual material at other times.

(e) These regulations do not prevent informal consultation with selected Federal, State, and local governments and the public when such consultation is deemed appropriate in formulating Manual material.

§ 216.4 Determining the need for formal public review of proposed Manual directives.

(a) Agency officials responsible for formulating Manual directives containing applicable standards, criteria, and guidelines shall determine whether substantial public interest or controversy concerning a proposed Manual directive can be expected.

(b) The following shall be considered in making this determination:

1. Direct written or oral communication with those known to be interested in the proposal;
2. The degree to which the proposal is likely to adversely or beneficially affect the general public as well as those known to be interested in the proposal;
3. The amount of change the proposal represents from current direction;
4. The extent of recent news media coverage on subjects related to the proposal; and
§ 216.5 Documentation.

The responsible Forest Service official shall document the results of the determination made pursuant to §216.4(b), and the reasons therefor, in a concise written summary. The summary may be combined with documentation required by NEPA procedures or other applicable law or policy. The summary shall be prepared and filed at the same location as the Forest Service official responsible for developing the Manual directive.

§ 216.6 Notice and comment procedures for proposed Manual directives identified for formal public review.

(a) Where it is determined that substantial public interest or controversy concerning a proposed Manual directive can be expected, the following minimum requirements for notifying the public and giving opportunity to comment on the proposal apply:

(1) National Forest and Ranger District Proposals. The responsible official shall determine appropriate means of notifying the public. This may include, but is not limited to, legal notice in a newspaper of general circulation or press release. The public shall have a minimum of 30 calendar days to review and comment on the proposal.

(2) Regional, Station, and Area Proposals. The responsible official shall determine appropriate means of notifying the public. This may include, but is not limited to, notice and summary of the proposal in the FEDERAL REGISTER, legal notice in one or more newspapers of general circulation, or press release. The public shall have a minimum of 30 calendar days to review and comment on the proposal.

(3) National Proposals. The responsible official shall publish a notice and summary of the proposal in the FEDERAL REGISTER, followed by a minimum of 60 calendar days for public review and comment.

(b) Agency officials will give direct notice to Federal, State, and local governments and to the public known to be interested in the proposal. Along with the notice, the responsible official shall also provide either a complete proposal or a summary of the proposal for review.

(c) The responsible Forest Service official may conduct additional public participation activities related to the proposed Manual directive as are deemed appropriate and necessary.

(d) Comments received from the public shall be analyzed and considered in the formulation and preparation of the final Manual directive.

(e) The final Manual directive or a summary shall be sent to those who offered comments on the proposed directive and further publicized as deemed appropriate by the responsible official.

§ 216.7 Exemption of proposed Manual directives from normal procedures.

When it is found for good cause that an exigency exists, an interim Manual directive that is determined to be of substantial public interest or expected controversy may be issued in advance of providing opportunity for public comment. However, as soon as practicable after issuance, the interim Manual directive will be made available for public review and comment as described in §216.6. In making the Manual directive available, the responsible official shall state why the interim directive was issued prior to obtaining public comments.

§ 216.8 Availability of proposed Manual directives identified for formal public review.

As a minimum, review copies of proposed Manual directives determined to be of substantial public interest or expected controversy shall be available in the Forest Supervisor’s Office and District Rangers’ Offices when National Forest proposals are involved; in the Regional Office and Forest Supervisors’ Offices when regional proposals are involved; and in Regional Offices and National Headquarters when national proposals are involved. When Manual directives involve Forest Service Research or State and Private Forestry programs, review copies shall be available at comparable administrative offices.
PART 218—PREDECISIONAL ADMINISTRATIVE REVIEW PROCESSES


§ 218.1 Purpose and scope.

This subpart establishes a predecisional administrative review process for 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 a proposed authorized hazardous fuel reduction project on National Forest System land may be sought. This subpart identifies who may file objections to those proposed authorized hazardous fuel reduction projects, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

§ 218.2 Definitions.

Address: An individual’s or organization’s current physical mailing address. An e-mail address is not sufficient.


Comments: Specific written comments related to a proposed authorized hazardous fuel reduction project pursuant to the HFRA.

Decision notice (DN): A concise written record of a responsible official’s decision based on an environmental assessment and a finding of no significant impact (FONSI) (40 CFR 1508.13; Forest Service Handbook (FSH) 1909.15, chapter 40).

Environmental assessment (EA): A public document 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 1508.13; 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; FSH 1909.15, Chapter 20).

Forest Service line officer: A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions approving hazardous fuel reduction projects subject to this subpart.

Lead objector: For an objection submitted with multiple individuals and/or organizations listed, the individual or organization identified to represent all other objectors for the purposes of...
§ 218.3 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 lands 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 and not subject to the notice, comment, and appeal provisions set forth in part 215 of this chapter.

(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 part applies to both the plan amendment and the project.

§ 218.4 Authorized hazardous fuel reduction projects not subject to objection.

Projects are not subject to objection when no comments (§ 218.2) are received during the opportunity for public comment (§ 218.7(a)). The responsible official must issue an explanation with the record of decision (ROD) or decision notice (DN) that the project was not subject to objection.

§ 218.5 Giving notice of proposed authorized hazardous fuel reduction projects subject to objection.

(a) In addition to the notification required in paragraph (c) of this section, the responsible official should disclose during scoping and in the EA or EIS that the project is authorized under the HFRA and will therefore be subject to the objection procedure at 36 CFR
218, in lieu of the appeal procedure at 36 CFR 215.

(b) The responsible official must promptly distribute the final EIS or the EA to those who have requested the document or are eligible to file an objection in accordance with § 218.7(a).

(c) Upon completion and distribution mailing of the final EIS or EA, legal notice of the opportunity to object to a proposed authorized hazardous fuel reduction project must be published in the applicable newspaper of record identified (218.2) for each 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 authorized hazardous fuel reduction project, a concise description of the preferred alternative 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 authorized hazardous fuel reduction project will occur, instructions for obtaining a copy of the final EIS or EA, and instructions on how to obtain additional information on the proposed authorized hazardous fuel reduction project.

(2) State that the proposed authorized hazardous fuel reduction project is subject to the objection process pursuant to 36 CFR part 218, subpart A, 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 e-mail address, the acceptable format(s) for objections filed electronically, and the reviewing officer’s office business hours for those filing hand-delivered objections.

(ii) A statement that objections will be accepted only from those who have previously submitted written comments specific to the proposed authorized hazardous fuel reduction project during scoping or other opportunity for public comment in accordance with § 218.7(a).

(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 (§ 218.10(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, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate reviewing officer (§ 218.8) within 30 days of the date of publication of the legal notice for the objection process. It should also be stated that incorporation of documents by reference is permitted only as provided for at § 218.8(b).

(v) A statement describing the minimum content requirements of an objection (§ 218.8(c)).

(d) Publication. 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 subpart.

§ 218.6 Reviewing officer.

The reviewing officer determines procedures to be used for processing objections when the procedures are not specifically described in this subpart, including such procedures as needed to be compatible to the extent practicable, with the administrative review processes of other Federal agencies, for authorized hazardous fuel reduction projects proposed jointly with other agencies. Such determinations are not subject to further administrative review.

§ 218.7 Who may file an objection.

(a) Individuals and organizations who have submitted specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment provided during preparation of an EA or EIS for the proposed authorized hazardous fuel reduction project as characterized in section 104(g) of the HFRA may file an objection. For proposed authorized hazardous fuel reduction projects described in a draft EIS,
§ 218.8 Filing an objection.

(a) Objections must be filed with the reviewing officer in writing. All objections must be open to public inspection during the objection process.

(b) Incorporation of documents by reference is not allowed, except for the following list of items which may be provided by including date, page, and section of the cited document. 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 HFRA project subject to objection,
(4) Comments previously provided to the Forest Service by the objector during the proposed HFRA project comment period.

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

(1) Objector’s name and address (§ 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 (§ 218.2). Verification of the identity of the lead objector must be provided upon request;
(4) The name of the proposed authorized hazardous fuel reduction 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 authorized hazardous fuel reduction project will be implemented; and,
(5) Sufficient narrative description of those aspects of the proposed authorized hazardous fuel reduction project addressed by the objection, specific issues related to the proposed authorized hazardous fuel reduction project, and suggested remedies that would resolve the objection.

§ 218.9 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 (§§ 218.5(c)(2)(iv), 218.10(c)).
(2) The proposed project is not subject to the objection procedures of this subpart (§§ 218.3, 218.4).

(3) The individual or organization did not submit written comments during scoping or other opportunity for public comment (§ 218.7(a)).

(4) The objection does not provide sufficient information as required by § 218.7(b) through (d) for the reviewing officer to review.

(5) The objector withdraws the objection.

(6) 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 (§ 218.8(c)(2)).

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

(b) The reviewing officer must give 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 in the project 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 or not adequate time remains in the review period to make a meeting with the objector practical.” All meetings are open to the public.

(b) 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 authorized hazardous fuel reduction
§ 218.12 Timing of authorized hazardous fuel reduction project decision.

(a) The responsible official may not issue a ROD or DN concerning an authorized hazardous fuel reduction project subject to the provisions of this subpart until the reviewing officer has responded to all pending objections.

(b) When no objection is filed within the 30-day time period, the reviewing officer must notify the responsible official and approval of the authorized hazardous fuel reduction project in a ROD in accordance with 40 CFR 1506.10, or DN may occur on, but not before, the fifth business day following the end of the objection-filing period.

§ 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) Authorized hazardous fuel reduction projects proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this subpart. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

§ 218.14 Judicial proceedings.

The objection process set forth in this subpart fully implements Congress’ design for a predecisional administrative review process for proposed hazardous fuel reduction projects authorized by the HFRA. 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. Further, any filing for Federal judicial review of an authorized hazardous fuel reduction project is premature and inappropriate unless the plaintiff has submitted specific written comments relating to the proposed action during scoping or other opportunity for public comment as prescribed by the HFRA, and the plaintiff has challenged the authorized hazardous fuel reduction project by exhausting the administrative review process set out in this subpart. Further, judicial review of hazardous fuel reduction projects that are subject to these procedures is strictly limited to those issues raised by the plaintiff’s submission during the objection process, except in exceptional circumstances such as where significant new information bearing on a specific claim only becomes available after conclusion of the administrative review.

§ 218.15 Information collection requirements.

The rules of this subpart specify the information that objectors must provide in an objection to a proposed authorized hazardous fuel reduction project as defined in the HFRA (§ 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 Applicability and effective date.

The provisions of this subpart are effective as of October 17, 2008 and apply to all proposed authorized hazardous fuel reduction projects conducted under the provisions of the HFRA for which scoping begins on or after October 17, 2008.

Subpart B [Reserved]

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

Sec. 219.1 Purpose and applicability.
219.2 Levels of planning and planning authority.
219.3 Nature of land management planning.
Subpart A—National Forest System Land Management Planning

§ 219.1 Purpose and applicability.
(a) The rules of this subpart set forth a process for land management planning, including the process for developing, amending, and revising land management plans (also referred to as plans) for 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 (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.

(b) Forest, grassland, prairie, or other comparable administrative unit.

(1) Land management plans provide broad guidance and information for project and activity decisionmaking in a national forest, grassland, prairie, or other comparable administrative unit. 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, or the Secretary chooses to act as the responsible official.

(2) When plans, plan amendments, or plan revisions are prepared for more than one administrative unit, a unit supervisor identified by the regional forester, the Chief, or the Secretary may be the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.

(3) The appropriate station director must concur with that part of a plan of uses, benefits, products, services, and visitor opportunities.

(c) The Chief of the Forest Service shall establish planning procedures for this subpart for plan development, plan amendment, or plan revision in the Forest Service Directive System.

§ 219.2 Levels of planning and planning authority.
Planning occurs at multiple organizational levels and geographic areas.

(a) National. 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 Act of 1993 (5 U.S.C. 306; 31 U.S.C. 1115–1119; 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 National Forest Management Act (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.

(b) Forest, grassland, prairie, or other comparable administrative unit.

(1) When plans, plan amendments, or plan revisions are prepared for more than one administrative unit, a unit supervisor identified by the regional forester, the Chief, or the Secretary may be the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.
§ 219.3 Nature of land management planning.

(a) Principles of land management planning. Land management planning is an adaptive management process that includes social, economic, and ecological evaluation; plan development, plan amendment, and plan revision; and monitoring. The aim of planning is to produce responsible land management for the NFS based on useful and current information and guidance. Land management planning guides the Forest Service in fulfilling its responsibilities for stewardship of the NFS to best meet the needs of the American people.

(b) Force and effect of plans. Plans developed in accord with this subpart generally contain desired conditions, objectives, and guidance for project and activity decisionmaking in the plan area. Plans do not grant, withhold, or modify any contract, permit, or other legal instrument; subject anyone to civil or criminal liability; or create any legal rights. Plans typically do not approve or execute projects and activities. Decisions with effects that can be meaningfully evaluated (40 CFR 1508.23) typically are made when projects and activities are approved.

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§ 219.4 National Environmental Policy Act compliance.

(a) In accord with 16 U.S.C. 1604(g)(1) this subpart clarifies how the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4346) (hereinafter referred to as NEPA) applies to NFS land management planning.

(b) Approval of a plan, plan amendment, or plan revision, under the authority of this subpart, will be done in accord with the Forest Service NEPA procedures.

(c) Nothing in this subpart alters the application of NEPA to proposed projects and activities.

(d) Monitoring and evaluations, including those required by § 219.6, may be used or incorporated by reference, as appropriate, in applicable NEPA documents.

§ 219.5 Environmental management systems.

The responsible official will establish an environmental management system (EMS) or conform to a multi-unit, regional, or national level EMS. The scope of an EMS will include, at the minimum, land management environmental aspects as determined by the responsible official or established in a multi-unit, regional, or national level EMS. An EMS may also include environmental aspects unrelated to land management if deemed appropriate.

(a) An EMS may be established independently of the planning process.

(b) The Chief of the Forest Service shall establish procedures in the Forest Service Directive System to ensure that an appropriate EMS(s) is in place. The responsible official may determine whether and how to change and improve an EMS, consistent with those procedures.

(c) The EMS must conform to the consensus standard developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as “ISO 14001: Environmental Management Systems.”
Management Systems—Specification With Guidance For Use’ (ISO 14001). The ISO 14001 describes EMSs and outlines the elements of an EMS.

(d) No project or activity approved under a plan developed, amended, or revised under the requirements of this subpart may be implemented until the responsible official establishes an EMS or the responsible official conforms to a multi-unit, regional, or national level EMS as required by this section.

§ 219.6 Evaluations and monitoring.

(a) Evaluations. The responsible official shall keep the plan set of documents up to date with evaluation reports, which will reflect changing conditions, science, and other relevant information. The following three types of evaluations are required for land management planning: Comprehensive evaluations for plan development and revision, evaluations for plan amendment, and annual evaluations of monitoring information. The responsible official shall document evaluations in evaluation reports, make these reports available to the public as required in § 219.9, and include these reports in the plan set of documents (§ 219.7(a)(1)). Evaluations under this section should be commensurate to the level of risk or benefit associated with the nature and level of expected management activities in the plan area.

(1) Comprehensive evaluations. These evaluate current social, economic, and ecological conditions and trends that contribute to sustainability, as described in § 219.10. Comprehensive evaluations and comprehensive evaluation reports must be updated at least every 5 years to reflect any substantial changes in conditions and trends since the last comprehensive evaluation. A comprehensive evaluation report may be combined with other documents, including NEPA documents. The responsible official must ensure that comprehensive evaluations, including any updates necessary, include the following elements:

(i) Area of analysis. The area(s) of analysis must be clearly identified.

(ii) Conditions and trends. The current social, economic, and ecological conditions and trends and substantial changes from previously identified conditions and trends must be described based on available information, including monitoring information, surveys, assessments, analyses, and other studies as appropriate. Evaluations may build upon existing studies and evaluations.

(2) Evaluation for a plan amendment. An evaluation for a plan amendment must analyze the issues relevant to the purposes of the amendment and may use the information in comprehensive evaluations relevant to the plan amendment. When a plan amendment is made contemporaneously with, and only applies to, a project or activity decision, the analysis prepared for the project or activity may be used to satisfy the requirements for an evaluation for an amendment.

(3) Annual evaluation of the monitoring information. Monitoring results must be evaluated annually and in accord with paragraph (b)(2) of this section.

(b) Monitoring. The plan must describe the monitoring program for the plan area. Monitoring information in the plan document or set of documents may be changed and updated as appropriate, at any time. Such changes and updates are administrative corrections (§ 219.7(b)) and do not require a plan amendment or revision.

(1) The plan-monitoring program shall be developed with public participation and take into account:

(i) Financial and technical capabilities;

(ii) Key social, economic, and ecological performance measures relevant to the plan area; and

(iii) The best available science.

(2) The plan-monitoring program shall provide for:

(i) Monitoring to assist in evaluating the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

(ii) Monitoring of the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan; and

(iii) Adjustment of the monitoring program as appropriate to account for unanticipated changes in conditions.

(3) The responsible official may conduct monitoring jointly with others,
including but not limited to, Forest Service units, Federal, State or local government agencies, federally recognized Indian Tribes, Alaska Native Corporations, and members of the public.

§ 219.7 Developing, amending, or revising a plan.

(a) General planning requirements—(1) Plan documents or set of documents. The responsible official must maintain a plan document or set of documents for the plan. A plan document or set of documents includes, but is not limited to evaluation reports; documentation of public involvement; the plan, including applicable maps; applicable plan approval documents; applicable NEPA documents, if any; applicable EMS documents, if any; and the monitoring program for the plan area.

(2) Plan components. Plan components may apply to all or part of the plan area. A plan should include the following components:

(i) Desired conditions. Desired conditions are the social, economic, and ecological attributes toward which management of the land and resources is to be directed. Desired conditions are aspirations and are not commitments or final decisions approving projects and activities, and may be achievable only over a long time period.

(ii) Objectives. Objectives are concise projections of measurable, time-specific intended outcomes. The objectives for a plan are the means of measuring progress toward achieving or maintaining desired conditions. Like desired conditions, objectives are aspirations and are not commitments or final decisions approving projects and activities.

(iii) Guidelines. Guidelines provide information and guidance for project and activity decisionmaking to help achieve desired conditions and objectives. Guidelines are not commitments or final decisions approving projects and activities.

(iv) Suitability of areas. Areas of each NFS unit are identified as generally suitable for various uses (§ 219.12). An area may be identified as generally suitable for uses that are compatible with desired conditions and objectives for that area. Identification of an area as generally suitable or not suitable for a use is guidance for project and activity decisionmaking and not a commitment nor a final decision approving projects and activities. Uses of specific areas are approved through project and activity decisionmaking.

(v) Special areas. Special areas are areas in the NFS designated because of their unique or special characteristics. Special areas such as botanical areas or significant caves may be designated, by the responsible official in approving a plan, plan amendment, or plan revision. Such designations are not final decisions approving projects and activities. The plan may also recognize special areas designated by statute or through a separate administrative process in accord with NEPA requirements (§ 219.4) and other applicable laws.

(3) Standards. A plan may include standards as a plan component. Standards are constraints upon project and activity decisionmaking and are explicitly identified in a plan as "standards." Standards are established to help achieve the desired conditions and objectives of a plan and to comply with applicable laws, regulations, Executive orders, and agency directives.

(4) Changing plan components. Plan components may be changed through plan amendment or revision or through an administrative correction in accord with § 219.7(b).

(5) Planning authorities. The responsible official has the discretion to determine whether and how to change the plan, subject to the requirement that the plan be revised at least every 15 years. A decision by a responsible official about whether or not to initiate the plan amendment or plan revision process and what issues to consider for plan development, plan amendment, or plan revision is not subject to objection under this subpart (§ 219.13).

(6) Plan process. (i) Required evaluation reports, plans, plan amendments, and plan revisions must be prepared by an interdisciplinary team; and

(ii) Unless otherwise provided by law, all NFS lands possessing wilderness characteristics must be considered for
§ 219.8 Application of a new plan, plan amendment, or plan revision.

(a) Application of a new plan, plan amendment, or plan revision to existing authorizations and approved projects or activities. (1) The responsible official must include in any document approving a plan amendment or revision a description of the effects of the plan, plan amendments, or plan revision on existing occupancy and use authorized by permits, contracts, or other instruments carrying out approved projects and activities. If not expressly excepted, approved projects and activities must be consistent with applicable plan components, as provided in paragraph (e) of this section. Approved projects and activities are those for which a responsible official has signed a decision document.

(b) Any modifications of such permits, contracts, or other instruments needed to make them consistent with applicable plan components as developed, amended, or revised are subject to valid existing rights. Such modifications should be made as soon as practicable following approval of a new plan, plan amendment, or plan revision.

(c) Application of a new plan, plan amendment, or plan revision to authorizations and projects or activities subsequent to plan approval. Decisions approving projects and activities subsequent to approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (e) of this section.

(d) Effect of new information on projects or activities. Although new information will be considered in accord with agency NEPA procedures, nothing in this subpart requires automatic deferral, suspension, or modification of approved decisions in light of new information.

(e) Ensuring project or activity consistency with plans. Projects and activities must be consistent with the applicable plan components. If an existing (paragraph (a) of this section) or proposed (paragraph (b) of this section) use, project, or activity is not consistent
with the applicable plan components, the responsible official may take one of the following steps, subject to valid existing rights:

(1) Modify the project or activity to make it consistent with the applicable plan components;

(2) Reject the proposal or terminate the project or activity, subject to valid existing rights; or

(3) Amend the plan contemporaneously with the approval of the project or activity so that it will be consistent with the plan as amended. The amendment may be limited to apply only to the project or activity.

§ 219.9 Public participation, collaboration, and notification.

The responsible official must use a collaborative and participatory approach to land management planning, in accord with this subpart and consistent with applicable laws, regulations, and policies, by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies, federally recognized Indian Tribes, Alaska Native Corporations, State or local governments, or other interested or affected communities, groups, or persons.

(a) Providing opportunities for participation. The responsible official must provide opportunities for the public to collaborate and participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected parties. Specifically, as part of plan development, plan amendment, and plan revision, the responsible official shall involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. The responsible official has the discretion to determine the methods and timing of public involvement opportunities.

(1) Engaging interested individuals and organizations. The responsible official must provide for and encourage collaboration and participation by interested individuals and organizations, including private landowners whose lands are in, adjacent to, or otherwise affected by future management actions in the plan area.

(2) Engaging State and local governments and Federal agencies. The responsible official must provide opportunities for the coordination of Forest Service planning efforts undertaken in accord with this subpart with those of other resource management agencies. The responsible official also must meet with and provide early opportunities for other government agencies to be involved, to collaborate, and to participate in planning for NFS lands. The responsible official should seek assistance, where appropriate, from other State and local governments, Federal agencies, and scientific and academic institutions to help address management issues or opportunities.

(3) Engaging Tribal governments and Alaska Native Corporations. The Forest Service recognizes the Federal Government’s trust responsibility for federally recognized Indian Tribes. The responsible official must consult with, invite, and provide opportunities for any federally recognized Indian Tribes and Alaska Native Corporations that may be affected by the planning process to collaborate and participate. In working with federally recognized Indian Tribes, the responsible official must honor the government-to-government relationship between Tribes and the Federal Government. The responsible official should seek assistance, where appropriate, from federally recognized Indian Tribes and Alaska Native Corporations to help address management issues or opportunities.

(b) Public notification. The following public notification requirements apply to plan development, amendment, or revision, except when a plan amendment is approved contemporaneously with approval of a project or activity and the amendment applies only to the project or activity, in a way that 36 CFR part 215 or part 218, subpart A, applies:

(1) When formal public notification is provided. Public notification must be provided at the following times:

(i) Initiation of development of a plan, plan amendment, or plan revision

(ii) Commencement of the 90-day comment period on a proposed plan, plan amendment, or plan revision
(iii) Commencement of the 30-day objection period prior to approval of a plan, plan amendment, or plan revision
(iv) Approval of a plan, plan amendment, or plan revision
(v) Adjustment to conform to this subpart of a planning process for a plan, plan amendment, or plan revision initiated under the provisions of a previous planning regulation

(2) How public notice is provided. Public notice must be provided in the following ways:
(i) All required public notices applicable to a new plan, plan revision, or any ongoing plan revision as provided in §219.14(b) must be published in the Federal Register and newspaper(s) of record.
(ii) Required notifications that are associated with a plan amendment or any ongoing plan amendment as provided in §219.14(b) and that apply to one plan must be published in the newspaper(s) of record. Required notifications that are associated with plan amendments and any ongoing plan amendments (as provided at §219.14(b)) and that apply to more than one plan must be published in the Federal Register.
(iii) Public notification of evaluation reports and monitoring program changes may be made in a way deemed appropriate by the responsible official.

(3) Content of the public notice. Public notices must contain the following information:
(i) Content of the public notice for initiating a plan development, plan amendment, or plan revision. The notice must inform the public of the documents available for review and how to obtain them; provide a summary of the need to develop a plan or change a plan; invite the public to comment on the need for change in a plan; identify any other need for change in a plan that they feel should be addressed during the planning process; provide an estimated schedule for the planning process, including the time available for comments; and inform the public how to submit comments.
(ii) Content of the public notice for a proposed plan, plan amendment, or plan revision. The notice must inform the public of the availability of the proposed plan, plan amendment, or plan revision, including any relevant evaluation report; the commencement of the 90-day comment period; and the process for submitting comments.
(iii) Content of the public notice for a plan, plan amendment, or plan revision before approval. The notice must inform the public of the availability of the plan, plan amendment, or plan revision; any relevant evaluation report; and the commencement of the 30-day objection period; and the process for objecting.
(iv) Content of the public notice for the approval of a plan, plan amendment, or plan revision. The notice must inform the public of the availability of the approved plan, plan amendment, or plan revision, the approval document, and the effective date of the approval (§219.14(a)).
(v) Content of the public notice for an ongoing planning process. The notice must state whether or not a planning process initiated before April 21, 2008 (§219.14(b)) will be adjusted to conform to this subpart.

§ 219.10 Sustainability.
Sustainability, for any unit of the NFS, has three interrelated and interdependent elements: Social, economic, and ecological. A plan can contribute to sustainability by creating a framework to guide on-the-ground management of projects and activities; however, a plan by itself cannot ensure sustainability. Agency authorities, the nature of a plan, and the capabilities of the plan area are some of the factors that limit the extent to which a plan can contribute to achieving sustainability.

(a) Sustaining social and economic systems. The overall goal of the social and economic elements of sustainability is to contribute to sustaining social and economic systems within the plan area. To understand the social and economic contributions that National Forest System lands presently make, and may make in the future, the responsible official, in accordance with §219.6, must evaluate relevant economic and social conditions and trends as appropriate during plan development, plan amendment, or plan revision.
(b) Sustaining ecological systems. The overall goal of the ecological element
of sustainability is to provide a framework to contribute to sustaining native ecological systems by providing appropriate ecological conditions to support diversity of native plant and animal species in the plan area. This will satisfy the statutory requirement to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives (16 U.S.C. 1604(g)(3)(B)). Procedures developed pursuant to §219.1(c) for sustaining ecological systems must be consistent with the following:

(1) Ecosystem diversity. Ecosystem diversity is the primary means by which a plan contributes to sustaining ecological systems. Plan components must establish a framework to provide the characteristics of ecosystem diversity in the plan area.

(2) Species diversity. If the responsible official determines that provisions in plan components, in addition to those required by paragraph (b)(1) of this section, are needed to provide appropriate ecological conditions for specific threatened and endangered species, species-of-concern, and species-of-interest, then the plan must include additional provisions for these species, consistent with the limits of Agency authorities, the capability of the plan area, and overall multiple use objectives.

§219.11 Role of science in planning.

(a) The responsible official must take into account the best available science. For purposes of this subpart, taking into account the best available science means the responsible official must:

(1) Document how the best available science was taken into account in the planning process within the context of the issues being considered;

(2) Document that the science was appropriately interpreted and applied.

(b) To meet the requirements of paragraph (a) of this section, the responsible official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process.

§219.12 Suitable uses and provisions required by NFMA.

(a) Suitable uses—(1) Identification of suitable land uses. National Forest System lands are generally suitable for a variety of multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired conditions and objectives for that area. The responsible official may identify lands within the plan area as generally not suitable for uses that are not compatible with desired conditions and objectives for that area. Identification of an area as generally suitable or not suitable for a use is guidance for project and activity decisionmaking and not a permanent land designation, and is subject to change through plan amendment or plan revision.

A plan approval document may include project and activity decisions including prohibitions of a specific use (or uses) under 36 CFR part 261 or authorization of a specific use (or uses) when the supporting analysis and plan approval document for the prohibition or use is in accordance with the Forest Service NEPA procedures.

(2) Identification of lands not suitable for timber production. (i) The responsible official must identify lands within the plan area as not suitable for timber production (§219.16) if:

(A) Statute, Executive Order, or regulation prohibits timber production on the land; or

(B) The Secretary of Agriculture or the Chief of the Forest Service has withdrawn the land from timber production; or

(C) The land is not forest land (as defined at §219.16); or

(D) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands; or

(E) The technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land; or
(F) There is no reasonable assurance that such lands can be adequately re-stocked within 5 years after final regeneration harvest.

(ii) This identification in a plan is not a final decision compelling, approving, or prohibiting projects and activities. A final determination of suitability for timber production is made through project and activity decision-making.

(3) Lands suitable for timber production. After considering physical, ecological, economic, and other pertinent factors to the extent feasible, a Responsible Official may establish timber production as an objective in a plan for any lands not identified in paragraph (a)(2)(i) of this section. The responsible official must review lands not suited for timber production at least once every 10 years, or otherwise prescribed by law, to determine their suitability for timber production. As a result of this 10-year review, timber production may be established as a plan objective for any lands found to be suitable for such purpose through amendment or revision of the plan.

(4) Other lands where trees may be harvested for multiple use values other than timber production. Designation of lands as not suitable for timber production does not preclude the harvest of trees on those lands for sanitation, salvage, or other multiple use purposes. Except for lands described at paragraph (a)(2)(i)(E) of this section, timber harvest may be used as a tool to assist in achieving or maintaining applicable desired conditions or objectives.

(b) Plan provisions for resource management. A plan should include provisions for the following:

1. Limitations on even-aged timber harvest methods, including provisions to require harvest in a manner consistent with the protection of soil, watersheds, fish, wildlife, recreation, and aesthetic resources and the regeneration of the timber resource, including requirements that even-aged harvest may occur only upon a finding that it is appropriate and that clearcutting may occur only upon a finding that it is the optimum method to meet the objectives and requirements of the plan;

2. Maximum size openings created by timber harvest according to geographic areas, forest types, or other suitable classifications for areas to be cut in one regeneration harvest operation. This limit may be less than, but will 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. The plan must allow for exceeding its limitations on maximum size openings after appropriate public notice and review by the supervisor of the responsible official who normally would approve the harvest proposal. The plan maximum size openings must not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm;

3. Provisions that cut blocks, patches, or strips that are shaped and blended to the extent practicable with the natural terrain;

4. Provisions for maintaining or re-storing soil and water resources, including protection for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, when management activities are likely to seriously and adversely affect water conditions or fish habitat;

5. Provisions that timber harvest projects be considered through interdisciplinary review, assessing the potential environmental, biological, aesthetic, engineering, and economic impacts on the sale area, as well as the consistency of the sale with the multiple use of the general area, and that the harvesting system used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber;

6. Provisions that there is reasonable assurance that lands can be adequately restocked within 5 years after final regeneration harvest; and

7. Provisions that soil, slope, or other watershed conditions will not be
§ 219.13 Objections to plans, plan amendments, or plan revisions.

(a) Opportunities to object. Before approving a plan, plan amendment, or plan revision, the responsible official must provide the public 30 calendar days for pre-decisional review and the opportunity to object. Federal agencies may not object under this subpart. During the 30-day review period, any person or organization, other than a Federal agency, who participated in the planning process through the submission of written comments, may object to a plan, plan amendment, or plan revision according to the procedures in this section, except in the following circumstances:

(1) When a plan amendment is approved contemporaneously with a project or activity decision and the plan amendment applies only to the project or activity, in a way that the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this section; or

(2) When the responsible official is an official in the Department of Agriculture at a level higher than the Chief of the Forest Service, in a way that there is no opportunity for administrative review.

(b) Submitting objections. The objection must be in writing and must be filed with the reviewing officer within 30 days following the publication date of the legal notice in the newspaper of record of the availability of the plan, plan amendment, or plan revision. Specific details will be in the Forest Service Directive System. An objection must contain:

(1) The name, mailing address, and telephone number of the person or entity filing the objection. Where a single objection is filed by more than one person, the objection must indicate the lead objector to contact. The reviewing officer may appoint the first name listed as the lead objector to act on behalf of all parties to the single objection when the single objection does not specify a lead objector. The reviewing officer may communicate directly with the lead objector and is not required to notify the other listed objectors of the objection response or any other written correspondence related to the single objection;

(2) A statement of the issues, the parts of the plan, plan amendment, or plan revision to which the objection applies, and how the objecting party would be adversely affected; and

(3) A concise statement explaining how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy or how the objector disagrees with the decision and providing any recommendations for change.

(c) Responding to objections. (1) The reviewing officer (§219.16) has the authority to make all procedural determinations related to the objection not specifically explained in this subpart, including those procedures necessary to ensure compatibility, to the extent practicable, with the administrative review processes of other Federal agencies. The reviewing officer must promptly render a written response to the objection. The response response must be sent to the objecting party by certified mail, return receipt requested.

(2) The response of the reviewing officer shall be the final decision of the
§ 219.14 Effective dates and transition.

(a) Effective dates. A plan, plan amendment, or plan revision is effective 30 days after publication of notice of its approval (§219.9(b)), except when a plan amendment is approved contemporaneously with a project or activity and applies only to the project or activity, in a way that 36 CFR part 215 or part 218, subpart A, apply.

(b) Transition. For the purposes of this section, initiation means that the agency has provided notice under §219.9(b) or issued a notice of intent or other public notice announcing the commencement of the process to develop a plan, plan amendment, or plan revision.

(1) Plan development and plan revisions. Plan development and plan revisions initiated after April 21, 2008 must conform to the requirements of this subpart, except that the plan for the Tongass National Forest may be revised once under this subpart or the planning regulations in effect before November 9, 2000.

(2) Plan Amendments. With respect to plans approved or revised pursuant to the planning regulation in effect before November 9, 2000, (see 36 CFR parts 200 to 299, Revised as of July 1, 2000), a 3-year transition period for plan amendments begins on April 21, 2008. During the transition period, plan amendments may continue using the provisions of the planning regulation in effect before November 9, 2000, or may conform to the requirements of this subpart. If the responsible official uses the provisions of the prior planning regulations, the responsible official may elect to use either the objection procedures of this subpart or the optional appeal procedures available during the planning regulation transition period. The optional appeal procedures available during the planning regulation transition period are published at 54 FR 3357 (January 23, 1989), as amended at 54 FR 13807 (April 5, 1989); 54 FR 34509 (August 21, 1989); 55 FR 7805 (March 6, 1990); 56 FR 4918 (February 6, 1991); 56 FR 46550 (September 13, 1991); and 58 FR 58915 (November 4, 1993). Plan amendments initiated after the transition period must conform to the requirements of this subpart.

(iii) Except when a plan amendment is approved contemporaneously with a project or activity and applies only to that project or activity (in a way that 36 CFR part 215 or part 218, subpart A...
apply), the responsible official may elect to use either the objection procedures of this subpart or the optional appeal procedures available during the planning rule transition period. The optional appeal procedures available during the planning rule transition period are published at 54 FR 3357 (January 23, 1989), as amended at 54 FR 13807 (April 5, 1989); 54 FR 34509 (August 21, 1989); 55 FR 7895 (March 6, 1990); 56 FR 4918 (February 6, 1991); 56 FR 46550 (September 13, 1991); and 58 FR 58915 (November 4, 1993).

(4) Plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000. For units with plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), that rule is without effect. No obligations remain from that regulation, except those that are those specifically in the plan.

[73 FR 21505, Apr. 21, 2008, as amended at 73 FR 80300, Dec. 31, 2008]

§ 219.15 Severability.

In the event that any specific provision of this rule is deemed by a court to be invalid, the remaining provisions shall remain in effect.

§ 219.16 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order.

Adaptive management: A system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes, and if not, to facilitate management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.


Area of analysis: The geographic area within which ecosystems, their components, or their processes are evaluated during analysis and development of one or more plans, plan revisions, or plan amendments. This area may vary in size depending on the relevant planning issue. For a plan, an area of analysis may be larger than a plan area. For development of a plan amendment, an area of analysis may be smaller than the plan area. An area of analysis may include multiple ownerships.

Diversity of plant and animal communities: The distribution and relative abundance or extent of plant and animal communities and their component species, including tree species, occurring within an area.

Ecosystem diversity: The variety and relative extent of ecosystem types, including their composition, structure, and processes within all or a part of an area of analysis.

Environmental management system: The part of the overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining environmental policy.

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 pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

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 non-forest uses. Lands developed for non-forest 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.

ISO 14001: A consensus standard developed by the International Organization for Standardization and adopted by the American National Standards Institute that describes environmental.
management systems and outlines the elements of an environmental management system.

Newspaper(s) of record: The principal newspapers 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.

Plan: A document or set of documents that integrates and displays information relevant to management of a unit of the National Forest System.

Plan area: The National Forest System lands covered by a plan.

Productivity: The capacity of National Forest System lands and their ecological systems to provide the various renewable resources in certain amounts in perpetuity. For the purposes of this subpart it is an ecological, not an economic, term.

Public participation: Activities that include a wide range of public involvement tools and processes, such as collaboration, public meetings, open houses, workshops, and comment periods.

Responsible official: The official with the authority and responsibility to oversee the planning process and to approve plans, plan amendments, and plan revisions.

Reviewing officer: The supervisor of the responsible official. The reviewing officer responds to objections made to a plan, plan amendment, or plan revision prior to approval.

Species-of-concern: Species for which the responsible official determines that management actions may be necessary to prevent listing under the Endangered Species Act.

Species-of-interest: Species for which the responsible official determines that management actions may be necessary or desirable to achieve ecological or other multiple use objectives.

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.

Visitor opportunities: The spectrum of settings, landscapes, scenery, facilities, services, access points, information, learning-based recreation, wildlife, natural features, cultural and heritage sites, and so forth available for National Forest System visitors to use and enjoy.

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).

Subpart B [Reserved]

PART 220—NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

Sec. 220.1 Purpose and scope.

220.2 Applicability.

220.3 Definitions.

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220.7 Environmental assessment and decision notice.


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.
§ 220.3 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 (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 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 1502.22)

(i) Applicants. The responsible official shall make policies or staff available to advise potential applicants of studies or other information foreseeable required for acceptance of their applications. Upon acceptance of an application as provided by 36 CFR 251.54(k) the responsible official shall initiate the NEPA process.

§ 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 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) Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization. Examples include, but are not limited to:
(i) Amending a special use authorization to reflect administrative changes such as adjustment to the land use fees, inclusion of non-discretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new monitoring required by water quality standards), and
(ii) Issuance of a new special use authorization for a new owner of ski area improvements or conversion of the existing special use authorization to a new type of special use authorization (for example, converting a permit to a lease or easement).

(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 (17) 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 minor special uses of NFS lands that require less than five contiguous acres of land. 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 40-foot utility corridor that crosses one mile of a national forest;

(v) Approving the installation of a driveway, mailbox, or other facilities incidental to use of a residence;

(vi) Approving an additional telecommunication use at a site already used for such purposes;

(vii) Approving the removal of mineral materials from an existing community pit or common-use area; and

(viii) Approving the continued use of land where such use has not changed since authorized and no change in the physical environment or facilities are proposed.

(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 1/3 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) Hazardous fuels reduction activities using prescribed fire, not to exceed 4,500 acres; and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:
   (i) Shall be limited to areas:
      (A) In the wildland-urban interface; or
      (B) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.
   (ii) Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and Environment 10-Year Comprehensive Strategy Implementation Plan";
   (iii) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;
   (iv) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and
   (v) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

(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 1⁄2 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 1⁄2 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 1⁄2 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 longhorned beetle, and sudden oak death pathogen.

(15) Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

(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.

(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:
(i) 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;

(8) The responsible official's signature and date when the decision is made.

§ 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

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(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


§ 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.


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.
222.11 Grazing advisory boards.

Subpart B—Management of Wild Free-Roaming Horses and Burros

222.20 Authority and definitions.
222.21 Administration of wild free-roaming horses and burros and their environment.
222.22 Ownership claims.
222.23 Removal of other horses and burros.
222.24 Use of helicopters, fixed-wing aircraft and motor vehicles.
222.25 Protection of wild free-roaming horses and burros when they are upon other than the National Forest System or public lands.
222.26 Removal of wild free-roaming horses and burros from private lands.
222.27 Maintenance of wild free-roaming horses and burros on privately-owned lands.
222.28 Agreements.
222.29 Relocation and disposal of animals.
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222.31 Loss of status.
222.32 Use of non-Forest Service personnel.
222.33 Management coordination.
222.34 National Advisory Board.
222.35 Studies.
222.36 Arrest.

Subpart C—Grazing Fees

222.50 General procedures.
222.51 National Forests in 16 Western States.
222.52 National Grasslands.
222.53 Grazing fees in the East—non-competitive procedures.
§ 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
§ 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.

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.
§ 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:
§ 222.4

(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.

§ 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 non-compliance with title VI of the Civil Rights Act of 1964 and Department of Agriculture regulation promulgated thereunder.

§ 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 by-laws 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.

§ 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.

   (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.

(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
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and oversee the manner in which permits 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.

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(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, infirmity, 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.

§ 222.21 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
§ 222.22 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.
§ 222.23 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]

§ 222.24 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 round-ups 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.

§ 222.25 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.

§ 222.26 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.

§ 222.27 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.

§ 222.28 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.

§ 222.29 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 than 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.

§ 222.34 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.

§ 222.35 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.

§ 222.36 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.

Subpart C—Grazing Fees


§ 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) 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 afforded 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
§ 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—non-competitive 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 non-competitive 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 comparable 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.

§ 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 2653, Jan. 26, 1990]

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

Effective Date Note: At 73 FR 70386, Dec. 29, 2008, the heading of part 223 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:
PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER, SPECIAL FOREST PRODUCTS, AND FOREST BOTANICAL PRODUCTS

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EFFECTIVE DATE NOTE: At 73 FR 79386, Dec. 29, 2008, the authority citation to part 223 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:


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. 465, 16 U.S.C. 477, 551), 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.


§ 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.

(5 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
§ 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.

§ 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.

§ 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 from the mining 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.

§ 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
§ 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 employ 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 and used by the permittee which would have been granted free under other applicable regulations;

(b) For timber necessarily killed or cut and used by the permittee which the Forest Service retains for sale in log or other product form.

(c) For timber which will be cut by the permittee which would have been granted free under other applicable regulations;

(d) For timber which would have been granted free under other applicable regulations.

(38 Stat. 1100, as amended; 16 U.S.C. 492)

§ 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.


§ 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 mining 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
§ 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
§ 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 ⅛-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 Rangeoland 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
§ 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.


§ 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.


§ 223.44 Collection rights on contracts involved in transfer of purchaser 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.


§ 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.

§ 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 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 date. 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 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 Downpayment.
(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) Ineffective purchaser credit is that portion of the credit earned, pursuant to a specific Forest Service timber sale contract for construction of specified
roads, or for other purposes in such contract, that exceeds the current contract value, minus base rate value as defined in that contract and, thus, is an amount that cannot be applied toward stumpage charges.

(3) Bid premium is the amount in excess of the advertised value that a purchaser bids for timber offered.

(4) 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.

(5) 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 or by application of earned effective purchaser credit at the time a timber sale contract is executed.

(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. To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustment.

(d) On scaled sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the total bid value of the sale has been charged and paid for. On tree measurement sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until 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. For 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 which results in notification 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) and the limitations of paragraph (h) 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.
§ 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.

(j) In order to deter speculation, the Chief of the Forest Service may increase the period for retention of the downpayment for future contracts subject to such criteria as the Chief may adopt after giving the public notice and opportunity to comment.

§ 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.

(j) In order to deter speculation, the Chief of the Forest Service may increase the period for retention of the downpayment for future contracts subject to such criteria as the Chief may adopt after giving the public notice and opportunity to comment.

§ 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.

§ 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

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.

(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) In accordance with 36 CFR 223.52(a), no contract executed before July 31, 1991, shall be modified to allow for market-related contract term additions unless the purchaser makes a written request to the Contracting Officer by December 1, 1991, for a simultaneous modification implementing the periodic payment requirements of this section. The midpoint payment clause in contracts executed before July 31, 1991, is not the “periodic payment requirement” mandated by 36 CFR 223.52(a).


§ 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

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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 expect 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:

<table>
<thead>
<tr>
<th>BLS producer price index</th>
<th>Index series</th>
<th>Index code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wood Chips</td>
<td>Industry</td>
<td>3211135</td>
</tr>
</tbody>
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(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...
§ 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 is 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

(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 re-establishing 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.

§ 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.

§ 223.66 [Reserved]

§ 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, 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.

§ 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.

§ 223.60 Appraisal of timber for land exchange; right-of-way, or other authorized use.

[61 FR 48625, Sept. 16, 1996]

§ 223.65 Appraisal of timber for land exchange, right-of-way, or other authorized use.

§ 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.

(b) Notification of preferential award to small business firms and certification requirements for set-aside sales.

§ 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
§ 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), 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 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
§ 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;
   (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.

§ 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.

§ 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.

§ 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 highest timber sale bidder is unwilling to perform the construction.

§ 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.

§ 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;
§ 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 advertised; or, if the highest bidder cannot meet the requirements under which the timber was advertised or the awarding 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.


§ 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.

(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,
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.


§223.113 Modification of contracts to prevent environmental damage or to conform to forest plans.

Timber sale contracts, 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
§ 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 other 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.

§ 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, 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 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 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 appeal 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 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.

(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,
§ 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.
§ 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

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 Division, 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]
§ 223.137 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 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]
§ 223.138 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 respondent 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 may 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 judgment 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.

§ 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,
§ 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

(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.

§ 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
§ 223.140 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.

Subpart D—Timber Export and Substitution Restrictions

§ 223.150 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.

Subpart E—Illegal and Dishonest Contracts and Performances

§ 223.165 Illegal and dishonest contracts and performances.

(a) The Forest Service, USDA, shall not award a timber sale contract that contains any clause or provision that violates the Forest Service policy on the sale of timber.

(b) The Forest Service, USDA, shall not award a timber sale contract to a person which, by its terms, requires the person to perform an act or to refrain from performing an act which is prohibited by law or regulation, or which, in the opinion of the Forest Service, violates the public interest.

(c) The Forest Service, USDA, shall not award a timber sale contract to a person which, by its terms, provides for the performance of any act or omission which is illegal or unethical.

(d) The Forest Service, USDA, shall not award a timber sale contract to a person which, by its terms, provides for the performance of any act or omission which is fraudulent.

Subpart F—Forest Service Acquisition of Timber

§ 223.175 Acquisition of timber.

(a) The Forest Service, USDA, shall acquire timber from private lands in accordance with the provisions of the Forest Service policy on acquisition of timber.

(b) The Forest Service, USDA, shall not acquire timber from private lands unless the terms and conditions of the acquisition are fair and reasonable and in the public interest.

(c) The Forest Service, USDA, shall not acquire timber from private lands unless the acquisition is in accordance with the provisions of the Forest Service policy on acquisition of timber.

Subpart G—Transportation of Unprocessed Timber

§ 223.185 Transportation of unprocessed timber.

(a) The Forest Service, USDA, shall transport unprocessed timber in accordance with the provisions of the Forest Service policy on transportation of unprocessed timber.

(b) The Forest Service, USDA, shall not transport unprocessed timber unless the terms and conditions of the transportation are fair and reasonable and in the public interest.

(c) The Forest Service, USDA, shall not transport unprocessed timber unless the transportation is in accordance with the provisions of the Forest Service policy on transportation of unprocessed timber.
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Coast; cants to be subsequently remanufactured exceeding 8 3/4 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, 8 3/4 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.

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;
(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.

§ 223.162 [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.


Subpart F [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.


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 to which title is held by any Indian tribe or individual; or the United States against alienation; or 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...
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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 other- wise 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/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 grade 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 _______
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The certificates described in paragraph (a)(3) of this section, 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 violations."

(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 within the same geographic and economic area.

(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
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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) 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 in 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 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) 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 in 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 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 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.

(f) Waiver within a sourcing area. The prohibitions in 36 CFR Ch. II (7–1–09 Edition) § 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.

(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.

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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 co-signature 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 19, to the Forest Service, USDA § 223.190, et seq., and its implementing regulations. I also 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 Act and its implementing regulations. I also understand that I may not purchase unprocessed timber originating from private 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 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 average annual volume 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 by [the application 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 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.

(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 from the geographic 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.”

or,

(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 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
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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.
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§ 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).

(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 prohibition 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, shall notify the person acquiring such unprocessed private timber that all 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, by retaining 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.

(i) On such form, described in paragraph (a) of this section, the person transferring the timber shall:

(A) Give notice to the person receiving the unprocessed private timber that exporting that timber would violate the Act and its implementing regulations;

(B) 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;

(ii) Agree to send a signed copy of the transaction statement to the Regional Forester within 10 calendar days of the transaction;

(iii) 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;

(iv) 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

(v) Certify that the form has been read and understood.

(2) On such form, described in paragraph (b), the person acquiring the timber shall:

(A) Acknowledge receipt of the notice of requirement to domestically process timber originating from private land;

(B) Certify that a statement pursuant to paragraph (b)(1) will be included in any subsequent transaction documents;

(C) Agree to maintain yellow paint markings on each log end until the timber is domestically processed or transferred;

(D) 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;

(E) Agree to send a signed copy of the transaction statement to the Regional Forester within 10 calendar days of the transaction;

(F) 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;

(G) 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;

(H) 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, 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 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.

(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, USDA

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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 FalseStatements 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 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
§ 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.
§ 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.
§ 223.203

(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.
§ 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.


§ 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 factors such as
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.

§ 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.

§ 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.

§ 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;
§ 223.230 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;
(b) Officers;
(c) Members of the board of directors; or
(d) Holders of bonds, notes, or other types of debt.

§ 223.233 Award to highest bidder.

(a) The Forest Service shall award contracts, permits, or other authorizing instruments for advertised sales as follows:

(i) 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.

(ii) 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
§ 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 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.
§ 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.
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.

§ 223.239 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 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).

§ 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 § 223.204 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.

PART 228—MINERALS

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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. 21–54), 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 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 Notice of intent.

(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 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  

(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(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.

(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,
§ 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 under review, 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
§ 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, dumping, 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;
§ 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.
§ 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 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.


§ 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 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.

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, 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, whitening, 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.

§ 228.42 Definitions.

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


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).

§ 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
§ 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 minerals 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
§ 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 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.
§ 228.55 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).

§ 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 than 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 re-advertised 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 re-advertising 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 non-competitive 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.


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

(5) In order to determine payment amount, the purchaser must make a report of operations. The report must include the amount of mineral material removed, which must be verified by the authorized officer.

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

(1) The purchaser may make payments monthly or quarterly which must be based on the in-place value (volume or weight equivalent) of material removed during the contract period. The units of measurement must correspond to the units used in the appraisal. The purchaser must make all payments before contract renewal.

(2) The purchaser must deliver a bond which conforms to the provisions of § 228.51(a)(2) to the authorized officer before operations are begun under the contract.

§ 228.66 Refunds.

Upon termination of any contract, payments in excess of $10 may be refunded, less the costs incurred by the United States, under any of the following conditions:

(a) Payment in excess of value. If the total payment exceeds the value of the mineral material removed, unless it is the minimum annual payment in lieu of production;

(b) Insufficiency of material. If insufficient mineral material existed in the sale area to provide the quantity of material estimated to have been available;

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

(2) If the contract is terminated by mutual agreement. This refund provision is not a warranty that a specific quantity of material exists in the sale area.
§ 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, prehistoric, 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)(3) 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
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, 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 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 lessee 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, 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 that 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.


(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 environmental 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 consult with 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 the 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
§ 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 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
§ 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.);


(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.

(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

§ 228.113
§ 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 proceeding 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 non-compliance 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
§228.114 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 re-
requirements in § 228.114 (c) through (i) of this subpart.

(2) Send comments regarding the bur-
den estimate or any other aspect of this collection of information, includ-
ing suggestions for reducing this bur-
den, to Chief (2800), Forest Service, USDA, P. O. Box 96090, Washington, DC 20090–6090 and to the Office of Informa-
tion and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

Subpart A—Stewardship Incentive Program

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230.46 Information collection requirements.

AUTHORITY: 16 U.S.C. 2101 et seq.

SOURCE: 56 FR 63585, Dec. 4, 1991, unless otherwise noted.

Subpart A—Stewardship Incentive Program

§ 230.1 Purpose and scope.

(a) The regulations in this subpart govern the operation of the Steward-
ship Incentive Program as provided in section 6 of the Cooperative Forestry Assistance Act, as amended by title XII of the Food, Agriculture, Conservation, and Trade Act of 1990 (16 U.S.C. 2101, et seq.). This subpart sets forth the rules and procedures by which the Steward-
ship Incentive Program will be admin-
istered by the Forest Service to estab-
lish forest stewardship practices on nonindustrial private forest land.

(b) The cost-share assistance pro-
vided under the Stewardship Incentive Program shall complement rather than replace or duplicate the existing Agri-
cultural Conservation Program and Forestry Incentives Program. Tree planting and improvement and other State priorities for program activities and practices funded under the Stew-
ardship Incentive Program shall be de-
signed to provide multiple resource benefits not available through other cost-share programs.

§ 230.2 Definitions.

As used in this subpart, the following terms shall mean:


Assignee means any person, corpora-
tion, government agency, or other legal entity to whom a landowner transfers legal rights to receive all or part of federal cost-share payments.

Chief means the Chief of the Forest Service.

Committee means the State Forest Stewardship Coordinating Committee established pursuant to section 19(b)(1) of the Act.
Forest Service, USDA § 230.3

Fiscal year means the fiscal year of the United States Government which is October 1 through September 30.

Landowner means any private individual, group, association, corporation, Indian tribe or other native group, or other private legal entity, excluding corporations whose stocks are publicly traded or legal entities principally engaged in the production of wood products.

Nonindustrial private forest land means rural lands with existing tree cover or which are suitable for growing trees and owned by any landowner as defined in this subpart.

Practice means a stewardship activity or conservation measure consistent with the landowner’s desired management objectives.

Program means the Stewardship Incentive Program.

Regional Forester means the Forest Service official charged with the administration of a Region of the National Forest System as described in 36 CFR 200.2, except that with reference to the States covered by the Eastern Region, such term shall mean the Area Director for States and Private Forestry, Northeastern Area (36 CFR 200.2).

Resource Management Professional means any person who is recognized by the State Forester as having the knowledge and skills to develop landowner plans for managing the biological, economic, and environmental interrelationship of forest resources and to identify appropriate activities to manage, protect, or enhance forest resources including, but not limited to, an employee of a State forestry agency, other State resource agency, the Soil Conservation Service, a consulting forester, or wildlife biologist.

Service Representative means a resource management professional designated by the State Forester to perform any or all of the following technical assistance functions: Review and approval of landowner plans, determination of need and feasibility of practices, establishment of site specific practice specifications, certification of completion of practices and performance of compliance checks pursuant to this subpart.

State means any one of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the North Mariana Islands, the Trust Territory of the Pacific Islands and the Territories and possessions of the United States.

State Forester means the employee of a State responsible for administration and delivery of forestry and assistance within such State.

USDA means the U.S. Department of Agriculture.

§ 230.3 National program administration.

(a) The Chief shall develop and oversee all Program policy and procedure and monitor the implementation of such policy and procedure over the life of the Program.

(b) The Chief shall annually distribute among the States such cost-share funds as may be available for the Program after addressing the public benefit incidental to such distribution and after giving appropriate consideration to the following: The total acreage of nonindustrial private forest land in each State, the potential productivity of such land, the number of owners eligible for cost sharing in each State, the need for reforestation in each State, the opportunities to enhance nontimber resources on such forest lands, and the anticipated demand for timber and nontimber resources in each State. In making distributions under this paragraph, the Chief shall consult with a group of not less than five State Foresters selected by a majority of the State foresters.

(c) Tree planting, tree maintenance, and tree improvement are national priorities for cost-share practices under the Programs. In addition to these practices, the Chief, in consultation with the State Foresters, may develop other national priorities for practices to be cost shared under the Program and shall communicate such priorities to guide administration of the Program.

(d) The Chief shall review and determine approval of State plans, including any revisions of such plans.
(e) The Chief, in consultation with the State Foresters, shall annually re-evaluate and set the percentage of program funding to be made available for landowner forest stewardship plan development (§230.7(a)(1) of this subpart).

(f) The Chief may enter into such agreements with any other USDA agency as are necessary to administer the Program. These agreements may include provisions authorizing the collection of Program participant information, the management of accounting ledgers, and the disbursement of payment to participants.

(g) The Chief shall retain final authority to resolve all issues which may arise in the administration of the Program.

§ 230.4 State program administration.

(a) In each State participating in the Program, the Secretary of Agriculture, in consultation with the State Forester, shall establish a State Forest Stewardship Coordinating Committee whose composition meets the requirements of section 19(b) of the Act. The Committee shall be chaired by the State Forester, or the designee thereof.

(b) In each State participating in the Program, the Committee shall recommend to the State Forester for approval:

(1) Stewardship Incentive Program needs within the State;

(2) The minimum contiguous acreage of eligible nonindustrial private forest land, consistent with §230.5(c) of this subpart;

(3) Those nationally approved practices that will be eligible for cost-share assistance within the State;

(4) Those nationally approved technical practices and minimum specifications to be used in implementing practices;

(5) The cost-share levels, by practice, which will encourage tree planting, maintenance, and improvement, and other high priority practices within the State that will result in multiple resource benefits;

(6) The fixed rate or reimbursement or designated percentage of total cost for practice components;

(7) The distribution mechanism for the allocation of cost-share funds within the State;

(8) The assignment of technical responsibility, by type of Program practice, to the appropriate Service Representative;

(9) Guidelines for establishing annual priorities for the approval of landowner applications;

(10) The mechanisms for ensuring landowner compliance with practice specification;

(11) The mechanisms to monitor State participation in the Program; and

(12) Any adjustments in Program guideline, administration, or funding levels to better achieve Program objectives within the State.

(c) The State Forester, after giving full consideration to the recommendations of the Committee, shall approve Program administration procedures as set forth in paragraph (b) of this section. In the event a Committee fails to make timely recommendations with regard to any matter listed in paragraph (b) of this section, the State Forester is authorized to approve administrative procedures for implementing the Program without further delay.

(d) To participate in the Program, the State Forester, in consultation with the Committee, shall develop a State plan that shall provide baseline data on the forest resources of the State; outline threats to the forest resources of the State; describe economic and environmental opportunities that are linked with the forest resources of the State; address management problems, opportunities, and objectives associated with intermingled Federal, State, and private land ownership patterns within the State; and make planning recommendations for Federal, State, and local implementation of the Act.

(1) The State Plan shall cover a 5-year period, identify management goals for nonindustrial private forest lands and set priorities for achieving the goals and objectives identified for the State for each year.

(2) State Foresters may use existing resource inventories, landowner surveys, and other relevant planning data to develop the State plan.
§ 230.6 Landowner forest stewardship plan.  

(a) Prior to receiving approval to implement any Program practice identified in § 230.7(a)(2)-(9) of this subpart, eligible landowners shall have an approved landowner forest stewardship plan. The landowner forest stewardship plan shall be prepared by a Resource Management Professional and approved by a Service Representative and shall identify and describe actions to be taken by the landowner to protect and manage soil, water, aesthetic qualities, recreation, timber, and fish and wildlife resources in a manner which is compatible with the objectives of the landowner.  

(b) A landowner forest stewardship plan shall be effective for not less than 10 years, but shall be reviewed at least...
every five years and may be revised as needed, subject to approval of the Service Representative.

(c) To the extent deemed applicable by the Service Representative, where existing landowner management plans such as conservation plans, Tree Farm management plans, or similar plans meet or can be amended to meet Landowner Forest Stewardship Plan requirements, such plans shall satisfy the requirements of this section.

(d) If a landowner sells or otherwise conveys land covered by a landowner forest stewardship plan, such plan shall remain in effect if agreed to by the new owner. New landowner objectives shall be incorporated through plan revision as needed. Where the new landowner does not agree to adopt the Landowner Forest Stewardship plan, the new landowner cannot obtain approval of new Program practices without preparation and approval of a new Landowner Forest Stewardship Plan.

§ 230.7 Program practices.

(a) Practices for which cost sharing is available under the Stewardship Incentive Program and the reporting codes assigned to each are as follows:

(1) Landowner Forest Stewardship Plan Development (SIP1), which identifies landowner objectives and multiple resource management decisions.

(2) Reforestation and Afforestation (SIP2), which includes establishment or reestablishment of diverse stands of forest trees through natural regeneration, planting, or direct seeding for conservation purposes and sustainable timber production.

(3) Forest and Agroforest Improvement (SIP3), which includes the improvement of forest and agroforest stand productivity, vigor, and health, and the value and quality of wood products.

(4) Windbreak and Hedgerow Establishment, Maintenance, and Renovation (SIP4), which includes the establishment, maintenance, and renovation of windbreaks and hedgerows to conserve energy, protect farmsteads, livestock, and crops, and reduce soil erosion.

(5) Soil and Water Protection and Improvement (SIP5), which includes the maintenance or improvement of water quality and soil productivity on forest land.

(6) Riparian and Wetland Protection and Improvement (SIP6), which includes the protection, restoration, and improvement of wetlands and riparian areas to maintain water quality and enhance habitat.

(7) Fisheries Habitat Enhancement (SIP7), which includes the protection and enhancement of habitat for native resident and anadromous fisheries.

(8) Wildlife Habitat Enhancement (SIP8), which includes the establishment and enhancement of permanent habitat for game and nongame wildlife species.

(9) Forest Recreation Enhancement (SIP9), which includes the enhancement of outdoor recreation activities and aesthetics.

(b) In the application and use of pesticides, including biological, chemical, and behavioral substances, practice performance shall meet all label requirements, State and Federal regulations, and local ordinances.

(c) Anyone who carries out practices under this Program shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations.

§ 230.8 Application and approval.

(a) A landowner wishing to participate in the Program shall contact the local office of the State Forester who shall provide information necessary to make application.

(b) The State Forester, or such official as the State Forester may designate, shall make basic eligibility determinations, including whether the applicant meets nonindustrial private forest land ownership criteria and minimum and maximum acreage criteria in accordance with § 230.5 of this subpart, and approve Program practices. The landowner shall be notified of such determination in writing by mail.

(c) The State Forester, or such official as the State Forester may designate, shall approve Program practices based on the following:
(1) For approval of practices described in §230.7(a)(2)–(a)(9) of this subpart, verification that the landowner has an approved landowner forest stewardship plan.

(2) A determination whether the practice is needed and feasible.

(3) A determination that the practice is consistent with funding priorities established by the State Forester.

(d) Applications shall not be approved unless cost-share funds are available. Approval of an application shall constitute an agreement by the United States and the landowner to cost-share approved practices upon acceptable performance.

(e) Upon approval of Program practices, a Service Representative shall prepare a project outline that identifies the needed technical practices, specifications, and approximate time frame(s) for the implementation of the practice(s) to achieve the objectives of the landowner forest stewardship plan. Upon agreement by the landowner and the Service Representative to the requirements set forth in the project outline, the outline shall be attached to and become part of the landowner forest stewardship plan and shall be effective for the duration of the practice. Requirements of a project outline shall constitute the basis for determining acceptable performance upon practice completion.

(f) Upon approval of Program practices, the landowner shall be notified of approved practices in writing. Such notice shall state that the landowner can begin implementing approved practices.

§230.9 Payment to landowners.

(a) To be eligible for cost-share payments, a landowner must complete each practice within eighteen months of approval. However, if practice(s) are not completed in eighteen months due to conditions beyond the landowner's control, a six month extension period may be granted by the Service Representative.

(b) Upon certification by the Service Representative that a practice has been completed in accordance with specifications, the federal cost-share payment will be calculated and disbursed to the landowner. Service Representatives shall have the right of access to the landowner's property to inspect practices for the duration of the practice maintenance period.

(c) The amount of payment under the Program to any one landowner shall not exceed $10,000 in any given fiscal year. For each landowner participating in the Program, the payment limitation shall apply as follows:

(1) Where husband and wife hold joint ownership, they shall be considered as a single landowner.

(2) Where any number of individuals hold common ownership, they shall be considered as a single landowner.

(3) Where the individual is a partner, corporate shareholder, or has an ownership interest in another private legal entity, the amount of payment to the individual shall be equivalent to the percentage of ownership the individual holds in the partnership, corporation or other private legal entity times the payment made to such partnership, corporation or other legal entity.

(d) Levels of federal cost-share funds to be paid to landowners shall be set by the State Forester, but shall not exceed 75 percent of the actual costs incurred by a participating landowner. Non-Federal program funds and other donated assistance may be used to supplement cost-share assistance under the Program; however, the total of all funds and assistance shall not exceed 100 percent of the actual cost of practice implementation.

(e) A practice may consist of one or more component activities. A landowner may receive partial payment for completed components on the condition that the landowner agrees to complete the remaining component(s) of the practice within the time period specified by the Service Representative, not to exceed eighteen months following approval to implement the practice, unless an extension is justified as provided in paragraph (a) of this section.

(f) Where performance actually rendered does not meet the minimum specifications of a practice due to factors beyond the landowner's control, the State Forester or designee may approve cost-share payment under one of the following conditions:
§ 230.10 Prohibitions.

(a) No cost-share funds shall be paid for the following:

(1) Costs incurred before an application for cost-share assistance is approved;

(2) The implementation of any practice(s) already required by law, regulation, or other authority; and

(3) Repairs or normal upkeep or maintenance of any practice.

(b) No cost-share assistance shall be paid for repeating practices on the same site by the same landowner which have been implemented under the Forestry Incentives Program (16 U.S.C. 2104) or any other Federal, State, or local government programs, or private sector programs, except where such practices are repeated due to a failure of a prior practice without fault of the landowner.

§ 230.11 Recapture of payment.

(a) If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from this program, the cost-share funds shall be withheld or a refund of all or part of any Program payments otherwise due or paid that person shall be secured. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival, or other legal mechanism designed for or having the effect of evading the requirements of this subpart.

(b) If any landowner or successor takes any action or fails to take action which results in the destruction or impairment of a prescribed practice for the duration of the practice, cost-share...
funds shall be withheld or a recapture of all or part of any Program payments otherwise due or paid shall be secured based on the extent and effect of destruction and impairment.

(c) Nothing in this section requiring the withholding or refunding of cost-share funds shall preclude any penalty or liability otherwise imposed by law.

§ 230.12 Reconsideration.

Any landowner, successor, or assignee who is dissatisfied with any determination made under the Program may request reconsideration by the State Forester and, if the matter is still not resolved, by the Regional Forester. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for requesting reconsideration. All decisions upon reconsideration shall be issued in writing.

§ 230.13 Information requirements.

The requirements governing the preparation of a State forest stewardship plan in §230.4(d) of this subpart, the landowner forest stewardship plan in §230.6 of this subpart, and the application requirements of §230.8 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 0596–0120.

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,


$230.30$ Purpose and scope.

(a) The regulations in this subpart govern the operation of the Forest Land Enhancement Program (hereafter, FLEP) as provided in Section 4 of the Cooperative Forestry Assistance Act (16 U.S.C. 2102 et seq.), as amended by title VIII of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). The purpose of FLEP is to provide a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land.

(b) The educational assistance, resource management expertise, and financial assistance provided under FLEP shall complement any existing Federal or State programs or programs offered through institutions of higher learning providing assistance to nonindustrial private forest landowners. FLEP promotes improved coordination and cooperation among Federal, State, and local programs regarding the establishment, maintenance, enhancement, and restoration of nonindustrial private forestlands.

(c) Participation in FLEP is voluntary on the part of both the State and the nonindustrial forest landowner. To participate, each State must have nonindustrial private forest lands, a State Forester or equivalent, and a State Forest Stewardship Coordinating Committee.

$230.31$ Definitions.

The terms used in this subpart are defined as follows:

Capital investment or improvement. Durable equipment or assets capable of being amortized or depreciated over a period of 3 or more years, not including activities or practices carried out as part of the Forest Land Enhancement Program (FLEP) cost-share element.

Catastrophic natural event. Destructive natural event, which includes, but is not limited to, wildfires, insect infestations, disease outbreaks, droughts, floods, windstorms, freezing, ice storms, hail, sleet, mudslides, landslides, earthquakes, avalanches, torna- does, volcanoes, hurricanes, or tsunamis.

Chief. The Chief of the Forest Service, United States Department of Agriculture.

Committee. The State Forest Stewardship Coordinating Committee.

Concurrence. Review, verification, and confirmation by the Responsible Official that the State priority plan contains all of the key elements required by law and the rules of this subpart.

Cost-share. A program payment, on a reimbursable basis, at a maximum of 75 percent of the cost incurred by a landowner for implementation of a State-approved activity or practice authorized under FLEP.

Financial assistance. Funds disbursed as an award by the Federal Government to an eligible party from the FLEP annual apportionment, in the form of money, including grants, agreements, contracts, and other arrangements.

Fiscal year. The accounting period, used by the United States Government, from October 1 through September 30.

Landowner. An individual, group, association, corporation, Indian Tribe, or other legal private entity owning nonindustrial private forest land or a person who receives concurrence from the landowner for practice implementation and who holds a lease on the land for a minimum of 10 years. Corporations whose stocks are publicly traded or owners principally engaged in the primary processing of raw wood products are excluded.

Management plan. A written plan prepared by a service representative and approved by a State Forester.

Nonindustrial private forest land. Rural lands with existing tree cover, or which are suitable for growing trees, that are owned by any landowner as defined in this section.

Practice. A prescribed, natural resource management activity that is
consistent with a practice plan and implemented through FLEP to enhance the multiple resource values and benefits and that results in improved conditions on nonindustrial private forest land. A practice may consist of multiple components.

Practice plan. A plan prepared by a service representative and approved by the State Forester that documents the specific practices that are to occur as a result of a landowner application for cost-share. A practice plan may be a stand-alone document or it may be a part of a management plan.

Responsible official. USDA Forest Service Regional Forester, Area Director, or Institute Director charged with the administration of FLEP.

Service representative. Any person who is recognized by a State Forester as having the knowledge and skills to develop management plans, understanding of the economic and environmental interrelationships of forestry and/or agroforestry resources, and the ability to identify appropriate activities to manage, protect, or enhance such resources. The State Forester designates service representatives as the line officers to perform specified FLEP elements.

State. Includes each of the States in the United States, and the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Forester. The director or other head of a State forestry agency or equivalent State official.

State priority plan. The document required from a State to participate in FLEP. A State Forester jointly prepares this plan with the State Forest Stewardship Coordinating Committee to facilitate long-term sustainability of nonindustrial private forest lands within the State.

§ 230.32 National program administration.

(a) The Chief shall develop and implement FLEP in partnership with State forestry agencies and in consultation with other Federal, State, and local natural resource management agencies, institutions of higher learning, and a broad range of private sector interests.

(b) In collaboration with State Foresters, the Chief of the Forest Service and Responsible Officials shall oversee developing and implementing FLEP policy and procedure, including the monitoring of program results over the life of FLEP to ensure that environmental, economic, and social values and public benefits are derived from the program.

(c) The Chief shall annually distribute such funds as may be available for FLEP to the Responsible Official(s) for each of the three geographic funding areas based on the criteria set out in the Forest Service Manual Chapter 3310.

(d) In developing allocation factors for making FLEP distributions under this subpart,

(1) The Chief shall consult with the State Foresters through their Forest Resource Management Committee, a standing committee of the National Association of State Foresters, or its successor.

(2) Allocation factors shall be based on National data sources that address the current status of forest lands of each State or Territory participating in FLEP. Data must be measurable, inclusive of all States, objective, and reliable. The data will address those factors described in the Cooperative Forestry Assistance Act (16 U.S.C. 2103(i), Distribution of Cost-Share Funds).

(e) National priorities for FLEP shall reflect the Department and Forest Service priorities for nonindustrial private forest land as provided in the Forest Service Manual Chapter 3310.

(f) The Responsible Official(s) in each of the three geographic funding areas shall coordinate with their respective State Foresters to determine the final allocation to each State based on the following:

(1) National priorities;

(2) National allocation factors;

(3) Regional and State-wide priorities;

(4) Ability of the State to deliver FLEP; and

§ 230.33

(g) FLEP financial assistance may be disbursed to a third party that will assist in program delivery. The Forest Service may disburse funds directly to a third party, which may include, but is not limited to, Federal, State, or local agencies, and landowner, non-profit, or private organizations, with written approval by the State Forester.

(h) Except as provided at §230.34(d), no financial assistance shall be provided by the Forest Service to a State Forester or any third party, until the Responsible Official has concurred with the State's priority plan.

(i) The Chief has final authority to resolve all issues that may arise in the administration of FLEP.

(j) The Forest Service shall provide National and regional administrative and financial support and oversight through distribution of available FLEP funds to State Foresters and through monitoring, review, and evaluation of FLEP activities and accomplishments.

(k) FLEP funds may not be used by States for capital investments or capital improvements unless specifically authorized in a funding document and must be limited to $5,000. The limitation on capital improvements excludes practices and activities cost-shared with landowners through FLEP.

(l) Funds may not be authorized in the financial assistance document or used for the purchase of land, any interest in land, or any interest in an endowment.

(m) By September 30, 2006, the Chief must submit an annual report to the Secretary of Agriculture summarizing all activities and practices funded through FLEP for the previous fiscal year.

§ 230.34 State program administration.

(a) In States electing to participate in FLEP, the State Forester and the State Forest Stewardship Coordinating Committee, established pursuant to section 19(b) of the Cooperative Forestry Assistance Act, as amended (16 U.S.C. 2101, et seq.), shall jointly develop a State priority plan. The plan must be submitted to the appropriate Responsible Official for review and concurrence.

(b) The State Forester shall develop, implement and administer FLEP consistent with the State priority plan. The State Forester must ensure that all activities are carried out properly and that all cost-shared practices meet the appropriate standards and specifications.

(c) No match of funds is required from the State for participation in FLEP.

(d) In order to facilitate development of FLEP any State may request up to $50,000 of the first-year allocation in advance of Forest Service concurrence with a State priority plan.

(e) Each State participating in FLEP shall submit an annual report to the respective Responsible Official, reporting all activities and practices funded through FLEP for the previous fiscal year. The report shall contain data on
accomplishments by educational assistance, technical assistance, and cost-share assistance based on State objectives and measurable outcomes included in State priority plans.

(f) By July 15, 2006, the State Forester of each State participating in FLEP must submit to the respective Responsible Official a summary report of all State activities and practices funded through FLEP as of June 1, 2006.

§ 230.35 FLEP elements.

(a) States may use FLEP funds to assist landowners in managing their nonindustrial private forest lands and related resources through the following elements:

(1) Development and implementation of educational programs;
(2) Resource management expertise and technical assistance; and
(3) Financial assistance through cost-share programs.

(b) All participating States may use a portion of allocated funds for FLEP administration costs.

(c) States do not have to participate in all FLEP elements.

§ 230.36 State priority plan—purpose and scope.

(a) The State priority plan shall be used to guide FLEP implementation in each participating State through fiscal year 2007 and can be revised as needed.

(b) The State priority plan must describe the various roles and responsibilities of the State Forester, State Forest Stewardship Coordinating Committee, and other agencies and organizations in FLEP planning, delivery, and accountability to the program objectives.

(c) The State priority plan must contain the following:

(1) Data from standard forest inventory and analysis reports on the forest resources found within the State;
(2) A description of concerns, issues, problems and threats related to resource management for all nonindustrial private forest and agroforestry resources;
(3) Identification of the desired objectives and environmental, economic, and social values and public benefits to be derived from FLEP;
(4) An explanation of how FLEP funds are to be used to complement efforts of sustainable forestry management already in place within the State;
(5) A rationale for, and a proposed distribution of, funds for the FLEP elements listed at section 230.35 that the State plans to implement; and
(6) A description of the public participation process used in the development of the plan, including outreach efforts to landowners with limited resources.

(d) If an existing State Forest Stewardship plan, as described at section 19(b)(3) of the Cooperative Forestry Assistance Act (16 U.S.C. 2101, et seq.), adequately addresses some or all of the required information, it may be incorporated into the State priority plan by reference.

(e) The State priority plan must also outline the State FLEP priorities, policies, and procedures that will be implemented to encourage landowners to practice sustainable management and to actively conserve and enhance their forest resources.

(f) Each FLEP element described in the State priority plan must clearly state objectives and measurable outcomes to be achieved.

(g) All activities performed using FLEP funds must be consistent with the purpose of the program.

§ 230.37 State priority plan—educational assistance.

(a) Educational assistance includes development and delivery of:

(1) Activities;
(2) Events;
(3) Programs;
(4) Curriculum;
(5) Written materials;
(6) Workshops;
(7) Training sessions;
(8) Web site construction and maintenance; or
(9) Similar activities designed to bring landowners to an informed decision point and accelerate adoption of sustainable forest practices in a State.

(b) If a State determines that all or some of its funds will be used for education, the State priority plan must describe the types of activities that will be covered, participating entities, expected outcomes, and method(s) that
§ 230.38 State priority plan—technical assistance.

(a) Technical assistance includes, but is not limited to:
(1) Agreements with other agencies, institutions of higher education, natural resource consultants, or private organizations to augment or complement existing services of a State Forestry agency;
(2) Grants, agreements, contracts or other arrangements to provide services to landowners not offered by a State;
(3) Support of existing technical assistance delivery by State forestry agencies or development of such technical assistance;
(4) The development or application of new tools or technology for servicing landowners; or
(5) Similar undertakings.

(b) If a State determines that all or some of its funds will be used for technical assistance, the State priority plan shall describe:
(1) Who will provide the assistance;
(2) Outreach efforts directed at specific groups or categories of landowners;
(3) Expected long- and short-term outcomes; and
(4) Method(s) for documenting accomplishments.

§ 230.39 State priority plan—financial assistance.

(a) Cost-share financial assistance includes a wide range of activities and practices developed by a State Forester, in cooperation with the State Forest Stewardship Coordinating Committee.

(b) A State does not have to adopt a separate FLEP cost-share program if a State cost-share program already exists that meets the objectives of FLEP. However, FLEP funds must be accounted for in accordance with Federal financial accounting standards. If an existing cost-share program is used, a copy of the guidelines for that program must be referenced and attached to the State priority plan.

(c) If a State determines that all or some of its funds will be placed into a cost-share program, the State priority plan must identify and describe how the cost-share funds will be made available to landowners participating in FLEP and expected outcomes and method(s) for documenting and evaluating accomplishments.

(d) The cost-share section of the State priority plan must include all of the following information:
(1) Describe any land ownership or annual acreage eligibility limitation under FLEP that is more restrictive than that established by the authorizing statute;
(2) Describe any limitations for cost-share of management plans;
(3) Define what constitutes a management plan if a State chooses to adopt more restrictive requirements than those established in this subpart; and
(4) Identify aggregate payment limitations to any one landowner receiving cost-share funds through FLEP.

(e) The State priority plan must also describe how funds identified for cost-share with landowners will be distributed and how cost-share rates are determined and established for each practice.

(f) The State priority plan must describe the application and payment process for landowners interested in participating in and receiving cost-share through FLEP (§ 230.42).

(g) The State priority plan must also address the following steps related to financial assistance:
(1) Application procedure;
(2) Approval process;
(3) Performance period;
(4) Cancellation of approvals;
(5) Certification of performance;
(6) Payment;
(7) Maintenance and compliance;
(8) Procedure for recapture of funds for non-compliance; and
(9) Appeals procedures.

§ 230.40 Eligible practices for cost-share assistance.

(a) The State priority plan must document and describe which of the following eleven categories will be made available to landowners for cost-share funding:
Forest Service, USDA

§ 230.41

(1) Management Plan Development—Development or revision of a management plan that must meet the minimum standards of a Forest Stewardship Plan (16 U.S.C. 2103a(f)(ii)). The plan applies to those portions of the landowner's property on which any practice or activity funded under FLEP shall be carried out, as well as any property of the owner that may be affected by the activity or practice. Management plans are not subject to any acreage limits, and therefore cost-sharing such a plan under FLEP is exempt from the 1,000-acre (or 5,000-acre) limit unless restricted as described in the State priority plan.

(2) Afforestation and Reforestation—Site preparation, planting, seeding, or other practices to encourage natural regeneration or to ensure forest establishment and carbon sequestration.

(3) Forest Stand Improvement—Practices to enhance growth and quality of wood fiber, special forest products, and carbon sequestration.

(4) Agroforestry Implementation—Establishment, maintenance, and renovation of windbreaks, riparian forest buffers, silvopasture, alley cropping, or other agroforestry practices, including purposes for energy conservation and carbon sequestration in conjunction with agriculture, forest, and other land uses.

(5) Water Quality Improvement and Watershed Protection—Establishment, maintenance, renovation, and restoration practices, including any necessary design and engineering to improve and protect water quality, riparian areas, and forest wetlands and watersheds.

(6) Fish and Wildlife Habitat Improvement—Establishment, maintenance, and restoration practices to create, protect, or improve fish and wildlife habitat, including any necessary design and engineering.

(7) Forest Health and Protection—Establishment of practices primarily to detect, monitor, assess, protect, improve, or restore forest health, including detection and control of insects, diseases, and animal damage to established stands.

(8) Invasive Species Control—Establishment, maintenance and restoration practices primarily to detect, monitor, eradicate, or control the spread of invasive species.

(9) Wildfire and Catastrophic Risk Reduction—Establishment of practices primarily to reduce the risk from wildfire and other catastrophic natural events.

(10) Wildfire and Catastrophic Event Rehabilitation—Establishment of practices primarily to restore and rehabilitate forests following wildfire and other catastrophic natural events.

(11) Special Practices—Establishment, maintenance, and restoration practices addressing other conservation concerns on nonindustrial private forest lands as proposed by the State Forester and the Committee, which must have concurrence by the responsible official.

(b) A practice may consist of one or more components.

§ 230.41 Eligibility requirements for cost-share assistance.

(a) All landowners of nonindustrial private forest land as defined in § 230.31 of this subpart, including those who engage in primary processing of raw wood products on a part-time or intermittent basis and who otherwise meet the requirements of this section, are eligible to apply for and receive assistance under FLEP without regard to race, color, religion, national origin, age, sex, disability, political affiliation, sexual orientation, or marital or family status.

(b) A landowner is eligible to receive funds under the cost-share element of FLEP for treatment of not more than a total of 1,000 acres of land annually, except where a State Forester, with the concurrence of a responsible official, determines that significant public benefits would accrue from approval of a landowner's treating up to 5,000 acres annually. In making a determination of significant public benefits, the State Forester and the responsible official shall consider, at a minimum, whether landowners who treat more than 1,000 acres annually can achieve cost-effective resource management objectives without unduly excluding FLEP participation of other eligible landowners.

(c) In order to meet the following minimum requirements to be eligible to receive cost-share through FLEP for
§ 230.42 Cost-share assistance application and payment procedures.

(a) Landowner applications for cost-share payments shall not be approved unless cost-share funds are available. The obligation of funds upon approval of an application constitutes an agreement by the State and the landowner to cost-share a completed practice on a reimbursable basis when the service representative verifies that the practice has been implemented.

(b) Upon receiving an application for an eligible FLEP practice and making a determination that funds are available, a service representative shall prepare a practice plan that identifies the needed practices, specifications, and performance period for the implementation of the practice(s) to achieve the objectives of the landowner. The requirements of a practice plan may be contained in a management plan. The practice plan is the basis for determining acceptable performance upon completion of the practice.

(c) Upon approval of a FLEP application, the State Forester shall notify the landowner in writing. Such notice shall state that the landowner can begin implementing the approved practice(s) and that funds have been obligated for reimbursement of a specified amount of the total cost. Practice costs incurred before approval are not eligible unless authorized by the State Forester. The notice shall also state that payment shall be made upon the service representative’s verification that the practice has been implemented in accordance with the specifications of the practice plan and activities described in the management plan.

(d) A leaseholder who has a long-term lease on the land to be treated through FLEP must provide a copy of the lease to the State Forester in order to be eligible to receive cost-share assistance.

(e) To be eligible for cost-share reimbursement payment, a landowner must complete each practice within the performance period specified in the State priority plan, not to exceed 24 months. However, if practice(s) are not completed within the performance period specified, due to conditions beyond the landowner’s control, the State Forester may grant an extension for a time period specified in the State priority plan, not to exceed 12 months.

(f) Upon certification by the service representative that a practice has been completed in accordance with the practice plan, the cost-share payment shall be calculated and disbursed to the landowner. Landowners must provide to service representatives the right of access to the landowner’s property to inspect practices for the duration of the maintenance period for the practices.

(g) The maximum aggregate amount of cost-share payment under FLEP to any one landowner shall not exceed $100,000 through 2007, with the following exception for Alaska Indian Tribes. The Alaska State Forester, in consultation with the State Forest Stewardship Coordinating Committee
and the Responsible Official, shall establish the maximum aggregate payment to any one Alaska Indian Tribe, however, the 1,000- and 5,000-acre limits shall apply.

(h) The State priority plan shall set the levels of cost-share assistance to be paid to landowners, not to exceed 75 percent of the total costs incurred by a participating landowner. Non-Federal program funds and other donated assistance may be used to supplement cost-share through FLEP; however, the total of all funds and assistance shall not exceed 100 percent of the total cost of practice implementation, and the Federal share of the total cost shall be reduced by any gross revenue from any material sold as a result of the cost-share practice.

(i) States may use the cost-share rate to define priority practices and priority areas by reserving the maximum rate of 75 percent of the total costs for the practices and areas having the highest priority.

(j) State priorities for cost-share shall reflect the national priorities as listed in the Forest Service Manual Chapter 3310.

(k) Other priorities may be developed by the State Forester in consultation with the State Forest Stewardship Coordinating Committee.

(l) A landowner may receive partial payment, if allowed in the State priority plan, for completed components on the condition that the landowner agrees to complete the remaining components of the practice within the performance period specified in the practice plan.

(m) Where performance actually rendered does not meet the minimum specifications of a practice due to factors beyond the landowner’s control, the State Forester may approve cost-share payments under one of the following conditions:

(1) The landowner repeats application of practices previously implemented or establishes additional eligible practices under such terms and conditions as the service representative may require, in which case the State Forester may approve cost-share payments for additional or repeated practices to the extent such measures are needed to meet the objectives of the management plan; or

(2) The landowner establishes, to the satisfaction of the service representative that:

(i) A reasonable effort was made to meet the minimum requirements; and

(ii) The practice, as performed, adequately meets the objectives of the practice plan.

(n) In case of death or incompetence of any landowner, the State Forester shall approve cost-share payments to the successor in title or other persons or entities in control of the landowner property if they agree to maintain the practices for the duration of the required maintenance period.

(o) Any landowner who may be entitled to a cost-share payment under this subpart may assign the right thereto, in whole or in part, under the following terms:

(1) Payments may be assigned only for performance of a FLEP practice;

(2) A payment that is made to a landowner may not be assigned to pay or secure any preexisting debt; and

(3) Nothing in this section shall be construed to authorize suit against the United States, the Department of Agriculture, the Forest Service, any State or any disbursing agent acting on their behalf, if payment is made to an assignor rather than to an assignee or if payment is made to only one of several assignees.

(p) No financial assistance or portion thereof due and owing to any landowner shall be subject to any claim arising under State or other law by any creditor, except for claims of agencies of the United States Government.

(q) Prior to receiving approval to implement any FLEP practice identified in the State priority plan, except for management plan development, eligible landowners shall have an approved practice plan providing appropriate technical standards concerning the performance of the requested practice(s). A service representative shall approve the plan. In reviewing and approving plans, to the extent deemed applicable by the service representative, existing landowner management plans such as Tree Farm management plans, Forest Stewardship management plans, or similar plans may either meet, or can
§ 230.43 Cost-share assistance—prohibited practices.

(a) Cost-share payments for the following are prohibited:
(1) Costs incurred before an application for cost-share is approved in writing, except:
   (i) As pre-approved by the State Forester, or
   (ii) The materials and items that may be purchased before approval of the practice as described in the State priority plan;
(2) Repeated practices on the same site within the required maintenance period which have been implemented under any other Federal, State, or local government programs, or private sector programs, except where such practices are repeated due to a failure of a prior practice without fault of the landowner or recurring practices as noted in this subpart;
(3) Capital investments or capital improvements not related to FLEP practices, purchase of land or any interest in land, or any interest in an endowment as provided in section 230.32(k) and (l);
(4) Practices associated with the development of or improvement to landowner nursery operations;
(5) Practices associated with the development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance;
(6) Any practice that is not related to the long-term sustainability of non-industrial private forest lands or agroforestry activities.

§ 230.44 Cost-share assistance—reporting requirement.

(a) FLEP cost-share accomplishments should be reported using the following standard categories of practices:
(1) FLEP1—Management Plan Development;
(2) FLEP2—Afforestation and Reforestation;
(3) FLEP3—Forest Stand Improvement;
(4) FLEP4—Agroforestry Implementation;
(5) FLEP5—Water Quality Improvement and Watershed Protection;
(6) FLEP6—Fish and Wildlife Habitat Improvement;
(7) FLEP7—Forest Health and Protection;
(8) FLEP8—Invasive Species Control;
(9) FLEP9—Fire and Catastrophic Risk Reduction;
(10) FLEP10—Fire and Catastrophic Event Rehabilitation; and
(11) FLEP11—Special Practices.

(b) All reporting must include activities and accomplishments for each category of FLEP practices.

§ 230.45 Recapture of cost-share assistance.

(a) Payments made to landowners may be recaptured under one or more of the following circumstances:
(1) If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from FLEP. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival, or other legal mechanism designed for or having the effect of evading the requirements of FLEP. Financial assistance payments shall be withheld or a refund of all or part of any FLEP payments otherwise due or paid to that person shall be secured.
(2) If any landowner or successor takes any action or fails to take action, which results in the destruction or impairment of a prescribed practice for the duration of the practice. Cost-share payments shall be withheld or a recapture of all or part of any FLEP payments otherwise due or paid shall be secured, based on the extent and effect of destruction and impairment.
(3) If a landowner sells, conveys, or otherwise loses control of the land, except when determined by a State Forester to have been beyond the landowner’s control, upon which there is a continuing obligation to maintain a practice, and the new landowner does not agree to assume the responsibility for maintaining the practice. In such cases the landowner who was originally obligated to maintain the practice shall be liable to reimburse the State(s) for all cost-share on such practices.
(b) Nothing in this section requiring the withholding or refunding of financial assistance payments shall preclude any penalty or liability otherwise imposed by law.

(c) Any landowner, successor, or assignee who is dissatisfied with any determination made under FLEP may request reconsideration by the State Forester and, if the matter is not resolved, by the Responsible Official. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for the request. All decisions on reconsideration must be issued in writing.

§ 230.46 Information collection requirements.

The requirements governing the preparation of a State priority plan, management plan, and practice plan, the reporting requirements, and the application requirements of this subpart constitute information requirements as defined by the Paperwork Reduction Act of 1995 and have been assigned Office of Management and Budget (OMB) control number 0596–0168.

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.


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
§ 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 the 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.
§ 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 §241.22 of this subpart or other applicable 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 specific multiple-use activity as a part of the planning and implementation process required by the National Forest Management Act and the implementing regulations at 36 CFR parts 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.
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

Sec. 242.1 Purpose. 242.2 Authority. 242.3 Applicability and scope. 242.4 Definitions. 242.5 Eligibility for subsistence use. 242.6 Licenses, permits, harvest tickets, tags, and reports. 242.7 Restriction on use. 242.8 Penalties. 242.9 Information collection requirements.

Subpart B—Program Structure

(1) Alaska Maritime National Wildlife Refuge, including the:

(i) Karluk Subunit: All of the submerged land and water of the Pacific Ocean (Shelikof 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 1/4 miles east of Rocky Point within Section 14 of Township 29 South, Range 31, West, Seward Meridian as described in Public Land Order 1749, dated October 30, 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, 1945 (U.S. Survey 21539);

(iii) Afognak Island Subunit: A submerged lands and waters of the Pacific Ocean lying within 3 miles of the shoreline as described in Proclamation No. 39, dated December 24, 1899;

(iv) Simeonof Island 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, 1946; 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°57'00"-56°15'57" North Latitude and 156°30'07"-157°00'00" West Longitude as described in Executive Order No. 5059, dated April 15, 1929.

(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 Latitude 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—Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 5°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., 2500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4200 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., 3000 feet, to a point, 5°03'15" north latitude, 135°23'07" west longitude; East, 2900 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. 1496 to angle point No. 35, on the southwestern point of Japonski Island; S. 60° E., 3300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point beginning.

(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

Forest Service, USDA

§ 242.3
§ 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.


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 use; 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 non-commercial 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.


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—

(ii) 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;

(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; 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.

§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.
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.


§ 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 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; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs.
Each 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 four 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 non-rural;

(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) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) 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;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) 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;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) 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;

(xviii) 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
(xix) 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.

§ 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 re-elected.

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 needs for fish and wildlife populations from the public lands 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.


§ 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:


(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 shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2,500 or less shall be deemed to be rural unless such a community or
area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2,500 but not more than 7,000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7,000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

(iii) Community infrastructure;

(iv) Transportation; and

(v) Educational institutions.

(6) Communities or areas which are economically, socially, and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a 10-year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of 5 years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at §242.23.

§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.
§ 242.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subparts C or D of this part shall be accepted by the Board according to a published schedule. 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 shall develop and publish proposed regulations in the Federal Register and publish notice in local newspapers. Comments on the proposed regulations shall be distributed 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.

§ 242.19 Special actions.

(a) The Board may restrict, close, or reopen the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of a particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) The Board may open, close, or restrict subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(c) The Board will accept a request for a change in seasons, methods and means, harvest limits and/or restrictions on harvest under this §242.19 only if there are extenuating circumstances
necessitating a regulatory change before the next annual subpart D proposal cycle. Extenuating circumstances include unusual and significant changes in resource abundance or unusual conditions affecting harvest opportunities that could not reasonably have been anticipated and that potentially could have significant adverse effects on the health of fish and wildlife populations or subsistence uses. Requests for Special Action that do not meet these conditions will be rejected; however, a rejected Special Action request will be deferred, if appropriate, to the next annual regulatory proposal cycle for consideration, after coordination with the submitter. In general, changes to Customary and Traditional Use Determinations will only be considered through the annual subpart C proposal cycle.

(d) In an emergency situation, the Board may immediately open, close, liberalize, or restrict subsistence uses of fish and wildlife on public lands, or close or restrict non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons. Prior to implementing an emergency action, the Board shall consult with the State. The emergency action shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and public hearing, that such action should be extended. The Board shall, in a timely manner, provide notice via radio announcement or personal contact of the emergency action and shall publish notice and reasons justifying the emergency action in newspapers of any area affected, and in the Federal Register thereafter. The length of any temporary change shall be confined to the minimum time period or harvest limit determined by the Board to be necessary to satisfy subsistence uses. A temporary opening or closure will not extend beyond the regulatory year for which it is promulgated.

(f) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands managed by the agency remain unaffected by the regulations in this part, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(g) You may not take fish and wildlife in violation of a restriction, closure, opening, or temporary change authorized by the Board.

§ 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.
§ 242.21 (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 (ADF&G) for review and recommendation. The Board shall consider any Regional Council and ADF&G 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.

§ 242.22 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, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

[67 FR 30570, May 7, 2002]

§ 242.23 Rural determinations.
(a) The Board has determined all communities and areas to be rural in accordance with §242.15, except those set forth in this paragraph. You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service, Office of Subsistence Management. The nonrural areas include:
(1) Anchorage, Municipality of;
(2) Fairbanks North Star Borough;
(3) Homer area—including Homer, Anchor Point, North Fork Road area, Kachemak City, and the Fritz Creek East area (not including Voznesenka);
(4) Juneau area—including Juneau, West Juneau, and Douglas;
(5) Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;
(6) Ketchikan area—including all parts of the road system connected to the City of Ketchikan including Saxman, Pennock Island and parts of Gravina Island;
(7) Prudhoe Bay;
(8) Seward area—including Seward and Moose Pass;
(9) Valdez; and
(10) Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, Point MacKenzie, and Bodenburg Butte.

(b) [Reserved]

[72 FR 25697, May 7, 2007]

§ 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>
<thead>
<tr>
<th>Area</th>
<th>Species</th>
<th>Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit 1C</td>
<td>Black Bear</td>
<td>Residents of Unit 1C, 1D, 3, Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.</td>
</tr>
<tr>
<td>Unit 1A</td>
<td>Brown Bear</td>
<td>Residents of Unit 1A, except no subsistence for residents of Yakutat.</td>
</tr>
<tr>
<td>Unit 1B</td>
<td>Brown Bear</td>
<td>Residents of Unit 1A, Petersburg, and Wrangell, except no subsistence for residents of Yakutat.</td>
</tr>
<tr>
<td>Unit 1C</td>
<td>Brown Bear</td>
<td>Residents of Unit 1C, Haines, Hoonah, Kake, Kluwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.</td>
</tr>
<tr>
<td>Unit 1D</td>
<td>Brown Bear</td>
<td>Residents of 1D.</td>
</tr>
<tr>
<td>Unit 1A</td>
<td>Deer</td>
<td>Residents of Units 1A and 2.</td>
</tr>
<tr>
<td>Unit 1B</td>
<td>Deer</td>
<td>Residents of Units 1A, 1B, 2, and 3.</td>
</tr>
<tr>
<td>Unit 1C</td>
<td>Deer</td>
<td>Residents of 1C, 1D, Hoonah, Kake, and Petersburg.</td>
</tr>
<tr>
<td>Unit 1D</td>
<td>Deer</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 1B</td>
<td>Goat</td>
<td>Residents of Units 1B and 3.</td>
</tr>
<tr>
<td>Unit 1C</td>
<td>Goat</td>
<td>Residents of Haines, Kake, Kluwan, Petersburg, and Hoonah.</td>
</tr>
<tr>
<td>Unit 1B</td>
<td>Moose</td>
<td>Residents of Units 1, 2, 3, and 4.</td>
</tr>
<tr>
<td>Unit 1C Berners Bay</td>
<td>Moose</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 1D</td>
<td>Moose</td>
<td>Residents of Unit 1D.</td>
</tr>
<tr>
<td>Unit 2</td>
<td>Deer</td>
<td>Residents of Units 1A, 2, and 3.</td>
</tr>
<tr>
<td>Unit 3</td>
<td>Deer</td>
<td>Residents of Unit 1B, 3, Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.</td>
</tr>
<tr>
<td>Unit 3, Wrangell and Mitkof Islands</td>
<td>Moose</td>
<td>Residents of Units 4 and Kake.</td>
</tr>
<tr>
<td>Unit 4</td>
<td>Brown Bear</td>
<td>Residents of Unit 4 and Kake.</td>
</tr>
<tr>
<td>Unit 5</td>
<td>Black Bear</td>
<td>Residents of Unit 5A.</td>
</tr>
<tr>
<td>Unit 5</td>
<td>Brown Bear</td>
<td>Residents of Yakutat.</td>
</tr>
<tr>
<td>Unit 5</td>
<td>Deer</td>
<td>Residents of Yakutat.</td>
</tr>
<tr>
<td>Unit 5</td>
<td>Goat</td>
<td>Residents of Unit 5A.</td>
</tr>
<tr>
<td>Unit 5</td>
<td>Moose</td>
<td>Residents of Unit 5A.</td>
</tr>
<tr>
<td>Unit 5</td>
<td>Wolf</td>
<td>Residents of Unit 5A.</td>
</tr>
<tr>
<td>Unit 6A</td>
<td>Black Bear</td>
<td>Residents of Yakutat and Unit 6C and 6D, except no subsistence for Whittier.</td>
</tr>
<tr>
<td>Unit 6, remainder</td>
<td>Black Bear</td>
<td>Residents of Unit 6C and 6D, except no subsistence for Whittier.</td>
</tr>
<tr>
<td>Unit 6</td>
<td>Brown Bear</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 6A</td>
<td>Goat</td>
<td>Residents of Unit 5A, 6C, Chenega Bay, and Tatitlek.</td>
</tr>
<tr>
<td>Unit 6C and Unit 6D</td>
<td>Goat</td>
<td>Residents of Unit 6C and 6.</td>
</tr>
<tr>
<td>Unit 6A</td>
<td>Moose</td>
<td>Residents of Units 5A, 6A, 6B and 6C.</td>
</tr>
<tr>
<td>Unit 6B and Unit 6C</td>
<td>Moose</td>
<td>Residents of Units 5A, 6A, 6B and 6C.</td>
</tr>
<tr>
<td>Unit 6D</td>
<td>Moose</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 6A</td>
<td>Wolf</td>
<td>Residents of Units 5A, 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chichakloan, and 16–26.</td>
</tr>
<tr>
<td>Unit 6, remainder</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chichakloan, and 16–26.</td>
</tr>
<tr>
<td>Unit 7</td>
<td>Brown Bear</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 7</td>
<td>Caribou</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Area</td>
<td>Species</td>
<td>Determination</td>
</tr>
<tr>
<td>------</td>
<td>---------</td>
<td>---------------</td>
</tr>
<tr>
<td>Unit 7, Brown Mountain hunt area</td>
<td>Goat</td>
<td>Residents of Port Graham and Ninwalek.</td>
</tr>
<tr>
<td>Unit 7, that portion draining into Kings Bay</td>
<td>Moose</td>
<td>Residents of Cheneya Bay, Cooper Landing, and Taltitek.</td>
</tr>
<tr>
<td>Unit 7, remainder</td>
<td>Moose</td>
<td>Residents of Cooper Landing.</td>
</tr>
<tr>
<td>Unit 7</td>
<td>Sheep</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 7</td>
<td>Ruffed Grouse</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 8</td>
<td>Brown Bear</td>
<td>Residents of Old Harbor, Akhiok, Larsen Bay, Kaktovik, Ouzinkie, and Port Lions.</td>
</tr>
<tr>
<td>Unit 8</td>
<td>Deer</td>
<td>Residents of Unit 8.</td>
</tr>
<tr>
<td>Unit 8</td>
<td>Elk</td>
<td>Residents of Unit 8.</td>
</tr>
<tr>
<td>Unit 8</td>
<td>Goat</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 9D</td>
<td>Bison</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 9A and Unit 9B</td>
<td>Black Bear</td>
<td>Residents of Units 9A, 9B, 17A, 17B, and 17C.</td>
</tr>
<tr>
<td>Unit 9A</td>
<td>Brown Bear</td>
<td>Residents of Pedro Bay.</td>
</tr>
<tr>
<td>Unit 9B</td>
<td>Brown Bear</td>
<td>Residents of Unit 9B.</td>
</tr>
<tr>
<td>Unit 9C</td>
<td>Brown Bear</td>
<td>Residents of Unit 9C, Igiugig, Kakhonak, and Levelock.</td>
</tr>
<tr>
<td>Unit 9D</td>
<td>Brown Bear</td>
<td>Residents of Units 9D and 10 (Unimak Island).</td>
</tr>
<tr>
<td>Unit 9E</td>
<td>Brown Bear</td>
<td>Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Irvanaf Bay, Perryville, Pilot Point, Ugamish, and Port Heiden/Meshik.</td>
</tr>
<tr>
<td>Unit 9A and Unit 9B</td>
<td>Caribou</td>
<td>Residents of Units 9B, 9C, and 17.</td>
</tr>
<tr>
<td>Unit 9C</td>
<td>Caribou</td>
<td>Residents of Units 9B, 9C, 17, and Egegik.</td>
</tr>
<tr>
<td>Unit 9D</td>
<td>Caribou</td>
<td>Residents of Units 9D, Akutan, and False Pass.</td>
</tr>
<tr>
<td>Unit 9E</td>
<td>Caribou</td>
<td>Residents of Units 9B, 9C, 17, Nelson Lagoon and Sand Point.</td>
</tr>
<tr>
<td>Unit 9A, Unit 9B, Unit 9C and Unit 9E</td>
<td>Moose</td>
<td>Residents of Units 9A, 9B, 9C, 17, Egegik, Irvanaf Bay, Perryville, Pilot Point, Ugamish, and Port Heiden/Meshik.</td>
</tr>
<tr>
<td>Unit 9D</td>
<td>Moose</td>
<td>Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.</td>
</tr>
<tr>
<td>Unit 9B</td>
<td>Sheep</td>
<td>Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, and residents of Lake Clark National Park and Preserve within Unit 9B.</td>
</tr>
<tr>
<td>Unit 9, remainder</td>
<td>Sheep</td>
<td>No determination.</td>
</tr>
<tr>
<td>Unit 9</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.</td>
</tr>
<tr>
<td>Unit 9A, Unit B, Unit C, &amp; Unit E</td>
<td>Beaver</td>
<td>Residents of Units 9A, 9B, 9C, 17, and Egegik.</td>
</tr>
<tr>
<td>Unit 10 Unimak Island</td>
<td>Brown Bear</td>
<td>Residents of Units 9D and 10 (Unimak Island).</td>
</tr>
<tr>
<td>Unit 10 Unimak Island</td>
<td>Caribou</td>
<td>Residents of Akutan, False Pass, King Cove, and Sand Point.</td>
</tr>
<tr>
<td>Unit 10, remainder</td>
<td>Caribou</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 10</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.</td>
</tr>
<tr>
<td>Unit 11</td>
<td>Bison</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 11, north of the Sanford River</td>
<td>Black Bear</td>
<td>Residents of Chistochina, Chilina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12.</td>
</tr>
<tr>
<td>Unit 11, remainder</td>
<td>Black Bear</td>
<td>Residents of Chistochina, Chilina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Unit 11.</td>
</tr>
<tr>
<td>Unit 11, north of the Sanford River</td>
<td>Brown Bear</td>
<td>Residents of Chistochina, Chilina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12.</td>
</tr>
<tr>
<td>Unit 11, remainder</td>
<td>Brown Bear</td>
<td>Residents of Chistochina, Chilina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Unit 11.</td>
</tr>
<tr>
<td>Unit 11, north of the Sanford River</td>
<td>Caribou</td>
<td>Residents of Units 11, 12, 13A–D, Chickaloon, Healy Lake, and Dot Lake.</td>
</tr>
<tr>
<td>Unit 11, remainder</td>
<td>Caribou</td>
<td>Residents of Units 11, 13A–D, and Chickaloon.</td>
</tr>
<tr>
<td>Unit 11</td>
<td>Goat</td>
<td>Residents of Units 11, 13A–D, and Chickaloon.</td>
</tr>
<tr>
<td>Unit 11, remainder</td>
<td>Moose</td>
<td>Residents of Units 11, 12, 13A–D, Chickaloon, Healy Lake, and Dot Lake.</td>
</tr>
<tr>
<td>Unit 11, north of the Sanford River</td>
<td>Moose</td>
<td>Residents of Units 11, 13A–D, Chickaloon, Healy Lake, and Dot Lake.</td>
</tr>
<tr>
<td>Unit 11, remainder</td>
<td>Moose</td>
<td>Residents of Units 11, 13A–D, and Chickaloon.</td>
</tr>
<tr>
<td>Area</td>
<td>Species</td>
<td>Determination</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-----------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Unit 11, north of the Sanford River</td>
<td>Sheep</td>
<td>Residents of Unit 12, Chistochina, Chiilina, Copper Center, Dot Lake, Gakona,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Glennalet, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/</td>
</tr>
<tr>
<td></td>
<td></td>
<td>South Wrangell/South Park, Tazlina, Tonsina, residents along the Nanesna</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Road—Milepost 0–46 (Nanesna Road), and residents along the McCarthy Road—</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Milepost 0–62 (McCarthy Road).</td>
</tr>
<tr>
<td>Unit 11, remainder</td>
<td>Sheep</td>
<td>Residents of Chisana, Chistochina, Copper Center, Gakona, Glennalet, Gulkana,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tazlina, Tonsina, residents along the Tok Cutoff—Milepost 79–110 (Mentasta</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pass), residents along the Nanesna Road—Milepost 0–46 (Nanesna Road), and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).</td>
</tr>
<tr>
<td>Unit 11</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimag Island only), 11–13 and the residents of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chickaloon, and 16–26.</td>
</tr>
<tr>
<td>Unit 11</td>
<td>Grouse</td>
<td>Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20D,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>22 and 23.</td>
</tr>
<tr>
<td>Unit 11</td>
<td>Parmigan</td>
<td>Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20D,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>22 and 23.</td>
</tr>
<tr>
<td>Unit 12</td>
<td>Brown Bear</td>
<td>Residents of Unit 12, Dot Lake, Chistochina, Gakona, Mentasta Lake, and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Slana.</td>
</tr>
<tr>
<td>Unit 12</td>
<td>Caribou</td>
<td>Residents of Unit 12, Dot Lake, Healy Lake, and Mentasta Lake.</td>
</tr>
<tr>
<td>Unit 12, that portion within the Teflin</td>
<td>Moose</td>
<td>Residents of Unit 12, 13C, and Healy Lake.</td>
</tr>
<tr>
<td>National Wildlife Refuge and those lands</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within the Wrangell-St. Elias National</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preserve north and east of a line formed by</td>
<td></td>
<td></td>
</tr>
<tr>
<td>the Pickerel Lake Winter Trail from the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canadian border to Pickerel Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit 12, that portion east of the Nanesna River</td>
<td>Moose</td>
<td>Residents of Unit 11 north of 62nd parallel, Unit 12, 13A–D and the residents</td>
</tr>
<tr>
<td>and Nanesna Glacier, and south of the Winter</td>
<td></td>
<td>of Chickaloon, Dot Lake, Healy Lake.</td>
</tr>
<tr>
<td>Trail running southeast from Pickerel Lake to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>the Canadian border.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit 12, remainder</td>
<td>Sheep</td>
<td>Residents of Unit 12, Chistochina, Dot Lake, Healy Lake.</td>
</tr>
<tr>
<td>Unit 12</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimag Island only), 11–13 and the residents of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chickaloon, and 16–26.</td>
</tr>
<tr>
<td>Unit 13</td>
<td>Brown Bear</td>
<td>Residents of Unit 13 and Slana.</td>
</tr>
<tr>
<td>Unit 13B</td>
<td>Caribou</td>
<td>Residents of Units 11, 12 (along the Nanesna Road), 13, residents of Units 20D</td>
</tr>
<tr>
<td></td>
<td></td>
<td>except Fort Greely, and the residents of Chickaloon.</td>
</tr>
<tr>
<td>Unit 13C</td>
<td>Caribou</td>
<td>Residents of Units 11, 12 (along the Nanesna Road), 13, Chickaloon, Dot Lake</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and Healy Lake.</td>
</tr>
<tr>
<td>Unit 13A and Unit 13D</td>
<td>Caribou</td>
<td>Residents of Units 11, 12 (along the Nanesna Road), 13, Chickaloon, McKinley</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Village, and the area along the Parks Highway between mileposts 216 and 239</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(except no subsistence for residents of Denali National Park headquarters).</td>
</tr>
<tr>
<td>Unit 13D</td>
<td>Goat</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 13A and Unit 13D</td>
<td>Moose</td>
<td>Residents of Unit 13, Chickaloon, and Slana.</td>
</tr>
<tr>
<td>Unit 13B</td>
<td>Moose</td>
<td>Residents of Units 13, 20D except Fort Greely, and the residents of Chickaloon</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and Slana.</td>
</tr>
<tr>
<td>Unit 13C</td>
<td>Moose</td>
<td>Residents of Units 12, 13, and the residents of Chickaloon, Healy Lake, Dot</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lake and Slana.</td>
</tr>
<tr>
<td>Unit 13E</td>
<td>Moose</td>
<td>Residents of Unit 13, Chickaloon, McKinley Village, Slana, and the area along</td>
</tr>
<tr>
<td></td>
<td></td>
<td>the Parks Highway between mileposts 216 and 239 (except no subsistence for</td>
</tr>
<tr>
<td></td>
<td></td>
<td>residents of Denali National Park headquarters).</td>
</tr>
<tr>
<td>Unit 13D</td>
<td>Sheep</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Area</td>
<td>Species</td>
<td>Determination</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Unit 13</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.</td>
</tr>
<tr>
<td>Unit 13</td>
<td>Grouse (Spruce, Blue, Ruffed &amp; Sharp-tailed)</td>
<td>Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 &amp; 23.</td>
</tr>
<tr>
<td>Unit 13</td>
<td>Piaromigan (Rock, Willow and White-tailed)</td>
<td>Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 &amp; 23.</td>
</tr>
<tr>
<td>Unit 14C</td>
<td>Brown Bear</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 14</td>
<td>Goat</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 14</td>
<td>Moose</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 14A and Unit 14C</td>
<td>Moose</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 15A and Unit 15B</td>
<td>Sheep</td>
<td>Residents of Ninilchik.</td>
</tr>
<tr>
<td>Unit 15C</td>
<td>Black Bear</td>
<td>Residents of Ninilchik, Port Graham, and Nanwalek.</td>
</tr>
<tr>
<td>Unit 15</td>
<td>Brown Bear</td>
<td>Residents of Ninilchik.</td>
</tr>
<tr>
<td>Unit 15</td>
<td>Brown Bear</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 15</td>
<td>Sheep</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 15</td>
<td>Moose</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 15</td>
<td>Piaromigan (Rock, Willow and White-tailed)</td>
<td>Residents of Ninilchik, Port Graham, and Nanwalek.</td>
</tr>
<tr>
<td>Unit 15</td>
<td>Grouse (Spruce)</td>
<td>Residents of Unit 15.</td>
</tr>
<tr>
<td>Unit 15</td>
<td>Grouse (Ruffed)</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 16</td>
<td>Black Bear</td>
<td>Residents of Unit 16B.</td>
</tr>
<tr>
<td>Unit 16</td>
<td>Brown Bear</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 16</td>
<td>Moose</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 16</td>
<td>Sheep</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 16</td>
<td>Grouse (Spruce and Ruffed)</td>
<td>Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.</td>
</tr>
<tr>
<td>Unit 16</td>
<td>Piaromigan (Rock, Willow and White-tailed)</td>
<td>Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.</td>
</tr>
<tr>
<td>Unit 17A and that portion of 17B draining into Nuyakuk Lake and Tikchik Lake</td>
<td>Black Bear</td>
<td>Residents of Units 9A and B, 17, Akiak, and Akiachak.</td>
</tr>
<tr>
<td>Unit 17B and Unit 17C</td>
<td>Brown Bear</td>
<td>Residents of Units 9A and B, 17, Akiak, and Akiachak.</td>
</tr>
<tr>
<td>Unit 17A and Unit 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Tikchik Lake, and northeast to the northern point of Nuyakuk Lake, to the point where the Unit 17 boundary intersects the Shotgun Hills.</td>
<td>Brown Bear</td>
<td>Residents of Kwethluk.</td>
</tr>
<tr>
<td>Unit 17A, remainder</td>
<td>Brown Bear</td>
<td>Residents of Unit 17, Akiak, Akiachak, Goodnews Bay, and Platinum.</td>
</tr>
<tr>
<td>Unit 17B, that portion draining into Nuyakuk Lake and Tikchik Lake.</td>
<td>Brown Bear</td>
<td>Residents of Akiak and Akiachak.</td>
</tr>
<tr>
<td>Unit 17B and Unit 17C</td>
<td>Brown Bear</td>
<td>Residents of Unit 17.</td>
</tr>
<tr>
<td>Unit 17A, that portion west of the Izaaklik River, Upper Tikchik Lake, Tikchik Lake, and the main course of the Tikchik River.</td>
<td>Caribou</td>
<td>Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutulik, and Napakiak.</td>
</tr>
<tr>
<td>Unit 17A, that portion north of Tikchik Lake that includes Izaaklik River drainages.</td>
<td>Caribou</td>
<td>Residents of Akiak, Akiachak, and Tuluksak.</td>
</tr>
<tr>
<td>Unit 17A and 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Tikchik Lake, and northeast to the northern point of Nuyakuk Lake, to the point where the Unit 17 boundary intersects the Shotgun Hills.</td>
<td>Caribou</td>
<td>Residents of Kwethluk.</td>
</tr>
<tr>
<td>Unit 17B, that portion of Tikchik National Wildlife Refuge within Unit 17B.</td>
<td>Caribou</td>
<td>Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Akiak, Akiachak, Tuluksak, Tuntutulik, and Napakiak.</td>
</tr>
<tr>
<td>Unit 17, remainder</td>
<td>Caribou</td>
<td>Residents of Units 9B, 17, Lime Village, and Stony River.</td>
</tr>
<tr>
<td>Area</td>
<td>Species</td>
<td>Determination</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Unit 17A and 17B, those portions north and west of a line beginning</td>
<td>Moose</td>
<td>Residents of Kwethluk.</td>
</tr>
<tr>
<td>the unit 18 boundary at the northwest end of Nenewok Lake, to the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>southern point of upper Togla Lake, and northeast to the northern</td>
<td></td>
<td></td>
</tr>
<tr>
<td>point of Nenewok Lake, northeast to the point where the Unit 17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>boundary intersects the Shotgun Hills.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit 17A, that portion north of Togla Lake that includes</td>
<td>Moose</td>
<td>Residents of Akiak, Akia.</td>
</tr>
<tr>
<td>Izaivienik River drainages.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit 17A, remainder</td>
<td>Moose</td>
<td>Residents of Unit 17, Goodnews Bay and Platinum; however, no subsistence for</td>
</tr>
<tr>
<td></td>
<td></td>
<td>residents of Akiak, Akiak, and Quinhagak.</td>
</tr>
<tr>
<td>Unit 17B, that portion within the Togla National Wildlife Refuge.</td>
<td>Moose</td>
<td>Residents of Akiak, Akia.</td>
</tr>
<tr>
<td>Unit 17B, remainder and Unit 17C</td>
<td>Moose</td>
<td>Residents of Unit 17, Nondalton, Levelock, Goodnews Bay, and Platinum.</td>
</tr>
<tr>
<td>Unit 17</td>
<td>Wolf</td>
<td>Residents of Units 6.9.10 (Unimak Island only), 11–13 and the residents of</td>
</tr>
<tr>
<td>Unit 17</td>
<td>Beaver</td>
<td>Residents of Units 9A, 9B, 9C, 9E, and 17.</td>
</tr>
<tr>
<td>Unit 18</td>
<td>Black Bear</td>
<td>Residents of Unit 18, Unit 19A living downstream of the Holokuk River, Holy</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cross, Stebbins, St. Michael, Twin Hills, and Togla.</td>
</tr>
<tr>
<td>Unit 18, that portion of the Yukon River drainage</td>
<td>Moose</td>
<td>Residents of Akiak, Akia.</td>
</tr>
<tr>
<td>upstream of Russian Mission and that portion of the Kuskokwim</td>
<td>Moose</td>
<td>Residents of Akiak, Akia, Eek, Goodnews Bay, Ketchluk, Mt. Village,</td>
</tr>
<tr>
<td>River drainage, but not including, the Tuluxkak River</td>
<td>Moose</td>
<td>Napaskiak, Plit-inum, Quinhagak, St. Mary's, and Tuluxkak.</td>
</tr>
<tr>
<td>Unit 18, that portion north of a line from Cape Romanzol to</td>
<td>Moose</td>
<td>Residents of Akiak, Akiak, and Quinhagak.</td>
</tr>
<tr>
<td>Kusilvak Mountain to Mountain Village, and all drainages north</td>
<td>Moose</td>
<td>Residents of Akiak, Akiak, and Quinhagak.</td>
</tr>
<tr>
<td>of the Yukon River downstream from Marshall.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit 18, remainder</td>
<td>Moose</td>
<td>Residents of Unit 18, Upper Kalskag, Akiak, and Chushalak.</td>
</tr>
<tr>
<td>Unit 18</td>
<td>Musk ox</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 19A and 19B</td>
<td>Brown Bear</td>
<td>Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and including, the Johnson River.</td>
</tr>
<tr>
<td>Unit 19C and 19D</td>
<td>Brown Bear</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 19A and 19B</td>
<td>Brown Bear</td>
<td>Residents of Units 19 and 19B within the Kuskokwim River drainage upstream from,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and including, the Johnson River.</td>
</tr>
<tr>
<td>Unit 19D</td>
<td>Brown Bear</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 19E</td>
<td>Moose</td>
<td>Residents of Unit 19, Lake Minchumina.</td>
</tr>
<tr>
<td>Unit 19F</td>
<td>Wolf</td>
<td>Residents of Units 6.9.10 (Unimak Island only), 11–13 and the residents of</td>
</tr>
<tr>
<td>Unit 19F, west of the Kogrukuk River</td>
<td>Moose</td>
<td>Residents of Eek and Quinhagak.</td>
</tr>
<tr>
<td>Unit 19</td>
<td>Moose</td>
<td>Residents of Unit 19.</td>
</tr>
<tr>
<td>Unit 19C</td>
<td>Moose</td>
<td>Residents of Unit 19 and Lake Minchumina.</td>
</tr>
<tr>
<td>Unit 19</td>
<td>Wolf</td>
<td>Residents of Units 6.9.10 (Unimak Island only), 11–13 and the residents of</td>
</tr>
<tr>
<td>Unit 20D</td>
<td>Bison</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 20F</td>
<td>Black Bear</td>
<td>Residents of Unit 20F, Stevens Village, and Manley.</td>
</tr>
<tr>
<td>Unit 20E</td>
<td>Brown Bear</td>
<td>Residents of Unit 20F, Stevens Village, and Manley.</td>
</tr>
<tr>
<td>Unit 20F</td>
<td>Brown Bear</td>
<td>Residents of Unit 20F, Stevens Village, and Manley.</td>
</tr>
<tr>
<td>Area</td>
<td>Species</td>
<td>Determination</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Unit 20A</td>
<td>Caribou</td>
<td>Residents of Cantwell, Nenana, and those domiciled between mileposts 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.</td>
</tr>
<tr>
<td>Unit 20B</td>
<td>Caribou</td>
<td>Residents of Unit 20B, Nenana, and Tanana.</td>
</tr>
<tr>
<td>Unit 20C</td>
<td>Caribou</td>
<td>Residents of Unit 20C living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenana, Nikolai, Tanana, Talida, and those domiciled between mileposts 216 and 239 of the Parks Highway and between mileposts 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.</td>
</tr>
<tr>
<td>Unit 20D and Unit 20E</td>
<td>Caribou</td>
<td>Residents of 20D, 20E, and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.</td>
</tr>
<tr>
<td>Unit 20F</td>
<td>Caribou</td>
<td>Residents of 20F, 250, and Manley.</td>
</tr>
<tr>
<td>Unit 20A</td>
<td>Moose</td>
<td>Residents of Cantwell, Minto, Nenana, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.</td>
</tr>
<tr>
<td>Unit 20B, Minto Flats Management Area</td>
<td>Moose</td>
<td>Residents of Minto and Nenana.</td>
</tr>
<tr>
<td>Unit 20B, remainder</td>
<td>Moose</td>
<td>Residents of Unit 20B, Nenana, and Tanana.</td>
</tr>
<tr>
<td>Unit 20C</td>
<td>Moose</td>
<td>Residents of Unit 20C (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), Cantwell, “Manley”, 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. No subsistence for residents of households of the Denali National Park Headquarters.</td>
</tr>
<tr>
<td>Unit 20D</td>
<td>Moose</td>
<td>Residents of Unit 20D and residents of Tanacross.</td>
</tr>
<tr>
<td>Unit 20E</td>
<td>Moose</td>
<td>Residents of Unit 20E, Unit 12 north of the Wrangell-St. Elias National Preserve, Circle, Central, Dot Lake, Healy Lake, and Mentasta Lake.</td>
</tr>
<tr>
<td>Unit 20F</td>
<td>Grouse (Spruce, Ruffed and Sharp-tailed)</td>
<td>Residents of Unit 20F, “Manley”, Minto, and Stevans Village.</td>
</tr>
<tr>
<td>Unit 20, remainder</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.</td>
</tr>
<tr>
<td>Unit 20D</td>
<td>Grouse (Rock and Willow)</td>
<td>Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.</td>
</tr>
<tr>
<td>Unit 21</td>
<td>Brown Bear</td>
<td>Residents of Units 21A, 21D, 21E, Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.</td>
</tr>
<tr>
<td>Unit 21B and Unit 21C</td>
<td>Caribou</td>
<td>Residents of Units 21B, 21C, 21D, and Tanana.</td>
</tr>
<tr>
<td>Unit 21D</td>
<td>Caribou</td>
<td>Residents of Units 21B, 21C, 21D, and Huslia.</td>
</tr>
<tr>
<td>Unit 21E</td>
<td>Caribou</td>
<td>Residents of Units 21A, 21E, Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.</td>
</tr>
<tr>
<td>Unit 21A</td>
<td>Moose</td>
<td>Residents of Units 21A, 21E, Takotna, McGrath, Aniak, and Crooked Creek.</td>
</tr>
<tr>
<td>Unit 21B and Unit 21C</td>
<td>Moose</td>
<td>Residents of Units 21B, 21C, Tanana, Ruby, and Galena.</td>
</tr>
<tr>
<td>Unit 21D</td>
<td>Moose</td>
<td>Residents of Units 21D, Huslia, and Ruby.</td>
</tr>
<tr>
<td>Unit 21E</td>
<td>Moose</td>
<td>Residents of Units 21E, and Russian Mission.</td>
</tr>
<tr>
<td>Unit 21</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.</td>
</tr>
<tr>
<td>Unit 22</td>
<td>Black Bear</td>
<td>Residents of Unit 22A and Koyuk.</td>
</tr>
<tr>
<td>Unit 22B</td>
<td>Black Bear</td>
<td>Residents of Unit 22B.</td>
</tr>
<tr>
<td>Unit 22C, Unit 22D, and Unit 22E</td>
<td>Black Bear</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 22</td>
<td>Brown Bear</td>
<td>Residents of Unit 22.</td>
</tr>
<tr>
<td>Area</td>
<td>Species</td>
<td>Determination</td>
</tr>
<tr>
<td>------</td>
<td>---------</td>
<td>---------------</td>
</tr>
<tr>
<td>Unit 22A</td>
<td>Caribou</td>
<td>Residents of Unit 21D west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, and 24.</td>
</tr>
<tr>
<td>Unit 22, remainder</td>
<td>Caribou</td>
<td>Residents of Unit 21D west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, and 24.</td>
</tr>
<tr>
<td>Unit 22B, west of the Darby Mountains</td>
<td>Moose</td>
<td>Residents of Unit 22.</td>
</tr>
<tr>
<td>Unit 22B, remainder</td>
<td>Musk ox</td>
<td>Residents of Unit 22B.</td>
</tr>
<tr>
<td>Unit 22C</td>
<td>Musk ox</td>
<td>Residents of Unit 22C.</td>
</tr>
<tr>
<td>Unit 22D, that portion within the Kougarok, Kustrin, and Pilgrim River drainages.</td>
<td>Musk ox</td>
<td>Residents of Unit 22C, White Mountain, and Unit 22D excluding St. Lawrence Island.</td>
</tr>
<tr>
<td>Unit 22D, remainder</td>
<td>Musk ox</td>
<td>Residents of Unit 22D excluding St. Lawrence Island.</td>
</tr>
<tr>
<td>Unit 22E</td>
<td>Musk ox</td>
<td>Residents of Unit 22E excluding Little Diomede Island.</td>
</tr>
<tr>
<td>Unit 22</td>
<td>Wolf</td>
<td>Residents of Units 23, 22, 21D north and west of the Yukon River, and Kotlik.</td>
</tr>
<tr>
<td>Unit 22</td>
<td>Grouse (Spruce)</td>
<td>Residents of Units 11, 13, and the residents of Chickaloon, 15, 16, 20D, 22, and 23.</td>
</tr>
<tr>
<td>Unit 22</td>
<td>Ptarmigan (Rock and Willow).</td>
<td>Residents of Units 11, 13, and the residents of Chickaloon, 15, 16, 20D, 22, and 23.</td>
</tr>
<tr>
<td>Unit 23</td>
<td>Black Bear</td>
<td>Residents of Units 23, Atlin, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.</td>
</tr>
<tr>
<td>Unit 23</td>
<td>Brown Bear</td>
<td>Residents of Units 21 and 23.</td>
</tr>
<tr>
<td>Unit 23</td>
<td>Caribou</td>
<td>Residents of Unit 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.</td>
</tr>
<tr>
<td>Unit 23</td>
<td>Moose</td>
<td>Residents of Unit 23.</td>
</tr>
<tr>
<td>Unit 23, south of Kotzebue Sound and west of and including the Buckland River drainage.</td>
<td>Musk ox</td>
<td>Residents of Unit 23 south of Kotzebue Sound and west of and including the Buckland River drainage.</td>
</tr>
<tr>
<td>Unit 23, remainder</td>
<td>Musk ox</td>
<td>Residents of Unit 23 east and north of the Buckland River drainage.</td>
</tr>
<tr>
<td>Unit 23</td>
<td>Sheep</td>
<td>Residents of Point Lay and Unit 23 north of the Arctic Circle.</td>
</tr>
<tr>
<td>Unit 23</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–20.</td>
</tr>
<tr>
<td>Unit 23</td>
<td>Grouse (Spruce and Ruffed).</td>
<td>Residents of Units 11, 13, and the residents of Chickaloon, 15, 16, 20D, 22, and 23.</td>
</tr>
<tr>
<td>Unit 23</td>
<td>Ptarmigan (Rock, Willow and White-tailed).</td>
<td>Residents of Units 11, 13, and the residents of Chickaloon, 15, 16, 20D, 22, and 23.</td>
</tr>
<tr>
<td>Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.</td>
<td>Black Bear</td>
<td>Residents of Stevens Village, Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.</td>
</tr>
<tr>
<td>Unit 24, remainder</td>
<td>Black Bear</td>
<td>Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.</td>
</tr>
<tr>
<td>Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.</td>
<td>Brown Bear</td>
<td>Residents of Stevens Village and residents of Unit 24.</td>
</tr>
<tr>
<td>Unit 24</td>
<td>Caribou</td>
<td>Residents of Unit 24.</td>
</tr>
<tr>
<td>Unit 24</td>
<td>Moose</td>
<td>Residents of Unit 24, Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.</td>
</tr>
<tr>
<td>Unit 24</td>
<td>Sheep</td>
<td>Residents of Unit 24, Koyukuk, and Galena.</td>
</tr>
<tr>
<td>Unit 24</td>
<td>Wolf</td>
<td>Residents of Unit 24 residing north of the Arctic Circle, Allakaket, Atlin, Hughes, and Huslia.</td>
</tr>
<tr>
<td>Unit 24</td>
<td></td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–20.</td>
</tr>
<tr>
<td>Unit 25D</td>
<td>Black Bear</td>
<td>Residents of Unit 25D.</td>
</tr>
<tr>
<td>Unit 25D</td>
<td>Brown Bear</td>
<td>Residents of Unit 25D.</td>
</tr>
<tr>
<td>Unit 25, remainder</td>
<td>Brown Bear</td>
<td>Residents of Unit 25 and Eagle.</td>
</tr>
<tr>
<td>Unit 25D</td>
<td>Caribou</td>
<td>Residents of 208, 250, and Manley.</td>
</tr>
</tbody>
</table>
### Area Species Determination

<table>
<thead>
<tr>
<th>Area</th>
<th>Species</th>
<th>Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit 25A</td>
<td>Moose</td>
<td>Residents of Units 25A and 25D.</td>
</tr>
<tr>
<td>Unit 25D, west</td>
<td>Moose</td>
<td>Residents of Unit 25D west.</td>
</tr>
<tr>
<td>Unit 25D, remainder</td>
<td>Moose</td>
<td>Residents of remainder of Unit 25.</td>
</tr>
<tr>
<td>Unit 25A</td>
<td>Sheep</td>
<td>Residents of Arctic Village, Chalkyitsik, Fort Yukon, Kaktovik, and Venetie.</td>
</tr>
<tr>
<td>Unit 25B and Unit 25C</td>
<td>Sheep</td>
<td>No Federal subsistence priority.</td>
</tr>
<tr>
<td>Unit 25D, remainder</td>
<td>Sheep</td>
<td>Residents of Unit 25D west.</td>
</tr>
<tr>
<td>Unit 25A</td>
<td>Sheep</td>
<td>Residents of Unit 25A.</td>
</tr>
<tr>
<td>Unit 25B and Unit 25C</td>
<td>Sheep</td>
<td>Residents of remainder of Unit 25.</td>
</tr>
<tr>
<td>Unit 26</td>
<td>Brown Bear</td>
<td>Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex), Anaktuvuk Pass, and Point Hope.</td>
</tr>
<tr>
<td>Unit 26A and C</td>
<td>Caribou</td>
<td>Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.</td>
</tr>
<tr>
<td>Unit 26B</td>
<td>Caribou</td>
<td>Residents of Unit 26, Anaktuvuk Pass, Point Hope, and residents of Unit 24 within the Dalton Highway Corridor Management Area.</td>
</tr>
<tr>
<td>Unit 26</td>
<td>Moose</td>
<td>Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex), Point Hope, and Anaktuvuk Pass.</td>
</tr>
<tr>
<td>Unit 26A</td>
<td>Musk ox</td>
<td>Residents of Anaktuvuk Pass, Attuak, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.</td>
</tr>
<tr>
<td>Unit 26B</td>
<td>Musk ox</td>
<td>Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.</td>
</tr>
<tr>
<td>Unit 26C</td>
<td>Musk ox</td>
<td>Residents of Kaktovik.</td>
</tr>
<tr>
<td>Unit 26A</td>
<td>Sheep</td>
<td>Residents of Unit 26, Anaktuvuk Pass, and Point Hope.</td>
</tr>
<tr>
<td>Unit 26B</td>
<td>Sheep</td>
<td>Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.</td>
</tr>
<tr>
<td>Unit 26C</td>
<td>Sheep</td>
<td>Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkyitsik, Fort Yukon, Point Hope, and Venetie.</td>
</tr>
<tr>
<td>Unit 26</td>
<td>Wolf</td>
<td>Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.</td>
</tr>
</tbody>
</table>

(2) Fish determinations. The following traditional use determination in the communities and areas have been found to have a positive customary and

#### Fish Determinations

<table>
<thead>
<tr>
<th>Area</th>
<th>Species</th>
<th>Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>KOTZEBUE AREA</td>
<td>All fish.</td>
<td>Residents of the Kotzebue Area.</td>
</tr>
<tr>
<td>NORTON SOUND–PORT CLARENCE AREA</td>
<td>All fish.</td>
<td>Residents of Stebbins, St. Michael, and Kotlik.</td>
</tr>
<tr>
<td>Norton Sound–Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point, Norton Sound–Port Clarence Area, remainder.</td>
<td>All fish.</td>
<td>Residents of the Norton Sound–Port Clarence Area.</td>
</tr>
<tr>
<td>YUKON-NORTHERN AREA</td>
<td>Salmon, other than fall chum salmon.</td>
<td>Residents of the Yukon River drainage and the community of Stebbins.</td>
</tr>
<tr>
<td>Yukon River drainage.</td>
<td>Fall chum salmon.</td>
<td>Residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.</td>
</tr>
<tr>
<td>Remainder of the Yukon–Northern Area.</td>
<td>Freshwater fish (other than salmon).</td>
<td>Residents of the Yukon–Northern Area.</td>
</tr>
<tr>
<td>Yukon River drainage.</td>
<td>All fish.</td>
<td>Residents of the Yukon–Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B.</td>
</tr>
<tr>
<td>Area</td>
<td>Species</td>
<td>Determination</td>
</tr>
<tr>
<td>------</td>
<td>---------</td>
<td>---------------</td>
</tr>
<tr>
<td>Tanana River drainage contained within the Tetlin NWR and the Wrangell–St. Elias NPP.</td>
<td>Freshwater fish (other than salmon).</td>
<td>Residents of the Yukon–Northern Area and residents of Mentasta Lake, Chistocha, Slana, and all residents living between Mentasta Lake and Chistocha.</td>
</tr>
<tr>
<td><strong>KUSKOKWIM AREA</strong></td>
<td>Salmon.</td>
<td>Residents of the Kuskokwim Area, except those persons residing on the United States military installations located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.</td>
</tr>
<tr>
<td></td>
<td>All other fish other than herring.</td>
<td>Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.</td>
</tr>
<tr>
<td>Waters around Nunivak Island.</td>
<td>Herring and herring roe.</td>
<td>Residents within 20 miles of the coast between the westernmost tip of the Nasqonat Peninsula and the terminus of the Ishowik River and on Nunivak Island.</td>
</tr>
<tr>
<td><strong>BRISTOL BAY AREA</strong></td>
<td>Salmon and freshwater fish.</td>
<td>Residents of the Nushagak District and freshwater drainages flowing into the district.</td>
</tr>
<tr>
<td></td>
<td>Salmon and freshwater fish.</td>
<td>Residents of the Naknek and Kvichak River drainages.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Residents of the Kvichak/Iliamna-Lake Clark drainage.</td>
</tr>
<tr>
<td></td>
<td>Salmon and freshwater fish.</td>
<td>Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.</td>
</tr>
<tr>
<td></td>
<td>Salmon and freshwater fish.</td>
<td>Residents of the Ugashik District and freshwater drainages flowing into the district.</td>
</tr>
<tr>
<td></td>
<td>Salmon and freshwater fish.</td>
<td>Residents of the Egegik District and freshwater drainages flowing into the district.</td>
</tr>
<tr>
<td></td>
<td>Herring spawn on kelp.</td>
<td>Residents of the Togiak District and freshwater drainages flowing into the district.</td>
</tr>
<tr>
<td></td>
<td>All fish.</td>
<td>Residents of the Bristol Bay Area.</td>
</tr>
<tr>
<td><strong>ALEUTIAN ISLANDS AREA</strong></td>
<td>All fish.</td>
<td>Residents of the Aleutian Islands Area and the Pribilof Islands.</td>
</tr>
<tr>
<td><strong>ALASKA PENINSULA AREA</strong></td>
<td>All other fish in the Alaska Peninsula Area.</td>
<td>Residents of the Alaska Peninsula Area.</td>
</tr>
<tr>
<td><strong>CHIGNIK AREA</strong></td>
<td>Salmon and fish other than rainbow/steelhead trout.</td>
<td>Residents of the Chignik Area.</td>
</tr>
</tbody>
</table>
### 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 Imlay Bay near Klikok Rocks. (57°10.34' North latitude, 156°20.22' West longitude).

- **Species**: Salmon.
- **Determination**: Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.

- **Species**: Fish other than rainbow/steelhead trout and salmon.
- **Determination**: 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.**

- **Species**: All fish.
- **Determination**: Residents of the communities of Hope and Cooper Landing.

- **Species**: Salmon.
- **Determination**: Residents of the community of Ninilchik.

**Waters within the Kasilof River drainage within the Kenai NWR.**

- **Species**: All fish.
- **Determination**: Residents of the community of Ninilchik.

- **Species**: Salmon.
- **Determination**: Residents of the Tuxedni Bay area.

**Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.**

- **Species**: Fish other than salmon, Dolly Varden, trout, grayling, and burbot.
- **Determination**: Residents of the Cook Inlet Area.

### PRINCE WILLIAM SOUND AREA

**Southwestern District and Green Island.**

- **Species**: Salmon.
- **Determination**: 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.**

- **Species**: Salmon.
- **Determination**: Residents of the villages of Tatitlek and Ellamar.

**Copper River drainage upstream from Haley Creek.**

- **Species**: Freshwater fish.
- **Determination**: Residents of Cantwell, Chisana, Chistochina, Chiltona, 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.**

- **Species**: Freshwater fish.
- **Determination**: Residents of Cantwell, Chisana, Chistochina, Chiltona, 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.**

- **Species**: Freshwater fish (trout, char, whitefish, suckers, grayling, and burbot).
- **Determination**: Residents of the Prince William Sound Area, except those living in the Copper River drainage upstream of Haley Creek.
### Fish Determinations—Continued

<table>
<thead>
<tr>
<th>Area</th>
<th>Species</th>
<th>Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chiitna Subdistrict of the Upper Copper River District.</strong></td>
<td>Salmon.</td>
<td>Residents of Cantwell, Chisana, Chistocina, 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.</td>
</tr>
<tr>
<td><strong>Glennallen Subdistrict of the Upper Copper River District.</strong></td>
<td>Salmon.</td>
<td>Residents of the Prince William Sound Area and residents of Cantwell, Chisana, Dot Lake, 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.</td>
</tr>
<tr>
<td><strong>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.</strong></td>
<td>Salmon.</td>
<td>Residents of Mentasta Lake and Dot Lake.</td>
</tr>
<tr>
<td><strong>Remainder of the Prince William Sound Area.</strong></td>
<td>Salmon.</td>
<td>Residents of the Prince William Sound Area.</td>
</tr>
<tr>
<td><strong>Waters of the Bering River area from Point Martin to Cape Suckling.</strong></td>
<td>Eulachon.</td>
<td>Residents of Cordova.</td>
</tr>
<tr>
<td><strong>Waters of the Copper River Delta from the Eyak River to Point Martin.</strong></td>
<td>Eulachon.</td>
<td>Residents of Cordova, Chenega Bay, and Tattiekel.</td>
</tr>
<tr>
<td><strong>YAKUTAT AREA</strong></td>
<td>Salmon.</td>
<td>Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.</td>
</tr>
<tr>
<td>Fresh water upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsu River.</td>
<td>Dolly Varden, steelhead trout, and smelt.</td>
<td>Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.</td>
</tr>
<tr>
<td>Fresh water upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Marby.</td>
<td>Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of Southeastern Alaska and Yakutat Areas.</td>
</tr>
<tr>
<td>Remainder of the Yakutat Area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SOUTHEASTERN ALASKA AREA</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City of Saxman.</td>
</tr>
<tr>
<td>District 1—Section 1E in waters of the Naha River and Roosevelt Lagoon.</td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City of Saxman.</td>
</tr>
<tr>
<td>District 1—Section 1F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.</td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage.</td>
</tr>
<tr>
<td>Districts 2, 3, and 5 and 5 and 5 waters draining into those Districts.</td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.</td>
</tr>
<tr>
<td>District 5—North of a line from Point Barne to Boulder Point.</td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td></td>
</tr>
</tbody>
</table>
### § 242.24

#### Fish Determinations—Continued

<table>
<thead>
<tr>
<th>Area</th>
<th>Species</th>
<th>Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>District 6 and waters draining into that District.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage; residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 &amp; 8, including the communities of Petersburg &amp; Wrangell; and residents of the community of Meyers Chuck.</td>
</tr>
<tr>
<td><strong>District 7 and waters draining into that District.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 &amp; 8, including the communities of Petersburg &amp; Wrangell; and residents of the community of Meyers Chuck.</td>
</tr>
<tr>
<td><strong>District 8 and waters draining into that District.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of drainages flowing into Districts 7 &amp; 8, residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island), and residents of Meyers Chuck.</td>
</tr>
<tr>
<td><strong>District 9—Section 9A.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.</td>
</tr>
<tr>
<td><strong>District 9—Section 9B north of the latitude of Swain Point.</strong></td>
<td>Salmon, trout, smelt, and eulachon.</td>
<td>Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.</td>
</tr>
<tr>
<td><strong>District 10—West of a line from Pinta Point to False Point Pybus.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.</td>
</tr>
<tr>
<td><strong>District 12—South of a line from Fishery Point to north Passage Point and north of the latitude of Point Caution.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' West longitude, including Killisnoo Island.</td>
</tr>
<tr>
<td><strong>District 13—Section 13A south of the latitude of Cape Edward.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.</td>
</tr>
<tr>
<td><strong>District 13—Section 13B north of the latitude of Redfish Cape.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.</td>
</tr>
<tr>
<td><strong>District 13—Section 13C.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.</td>
</tr>
<tr>
<td><strong>District 13—Section 13C east of the longitude of Point Elizabeth.</strong></td>
<td>Salmon, Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' West longitude, including Killisnoo Island.</td>
</tr>
<tr>
<td><strong>District 14.</strong></td>
<td>All fish.</td>
<td>Residents of drainages flowing into Sections 12A, 13A, and District 14.</td>
</tr>
<tr>
<td><strong>Remainder of the Southeastern Alaska Area.</strong></td>
<td>Dolly Varden, trout, smelt, and eulachon.</td>
<td>Residents of Southeastern Alaska and Yakutat Areas.</td>
</tr>
</tbody>
</table>
(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>
<thead>
<tr>
<th>Area</th>
<th>Species</th>
<th>Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bering Sea Area</td>
<td>All shellfish</td>
<td>Residents of the Bering Sea Area.</td>
</tr>
<tr>
<td>Alaska Peninsula-Aleutian Islands Area</td>
<td>Shrimp, Dungeness, and Tanner crab</td>
<td>Residents of the Alaska Peninsula-Aleutian Islands Area.</td>
</tr>
<tr>
<td>Kodiak Area</td>
<td>King crab</td>
<td>Residents of the Kodiak Area.</td>
</tr>
<tr>
<td>Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.</td>
<td>Shellfish</td>
<td>Residents of the Kodiak Island Borough, except those residents on the Kodiak Coast Guard base.</td>
</tr>
<tr>
<td>Cook Inlet Area: Federal waters in the Tuxedni Bay Area within the boundaries of Lake Clark National Park.</td>
<td>Shrimp, clams, Dungeness, king, and Tanner crab.</td>
<td>Residents of Tuxedni Bay, Chisik Island, and Tyonek.</td>
</tr>
<tr>
<td>Southeastern Alaska—Yakutat Area: Section 1E south of the latitude of Grant Island light.</td>
<td>Shellfish, except shrimp, king crab, and Tanner crab.</td>
<td>Residents of the Southeast Area.</td>
</tr>
<tr>
<td>Section 1F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra.</td>
<td>Shellfish, except shrimp, king crab, and Tanner crab.</td>
<td>Residents of the Southeast Area.</td>
</tr>
<tr>
<td>Section 3A and 3B</td>
<td>Shellfish, except shrimp, king crab, and Tanner crab.</td>
<td>Residents of the Southeast Area.</td>
</tr>
<tr>
<td>District 13</td>
<td>Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks.</td>
<td>Residents of the Southeast Area.</td>
</tr>
</tbody>
</table>

(b) [Reserved]

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 Airmen'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, horn-like 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 1/2 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. 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.

Grapping 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, blue grouse, and sharp-tailed grouse.

Hand purse seine means a floating net which 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.

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 of combinations 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 which 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.

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 one 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 which 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.

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

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.

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Take or Taking means to fish, pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

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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 which 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 which 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 oxen.

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.

(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 applies to the number of fish, wildlife, or shellfish that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be 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; 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 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, 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) [Reserved]

(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, 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) [Reserved]

(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) If you are a Federally qualified subsistence user, you may sell handicraft articles 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, musk ox, and sheep.

(13) You may sell the raw/untanned and tanned hide or cape from a legally harvested caribou (except caribou harvested in Unit 23), deer, elk, goat, 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. 1031, 16 U.S.C. 1187); the Endangered Species Act of 1973 (87
§ 242.26 Subsistence taking of wildlife.

(a) 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) 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;
   (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 with a hunting license as authorized in Unit-specific regulations at paragraphs (n)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:
   (i) Before establishing a black 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; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(iv) You may not use bait within 1⁄4 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 onetime;

(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); however, this restriction does not apply to subsistence taking of deer, the 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) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(d) 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 5½ 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);

(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 paragraphs (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 §242.10(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 that species taken under Federal or State of Alaska regulations.

(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.
(3) The Assistant Regional Director for Subsistence Management, FWS, is authorized to open, close, or adjust Federal subsistence lynx seasons and to set harvest and possession limits for lynx in Units 6, 7, 11, 12, 13, 14, 15, 16, 20A, 20B, 20C east of the Teklanika River, 20D, and 20E, with a maximum season of November 1–February 28. This delegation may be exercised only when it is necessary to conserve lynx populations or to continue subsistence uses, only within guidelines listed within the ADF&G Lynx Harvest Management Strategy, and only after staff analysis of the potential action, consultation with the appropriate Regional Council Chairs, and Interagency Staff Committee concurrence.

(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 after arrival at the place where it is to be stored or consumed.

(h) Removing harvest from the field. 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 19 before October 1 until you remove the meat from the field or process it for human consumption. 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. 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.

(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, 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, 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, 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 Units 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 30th day after the date of taking.

(l) 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) You may take wildlife, outside of established season or harvest limits, for food in traditional religious ceremonies, that 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 §242.26(n).

(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 Units 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 outside of the village in which the religious/cultural ceremony will be held 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 made 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 harvest.

(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 PotlatchFunerary 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 drainages of 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;

(2) 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
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Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1B—the Anan Creek drainage within 1 mile of Anan Creek downsteam 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;

(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;

(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;

(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.

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</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Black Bear: 2 bears, no more than one may be a blue or glacier bear</td>
<td>Sept. 1–June 30.</td>
</tr>
<tr>
<td>Brown Bear: 1 bear every four regulatory years by State registration permit only</td>
<td>Sept. 15–Dec. 31.</td>
</tr>
<tr>
<td>Deer:</td>
<td>Mar. 15–May 31.</td>
</tr>
<tr>
<td>Unit 1A—4 antlered deer</td>
<td>Aug. 1-Dec. 31.</td>
</tr>
<tr>
<td>Unit 1B—2 antlered deer, The Petersburg District Ranger is authorized to close the season based on conservation concerns, in consultation with ADF&amp;G and the chair of the Southeast Alaska Subsistence Regional Advisory Council.</td>
<td>Aug. 1-Dec. 31.</td>
</tr>
<tr>
<td>Unit 1C—4 deer; however, antlerless deer may be taken only from Sept. 15-Dec. 31.</td>
<td>Aug. 1-Dec. 31.</td>
</tr>
<tr>
<td><strong>Goat:</strong></td>
<td></td>
</tr>
<tr>
<td>Unit 1A—Revillagigedo Island only</td>
<td>No open season.</td>
</tr>
<tr>
<td>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.</td>
<td>No open season.</td>
</tr>
<tr>
<td>Unit 1A and Unit 1B—that portion on the Cleveland Peninsula south of the divide between Yes Bay and Santa Anna Inlet.</td>
<td>Aug. 1-Dec. 31.</td>
</tr>
<tr>
<td>Unit 1A and Unit 1B—remnant—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.</td>
<td>Aug. 1-Dec. 31.</td>
</tr>
<tr>
<td>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.</td>
<td>Oct. 1–Nov. 31.</td>
</tr>
<tr>
<td>Unit 1C—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.</td>
<td>No open season.</td>
</tr>
<tr>
<td>Unit 1C—remnant—1 goat by State registration permit only</td>
<td>Aug. 1–Nov. 30.</td>
</tr>
<tr>
<td>Unit 1D—that portion lying north of the Kakezhen River and northeast of the Haines highway—1 goat by State registration permit only.</td>
<td>Sept. 15–Nov. 30.</td>
</tr>
<tr>
<td>Unit 1D—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad.</td>
<td>No open season.</td>
</tr>
<tr>
<td>Unit 1D—remnant—1 goat by State registration permit only</td>
<td>Aug. 1-Dec. 31.</td>
</tr>
<tr>
<td><strong>Moose:</strong></td>
<td></td>
</tr>
<tr>
<td>Unit 1A—1 antlered bull by Federal registration permit</td>
<td>Sept. 5–Oct. 15.</td>
</tr>
</tbody>
</table>
(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 western most point on Warren Island.

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beavers: No limit</td>
<td>Dec. 1–May 15</td>
</tr>
<tr>
<td>Coyotes: 2 coyotes</td>
<td>Sept. 1–Apr. 30</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black, and Silver Phases): 2 foxes</td>
<td>Nov. 1–Feb. 15</td>
</tr>
<tr>
<td>Lynx: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Marten: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Minks and Weasels: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Muskrats: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Owls: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Wolf: No limit</td>
<td>Nov. 10–Apr. 30</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
<td>Nov. 10–Apr. 30</td>
</tr>
</tbody>
</table>

(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) [Reserved]
(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, Woronofski, Etolin, Wrangel, 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;

(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 one 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.

### Harvest limits

<table>
<thead>
<tr>
<th>Hunting</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coyote: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black, and Silver Phases): No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Lynx: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Marten: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Otter: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
</tbody>
</table>

Wolf: No limit. The Tongass National Forest Supervisor (or designee) may close the Federal hunting and trapping season in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council, when the combined Federal-State harvest quota is reached. Any wolf taken in Unit 2 must be sealed within 30 days of harvest.

<table>
<thead>
<tr>
<th>Trapping</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Beaver.</td>
<td></td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td></td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black, and Silver Phases): No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Lynx: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
</tbody>
</table>

Marten: No limit
(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);

(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 northwest 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.

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mink and Weasel: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Otter: No limit</td>
<td>Dec. 1–Feb. 15.</td>
</tr>
<tr>
<td>Wolf: No limit</td>
<td>Nov. 10–Apr. 30.</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
<td>Nov. 10–Apr. 30.</td>
</tr>
</tbody>
</table>

Harvest limits

<table>
<thead>
<tr>
<th>Hunting</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Brown Bear:</td>
<td></td>
</tr>
<tr>
<td>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°34’ 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.</td>
<td></td>
</tr>
<tr>
<td>Unit 4—remainder—1 bear every four regulatory years by State registration permit only.</td>
<td></td>
</tr>
<tr>
<td>Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15-Jan. 31.</td>
<td></td>
</tr>
<tr>
<td>Coyote: 2 coyotes</td>
<td></td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black, and Silver Phases): 2 foxes</td>
<td></td>
</tr>
<tr>
<td>Hare (Snowshoe): 5 hares per day</td>
<td></td>
</tr>
<tr>
<td>Lynx: 2 lynx</td>
<td></td>
</tr>
<tr>
<td>Wolf: 5 wolves</td>
<td></td>
</tr>
<tr>
<td>Wolverine: 1 wolverine</td>
<td></td>
</tr>
<tr>
<td>Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession</td>
<td></td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trapping</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Beaver: Unit 4—No limit</td>
<td></td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td></td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black, and Silver Phases): No limit</td>
<td></td>
</tr>
<tr>
<td>Lynx: No limit</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trapping</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Beaver: Unit 4—No limit</td>
<td></td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td></td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black, and Silver Phases): No limit</td>
<td></td>
</tr>
<tr>
<td>Lynx: No limit</td>
<td></td>
</tr>
</tbody>
</table>
(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;
(B) Unit 5B consists of the remainder of Unit 5.

Harvest limits

<table>
<thead>
<tr>
<th></th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marten: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Otter: No limit</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Wolf: No limit</td>
<td>Nov. 10–Apr. 30</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
<td>Nov. 10–Apr. 30</td>
</tr>
</tbody>
</table>

(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.

Harvest limits

<table>
<thead>
<tr>
<th></th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Bear: 2 bears, no more than one may be a blue or glacier bear</td>
<td>Sept. 1–June 30</td>
</tr>
<tr>
<td>Brown Bear: 1 bear by Federal registration permit only</td>
<td>Sept. 1–May 31</td>
</tr>
<tr>
<td>Deer:</td>
<td></td>
</tr>
<tr>
<td>Unit 5A—1 buck</td>
<td>Nov. 1–Nov. 30</td>
</tr>
<tr>
<td>Unit 5B</td>
<td>No open season</td>
</tr>
<tr>
<td>Goat:</td>
<td></td>
</tr>
<tr>
<td>Unit 5A—that area between the Hubbard Glacier and the West Nunatak Glacier on the north and east sides of Nunatak Fjord—1 goat by Federal registration permit. The U.S. Forest Service Yakutat District Ranger and ADF&amp;G will jointly announce the harvest quota prior to the season. A minimum of two goats in the harvest quota will be reserved for Federally qualified subsistence users. The season will be closed by local announcement from the U.S. Forest Service Yakutat District Ranger when the quota has been taken. The harvest quota and season announcements will be made in consultation with The National Park Service and local residents. Unit 5A—remainder—1 goat by Federal registration permit. The U.S. Forest Service Yakutat District Ranger and ADF&amp;G will jointly announce the harvest quota prior to the season. A minimum of four goats in the harvest quota will be reserved for Federally qualified subsistence users. The season will be closed by local announcement when the quota has been taken. The harvest quota and season announcements will be made in consultation with The National Park Service and local residents. Unit 5B—1 goat by Federal registration permit only</td>
<td>Aug. 1–Jan. 31</td>
</tr>
<tr>
<td>Moose:</td>
<td></td>
</tr>
<tr>
<td>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. Unit 5A, except Nunatak Bench—1 bull by joint State/Federal registration permit only. The season will be closed when 60 bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 bulls have been taken in that area. From Oct. 8–21, public lands will be closed to taking of moose, except by residents of Unit 5A hunting under these regulations. Unit 5B—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5B.</td>
<td>Sept. 1–Dec. 15</td>
</tr>
<tr>
<td>Coyote: 2 coyotes</td>
<td>Sept. 1–Apr. 30</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 2 foxes</td>
<td>Nov. 1–Feb. 15</td>
</tr>
<tr>
<td>Hare (Snowshoe): 5 hares per day</td>
<td>Sept. 1–Apr. 30</td>
</tr>
<tr>
<td>Lynx: 2 lynx</td>
<td>Dec. 1–Feb. 15</td>
</tr>
<tr>
<td>Wolf: 5 wolves</td>
<td>Aug. 1–Apr. 30</td>
</tr>
<tr>
<td>Wolverine: 1 wolverine</td>
<td>Nov. 10–Feb. 15</td>
</tr>
<tr>
<td>Grouse (Spruce and Ruffed): 5 per day, 10 in possession</td>
<td>Aug. 1–May 15</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession</td>
<td>Aug. 1–May 15</td>
</tr>
</tbody>
</table>
(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;

(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;

(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 bull moose from Federal lands in Units 6B or C 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. 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.
### Harvest limits

<table>
<thead>
<tr>
<th>Wildlife</th>
<th>Harvest limits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Black Bear</td>
<td>1 bear</td>
</tr>
<tr>
<td>Deer</td>
<td>4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31</td>
</tr>
<tr>
<td>Wolf</td>
<td>5 wolves</td>
</tr>
<tr>
<td>Lynx (including Cross, Black and Silver Phases)</td>
<td>2 lynx</td>
</tr>
<tr>
<td>Hare (Snowshoe)</td>
<td>No limit</td>
</tr>
<tr>
<td>Coyote (including Cross, Black and Silver Phases)</td>
<td>5 per day, 10 in possession</td>
</tr>
<tr>
<td>Beaver</td>
<td>1 beaver per day, 1 in possession</td>
</tr>
<tr>
<td>Fox</td>
<td>1 beaver per day, 1 in possession</td>
</tr>
<tr>
<td>Beaver</td>
<td>1 beaver per day, 1 in possession</td>
</tr>
<tr>
<td>Grouse</td>
<td>5 per day, 10 in possession</td>
</tr>
<tr>
<td>Ptarmigan</td>
<td>10 per day, 20 in possession</td>
</tr>
<tr>
<td>Wolverine</td>
<td>1 wolverine</td>
</tr>
<tr>
<td>Wolf</td>
<td>1 wolverine</td>
</tr>
<tr>
<td>Marten</td>
<td>No limit</td>
</tr>
<tr>
<td>Muskrat</td>
<td>No limit</td>
</tr>
<tr>
<td>Otter</td>
<td>No limit</td>
</tr>
<tr>
<td>Goose</td>
<td>20 per day, 40 in possession</td>
</tr>
<tr>
<td><strong>Trapping</strong></td>
<td></td>
</tr>
<tr>
<td>Beaver</td>
<td>No limit</td>
</tr>
<tr>
<td>Marten</td>
<td>No limit</td>
</tr>
<tr>
<td>Muskrat</td>
<td>No limit</td>
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<td>Otter</td>
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<tr>
<td>Goose</td>
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<tr>
<td>Mink and Weasel</td>
<td>No limit</td>
</tr>
<tr>
<td>Fox</td>
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<td>Marten</td>
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</tr>
<tr>
<td>Muskrat</td>
<td>No limit</td>
</tr>
<tr>
<td>Otter</td>
<td>No limit</td>
</tr>
<tr>
<td>Beaver</td>
<td>No limit</td>
</tr>
</tbody>
</table>

#### Unit-specific regulations:

A. You may not take wildlife for subsistence uses in the Kenai Fjords National Park.

B. You may 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.

(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.

(C) You may not hunt moose in the Resurrection Creek Closed Area in Unit 7, which consists of the drainages of Resurrection Creek downstream from Rimrock and Highland Creeks including Palmer Creek.

(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]
Forest Service, USDA  § 242.26

<table>
<thead>
<tr>
<th>Harvest limits Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
</tr>
<tr>
<td>Black Bear: 3 bears</td>
</tr>
<tr>
<td>Moose:</td>
</tr>
<tr>
<td>Unit 7—that portion draining into Kings Bay—Public lands are closed to the taking of moose by all users. 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.</td>
</tr>
<tr>
<td>Beaver: 1 beaver per day. 1 in possession</td>
</tr>
<tr>
<td>Coyote: No limit</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 2 foxes</td>
</tr>
<tr>
<td>Hare (Snowshoe): No limit</td>
</tr>
<tr>
<td>Wolf:</td>
</tr>
<tr>
<td>Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves</td>
</tr>
<tr>
<td>Unit 7, remainder—5 wolves</td>
</tr>
<tr>
<td>Grouse (Spruce): 10 per day, 20 in possession</td>
</tr>
<tr>
<td>Grouse (Ruffed)</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession</td>
</tr>
<tr>
<td><strong>Trapping</strong></td>
</tr>
<tr>
<td>Beaver: 20 beaver per season</td>
</tr>
<tr>
<td>Coyote: No limit</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): No limit</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
</tr>
<tr>
<td>Otter: No limit</td>
</tr>
<tr>
<td>Wolf: No limit</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
</tr>
</tbody>
</table>

(8) Unit 8. Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marnot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands. (i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30. (ii) [Reserved]
(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;

(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–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;

(C) In Unit 9B, Lake Clark National Park and Preserve, 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, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community; however, no more than five permits will be issued in a single community. The season will be closed when four females or ten 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–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–December 31 or May 10–25, 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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Bear: 3 bears</td>
<td>July 1–June 30</td>
</tr>
<tr>
<td>Brown Bear:</td>
<td>July 1–June 30</td>
</tr>
<tr>
<td>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—one bear by Federal registration permit only.</td>
<td>Sept. 1–May 31</td>
</tr>
<tr>
<td>The season will be closed by the Lake Clark National Park and Preserve Superintendent when four females or ten bear have been taken, whichever occurs first.</td>
<td>Oct. 1–May 31</td>
</tr>
<tr>
<td>Unit 9B, remainder—one bear by State registration permit only</td>
<td>Sept. 25–Dec. 31</td>
</tr>
<tr>
<td>Unit 9C—1 bear by Federal registration permit only</td>
<td>Sept. 25–Dec. 31</td>
</tr>
<tr>
<td>The season will be closed by the Katmai National Park and Preserve Superintendent in consultation with BLM and FWS land managers and ADF&amp;G, when six females or ten bear have been taken, whichever occurs first.</td>
<td>Sept. 25–Dec. 31</td>
</tr>
<tr>
<td>Unit 9E—1 bear by Federal registration permit</td>
<td>Sept. 25–Dec. 31</td>
</tr>
<tr>
<td>Caribou:</td>
<td></td>
</tr>
<tr>
<td>Unit 9A—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.</td>
<td>Aug. 10–Mar. 31</td>
</tr>
<tr>
<td>Unit 9B—3 caribou; however, no more than 1 caribou may be taken from July 1–Nov. 30.</td>
<td>July 1–Apr. 15</td>
</tr>
<tr>
<td>Unit 9C, that portion within the Alagnak River drainage—one caribou</td>
<td>Aug. 1–Mar. 31</td>
</tr>
<tr>
<td>Unit 9C, remainder—Federal public lands are closed to the taking of caribou.</td>
<td>Apr. 15–May 25</td>
</tr>
<tr>
<td>Unit 9D—Federal public lands are closed to the taking of caribou.</td>
<td>No open season</td>
</tr>
<tr>
<td>Unit 9E—Federal public lands are closed to the taking of caribou.</td>
<td>No open season</td>
</tr>
<tr>
<td>Sheep:</td>
<td></td>
</tr>
<tr>
<td>Unit 9B, that portion within Lake Clark National Park and Preserve—1 ram with 3/4 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.</td>
<td>Jan. 1–Apr. 1</td>
</tr>
<tr>
<td>Unit 9B—remainder—1 ram with 3/4 curl or larger horn by Federal registration permit only.</td>
<td>Aug. 10–Oct. 10</td>
</tr>
<tr>
<td>Unit 9—remainder—1 ram with 3/4 curl or larger horn.</td>
<td>Aug. 10–Sept. 20</td>
</tr>
<tr>
<td>Moose:</td>
<td></td>
</tr>
<tr>
<td>Unit 9A—1 bull</td>
<td>Sept. 1–15</td>
</tr>
<tr>
<td>Unit 9B—1 bull</td>
<td>Aug. 20–Sept. 15</td>
</tr>
<tr>
<td>Unit 9C—that portion draining into the Naknek River from the north—one bull</td>
<td>Sept. 1–15</td>
</tr>
<tr>
<td>Unit 9C—that portion draining into the Naknek River from the south—one bull by Federal registration permit only. Public lands are closed during December for the hunting of moose, except by Federally qualified subsistence users hunting under these regulations.</td>
<td>Dec. 1–Jan. 15</td>
</tr>
<tr>
<td>Unit 9C—remainder—one bull</td>
<td>Dec. 1–Jan. 15</td>
</tr>
<tr>
<td>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.</td>
<td>Sept. 1–15</td>
</tr>
<tr>
<td>Unit 9E—1 bull, however only antlered bulls may be taken Dec. 1–Jan. 31</td>
<td>Dec. 15–Jan. 15</td>
</tr>
<tr>
<td>Beaver: Unit 9B and 9E—2 beaver per day</td>
<td>Apr. 15–May 31</td>
</tr>
<tr>
<td>Coyote: 2 coyotes</td>
<td>Sept. 1–Apr. 30</td>
</tr>
</tbody>
</table>
§ 242.26  36 CFR Ch. II (7–1–09 Edition)

Harvest limits

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fox, Arctic (Blue and White): No limit</td>
<td>Dec. 1–Mar. 15</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 2 foxes</td>
<td>Sept. 1–Feb. 15</td>
</tr>
<tr>
<td>Hare (Snowshoe and Tundra): No limit</td>
<td>July 1–June 30</td>
</tr>
<tr>
<td>Lynx: 2 lynx</td>
<td>Nov. 10–Feb. 28</td>
</tr>
<tr>
<td>Wolf: 10 wolves</td>
<td>Aug. 10–Apr. 30</td>
</tr>
<tr>
<td>Wolverine: 1 wolverine</td>
<td>Sept. 1–Mar. 31</td>
</tr>
<tr>
<td>Grouse (Spruce): 15 per day, 30 in possession</td>
<td>Aug. 10–Apr. 30</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession</td>
<td>Aug. 10–Apr. 30</td>
</tr>
</tbody>
</table>

Trapping

<table>
<thead>
<tr>
<th>Trapping</th>
</tr>
</thead>
<tbody>
<tr>
<td>No limit</td>
</tr>
<tr>
<td>Coyote: No limit</td>
</tr>
<tr>
<td>Fox, Arctic (Blue and White): No limit</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): No limit</td>
</tr>
<tr>
<td>Lynx: No limit</td>
</tr>
<tr>
<td>Marten: No limit</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
</tr>
<tr>
<td>Otter: No limit</td>
</tr>
<tr>
<td>Wolf: No limit</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
</tr>
</tbody>
</table>

(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–December 31 or May 10–25, 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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caribou: Unit 10—Unimak Island only—2 caribou by Federal registration permit only</td>
<td>Aug. 1–Sept. 30</td>
</tr>
<tr>
<td>Unit 10, remainder—No limit</td>
<td>Nov. 15–Mar. 31</td>
</tr>
<tr>
<td>Coyote: 2 coyotes</td>
<td>July 1–June 30</td>
</tr>
<tr>
<td>Fox, Arctic (Blue and White Phase): No limit</td>
<td>Sept. 1–Apr. 30</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 2 foxes</td>
<td>July 1–June 30</td>
</tr>
<tr>
<td>Wolf: 5 wolves</td>
<td>Sept. 1–Feb. 15</td>
</tr>
<tr>
<td>Wolverine: 1 wolverine</td>
<td>Aug. 10–Apr. 30</td>
</tr>
<tr>
<td>Ptarmigan (Rock and Willow): 20 per day, 40 in possession</td>
<td>Aug. 10–Apr. 30</td>
</tr>
</tbody>
</table>

Trapping

<table>
<thead>
<tr>
<th>Trapping</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coyote: 2 coyotes</td>
</tr>
<tr>
<td>Fox, Arctic (Blue and White Phase): No limit</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 2 foxes</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
</tr>
<tr>
<td>Otter: No limit</td>
</tr>
<tr>
<td>Wolf: No limit</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
</tr>
</tbody>
</table>
(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 bear between April 15 and June 15;
(B) One moose without calf may be taken from June 20–July 31 in the Wrangell-St. Elias National Park and Preserve in Unit 11 or 12 for the Batzunetia 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) The Assistant Regional Director for Subsistence Management, FWS, is authorized to align the Federal subsistence wolverine trapping season with the Federal subsistence lynx seasons in Unit 11.

(ii) A joint permit may be issued to a pair of a minor and an elder to hunt sheep during the Sept. 21–Oct. 20 hunt. The following conditions apply:
(A) The permittee 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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hunting</td>
<td></td>
</tr>
<tr>
<td>Black Bear: 3 bears</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Caribou</td>
<td>No open season.</td>
</tr>
<tr>
<td>Sheep:</td>
<td></td>
</tr>
<tr>
<td>1 sheep</td>
<td>Aug. 10–Sept. 20.</td>
</tr>
<tr>
<td>1 sheep by Federal registration permit only by persons 60 years of age or older</td>
<td>Sept. 21–Oct. 20.</td>
</tr>
<tr>
<td>Goat:</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>Unit 11—the remainder of the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only.</td>
<td></td>
</tr>
<tr>
<td>Unit 11—that portion outside of the Wrangell-St. Elias National Park and Preserve—Federal public lands will be closed by announcement of the Superintendent.</td>
<td></td>
</tr>
<tr>
<td>Moose:</td>
<td></td>
</tr>
<tr>
<td>1 antlered bull by Federal registration permit only</td>
<td>Aug. 20–Sept. 20.</td>
</tr>
<tr>
<td>Beaver: 1 beaver per day, 1 in possession</td>
<td>Sept. 20–June 10.</td>
</tr>
<tr>
<td>Coyote: 10 coyotes</td>
<td>June 1–Oct. 10.</td>
</tr>
<tr>
<td>Wolf: 10 wolves</td>
<td>Aug. 10–April 30.</td>
</tr>
<tr>
<td>Wolverine: 1 wolverine</td>
<td>Sept. 1–Mar. 15.</td>
</tr>
<tr>
<td>Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
<tr>
<td>Hare (Snowshoe): No limit</td>
<td></td>
</tr>
<tr>
<td>Lynx: 2 lynx</td>
<td></td>
</tr>
<tr>
<td>Ptarmigan: No limit</td>
<td></td>
</tr>
<tr>
<td>Trapping</td>
<td></td>
</tr>
<tr>
<td>Beaver: No limit</td>
<td>Sept. 25–May 31.</td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td>Lynx: No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td>Marten: No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
<td>Nov. 10–June 10.</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Other: No limit</td>
<td></td>
</tr>
</tbody>
</table>
Harvest limits

<table>
<thead>
<tr>
<th>Animal</th>
<th>Limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wolf</td>
<td>No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Wolverine</td>
<td>No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
</tbody>
</table>

(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 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 \(\frac{3}{32}\) 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–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 Sept. 21-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.

Harvest limits

<table>
<thead>
<tr>
<th>Animal</th>
<th>Limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Bear</td>
<td>3 bears</td>
<td>July 1–June 30.</td>
</tr>
</tbody>
</table>
| Caribou      | Unit 12—that portion of the Nabesna River drainage within the Wrangell-St. Elias National Park and Preserve and all Federal lands south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—All hunting of caribou is prohibited on Federal public lands.
|              | Unit 12—remainder—1 bull     | Sept. 1–20.          |
|              | Unit 12—remainder—1 caribou  | Winter season to be announced. |
|              | 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. |
| Sheep        | 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. |
| 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.
|              | 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.
|              | Unit 12—remainder—1 antlered bull | Sept. 1–17. |
(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 southeast 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 northeast shore of lake 4408, then southeast in a straight line to the northern most 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 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 downstream the southern bank of the Susitna River to the mouth of Kosina Creek, then up.

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coyote: 10 coyotes</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.</td>
<td>Sept. 1–Mar. 15.</td>
</tr>
<tr>
<td>Hare (Snowshoe): No limit</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Grease (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession.</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trapping</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beaver: 15 beaver per season. Only firearms may be used during Sept. 20–Oct. 31 and Apr. 16–May 15, to take up to 6 beaver. Only traps or snares may be used Nov. 1–Apr. 15. The total annual harvest limit for beaver is 15, of which no more than 6 may be taken by firearm under trapping or hunting regulations. Meat from beaver harvested by firearm must be salvaged for human consumption. Coyote: No limit.</td>
</tr>
<tr>
<td>Lynx: No limit; however, no more than 5 lynx may be taken between Nov. 1 and Nov. 30.</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
</tr>
<tr>
<td>Otter: No limit</td>
</tr>
<tr>
<td>Wolf: No limit</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
</tr>
</tbody>
</table>
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 to the Gakona 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 (m)(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 from 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 13D 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–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.
Harvest limits

<table>
<thead>
<tr>
<th>Harvest limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hunting</td>
</tr>
<tr>
<td>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.</td>
</tr>
<tr>
<td>Caribou: Unit 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.</td>
</tr>
<tr>
<td>Moose: Unit 13E—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household.</td>
</tr>
<tr>
<td>Coyote: 10 coyotes</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.</td>
</tr>
<tr>
<td>Lynx: 2 lynx</td>
</tr>
<tr>
<td>Wolf: 10 wolves</td>
</tr>
<tr>
<td>Wolverine: 1 wolverine</td>
</tr>
<tr>
<td>Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession.</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession.</td>
</tr>
<tr>
<td>Trapping</td>
</tr>
<tr>
<td>Beaver: No limit</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): No limit</td>
</tr>
<tr>
<td>Lynx: No limit</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
</tr>
<tr>
<td>Otter: No limit</td>
</tr>
<tr>
<td>Wolf: No limit</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
</tr>
</tbody>
</table>

Open season

- July 1–June 30.
- Aug. 10–May 31.
- Aug. 10–Sept. 20.
- Aug. 1–Sept. 20.
- Aug. 1–Sept. 20.
- June 15–Sept. 10.
- Aug. 10–Apr. 30.
- Sept. 1–Mar. 15.
- July 1–June 30.
- Nov. 10–Feb. 28.
- Aug. 10–Mar. 31.
- Sept. 25–May 31.
- Nov. 10–Mar. 31.
- Nov. 10–Feb. 28.
- Nov. 10–Feb. 28.
- Nov. 10–Feb. 28.
- Nov. 10–Mar. 31.
- Oct. 15–Apr. 30.

(14) Unit 14. (i) Unit 14 consists of drainages into the north 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 north side of Cook Inlet east of the Susitna...
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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 west 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 northeast 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 north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14B consists of that portion of Unit 14 north of Unit 14A;

(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;

(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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Beaver: Unit 14C—1 beaver per day, 1 in possession</td>
<td>May 15–Oct. 31.</td>
</tr>
<tr>
<td>Coyote: Unit 14C—2 coyotes</td>
<td>Sept. 1–Apr. 15.</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): Unit 14C—2 foxes</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td>Hare (Snowshoe): Unit 14C—5 hares per day</td>
<td>Nov. 1–Feb. 15.</td>
</tr>
<tr>
<td>Lynx: Unit 14C—2 lynx</td>
<td>Sept. 8–Apr. 30.</td>
</tr>
<tr>
<td>Wolverine: Unit 14C—1 wolverine</td>
<td>Sept. 1–Mar. 31.</td>
</tr>
<tr>
<td>Grouse (Spruce and Ruffed): Unit 14C—5 per day, 10 in possession</td>
<td>Sept. 8–Mar. 31.</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): Unit 14C—10 per day, 20 in possession</td>
<td>Sept. 8–Mar. 31.</td>
</tr>
<tr>
<td><strong>Trapping</strong></td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>Dec. 1–Apr. 15.</td>
</tr>
<tr>
<td>Coyote: Unit 14C—No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): Unit 14C—1 fox</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td>Mink and Weasel: Unit 14C—No limit</td>
<td>Nov. 10–Jan. 31.</td>
</tr>
<tr>
<td>Muskrat: Unit 14C—No limit</td>
<td>Nov. 10–May 15.</td>
</tr>
<tr>
<td>Otter: Unit 14C—No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td>Wolf: Unit 14C—No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td>Wolverine: Unit 14C—No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
</tbody>
</table>

(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 north 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 north shore of Skilak Lake, and north of the north bank of the Kasilof River, the north shore of Tustumena Lake, Glacier Creek, and Tustumena Glacier; 

(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-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 south-erly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north 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;

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare.

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Brown Bear: Unit 15C—1 bear every four 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&amp;G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council.</td>
<td>Oct. 1–Nov. 30, to be announced and Apr. 1–Jun. 15, to be announced.</td>
</tr>
<tr>
<td>Moose:</td>
<td></td>
</tr>
<tr>
<td>Unit 15A—Skilak Loop Wildlife Management Area</td>
<td>No open season.</td>
</tr>
<tr>
<td>Unit 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.</td>
<td>Aug. 10–Sept. 20.</td>
</tr>
<tr>
<td>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&amp;G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council.</td>
<td>Oct. 20–Nov. 10.</td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td>Sept. 1–Apr. 30.</td>
</tr>
<tr>
<td>Hare (Snowshoe): No limit</td>
<td>July 1–Jun. 30.</td>
</tr>
<tr>
<td>Wolf:</td>
<td></td>
</tr>
<tr>
<td>Unit 15—that portion within the Kenai National Wildlife Refuge—2 wolves</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td>Unit 15—remainder—5 wolves</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td>Grouse (Spruce): 15 per day, 30 in possession</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
<tr>
<td>Grouse (Ruffed)</td>
<td>No open season.</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): Unit 15A and 15B—20 per day, 40 in possession</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
<tr>
<td>Unit 15C—20 per day, 40 in possession</td>
<td>Aug. 10–Dec. 31.</td>
</tr>
<tr>
<td>Unit 15C—5 per day, 10 in possession</td>
<td>Jan. 1–Mar. 31.</td>
</tr>
<tr>
<td><strong>Trapping</strong></td>
<td></td>
</tr>
<tr>
<td>Beaver: 20 Beaver per season</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 1 Fox</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
<td></td>
</tr>
<tr>
<td>Muskrat: No limit</td>
<td></td>
</tr>
<tr>
<td>Otter: Unit 15—No limit</td>
<td></td>
</tr>
<tr>
<td>Wolf: No limit</td>
<td></td>
</tr>
<tr>
<td>Wolverine: Unit 15B and C—No limit</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
</tbody>
</table>
(16) Unit 16. (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kasilgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the mouth of the Kogelina Glacier, including the drainage of the Kogelina 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 Kogelina River, east of the east bank of the Kogelina River, and east of the Kogelina Glacier;

(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 (m)(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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Bear: 3 bears</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Moose: Unit 16B—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 bull.</td>
<td>Sept. 1–15.</td>
</tr>
<tr>
<td>Unit 16B—Denali National Preserve only—1 bull by Federal registration permit. One Federal registration permit for moose issued per household.</td>
<td>Sept. 1–30.</td>
</tr>
<tr>
<td>Unit 16B, remainder—1 bull</td>
<td>Dec. 1–Feb. 28.</td>
</tr>
<tr>
<td>Coyote: 2 coyotes</td>
<td>Sept. 1–Apr. 30.</td>
</tr>
<tr>
<td>Wolverine: 1 wolverine</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td>Grouse (Spruce and Ruffled): 15 per day, 30 in possession</td>
<td>Sept. 1–Mar. 31.</td>
</tr>
<tr>
<td>Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
<tr>
<td>Beaver: No limit</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td>AUG. 10–MAR. 31.</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Lynx: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Marten: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Muskrat: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Otter: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Wolf: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
<tr>
<td>Wolverine: No limit</td>
<td>Nov. 10–Mar. 31.</td>
</tr>
</tbody>
</table>

(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 those 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;

(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, bears, 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-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) [Reserved] 
(D) If you have a trapping license, you may use a firearm to take beaver in Unit 17 from April 15-May 31. You may not take beaver with a firearm under a trapping license on National Park Service lands.

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Black Bear: 2 bears</td>
<td>Aug. 1–May 31.</td>
</tr>
<tr>
<td>Brown Bear: Unit 17–1 bear by State registration permit only</td>
<td>Sept. 1–May 31.</td>
</tr>
<tr>
<td>Caribou: Unit 17A—all drainages west of Right Hand Point—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30. The season may be closed and harvest limit reduced for the drainages between the Togiak River and Right</td>
<td>Aug. 1–Mar. 31.</td>
</tr>
<tr>
<td>Hand Point by announcement of the Togiak National Wildlife Refuge Manager.</td>
<td></td>
</tr>
<tr>
<td>Unit 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 Tapsiquak Bay—up to 2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark’s Point, and Ekuk hunting under these regulations. The harvest objective, harvest limit, and the number of permits available will be announced by the Togiak National Wildlife Refuge Manager after consultation with the Alaska Department of Fish and Game and the Nushagak Peninsula Caribou Planning Committee. Successful hunters must report their harvest to the Togiak National Wildlife Refuge within 24 hours after returning from the field. The season may be closed by announcement of the Togiak National Wildlife Refuge Manager.</td>
<td></td>
</tr>
<tr>
<td>Unit 17A—remainder and 17C—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.</td>
<td></td>
</tr>
<tr>
<td><strong>Unit 17B and 17C</strong>—that portion of 17C east of the Wood River and Wood River Lakes—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30.</td>
<td></td>
</tr>
<tr>
<td><strong>Sheep:</strong> 1 ram with full curl or larger horn</td>
<td>Aug. 1–Sept. 20.</td>
</tr>
<tr>
<td><strong>Moose:</strong> Unit 17A—1 bull by State registration permit</td>
<td>Aug. 25–Sept. 20.</td>
</tr>
<tr>
<td><strong>Unit 17A</strong>—that portion that includes the area east of the west shore of Nenevok Lake, east of the west bank of the Kemuk River, and east of the west bank of the Togiak River south from the confluence Togiak and Kemuk Rivers—1 antlered bull by State registration permit. Up to a 14-day season during the period Dec. 1–Jan. 31 may be opened or closed by the Togiak National Wildlife Refuge Manager after consultation with ADF&amp;G and local users.</td>
<td>Winter season to be announced.</td>
</tr>
<tr>
<td><strong>Unit 17B</strong>—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchita River drainage—1 bull by State registration permit. Period during the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow lines on one side may be taken with a State harvest ticket.</td>
<td>Aug. 20–Sept. 15.</td>
</tr>
<tr>
<td><strong>Unit 17B</strong>—that portion that includes the loweitha drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit. Period during the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow lines on one side may be taken with a State harvest ticket.</td>
<td>Aug. 20–Sept. 15.</td>
</tr>
<tr>
<td><strong>Unit 17B</strong>—remainder and 17C—remainder—1 bull by State registration permit. During the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow lines on one side may be taken with a State harvest ticket.</td>
<td>Aug. 20–Sept. 15.</td>
</tr>
<tr>
<td><strong>Coyote:</strong> 2 coyotes</td>
<td>Sept. 1–Apr. 30.</td>
</tr>
<tr>
<td><strong>Fox, Arctic (Blue and White Phase): No limit</strong></td>
<td>Dec. 1–Mar. 15.</td>
</tr>
<tr>
<td><strong>Fox, Red (including Cross, Black and Silver Phases): 2 foxes</strong></td>
<td>Sept. 1–Feb. 15.</td>
</tr>
<tr>
<td><strong>Hare (Snowshoe and Tundra): No limit</strong></td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td><strong>Lynx:</strong> 2 lynx</td>
<td>Nov. 10–Feb. 28.</td>
</tr>
<tr>
<td><strong>Wolf:</strong> 10 wolves</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td><strong>Wolverine:</strong> 1 wolverine</td>
<td>Sept. 1–Mar. 31.</td>
</tr>
<tr>
<td><strong>Grouse (Spruce and Ruffed): 15 per day, 30 in possession</strong></td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td><strong>Phalarigam (Rock and Willow): 20 per day, 40 in possession</strong></td>
<td>Aug. 10–Apr. 30.</td>
</tr>
</tbody>
</table>

**Trapping**

**Beaver:**
Kalskag, you are not allowed to use old site of Paimiut, then back to Lower north bank of the Yukon River to the Yukon River, then east along the northwesterly to Russian Mission on Kalskag on the Kuskokwim River, Area, which consists of that portion of and the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River. Cent islands between Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(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 Apr. 1–Jun. 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.
(19) Unit 19. (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piarmigian:

(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 Hoholitna 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 northwest 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;

(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 (m)(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 air-
ports in the Controlled Use Area, or be-
tween 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.

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hunting</td>
<td></td>
</tr>
<tr>
<td>Black Bear: 3 bears</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Unit 19A and 19B—those portions which are downstream of and including the Aniak River drainage—1 bear by State registration permit.</td>
<td>Aug. 10–June 30.</td>
</tr>
<tr>
<td>Unit 19A, remainder, 19B, remainder, and Unit 19D—1 bear</td>
<td>Aug. 10–June 30.</td>
</tr>
<tr>
<td>Caribou:</td>
<td></td>
</tr>
<tr>
<td>Unit 19A—north of Kuskokwim River—1 caribou</td>
<td>Aug. 10–Sept. 30.</td>
</tr>
<tr>
<td>Unit 19A—south of the Kuskokwim River and Unit 19B (excluding rural Alaska residents of Lime Village)—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30.</td>
<td>Aug. 1–Apr. 15.</td>
</tr>
<tr>
<td>Unit 19C—1 caribou</td>
<td></td>
</tr>
<tr>
<td>Unit 19D—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou.</td>
<td>Aug. 10–Oct. 10.</td>
</tr>
<tr>
<td>Unit 19D, remainder—1 caribou</td>
<td>Aug. 10–Sept. 30.</td>
</tr>
<tr>
<td>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–Aug. 9. Reporting will be by a community reporting system.</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Sheep: 1 ram with ( \frac{3}{4} ) curl horn or larger</td>
<td>Aug. 10–Sept. 20.</td>
</tr>
<tr>
<td>Moose:</td>
<td></td>
</tr>
<tr>
<td>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 Tier II system). Reporting will be by a community reporting system.</td>
<td>Sept. 1–20.</td>
</tr>
<tr>
<td>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; Federal public lands are closed to the taking of moose.</td>
<td>No open season.</td>
</tr>
<tr>
<td>Unit 19A, remainder—1 antlered bull by Federal drawing permit or a State Tier II 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. The Refuge Manager of the Yukon Delta NWR, in cooperation with the BLM Field Office Manager, will annually establish the harvest quota and number of permits to be issued in coordination with the State Tier II hunt. If the allowable harvest level is reached before the regular season closing date, the Refuge Manager, in consultation with the BLM Field Office Manager, will announce an early closure of Federal public lands to all moose hunting.</td>
<td>Sept. 1–20.</td>
</tr>
<tr>
<td>Unit 19B—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side.</td>
<td>Sept. 1–20.</td>
</tr>
<tr>
<td>Unit 19C—1 antlered bull</td>
<td>Sept. 1–20.</td>
</tr>
<tr>
<td>Unit 19D—1 bull by State registration permit</td>
<td>Jan. 15–Feb. 15.</td>
</tr>
<tr>
<td>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.</td>
<td>Sept. 1–30.</td>
</tr>
<tr>
<td>Unit 19D, remainder of the Upper Kuskokwim Controlled Use Area—1 bull</td>
<td>Sept. 1–30.</td>
</tr>
<tr>
<td>Wolf: Unit 19D—10 wolves per day</td>
<td>Dec. 1–Jan. 15.</td>
</tr>
<tr>
<td>Unit 19, remainder—5 wolves</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td>Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td>Partridge (Rock, Willow, and White-tailed): 20 per day, 40 in possession</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
</tbody>
</table>

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in those portions of 19A and 19B downstream of and including the Aniak River drainage if you have obtained a State registration permit prior to hunting.
(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 north 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 from 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 from 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 northeasterly 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 Hot Springs Dome, then east to the Winter Cat Trail, then along the Winter 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 only hunt moose 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 northerly along Goldstream Creek to its confluence with First Chance Creek, 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 ditch,
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 from 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 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 Nuchalawoya 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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Bear: 3 bears</td>
<td>July 1–June 30</td>
</tr>
<tr>
<td>Brown Bear:</td>
<td></td>
</tr>
<tr>
<td>Unit 20A–1 bear</td>
<td>Sept. 1–May 31</td>
</tr>
<tr>
<td>Unit 20E–1 bear</td>
<td>Aug. 10–June 30</td>
</tr>
<tr>
<td>Unit 20, remainder–1 bear</td>
<td>Sept. 1–May 31</td>
</tr>
<tr>
<td>Caribou:</td>
<td></td>
</tr>
<tr>
<td>Unit 20E–1 caribou by joint State/Federal registration permit only. Up to 800 caribou may be taken under a State/Federal harvest quota. During the winter season, area closures or hunt restrictions may be announced when Nelchina caribou are present in a mix of more than 1 Nelchina caribou to 15 Fortymile caribou, except when the number of caribou present is low enough that less than 50 Nelchina caribou will be harvested regardless of the mixing ratio for the two herds. The season closures will be announced by the Eastern Interior Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game.</td>
<td>Aug. 10–Sept. 30</td>
</tr>
<tr>
<td>Unit 20F—north of the Yukon River—1 caribou</td>
<td>Nov. 1–Feb. 28</td>
</tr>
<tr>
<td>Unit 20F—east of the Dalton Highway and south of the Tanana River—1 caribou; however, cow caribou may be taken only from Nov. 1–March 31. During the November 1–March 31 season, a State registration permit is required.</td>
<td></td>
</tr>
<tr>
<td>Moose:</td>
<td></td>
</tr>
<tr>
<td>Unit 20A–1 antlered bull</td>
<td>Sept. 1–20</td>
</tr>
<tr>
<td>Unit 20B—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only.</td>
<td>Sept. 1–20</td>
</tr>
<tr>
<td>Unit 20B, remainder—1 antlered bull</td>
<td>Jan. 10–Feb. 28</td>
</tr>
<tr>
<td>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.</td>
<td>Sept. 1–30</td>
</tr>
<tr>
<td>Unit 20C, remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.</td>
<td>Nov. 15–Dec. 15</td>
</tr>
<tr>
<td>Unit 20E—that portion within Yukon–Charley National Preserve—1 bull</td>
<td>Sept. 1–15</td>
</tr>
<tr>
<td>Unit 20E—that portion drained by the Forty-mile River (all forks) from Mile 9 1/2 to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 bull.</td>
<td>Sept. 1–25</td>
</tr>
<tr>
<td>Unit 20F—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.</td>
<td>Sept. 1–25</td>
</tr>
<tr>
<td>Unit 20F, remainder—1 antlered bull</td>
<td>Dec. 1–10</td>
</tr>
<tr>
<td>Unit 20E—Yukon-Charley Rivers National Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption.</td>
<td>Sept. 20–May 15</td>
</tr>
<tr>
<td>Coyote: 10 coyotes</td>
<td>Aug. 10–Apr. 30</td>
</tr>
<tr>
<td>Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.</td>
<td>Sept. 1–Mar. 15</td>
</tr>
<tr>
<td>Hare (Snowshoe): No limit</td>
<td>July 1–June 30</td>
</tr>
<tr>
<td>Lynx:</td>
<td></td>
</tr>
<tr>
<td>Unit 20A, 20B, and that portion of 20C east of the Teklanika River—2 lynx</td>
<td>Dec. 1–Jan. 31</td>
</tr>
<tr>
<td>Unit 20E—2 lynx</td>
<td>Nov. 1–Jan. 31</td>
</tr>
<tr>
<td>Unit 20, remainder—2 lynx</td>
<td>Dec. 1–Jan. 31</td>
</tr>
<tr>
<td>Muskrat:</td>
<td></td>
</tr>
<tr>
<td>Unit 20E, that portion within Yukon–Charley Rivers National Preserve—No limit</td>
<td>Sept. 20–June 10</td>
</tr>
<tr>
<td>Wolf: 10 wolves</td>
<td>No open season</td>
</tr>
<tr>
<td>Wolverine: 1 wolverine</td>
<td>Aug. 10–Apr. 30</td>
</tr>
<tr>
<td>Grouse (Spruce, Ruffled, and Sharp-tailed): Units 20A, 20B, 20C, 20E, and 20F—15 per day, 30 in possession.</td>
<td>Aug. 10–Mar. 31</td>
</tr>
</tbody>
</table>

Ptarmigan (Rock and Willow):
§ 242.26  36 CFR Ch. II (7–1–09 Edition)

Harvest limits

<table>
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<tr>
<th></th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>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. Unit 20, remainder—20 per day, 40 in possession</td>
<td>Aug. 10–Mar. 31.</td>
</tr>
<tr>
<td>Trapping</td>
<td></td>
</tr>
<tr>
<td>Beaver:</td>
<td></td>
</tr>
<tr>
<td>Units 20A, 20B, 20C, and 20F—No limit</td>
<td>Nov. 1–Apr. 30.</td>
</tr>
<tr>
<td>Unit 20E—25 beaver per season. Only firearms may be used during Sept. 20–Oct. 31 and Apr. 16–May 15, to take up to 6 beaver. Only traps or snares may be used.</td>
<td>Sept. 20–May 15.</td>
</tr>
<tr>
<td>Mink and Weasel: No limit</td>
<td></td>
</tr>
<tr>
<td>Lynx:</td>
<td></td>
</tr>
<tr>
<td>Unit 20E—No limit; however, no more than 5 lynx may be taken between Nov. 1 and Nov. 30.</td>
<td>Nov. 1–Dec. 31.</td>
</tr>
<tr>
<td>Unit 20F and 20C—remainder—No limit</td>
<td>Nov. 1–Feb. 28.</td>
</tr>
<tr>
<td>Marten: No limit</td>
<td></td>
</tr>
<tr>
<td>Muskrat: Mink and Weasel: No limit</td>
<td>Nov. 1–Feb. 28.</td>
</tr>
<tr>
<td>Otter: No limit</td>
<td></td>
</tr>
<tr>
<td>Wolf:</td>
<td></td>
</tr>
<tr>
<td>Unit 20A, 20B, 20C, &amp; 20F—No limit</td>
<td>Nov. 1–Feb. 28.</td>
</tr>
<tr>
<td>Unit 20E—No limit</td>
<td></td>
</tr>
<tr>
<td>Wolverine: No limit</td>
<td></td>
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</tbody>
</table>

(21) Unit 21. (i) Unit 21 consists of the following drainages into the Yukon River upstream from Paimiut to, but not including, the Yukon 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 Tonwod Creek 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 the Yukon River drainage from Paimiut upstream 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 Unit 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 confluences of the forks of the Dakli River at 66°02.56’ N. lat., 156°12.71’ W. long., then easterly to the confluences 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, 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 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–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 Nuchalawoya 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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hunting</td>
<td></td>
</tr>
<tr>
<td>Black Bear: 3 bears</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Brown Bear: Unit 21D—1 bear by State registration permit only</td>
<td>Aug. 10–June 30.</td>
</tr>
<tr>
<td>Unit 21, remainder—1 bear</td>
<td>Aug. 10–June 30.</td>
</tr>
<tr>
<td>Caribou:</td>
<td></td>
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</tbody>
</table>

Otter: No limit. Nov. 1–Apr. 15.


Ptarmigan (Rocky Mountains, Calico): 20 per day, 40 in possession. Aug. 10–Sept. 30.

Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession. Aug. 10–Sept. 30.


Hare (Snowshoe and Tundra): No limit. July 1–June 30.


Beaver: 5 caribou per day; however, caribou may not be taken May 16–June 30.

Moose:


Unit 21B—that portion north of the Yukon River and downstream from Ukawutin Creek. Dec. 10–Dec. 20.

Unit 21C—the Dutil River drainage downstream from Big Creek. No open season.

Unit 21D—north of the Yukon River and east of the Koyukuk River—1 caribou. No open season.


Unit 21F—Koyukuk Controlled Use Area—1 caribou. Sept. 1–Mar. 15.

Five-day season to be announced between Dec. 1 and March 31.


Unit 21I—1 moose; however, antlerless moose may not be taken May 16–June 30.

Four-day season to be announced by the Refuge Manager of the Koyukuk/Nowitna National Wildlife Refuge Manager and the BLM Central Yukon Field Office Manager, in consultation with ADF&G and the Chairs of the Western Interior Subsistence Regional Advisory Council, and the Middle Yukon and Ruby Fish and Game Advisory Committees.

Unit 21J, remainder—5 caribou per day; however, caribou may not be taken Nov. 1–Mar. 31.


Unit 21L—1 moose. Nov. 1–Mar. 31.

Unit 21M—1 antlered bull. Aug. 20–Sept. 25.

Unit 21N—1 antlered bull. Sept. 5–25.

Unit 21O—which part of the Nowitna River drainage downstream from and including the Little Mud River drainage—1 antlered bull. No registration permit is required from Aug. 22–31.

Unit 21P—which part of the Nowitna River drainage downstream from and including the Little Mud River drainage—1 antlered bull. No registration permit is required from Aug. 22–31. During the Aug. 27–Sept. 20 season a State registration permit is required. During the Mar. 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Advisory Council and the Middle Yukon Fish and Game Advisory Committee.

Unit 21Q—1 antlered bull. Aug. 20–Sept. 25.


Trapping


Hare (Snowshoe and Tundra): No limit. Nov. 1–June 10.


Mink and Weasel: No limit. Nov. 1–June 10.


(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, 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 intended for red fox or wolf, 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 one musk ox by the community of Wales is allowed for the celebration of the Kingikmiut 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 only occur between January 1 and March 15 in Unit 22E for a bull moose and in Unit 22E for a musk ox. 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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
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</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Black Bear:</td>
<td></td>
</tr>
<tr>
<td>Unit 22, remainder</td>
<td>No open season.</td>
</tr>
<tr>
<td>Brown Bear:</td>
<td></td>
</tr>
<tr>
<td>Unit 22A, 22B, 22D, and 22E—1 bear by State registration permit only</td>
<td>Aug. 1–May 31.</td>
</tr>
<tr>
<td>Unit 22C—1 bear by State registration permit only</td>
<td>Aug. 1–Oct. 31.</td>
</tr>
<tr>
<td>May 10–25.</td>
<td></td>
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</tbody>
</table>
### Harvest Limits

<table>
<thead>
<tr>
<th>Caribou:</th>
<th>Open Season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit 22B west of Golovin Bay and west of a line along the west bank of the Fish and Niukluk Rivers and excluding the Libby River drainage—5 caribou per day.</td>
<td>Oct. 1–Apr. 30.</td>
</tr>
<tr>
<td>Units 22A, 22B remainder, that portion of Unit 22D in the Kougarok, Kuzitrin (excluding the Pilgrim River drainage), American, and Agiapuk River Drainages, and Unit 22E, that portion east of and including the Sanaguich River drainage—5 caribou per day; however, cow caribou may not be taken May 16–June 30.</td>
<td>May 1–Sept. 30, a season may be opened by announcement by the Anchorage Field Office Manager of the BLM, in consultation with ADF&amp;G.</td>
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<table>
<thead>
<tr>
<th>Moose:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>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 residents of Unit 22A hunting under these regulations.</td>
<td>Aug. 1–Sept. 30.</td>
</tr>
<tr>
<td>Unit 22A—that portion in the Unalakleet drainage and all drainages flowing into Norton Sound north of the Golovina 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&amp;G.</td>
<td>Aug. 15–Sept. 14.</td>
</tr>
<tr>
<td>Unit 22A, remainder—1 bull. However, during the period Jan. 1–31, only an antlered bull may be taken. Federal public lands are closed to the taking of moose except by residents of Unit 22A hunting under these regulations.</td>
<td>Aug. 1–Sept. 30.</td>
</tr>
<tr>
<td>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&amp;G. Federal public lands are closed to the taking of moose except by Federally qualified subsistence users hunting under these regulations.</td>
<td>Jan. 1–31.</td>
</tr>
<tr>
<td>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&amp;G. Federal public lands are closed to the taking of moose except by residents of White Mountain and Golovin hunting under these regulations.</td>
<td>Sept. 1–14.</td>
</tr>
<tr>
<td>Unit 22B, remainder—1 bull</td>
<td>Aug. 1–Jan. 31.</td>
</tr>
<tr>
<td>Unit 22C—1 antlered bull</td>
<td>Sept. 1–14.</td>
</tr>
<tr>
<td>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&amp;G. Federal public lands are closed to the taking of moose except by residents of Units 22D and 22C hunting under these regulations.</td>
<td>Sept. 1–14.</td>
</tr>
<tr>
<td>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&amp;G. Federal public lands are closed to the taking of moose except by residents of Units 22D and 22C hunting under these regulations.</td>
<td>Dec. 1–31.</td>
</tr>
<tr>
<td>Unit 22D, remainder—1 bull</td>
<td>Aug. 10–Sept. 14.</td>
</tr>
<tr>
<td>Unit 22D, remainder—1 antlered bull</td>
<td>Oct. 1–Nov. 30.</td>
</tr>
<tr>
<td>Unit 22E—1 bull. Federal public lands are closed to the taking of moose except by Federally qualified subsistence users hunting under these regulations.</td>
<td>Dec. 1–31.</td>
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</table>

### Musk ox: | |
<table>
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<tbody>
<tr>
<td>Unit 22B—1 bull by Federal permit or State Tier II permit. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&amp;G and the BLM Field Office Manager.</td>
<td>Aug. 1–Mar. 15.</td>
</tr>
<tr>
<td>Unit 22D—that portion west of the Tisuk River drainage and Canyon Creek—1 musk ox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&amp;G and BLM.</td>
<td>Sept. 1–Mar. 15.</td>
</tr>
</tbody>
</table>
(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 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 25–September 15. The Area consists of that portion of Unit 23 in a corridor extending five 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 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 take caribou from a boat moving under power in Unit 23.

(B) In addition to other restrictions on method of take found in this § 242.26, 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–Jun. 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;

(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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Black Bear: 3 bears</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td><strong>Sheep</strong></td>
<td></td>
</tr>
<tr>
<td>Unit 23—south of Rabbit Creek, Kyak Creek, and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep is 21, of which 15 may be rams and 6 may be ewes. Federal public lands are closed to the taking of sheep except by Federally qualified subsistence users hunting under these regulations.</td>
<td>Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.</td>
</tr>
<tr>
<td>Unit 23—north of Rabbit Creek, Kyak Creek, and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep for the DeLong Mountains is 8, of which 5 may be rams and 3 may be ewes.</td>
<td>Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.</td>
</tr>
<tr>
<td>Unit 23, remainder (Schwatka Mountains)—1 ram with 3⁄4 curl or larger horn</td>
<td>Aug. 10–Sept. 20.</td>
</tr>
<tr>
<td>Unit 23, remainder (Schwatka Mountains)—1 sheep</td>
<td>Oct. 1–Apr. 30.</td>
</tr>
<tr>
<td><strong>Moose</strong></td>
<td></td>
</tr>
<tr>
<td>Unit 23—that portion north and west of and including the Singpalk River drainage, and all lands draining into the Kupuk and Ipek River—1 moose; no person may take a calf or a cow accompanied by a calf.</td>
<td>July 1–Mar. 31.</td>
</tr>
<tr>
<td>Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a calf or a cow accompanied by a calf.</td>
<td>Aug. 1–Mar. 31.</td>
</tr>
<tr>
<td>Unit 23, remainder—1 moose; no person may take a calf or a cow accompanied by a calf.</td>
<td>Aug. 1–Mar. 31.</td>
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Musk ox:
### Harvest limits

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
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</thead>
<tbody>
<tr>
<td>Unit 23—the south of Kotzebue Sound and west of and including the Buckland River drainage—1 musk ox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&amp;G and BLM.</td>
<td>Aug. 1–Mar. 15.</td>
</tr>
<tr>
<td>Unit 23—Cape Krusenstern National Monument—1 bull by Federal permit. Annual harvest quotas and any needed closures will be announced by the Superintendent of Western Arctic National Parklands. Cape Krusenstern National Monument is closed to the taking of musk ox except by resident zone community members with permanent residence within the Monument or the immediately adjacent Napaktukuk Mountain area, south of latitude 67°05′ N and west of longitude 162°30′ W. Hunting under these regulations.</td>
<td>Aug. 1–Mar. 15.</td>
</tr>
</tbody>
</table>

| Beaver: No limit | No open season. |
| Coyote: 2 coyotes | July 1–June 30. |
| Fox, Arctic (Blue and White Phase): No limit | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Sept. 1–Mar. 31. |
| Lynx: 2 lynx | July 1–June 30. |
| Wolverine: 1 wolverine | No open season. |
| Muskox: No limit | July 1–June 30. |
| Grouse (Spruce and Ruffed): 15 per day, 30 in possession | Aug. 1–Mar. 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–Mar. 15. |

### Trapping

| Beaver: Unit 23—the Kobuk and Selawik River drainages—50 beaver | July 1–June 30. |
| Coyote: No limit | July 1–June 30. |
| Fox, Arctic (Blue and White Phase): No limit | Jul. 1–June 30. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Jul. 1–June 30. |
| Lynx: No limit | Jul. 1–June 30. |
| Mink and Weasel: No limit | Jul. 1–June 30. |
| Muskrat: No limit | Jul. 1–June 30. |
| Otter: No limit | Jul. 1–June 30. |

(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 on the northern fork of the Koyukuk National River at N. Lat. 66°33.303′ W. Long. 151°03.637′ and following the unnamed northern fork of the Koyukuk National River to the confluence of the southern fork of the Koyukuk National River at N. Lat. 66°27.000′ W. Long. 151°23.841′, 4.2 miles SSW (194 degrees true) of Clawamenkuk Lake and following the unnamed southern fork of the Koyukuk National River to the hydrologic divide with the Koyukuk River drainage at N. Lat. 66°30.149′ W. Long. 151°10.102′, 3.0 miles ENE (79 degrees true) from the 2,055 ft. peak on that divide, and the Koyukuk 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 2,902 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.

(i) 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 Atalna, 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 Unit 21s 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., 15°18.57' W. long., then southwesterly to the crest of Ilgandochtla 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., 154°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 in the Koyukuk Controlled Use Area,
Forest Service, USDA § 242.26

you may also use bait to hunt black bear between September 1 and September 25;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Caribou: Unit 24—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. Unit 24, remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30.</td>
<td></td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Deer: Unit 24A—except that portion within the Gates of the Arctic National Park—1 antlered bull by Federal registration permit only. Unit 24A, remainder—1 antlered bull by Federal registration permit.</td>
<td></td>
</tr>
<tr>
<td>Moose: Unit 24A—1 antlered bull by Federal registration permit.</td>
<td></td>
</tr>
<tr>
<td>Moose: Unit 24B—that portion within the John River Drainage—1 moose.</td>
<td></td>
</tr>
<tr>
<td>Sheep: Unit 24A and 24B—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—allantlered sheep—18 sheep per person, no more than 5 of which may be a ram.</td>
<td></td>
</tr>
<tr>
<td>Sheep: Unit 24A and 24B—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—2 sheep.</td>
<td></td>
</tr>
<tr>
<td>Sheep: Unit 24A—except that portion within the Gates of the Arctic National Park—1 ram with ¾ curl or larger horn by Federal registration permit only. Unit 24, remainder—1 ram with ¾ curl or larger horn.</td>
<td></td>
</tr>
<tr>
<td>Wolf: 15 wolves; however, no more than 5 wolves may be taken prior to Nov. 1.</td>
<td></td>
</tr>
<tr>
<td>Wolf: 15 wolves; however, no more than 1 wolverine may be taken prior to Nov. 1.</td>
<td></td>
</tr>
<tr>
<td>Lamb: No limit</td>
<td></td>
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<tr>
<td>Lamb: Aug. 1–Mar. 15.</td>
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<tr>
<td><strong>Trapping</strong></td>
<td></td>
</tr>
<tr>
<td>Beaver: No limit</td>
<td></td>
</tr>
<tr>
<td>Coyote: No limit</td>
<td></td>
</tr>
<tr>
<td>Fox: No limit</td>
<td></td>
</tr>
<tr>
<td>Fox: No limit</td>
<td>Nov. 1–June 10.</td>
</tr>
<tr>
<td>Fox: No limit</td>
<td>Nov. 1–Mar. 31.</td>
</tr>
<tr>
<td>Fox: No limit</td>
<td>Nov. 1–Feb. 28.</td>
</tr>
</tbody>
</table>
§ 242.26

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Harvest limits

<table>
<thead>
<tr>
<th>Wildlife</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lynx:</td>
<td>No limit, Nov. 1–Feb. 28.</td>
</tr>
<tr>
<td>Marten:</td>
<td>No limit, Nov. 1–Feb. 28.</td>
</tr>
<tr>
<td>Mink:</td>
<td>No limit, Nov. 1–Feb. 28.</td>
</tr>
<tr>
<td>Muskrat:</td>
<td>No limit, Nov. 1–June 10.</td>
</tr>
<tr>
<td>Wolf:</td>
<td>No limit, Nov. 1–Apr. 30.</td>
</tr>
<tr>
<td>Wolverine:</td>
<td>No limit, Nov. 1–Mar. 31.</td>
</tr>
</tbody>
</table>

(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 obtained from Christian, the Sheenjek River drainage upstream from 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 Saloon 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 Atalna, Allakaket, Anaktuvuk Pass, Bettles, Evaville, 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 2 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 northeasternly approximately 62 miles along the divide to the head waters 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; 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 contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, 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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Black Bear:</td>
<td></td>
</tr>
<tr>
<td>3 bears</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>or 3 bears by State community harvest permit</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Brown Bear:</td>
<td></td>
</tr>
<tr>
<td>Unit 25C—1 bear</td>
<td>Sept. 1–May 31.</td>
</tr>
<tr>
<td>Unit 25D—1 bear</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td>Caribou:</td>
<td></td>
</tr>
<tr>
<td>Unit 25C—that portion west of the east bank of the mainstem of Preacher Creek to its confluence with American Creek, then west of the east bank of American Creek—1 caribou; however, cow caribou may be taken only from Nov. 1–Mar. 31. However, during the November 1–March 31 season, a State registration permit is required.</td>
<td></td>
</tr>
<tr>
<td>Unit 25C, remainder—1 caribou by joint State/Federal registration permit only. Up to 600 caribou may be taken under a State/Federal harvest quota. The season closures will be announced by the Eastern Interior Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game.</td>
<td></td>
</tr>
<tr>
<td>Unit 25D—that portion of Unit 25D drained by the west fork of the Dall River west of 150° W. long.—1 bull.</td>
<td></td>
</tr>
<tr>
<td><strong>Sheep</strong></td>
<td></td>
</tr>
<tr>
<td>Unit 25A—that portion within the Dalton Highway Corridor Management Area</td>
<td>No open season.</td>
</tr>
<tr>
<td>Units 25A—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Federal public lands, except the drainages of Red Sheep Creek and Cane Creek during the period of Aug. 10–Sept. 20, 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.</td>
<td></td>
</tr>
<tr>
<td>Unit 25A, remainder—2 sheep by Federal registration permit only</td>
<td>Aug. 10–Sept. 30.</td>
</tr>
<tr>
<td><strong>Moose</strong></td>
<td></td>
</tr>
<tr>
<td>Unit 25A—1 antlered bull</td>
<td>Aug. 25–Sept. 25.</td>
</tr>
<tr>
<td>Unit 25B—that portion within Yukon-Charley National Preserve—1 bull</td>
<td>Aug. 20–Sept. 30.</td>
</tr>
<tr>
<td>Unit 25B—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.</td>
<td></td>
</tr>
<tr>
<td>Unit 25B—that portion, other than Yukon-Charley 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.</td>
<td></td>
</tr>
<tr>
<td>Unit 25C—1 antlered bull</td>
<td>Aug. 25–Sept. 25.</td>
</tr>
</tbody>
</table>

VerDate Nov<24>2008 08:58 Aug 06, 2009 Jkt 217137 PO 00000 Frm 00301 Fmt 8010 Sfmt 8010 Y:\SGML\217137.XXX 217137CPrice-Sewell on DSK1DXX6B1PROD with CFR
(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;
(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–Sept. 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, Atigun, 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 hunt brown bear in Unit 26A 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 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 §242.26, 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>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Black Bear: 3 bears</td>
<td></td>
</tr>
<tr>
<td>Brown Bear: Unit 26A—1 bear by State registration permit</td>
<td></td>
</tr>
<tr>
<td>Unit 26B—1 bear</td>
<td></td>
</tr>
<tr>
<td>Unit 26C—1 bear</td>
<td></td>
</tr>
<tr>
<td>Caribou: Unit 26A—10 caribou per day; however, cow caribou may not be taken May 16—June 30.</td>
<td></td>
</tr>
<tr>
<td>Unit 26B—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30.</td>
<td></td>
</tr>
<tr>
<td>Unit 26C—10 caribou per day</td>
<td></td>
</tr>
<tr>
<td>(You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass.)</td>
<td></td>
</tr>
<tr>
<td><strong>Sheep</strong></td>
<td></td>
</tr>
</tbody>
</table>

July 1—June 30.
July 1–May 31.
Sept. 1—May 31.
Aug. 10–June 30.
July 1–June 30.
July 1–June 30.
July 1–Apr. 30.
Harvest limits

<table>
<thead>
<tr>
<th>Species</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unit 26A and 26B</strong></td>
<td></td>
</tr>
<tr>
<td>(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.</td>
<td>July 15-Dec. 31.</td>
</tr>
<tr>
<td><strong>Unit 26A</strong></td>
<td></td>
</tr>
<tr>
<td>(excluding Anaktuvuk Pass residents) — those portions within the Gates of the Arctic National Park — 3 sheep.</td>
<td>Aug. 1–Apr. 30.</td>
</tr>
<tr>
<td><strong>Unit 26A</strong></td>
<td></td>
</tr>
<tr>
<td>(unit of the DeLong Mountains) — 1 sheep by Federal registration permit. The total allowable harvest of sheep for the DeLong Mountains is 8, of which 5 may be rams and 3 may be ewes.</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td><strong>Unit 26B</strong></td>
<td></td>
</tr>
<tr>
<td>(that portion within the Dalton Highway Corridor Management Area) — 1 ram with 1⁄4 curl or larger horn by Federal registration permit only.</td>
<td>Aug. 1–Sept. 20.</td>
</tr>
<tr>
<td><strong>Unit 26A, remainder and 26B, remainder</strong> — including the Gates of the Arctic National Preserve — 1 ram with 1⁄4 curl or larger horn.</td>
<td>Aug. 10–Sept. 20.</td>
</tr>
<tr>
<td><strong>Unit 26C</strong></td>
<td></td>
</tr>
<tr>
<td>(3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 1⁄4 curl or larger horn.)</td>
<td>Aug. 10–Sept. 20.</td>
</tr>
<tr>
<td><strong>Moose</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Unit 26A</strong></td>
<td></td>
</tr>
<tr>
<td>(that portion of the Colville River drainage upstream from and including the Anaktuvuk River drainage) — 1 bull.</td>
<td>Aug. 1–Sept. 14.</td>
</tr>
<tr>
<td><strong>Unit 26B</strong></td>
<td></td>
</tr>
<tr>
<td>(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.</td>
<td>Aug. 1–Sept. 14.</td>
</tr>
<tr>
<td><strong>Unit 26A</strong></td>
<td></td>
</tr>
<tr>
<td>(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.</td>
<td>Aug. 1–Sept. 14.</td>
</tr>
<tr>
<td><strong>Unit 26A</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Units 26B</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Units 26C</strong></td>
<td></td>
</tr>
<tr>
<td>(3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 1⁄4 curl or larger horn.)</td>
<td>Aug. 1–Sept. 14.</td>
</tr>
<tr>
<td><strong>Musk ox</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Unit 26C</strong></td>
<td></td>
</tr>
<tr>
<td>(1 bull by Federal registration permit only. The number of permits that may be issued 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-calling census. Public lands are closed to the taking of musk ox except by a Kaktovik resident holding a Federal registration permit and hunting under these regulations.</td>
<td>Jul. 15–Mar. 31.</td>
</tr>
<tr>
<td><strong>Coyote</strong></td>
<td></td>
</tr>
<tr>
<td>2 coyotes</td>
<td>Sept. 1–Apr. 30.</td>
</tr>
<tr>
<td><strong>Fox, Arctic (Blue and White Phase):</strong></td>
<td>Sept. 1–Apr. 30.</td>
</tr>
<tr>
<td>2 foxes</td>
<td>Sept. 1–Apr. 30.</td>
</tr>
<tr>
<td><strong>Fox, Red (including Cross, Black and Silver Phases):</strong></td>
<td>Sept. 1–Mar. 15.</td>
</tr>
<tr>
<td>Units 26A and 26B — 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1</td>
<td>Sept. 1–Mar. 15.</td>
</tr>
<tr>
<td><strong>Unit 26C — 10 foxes</strong></td>
<td>Sept. 1–Mar. 15.</td>
</tr>
<tr>
<td><strong>Hare (Snowshoe and Tundra):</strong></td>
<td>Nov. 1–Apr. 15.</td>
</tr>
<tr>
<td>No limit</td>
<td>July 1–June 30.</td>
</tr>
<tr>
<td><strong>Lynx</strong></td>
<td></td>
</tr>
<tr>
<td>2 lynx</td>
<td>Nov. 1–Apr. 15.</td>
</tr>
<tr>
<td><strong>Wolverine</strong></td>
<td></td>
</tr>
<tr>
<td>5 wolverine</td>
<td>Sept. 1–Mar. 31.</td>
</tr>
<tr>
<td><strong>Ptarmigan (Rock and Willow):</strong></td>
<td>Aug. 10–Apr. 30.</td>
</tr>
<tr>
<td>20 per day, 40 in possession</td>
<td>Aug. 10–Apr. 30.</td>
</tr>
</tbody>
</table>

Trapping

<table>
<thead>
<tr>
<th>Species</th>
<th>Open season</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coyote:</strong></td>
<td></td>
</tr>
<tr>
<td>No limit</td>
<td>Nov. 1–Apr. 15.</td>
</tr>
<tr>
<td><strong>Fox, Arctic (Blue and White Phase):</strong></td>
<td>Nov. 1–Apr. 15.</td>
</tr>
<tr>
<td>No limit</td>
<td>Nov. 1–Apr. 15.</td>
</tr>
<tr>
<td><strong>Fox, Red (including Cross, Black and Silver Phases):</strong></td>
<td>Nov. 1–Apr. 15.</td>
</tr>
<tr>
<td>No limit</td>
<td>Nov. 1–Apr. 15.</td>
</tr>
<tr>
<td><strong>Lynx:</strong></td>
<td></td>
</tr>
<tr>
<td>No limit</td>
<td>Nov. 1–Jan. 31.</td>
</tr>
<tr>
<td><strong>Marten:</strong></td>
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<tr>
<td>No limit</td>
<td>Nov. 1–Jan. 31.</td>
</tr>
<tr>
<td><strong>Mink and Weasel:</strong></td>
<td></td>
</tr>
<tr>
<td>No limit</td>
<td>Nov. 1–Jan. 31.</td>
</tr>
<tr>
<td><strong>Otter:</strong></td>
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<tr>
<td>No limit</td>
<td>Nov. 1–Jan. 31.</td>
</tr>
<tr>
<td><strong>Wolf:</strong></td>
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<td>No limit</td>
<td>Nov. 1–Apr. 15.</td>
</tr>
<tr>
<td><strong>Wolverine:</strong></td>
<td></td>
</tr>
<tr>
<td>No limit</td>
<td>Nov. 1–Apr. 15.</td>
</tr>
</tbody>
</table>
§ 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 § 242.27(i). 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.

(b) [Reserved]

(c) 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 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 handline;

(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 (c)(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.
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(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 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. No more than 50% of the annual household limit may be sold under paragraphs 242.27(c)(11) and (12) 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.
   (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% of the annual household limit may be sold under paragraphs 242.27(c)(11) and (12) 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.

(12) Transactions between a rural resident and others. In customary trade, a rural resident may trade 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 $500.00 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 rests 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 $400.00 annually. No more than 50% of the annual household limit may be sold under paragraphs 242.27(c)(11) and (12) 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.

(13) No sale to, nor purchase by, fisheries businesses.
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(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.

(d) [Reserved]

(e) 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 (f) of this section.

(2) The U.S. Fish and Wildlife Service Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. 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 Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that allowed under the appropriate commercial fishing regulations.

(f) 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.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]
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 2 to 4 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 fisherman, 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 Shaktoltik River drainages with gillnets which have a stretched-mesh size that does not exceed 4 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.

(vi) Only one subsistence fishing permit will be issued to each household per year.

(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. 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 §242.27(i)(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 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than five 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 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 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 salmon fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 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 not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xiv) 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.

(xv) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4A upstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4A downstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2.

(C) In the Yukon River mainstem, Subdistricts 4B and 4C with a Federal subsistence fishing permit, you may take Chinook salmon during the weekly subsistence fishing opening(s) by drift gillnets no more than 150 feet long and no more than 35 meshes deep, from June 10 through July 14.
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Forest Service, USDA

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(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 operating commercial
use, personal use, or subsistence fishing gear 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.
(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, you may
not possess Chinook salmon taken for
subsistence purposes unless the dorsal
fin has been removed immediately
after landing.
(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, 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), unless superseded by
a Federal Special Action.
(iii) In District 1, Kuskokuak Slough,
from June 1 through July 31 only, you
may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the
district.
(iv) In Districts 4 and 5, from June 1
through September 8, you may not

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take salmon for 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon by net gear or fish wheel for 16 hours before or during, and for 6 hours after each open commercial salmon fishing period in the 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 paragraph (i)(4) of this section.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) You may only take salmon by gillnet, beach seine, fish wheel, 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.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) 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.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) 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.

(xiv) 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.

(xv) 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.

(xvi) 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.

(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 under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m.
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Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9:00 a.m. June 23 through 9:00 a.m. July 17, you may take salmon only during the following times: from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and from 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) 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.

(vi) Within any district, you may take salmon, herring, and capelin by set gillnets only.

(vii) Outside the boundaries of any district, unless otherwise specified, you may take salmon by set gillnets 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 two 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 Lake Clark and its tributaries by snagging (by handline or rod and reel), using a spear, bow and arrow, 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.

(viii) 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.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) 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.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) 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.

(xiv) 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.

(xv) 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.

(xvi) In the Togiak River section and 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 remain.

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(tail) or the dorsal fin have been removed.

(xvii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are 2 per day/2 in possession with no size limit from April 10 through October 31 and 5 per day/5 in possession with no size limit from November 1 through April 9.

(xviii) 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, 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° 36.88' 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 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 Kokok 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. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31. You may not take salmon in Black Lake or any tributary to Black or Chignik Lakes, except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream 1 mile.
(A) In the open waters of Clark River and Home Creek you may take salmon by gillnet under the authority of a State permit.
(B) 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 5 per day and 5 in possession.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(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 October 31.

(v) 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°
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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 of 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), and 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°28.36' 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) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(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) 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 Cook Inlet Area. If you take rainbow/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 2 rainbow/steelhead trout 20 inches or longer,
(ii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section). For all fish that must be marked and recorded on a permit in this section, they must be marked and recorded prior to leaving the fishing site. The fishing site includes the particular Federal public waters and/or adjacent shoreline from which the fish were harvested.

(iii) You may not take grayling or burbot for subsistence purposes.

(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence permit. 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. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a 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. Residents using rod and reel gear may fish with up to two baited single or treble hooks. 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. Before leaving the fishing site, all retained salmon must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.

(B) In addition to the dip net and rod and reel fishery on the upper mainstem of the Kasilof River described under paragraph (i)(10)(iv)(A) of this section, residents of Ninilchik may also take coho and pink salmon through a rod and reel fishery in Tustumena Lake. Before leaving the fishing site, all retained salmon must be recorded on the permit and marked by removing the dorsal fin. 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 methods and means, and harvest and possession limits:

(1) Fishing will be allowed with up to 2 baited single or treble hooks.

(2) Fishing for coho and pink salmon will be allowed from June 16-October 31.

(3) Fishing for sockeye, Chinook, coho, or pink salmon will end prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(4) Each household may harvest their annual sockeye, Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or a rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery will be included as part of each household's annual limit for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000; annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For Chinook salmon—annual harvest limit of 500; annual household limit of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member; and

(iv) For pink salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member.

In addition to the sockeye and Chinook salmon harvest allowed under (i), residents of Ninilchik may also take coho and pink salmon from the upper mainstem of the Kasilof River through a dip net and rod and reel fishery.

(1) Fishing for sockeye and Chinook salmon will be allowed from June 16-August 15.

(2) Fishing for coho and pink salmon will be allowed from June 16-October 31.

(3) Fishing for sockeye, Chinook, coho, or pink salmon will end prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(4) Each household may harvest their annual sockeye, Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or a rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery will be included as part of each household's annual limit for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000; annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For Chinook salmon—annual harvest limit of 500; annual household limit of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member; and

(iv) For pink salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member.

In addition to the dip net and rod and reel fishery on the upper mainstem of the Kasilof River described under paragraph (i)(10)(iv)(A) of this section, residents of Ninilchik may also take coho and pink salmon through a rod and reel fishery in Tustumena Lake. Before leaving the fishing site, all retained salmon must be recorded on the permit and marked by removing the dorsal fin. 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 methods and means, and harvest and possession limits:

(1) Fishing will be allowed with up to 2 baited single or treble hooks.
(2) For coho salmon 16 inches and longer, the daily harvest and possession limits are 4 per day and 4 in possession.

(3) For pink salmon 16 inches and longer, daily harvest and possession limits are 6 per day and 6 in possession.

(C) Resident fish species including lake trout, rainbow/steelhead trout, and Dolly Varden/Arctic char may be harvested in Federally managed waters of the Kasilof River drainage. Resident fish species harvested in the Kasilof River drainage under the conditions of a Federal subsistence permit must be marked by removing the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site.

(1) Lake trout may be harvested with rod and reel gear the entire year. For fish 20 inches or longer, daily harvest and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily harvest and possession limits are 15 per day and 15 in possession.

(2) Dolly Varden/Arctic char may be harvested with rod and reel gear the entire year. In flowing waters, daily harvest and possession limits are 4 per day and 4 in possession. In lakes and ponds, daily harvest and possession limits are 10 fish per day and 10 in possession.

(3) Rainbow trout may be harvested with rod and reel gear the entire year for fish less than 20 inches in length. In flowing waters, daily harvest and possession limits are 2 per day and 2 in possession. In lakes and ponds, daily harvest and possession limits are 5 per day and 5 in possession.

(4) You may fish in Tustumena Lake with a gillnet, no longer than 10 fathoms, fished under the ice or jigging gear used through the ice under authority of a Federal subsistence fishing permit. The total annual harvest quota for this fishery is 200 lake trout, 200 rainbow trout, and 500 Dolly Varden/Arctic char. The use of a gillnet will be prohibited by special action after the harvest quota of any species has been met. For the jig fishery, annual household limits are 30 fish in any combination of lake trout, rainbow trout or Dolly Varden/Arctic char.

(i) You may harvest fish under the ice only in Tustumena Lake. Gillnets are not allowed within a 1 mile radius of the mouth of any tributary to Tustumena Lake, or the outlet of Tustumena Lake.

(ii) Permits will be issued by the Federal fisheries manager or designated representative, and will be valid for the winter season, unless the season is closed by special action.

(iii) All harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location. Reported information must include number of each species caught; number of each species retained; length, depth (number of meshes deep) and mesh size of gillnet fished; location fished; and total hours fished. Harvest data on the permit must be filled out before transporting fish from the fishing site.

(iv) The gillnet must be checked at least once in every 48-hour period.

(v) For unattended gear, the permittee's name and address must be plainly and legibly inscribed on a stake at one end of the gillnet.

(vi) Incidentally caught fish may be retained and must be recorded on the permit before transporting fish from the fishing site.

(vii) 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.

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or
longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Hope and Cooper Landing may retain incidentally caught resident species.

(1) The household dip net and rod and reel gear fishery is limited to three sites:

(i) 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 2 baited single or treble hooks from June 15 - August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

(ii) 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 2 baited single or treble hooks from June 15 - August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).

(iii) 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) Fishing seasons are as follows:

(i) For sockeye salmon at all fishery sites: June 15 - August 15;

(ii) For late-run Chinook, pink, and coho salmon at both Kenai River fishery sites only: July 16 - September 30; and

(iii) Fishing for sockeye, late-run Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(3) Each household may harvest their annual sockeye, late-run Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those household's annual limits for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000 (including any retained chum salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For late-run Chinook salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member;

(iv) For pink salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel
fisheries on the Kenai and Russian rivers described under paragraph (i)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager by the due date listed on the permit. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) 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 77.54), except for the following harvest and possession limits:

1. In the Kenai River below Skilak Lake, fishing is allowed with up to 2 baited single or treble hooks from June 15–August 31.

2. For early-run Chinook salmon less than 46 inches or 55 inches or longer, daily harvest and possession limits are 2 per day and 2 in possession.

3. For late-run Chinook salmon 20 inches and longer, daily harvest and possession limits are 2 per day and 2 in possession.

4. Annual harvest limits for any combination of early- and late-run Chinook salmon are 4 for each permit holder.

5. For other salmon 16 inches and longer, the combined daily harvest and possession limits are 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, for which no more than 2 per day and 2 in possession may be coho salmon.

6. For Federally managed waters of the Kenai River and its tributaries below Skilak Lake outlet at river mile 50, residents of Hope and Cooper Landing may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) 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 77.54), except for the following harvest and possession limits:

1. For lake trout 20 inches or longer, daily harvest and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily harvest and possession limits are 15 per day and 15 in possession.

2. In flowing waters, daily harvest and possession limits for Dolly Varden/Arctic char less than 18 inches in length are 1 per day and 1 in possession. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession. Only 1 of these fish can be 20 inches or longer.

3. In flowing waters, daily harvest and possession limits for rainbow/steelhead trout are 1 per day and 1 in possession and must be less than 18 inches in length. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

(G) For Federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile 50, residents of Hope and Cooper Landing may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) 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 77.54), except for the following harvest and possession limits:

1. For lake trout 20 inches or longer, daily harvest and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily harvest and possession limits are 15 per day and 15 in possession.

2. In flowing waters, daily harvest and possession limits for Dolly Varden/Arctic char less than 18 inches in length are 1 per day and 1 in possession. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession. Only 1 of these fish can be 20 inches or longer.

3. In flowing waters, daily harvest and possession limits for rainbow/steelhead trout are 1 per day and 1 in possession and must be less than 18 inches in length. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.
restrictions) 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 77.54), except for the following harvest and possession limits:

1. For lake trout 20 inches or longer, daily harvest and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily harvest and possession limits are 15 fish per day and 15 in possession. For Hidden Lake, daily harvest and possession limits are 2 per day and 2 in possession regardless of size.

2. In flowing waters, daily harvest and possession limits for Dolly Varden/Arctic char less than 16 inches are 1 per day and 1 in possession. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

3. In flowing waters, daily harvest and possession limits for rainbow/steelhead trout are 1 per day and 1 in possession and it must be less than 16 inches in length. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

(H) 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. Residents of Ninilchik may retain other species incidentally caught in the Kasilof River except for rainbow/steelhead trout, which must be released and returned unharmed to the water.

1. Only one fish wheel can be operated on the Kasilof River. The fish wheel must have a live box, must be monitored when fishing, must be stopped from fishing when it is not being monitored or used, and must be installed and operated in compliance with any regulations and restrictions for its use within the Kenai National Wildlife Refuge.

2. 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 operation 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 operation 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 at least 12 inches high by 12 inches wide that is 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, person or households operating the gear, hours of operation, and number of each species caught and retained or released.

3. People operating the fish wheel must:

(i) Have a valid Federal subsistence fishing permit in their possession;

(ii) If they are not the fishwheel owner, attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide to the fish wheel that is plainly visible, and that contains their fishing permit number, name, and address in letters and numerals at least 1 inch high;

(iii) Remain on site to monitor the fish wheel and remove all fish at least every hour;

(iv) Before leaving the site, mark all retained fish by removing their dorsal fin and record all retained fish on their fishing permit; and

(v) Within 72 hours of leaving the site, report their harvest to the Federal fisheries manager.

4. The fish wheel owner (organization) 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;

(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.

(5) Fishing will be allowed from June 16 through October 31 on the Kasilof River unless closed or otherwise restricted by Federal special action.

(6) Salmon taken in the fish wheel fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River and as part of dip net/rod and reel household annual limits of participating households.

(7) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(8) This regulation expires December 31, 2011, or 3 years after the first installation of the fish wheel, which ever comes first, or unless renewed by the Federal Subsistence Board.

(9) You may take smelt with dip nets in fresh water only from April 1-June 15. There are no harvest or possession limits for smelt.

(10) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage and as otherwise provided for in this Cook Inlet section.

(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 may not take rainbow/steelhead trout, except as otherwise provided for in this §242.27(i)(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 (c)(1) of this part 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 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 (ventral) 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 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 Section 242.27(i)(11) 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.

(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 must check your fish wheel at least once every 10 hours and remove all fish;

(E) You are responsible for the fish wheel; you must remove the fish wheel from the water at the end of the permit period;

(F) 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) No fish wheel may have more than two baskets;

(D) 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 (i)(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 each fish wheel in a similar manner to a fish wheel owner as described in paragraph (i)(11)(xii) 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 (i)(11)(xii) 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 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.

(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 Sections 1C or 1D.

(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 §242.27(i)(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 §242.27(i)(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) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road...
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systems within the city limits of Petersburg, Wrangell, and Sitka.

(x) You must immediately remove both lobes of the caudal (tail) fin of subsistence-caught salmon when taken.

(xi) You may not possess subsistence-taken and sport-taken fish of a given species on the same day.

(xii) If a harvest limit is not otherwise listed for sockeye in this § 242.27(i)(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.

(xiii) The Sarkar River system above the bridge is closed to the use of all nets by both Federally qualified and non-Federally qualified users.

(xiv) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.

(xv) 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, handline, and rod and reel may be used. The maximum gillnet mesh size is 5 inches, except during the Chinook season when the maximum gillnet mesh size is 8 inches.

(A) You may take Chinook salmon from May 15 through June 20. The annual limit is 5 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 take other salmon species within the city limits of Petersburg, Wrangell, and Sitka.

(E) 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.

(F) The total annual guideline harvest limit for the Stikine River fishery is 125 Chinook, 600 sockeye, and 400 coho salmon. All salmon harvested, including incidentally taken salmon, will count against the guideline for that species.

(xvi) 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.

(xvii) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon.

(xviii) Unless otherwise specified in this § 242.27(i)(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.

(xix) 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 2 fish per household. You may use only a dip net, handline, spear, or rod and reel. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales/Kosciusko Islands has been reached. 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 5 fish per household. You may use only
a dip net, handline, spear, or rod and reel. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. 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.

(xx) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat, 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.

(xxii) There is no subsistence fishery for any salmon on the Taku River.

[74 FR 14058, Mar. 30, 2009]

EFFECTIVE DATE NOTE: At 74 FR 14058, Mar. 30, 2009, §242.27 was added, effective Apr. 1, 2009 through Mar. 31, 2011.

§ 242.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) [Reserved]

(c) 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.

(d) 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
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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(c)(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.

(e) 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. 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.

(f) If a subsistence shellfishing 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;

(g) 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.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) 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.

(j)(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.

(k) Subsistence shellfish areas and pertinent restrictions.

(1) Southeastern Alaska–Yakutat Area. No marine waters are currently identified under Federal subsistence management jurisdiction.

(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 this section (k)(3).

(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 51/2 inches or greater in width of shell may be taken or possessed;

(D) No more than 2 pots per person, regardless of type, with a maximum of 2 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 61/2 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 six 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 1/2 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 5 1/2 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) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Dungeness crabs per person.
(iii) 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.
(iv) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Tanner crabs.

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PART 251—LAND USES

Subpart A—Miscellaneous Land Uses

NATURAL RESOURCES CONTROL

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Subpart A—Miscellaneous Land Uses

§ 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.
§ 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.

[36 FR 27685, July 22, 1988]

§ 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

[13 FR 3676, July 1, 1948, as amended at 48 FR 31854, July 12, 1983]
(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 falling 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
(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 conveyances 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 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 aforesaid permit shall be cause for termination of all rights to use, occupy, or disturb the surface of the lands covered thereby, but in event of such termination a new
permit shall be issued upon application when the causes for termination of the preceding permit have been satisfactorily remedied and the United States reimbursed for any resultant damage to it.

(3) All structures, other improvements, and materials shall be removed from the lands within one year after date of termination of the aforementioned permit. Should the holder of the permit fail to do so within the specified time, the Forest Service may remove, destroy or otherwise dispose of said structures, other improvements, and materials at the permittee's expense, or in lieu thereof, may upon written notice to the permittee, assume title thereto in the name of the United States.

(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]

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,
§ 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.
§ 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

§ 251.50 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.
§ 251.51

(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 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.

§ 251.51 Definitions.

Applicant—any individual, partnership, corporation, association, or other business entity, and any Federal, State or governmental entity or agency which 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.

Holder—any applicant who has received a 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—a right-of-way for a linear facility, such as a road, trail, pipeline, electronic transmission line, fence, water transmission facility, or fiber optic cable.

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.

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.


Noncommercial use or activity—any use or activity that does not involve a commercial use or activity as defined in this section.

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.

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.

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
§ 251.52 Delegation of authority.

Special use authorizations shall be issued, granted, amended, renewed, suspended, terminated, or revoked by the Secretary, 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.

§ 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) Easements for rights-of-way for pipeline purposes for the transportation of oil and gas and products thereof where no Federal land other than National Forest System land is required, and permits for the temporary use of additional National Forest System land necessary for construction, operation, maintenance or termination of a pipeline or to protect the natural environment or the public safety under section 28 of the Mineral Leasing Act of 1920, 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, 1919, 38 Stat. 580 (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, 1964, 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, recreational events, and motorized recreational vehicle use;


(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).

§ 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) Non-commercial 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, landowner-ship 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 notify the House Committee on Resources and the Senate Committee on Energy and Natural Resources promptly upon receipt of a proposal for a right-of-way for a pipeline twenty-four (24) inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty (60) days (not counting days on which the House of Representatives or the Senate has adjourned for more than three (3) days) after a notice of intention to grant the right-of-way, together with the authorized officer’s detailed findings as to terms and conditions the officer proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(2) Electric power transmission lines 66 kV or over. Any proposal for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this section must be referred to the Secretary of Energy for consultation.

(3) 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)(iii) 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)(ii) 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)(3)(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 under paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section constitutes final agency action and is immediately subject to judicial review.

(4) Response to all other applications. 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 having minor environmental impacts may be evaluated with one analysis and approved in one decision.

(5) Authorization of a special use. Upon a decision to approve a special use or a group of similar special uses, the authorized officer may issue one or more special use authorizations as defined in §251.51 of this subpart.

[63 FR 65964, Nov. 30, 1998]

§ 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 aesthetic 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 25156(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 non-commercial 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...
§ 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.

(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 authorities, and the fee is paid by revenue from the State or local government or by the agency or instrumentality.

(2) The fee is paid by a charitable or non-profit organization, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(3) The fee is paid by a private individual, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(4) The fee is paid by a commercial or other corporate, business, or government entity, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(5) The fee is paid by a government agency or an instrumentality thereof, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(6) The fee is paid by a private individual, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(7) The fee is paid by a commercial or other corporate, business, or government entity, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(8) The fee is paid by a government agency or an instrumentality thereof, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

§ 251.57 Rental fees.

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(2) The fee is paid by a charitable or non-profit organization, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(3) The fee is paid by a private individual, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(4) The fee is paid by a commercial or other corporate, business, or government entity, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(5) The fee is paid by a government agency or an instrumentality thereof, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(6) The fee is paid by a private individual, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(7) The fee is paid by a commercial or other corporate, business, or government entity, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.

(8) The fee is paid by a government agency or an instrumentality thereof, and the fee is used for the benefit of the public or for the preservation or improvement of the public domain.
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.

§ 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:
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(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.
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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 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 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).

(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 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 the forest service 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 reasons 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).
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(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)(i) and (ii) and (d)(4)(i) and (ii) 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 than 1 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 than 1 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...
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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:

(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)).


(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(h)(1);

(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) Administrative or judicial review. Revocation or suspension of a special use authorization under this paragraph constitutes final agency action 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 an easement issued pursuant to § 251.53(e) and (l):

(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) and (l) of this subpart, a suspension or revocation of a special use authorization under this paragraph is subject to administrative appeal and review in accordance with 36 CFR part 251, subpart C, of this chapter.

(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 easements issued pursuant to § 251.53(e) and (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. No administrative proceeding shall be required if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(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 for nonuse or 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, an opportunity to present relevant information in accordance with the provisions of 36 CFR part 251, subpart C, of this chapter.  

(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.  

§ 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.  

§ 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
§ 251.65 Information collection requirements.

The rules of this subpart governing special use applications (§ 251.54 and § 251.59), terms and conditions (§ 251.54), 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 in order for an authorized officer to act on a request or administer the authorization. As such, these rules contain information requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–0082.

[63 FR 65968, Nov. 30, 1998]

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands


Source: 54 FR 3362, Jan. 23, 1989, unless otherwise noted.

§ 251.80 Purpose and scope.

(a) This subpart provides a process by which those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands, may appeal a written decision by an authorized Forest Service line officer with regard to issuance, approval, or administration of the written instrument. The rules in the subpart establish who may appeal under these rules, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various procedures and timeframes that will govern the conduct of appeals under this subpart.

(b) The rules in this subpart seek to offer appellants a fair and deliberate process for appealing and obtaining administrative review of decisions regarding written instruments that authorize the occupancy and use of National Forest System lands.

§ 251.81 Definitions and terminology.

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

Appeal. A request to a higher ranking officer for relief from a written decision filed under this subpart by an applicant for or a holder of a written instrument issued or approved by a Forest Service line officer.

Appeal decision. The written decision rendered by the Reviewing Officer on an appeal for relief under this subpart. The use of this term is limited to the final decision of a Reviewing Officer and does not refer to a stay decision or to any other determinations or procedural orders made on the conduct of an appeal (§ 251.99).

Appeal record. The documents submitted to the Reviewing Officer by an appellant, intervenor, or Deciding Officer (§ 251.98).

Appellant. An eligible applicant for or holder of a written instrument issued for the occupancy and use of National Forest System land (or their authorized agent or representative) who files an appeal pursuant to the provisions of this subpart (§ 251.86).

Deciding officer. The Forest Service line officer who makes a decision related to issuance, approval, or administration of an authorization to occupancy and use National Forest System lands that is appealed under this subpart.

Decisions regarding a written instrument or authorization to occupy and use National Forest System lands. A broad, all inclusive phrase used throughout this subpart to connote the full range of actions and decisions a forest officer takes to issue written instruments, or to manage authorized uses of National Forest System lands, including, but
§ 251.82 Appealable decisions.

(a) The rules of this subpart govern appeal of written decisions of Forest Service line officers related to issuance, denial, or administration of the following written instruments to occupy and use National Forest System lands, including but not limited to:

(1) Permits for ingress and egress to intermingled and adjacent private lands across National Forest System lands, 36 CFR 212.8 and 212.10.

(2) Permits and occupancy agreements on National Grasslands and other lands administered under the provisions of title III of Bankhead-Jones Farm Tenant Act issued under 36 CFR 213.3.

(3) Grazing and livestock use permits issued under 36 CFR part 222, subpart A.

(4) Mining plans of operation under 36 CFR part 228, subpart A.

(5) Mining operating plans for the Sawtooth National Recreation Area issued under 36 CFR 292.17 and 292.18.

(6) Permits and agreements regarding mineral materials (petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinder, clay and other similar materials) under 36 CFR 228, subpart C.

(7) Permits authorizing exercise of mineral rights reserved in conveyance to the United States issued under 36 CFR part 291, subpart A.

(8) Special use authorizations issued under 36 CFR part 293, subpart B, except, as provided in § 251.60(g), for suspension or termination of easements issued pursuant to 36 CFR 251.53(e) and (el)(1).

(9) Permits for uses in Wilderness Areas issued under 36 CFR 293.3.

(10) Permits to excavate and/or remove archaeological resources issued under the Archaeological Resources Protection Act 1979 and 36 CFR part 296.
§ 251.83 Approval/non-approval of Surface Use Plans of Operations related to the authorized use and occupancy of a particular site or area.

(11) Approval/non-approval of Surface Use Plans of Operations related to the authorized use and occupancy of a particular site or area.

(12) Decisions related to the standards for the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area pursuant to 36 CFR part 292, subpart C.

(b) Written decisions on any of the matters of the type listed in paragraph (a) of this section issued by a Forest Service staff officer with delegated authority to act for a Forest Service line officer are considered to be decisions of the line officer.


§ 251.83 Decisions not appealable.

The following decisions are not appealable under this subpart:

(a) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR part 24.

(b) Decisions involving Freedom of Information Act denials under 7 CFR part 1 or Privacy Act determinations under 7 CFR 1.118.

(c) Decisions for which the jurisdiction of another Government agency, the Comptroller General, or a court to hear and settle disputes supersedes that of the Department of Agriculture.

(d) Recommendations of Forest Service line officers to higher ranking Forest Service line officers or to other entities having final authority to implement the recommendation in question.

(e) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117 (Administration of Cooperative for Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Recreation Payment of Amount); and 4 CFR part 21 (Bid Protests).


(g) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(h) Decisions covered by the Contract Disputes Act.

(i) Decisions involving Agency personnel matters.

(j) Decisions where relief sought is reformation of a contract or award of monetary damages.

(k) Decisions made during the preliminary planning process pursuant to 36 CFR part 219 and 40 CFR parts 1500-1508 that precede decisions to implement the proposed action.

(l) Decisions related to National Forest land and resource management plans and projects only reviewable under 36 CFR part 217.

(m) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice that good cause exists to exempt such decisions from appeal under this subpart.

(n) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or for violations of prohibitions and orders under 36 CFR part 261.

(o) Reaffirmation of prior decisions.


§ 251.84 Obtaining notice.

(a) A Deciding Officer shall promptly give written notice of decisions subject to appeal under this subpart to applicants and holders defined in § 251.86 of this subpart and to any holder of like instruments who has made a written request to be notified of a specific decision. The notice shall include a statement of the Deciding Officer’s willingness to meet with applicants or holders to hear and discuss any concerns or issues related to the decision (§251.93). The notice shall also specify the name of the officer to whom an appeal of the decision may be filed, the address, and the deadline for filing an appeal.

(b) In States with Department of Agriculture certified mediation programs, a Deciding Officer shall also give written notice of the opportunity for the affected term grazing permit holder to request mediation of decisions to suspend or cancel term grazing permits, in whole or in part, pursuant to 36 CFR 222.4(a)(2)(i), (ii), (v), and (a)(3)
§ 251.87 Levels of appeal.

(a) Decisions made by the Chief. If the Chief of the Forest Service is the Deciding Officer, the appeal is to the Secretary of Agriculture. Review by the Secretary is discretionary. Within 15 calendar days of receipt of a timely notice of appeal, the Secretary shall determine whether or not to review the decision. If the Secretary has not decided to review the Chief’s decision by the expiration of the 15-day period, the requester(s) shall be notified by the Secretary’s office that the Chief’s decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

(b) Decisions made by Forest Supervisors and Regional Foresters. Only one level of appeal is available on written decisions by Forest Service line officers below the level of the Chief and above the level of the District Ranger. The levels of available appeal are as follows:

(1) If the decision is made by a Forest Supervisor, the appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the appeal is filed with the Chief of the Forest Service.

(c) Decisions made by the District Ranger. Two levels of appeal are available for written decisions by District Rangers.

(1) The appeal for initial review is filed with the Forest Supervisor.

(2) The appeal for a second level of review is filed with the Regional Forester within 15 days of the first level appeal decision. Upon receiving such a request, the Regional Forester shall promptly request the first level file from the Forest Supervisor. The review shall be conducted on the existing record and no additional information shall be added to the file.

(d) Discretionary review of dismissal decisions. Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 251.92) are subject to only one level of discretionary review (§ 251.100) as follows:

(1) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review.

(2) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.
§ 251.88  Filing procedures.

(a) Filing procedures. In order to appeal a decision under this subpart, an appellant must:

(1) File a notice of appeal in accordance with §251.90 of this subpart with the next higher line officer as identified in §251.87.

(2) File the notice of appeal within 45 days of the date on the notice of the written decision being appealed (§251.84); and

(3) Simultaneously send a copy of the notice of appeal to the Deciding Officer.

(b) Evidence of timely filing. 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 will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timeliness of the notice of appeal. Untimely submissions are subject to dismissal as provided for in §251.92(a)(2).

(c) Computation of time period for filing. (1) The time period for filing a notice of appeal of a decision under this subpart begins on the first day after the Deciding Officer’s written notice of the decision. All other time periods applicable to this subpart also will be computed to begin on the first day following an event or action related to the appeal.

(2) Time periods applicable to this subpart 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 extended to the end of the next Federal working day.

§ 251.89  Time extensions.

(a) Filing of notice of appeal. Time for filing a notice of appeal is not extendable.

(b) All other time periods. Appellants, Intervenors, Deciding Officers, and Reviewing Officers shall meet the time periods specified in the rules of this subpart, unless a Reviewing Officer has extended the time as provided in this paragraph. Except as noted in paragraph (a) of this section and as prohibited at the discretionary review level (§251.100), the Reviewing Officer may extend all other time periods under this subpart.

(1) For appeals of initial written decisions by the Chief, a Regional Forester, or a Forest Supervisor, a Reviewing Officer, where good cause exists, may grant a written request for extension of time to file a responsive statement or replies thereto. The Reviewing Officer shall rule on requests for extensions within 10 days of receipt of the request and shall provide written notice of the extension ruling to all parties to the appeal.

(2) Except for discretionary reviews of appeal decisions as provided in §251.100 of this subpart, a Reviewing Officer may extend the time period for issuance of the appeal decision, including for purposes of allowing additional time for the Deciding Officer to resolve disputed issues, as provided in §251.93 of this subpart.

§ 251.90  Content of notice of appeal.

(a) It is the responsibility of an appellant to provide a Reviewing Officer sufficient narrative evidence and argument to show why a decision by a
lower level officer should be reversed or changed.

(b) An appellant must include the following information in a notice of appeal:

(1) The appellant’s name, mailing address, and daytime telephone number;

(2) The title or type of written instrument involved, the date of application for or issuance of the written instrument, and the name of the responsible Forest Service Officer;

(3) A brief description and the date of the written decision being appealed;

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

(5) A statement of the facts of the dispute and the issue(s) raised by the appeal;

(6) Specific references to any law, regulation, or policy that the appellant believes to be violated and the reason for such an allegation.

(7) A statement as to whether and how the appellant has tried to resolve the issue(s) being appealed with the Deciding Officer, the date of any discussion, and the outcome of that meeting or contact; and

(8) A statement of the relief the appellant seeks.

(c) An appellant may also include one or more of the following in a notice of appeal: a request for oral presentation (§ 251.97); a request for stay of implementation of the decision pending decision on the appeal (§ 251.91); or in those States with a Department of Agriculture certified mediation program, a request for mediation of grazing permit cancellation or suspensions pursuant to § 251.103.

§ 251.91 Stays.

(a) A decision may be implemented during the appeal process, unless the Reviewing Officer grants a stay or unless a term grazing permit holder appeals a decision and simultaneously requests mediation pursuant to § 251.103. In the case of mediation requests, a stay is granted automatically upon receipt of the notice of appeal for the duration of the mediation period as provided in § 251.103.

(b) An appellant or intervenor may request a stay of a decision at any time while an appeal is pending, if the harmful effects alleged pursuant to paragraph (c)(3) of this section would occur during pendency of the appeal. The Reviewing Officer shall not accept any request to stay implementation of a decision that is not scheduled to begin during pendency of the appeal.

(c) To request a stay of decision, an appellant or intervenor must—

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), to intervenor(s), and to the Deciding Officer.

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped, and

(C) How the cited effects and impacts would prevent a meaningful decision on the merits.

(d) A Deciding Officer and other parties to an appeal may provide the Reviewing Officer with a written response to a stay request. A copy of any response must be sent to all parties to the appeal.

(e) Timeframe. The Reviewing Officer must rule on a stay request no later than 10 calendar days from receipt.

(f) Criteria to consider. In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to paragraph (c) of this section including the validity of any claim of adverse effect on the requester;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;
(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(g) Notice of decision on a stay request. A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to all parties to the appeal.

(h) Duration. A stay shall remain in effect for the 15-day period for determining discretionary review (§ 251.100), unless changed by the Reviewing Officer in accordance with paragraph (i) of this section.

(i) Change in a stay. A Reviewing Officer may change a stay decision in accordance with any terms established in the stay decision itself or at any time during pendency of an appeal that circumstances support a change of stay. In making any changes to a stay decision, the Reviewing Officer must issue a written notice to all parties to the appeal explaining the reason for making the changes and setting forth any terms or conditions that apply to the change.

(j) Petitions to change a stay. An appellant or intervenor may petition a Reviewing Officer to change or lift a stay at any time during the pendency of an appeal. Such petitions must be in writing, must explain how circumstances have changed since the stay was imposed, and must state why the change in the stay is being requested. The petitioner must send a copy of the petition to all parties to the appeal.

(k) Appeal of stay decision or changes in stay. A Reviewing Officer’s decision to grant, deny, lift, or otherwise change a stay is not subject to further appeal and review, except when the first-level Reviewing Officer was the Forest Supervisor. In this instance, the Regional Forester has discretion to review.


§ 251.92 Dismissal.

(a) The Reviewing Officer shall dismiss an appeal and close the record without a decision on the merits when:

(1) The appellant is not eligible to appeal a decision under this subpart.

(2) Appellant’s notice of appeal is not filed within the required time period, or the notice of appeal fails to meet the minimum requirements of § 251.90 of this subpart to such an extent that the Reviewing Officer lacks adequate information on which to base a decision.

(3) In cases where there is only one appellant, the appellant withdraws the appeal.

(4) The requested relief cannot be granted under existing law, fact, or regulation.

(5) The decision is excluded from appeal under this subpart (§ 251.83).

(6) The Deciding Officer has withdrawn the decision under appeal.

(7) A request for review of the same decision has been filed by the same person under part 217 of this chapter.

(8) A mediated agreement is reached (§ 251.103).

(b) The Reviewing Officer shall give written notice of dismissal that includes an explanation of why the appeal is dismissed.

(c) A Reviewing Officer’s dismissal decision is subject to discretionary review at the next administrative level as provided for in § 251.87(d), except when a dismissal decision results from withdrawal of an appeal by an appellant, withdrawal of the initial decision by the Deciding Officer, or a mediated resolution of the dispute.


§ 251.93 Resolution of issues.

(a) Authorized Forest Service officers shall, to the extent practicable and consistent with the public interest, consult and meet in person, or by phone, with holders of written instruments prior to issuing written decisions related to administration of a...
§ 251.95 Authority of reviewing officer.

(a) Discretion to establish procedures. A Reviewing Officer may issue such procedural orders as deemed appropriate to ensure orderly, expeditious, and fair conduct of an appeal providing they are consistent with other provisions of this part.

(b) Consolidation of appeals. A Reviewing Officer may consolidate multiple appeals of the same decision, or of similar decisions involving common issues of fact or law and issue one appeal decision. Similarly, a Reviewing Officer may issue one decision in cases involving separate reviews filed pursuant to 36 CFR part 217 and under this part when the decision at issue is the same decision. In such case, the Reviewing Officer shall give notice to all parties to multiple appeals.

(c) Replies. Within 20 days of the postmarked date of the responsive statement, the appellant(s) and any intervenor(s) may file a written reply to the responsive statement with the Reviewing Officer. Appellants and intervenors must send a copy of any reply to a responsive statement to all parties to the appeal, including the Deciding Officer.

§ 251.94 Responsive statement.

(a) Content. A responsive statement contains the Deciding Officer's response to the specific facts or issues of law or regulation and the requested relief set forth by the appellant in the notice of appeal.

(b) Timeframe. Unless the Reviewing Officer has granted an extension or dismissed the appeal, or unless mediation has been requested under this subpart, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of receipt of the notice of appeal. Where mediation occurs but fails to resolve the issues, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of the reinstatement of the appeal timeframes (§ 251.103(c)).
§ 251.96 Intervention.

(a) A request to intervene in an appeal may be made at any time prior to the closing of the appeal record (§ 251.98) at the first level of appeal (§ 251.87). Requests to intervene in an appeal at the discretionary review level (§ 251.87(d)) shall be denied.

(b) To request intervention in a first-level appeal under this subpart, a party, at a minimum, must:

(1) Submit a written petition to intervene to the Reviewing Officer,

(2) Be, as defined at § 251.81 of this subpart, an applicant for or holder of a written instrument issued by the Forest Service that is the subject of or affected by the appeal, and have an interest that could be directly affected by a decision on the appeal, and

(3) Show, in the request for intervention, how the decision on the appeal would directly affect petitioner’s interests.

(c) The Reviewing Officer determines whether a party requesting intervention meets the requirements of paragraph (a) of this section. In granting intervention, the Reviewing Officer must give notice to all other parties to the appeal.

(d) A granting or denial of intervention is not subject to appeal to a higher level.

(e) Appellants and intervenors must concurrently furnish copies of all submissions to each other as well as the Deciding Officer. Failure to provide each other copies may result in removal of a submission from the appeal record. At the discretion of the Reviewing Officer, appellants may be given additional time to review and comment on initial submissions by intervenors.

(f) An intervenor cannot continue an appeal if the appellant withdraws the appeal.


§ 251.97 Oral presentation.

(a) Purpose. An oral presentation provides an additional opportunity for an appellant, and other parties to an appeal, to present their viewpoints to the Reviewing Officer. The purpose is to restate, emphasize, and/or clarify information related to an appeal. Oral presentations are to be conducted in an informal manner and shall not be subject to formal rules of procedure such as those applicable to judicial proceedings.

(b) Requests. Only an appellant may request and be granted an oral presentation. An appellant may request an oral presentation at any time prior to closing of the appeal record (§ 251.98). A Reviewing Officer shall automatically grant an oral presentation if the appellant requested the presentation as part of the notice of appeal.

(c) Participation. At the discretion of the Reviewing Officer, oral presentations may be open to public attendance, but participation is limited to parties to the appeal. The Reviewing Officer shall advise all parties to the appeal, including the Deciding Officer, of the place, time, and date of the oral presentation, and how the oral presentation will be conducted. All parties to an appeal shall be invited to participate. Appellants and intervenors must bear any expense involved in making an oral presentation in person or by telephone.

(d) Limitation. Oral presentations shall be held only at the first level of appeal (§ 251.87(b)).

§ 251.98 Appeal record.

The following rules apply only to the appeal record for appeals at the first level (§ 251.87(a), (b)):

(a) It is the responsibility of the Reviewing Officer to maintain in one location the documents related to the appeal.

(b) The record consists of the documents filed with the Reviewing Officer.
including, but not limited to, the notice of appeal, responsive statement, replies to submissions by various parties to the appeal, orders and determinations made on the conduct of the appeal, and correspondence.

(c) The Reviewing Officer has discretion to remove from the record documents that were not sent to all parties to an appeal.

(d) Unless the Reviewing Officer has ordered otherwise, the appeal record closes with the expiration of the time period for filing of the reply(ies) to the responsive statement, or at the conclusion of an oral presentation, if there is one. The Reviewing Officer shall notify all parties to an appeal of the closure of the record.

(e) The appeal record is open to public inspection.

(f) In appeals involving initial decisions of the Chief (§251.87(a)), the establishment of an administrative record as defined in paragraph (a) of this section shall not begin unless the Secretary elects to review the appeal. Except for the initial notice of appeal, any filings made previous to the Secretary’s election to review will not be accepted.

§251.99 Appeal decision.

(a) The Reviewing Officer shall base the appeal decision on the appeal record and applicable laws, regulations, orders, policies, and procedures.

(b) The Reviewing Officer shall affirm or reverse the original decision whole or in part and include the reason(s) for the decision. The Reviewing Officer may also include in the appeal decision instructions for further action by the Deciding Officer.

(c) At the first level of appeal, the Reviewing Officer shall make and issue an appeal decision within 30 days of the date the record is closed.

(d) At the second level of appeal provided in §251.87(c), the Reviewing Officer shall make and issue an appeal decision within 30 days of the date the record is received from the first level Reviewing Officer.

(e) The Reviewing Officer shall send a copy of all appeal decisions to all participants.

(f) Unless the next higher officer exercises the discretion to review an appeal decision as provided in §§251.87(e) and 251.100 of this subpart, the appeal decision is the final administrative decision of the Department of Agriculture and is not subject to further review under this subpart or part 217 of this chapter.

§251.100 Discretionary review.

(a) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In exercising to exercise discretion, a Reviewing Officer should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, and whether the appeal decision is precedent in nature or establishes new policy.

(b) As provided for in §§251.87(d) and (e), 251.91(k), and 251.92, stay decisions rendered by a Forest Supervisor, certain dismissal decisions rendered by Forest Service line officers, and first-level appeal decisions rendered by Regional Foresters and the Chief (§251.99), are subject to discretionary review at the next highest administrative level. Within one day following the date of a decision subject to such discretionary review, the Reviewing Officer shall forward a copy of the decision and the initial decision upon which the appeal is predicated to the next higher officer.

(c) The next higher level officer shall have 15 calendar days from date of receipt to decide whether or not to review an appeal decision and may call for or use the appeal record in deciding whether or not to review the appeal decision. If the record is requested, the 15-day period is suspended at that point. The lower level Reviewing Officer shall forward it within 5 days of the request. Upon receipt, the higher level officer shall have 15 days to decide whether or not to review the lower level decision. If that officer takes no action by the expiration of the discretionary review period, appellants shall be notified by the discretionary level officer that the appeal decision of the Reviewing Officer stands as the final
§ 251.101 Policy in event of judicial proceedings.
It is the position of the Department of Agriculture that any filing for Federal judicial review of and relief from a decision appealable under this subpart is premature and inappropriate, unless the appellant has first sought to resolve the dispute by invoking and exhausting the procedures of this subpart. This position may be waived only upon a written finding by the Chief.

§ 251.102 Applicability and effective date.
(a) Except where applicants or holders elect the decision review procedures of part 217 of this chapter, appealable decisions arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands made on or after February 22, 1989, shall be subject to the procedures of this part.
(b) Decisions made before February 22, 1989, arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands shall be subject to appeal under the provisions of 36 CFR 211.18.

§ 251.103 Mediation of term grazing permit disputes.
(a) Decisions subject to mediation. In those States with Department of Agriculture certified mediation programs, any holder of a term grazing permit may request mediation, if a Deciding Officer issues a decision to suspend or cancel a term grazing permit, in whole or in part, as authorized by 36 CFR 222.4 (a)(2)(i), (ii), (iv), (v), and (a)(3) through (a)(6).
(b) Parties. Notwithstanding the provisions addressing parties to an appeal at §251.86, only the following may participate in mediation of term grazing permit disputes under this section:
(1) A mediator authorized to mediate under a Department of Agriculture State certified mediation program;
(2) The Deciding Officer who made the decision being mediated, or designee;
(3) The holder whose term grazing permit is the subject of the Deciding Officer’s decision and who has requested mediation in the notice of appeal;
(4) The holder’s creditors, if applicable; and
(5) Legal counsel, if applicable. The Forest Service will have legal counsel participate only if the permittee chooses to have legal counsel.
(c) Timeframe. When an appellant simultaneously requests mediation at the time an appeal is filed (§251.84), the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that, in order to allow for mediation, the appeal is suspended for 45 calendar days from the date of the appeal.
Reviewing Officer's notice. If agreement has not been reached at the end of 45 calendar days, but it appears to the Deciding Officer that a mediated agreement may soon be reached, the Reviewing Officer may notify, by certified mail, all parties to the appeal that the period for mediation is extended for a period of up to 15 calendar days from the end of the 45-day appeal suspension period. If a mediated agreement cannot be reached under the specified timeframes, the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that mediation was unsuccessful, that the stay granted during mediation is lifted, and that the timeframes and procedures applicable to an appeal (§ 251.89) are reinstated as of the date of such notice.

(d) Confidentiality. Mediation sessions shall be confidential; moreover, dispute resolution communications, as defined in 5 U.S.C. 571(5), shall be confidential. However, the final agreement signed by the Forest Service official and the permit holder is subject to public disclosure.

(e) Records. Notes taken or factual material received during mediation sessions are not to be entered as part of the appeal record.

(f) Cost. The United States Government shall cover only incurred expenses of its own employees in mediation sessions.

(g) Ex parte communication. Except to request a time extension or communicate the results of mediation pursuant to paragraph (d) of this section, the Deciding Officer, or designee, shall not discuss mediation and/or appeal matters with the Reviewing Officer.

[64 FR 37846, July 14, 1999]

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
§ 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 0596–0062.

§ 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 non-motorized 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


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)
§ 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 entrepreneurs, 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 § 251.122 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 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 subpart C of this part.

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, and 555a; 43 U.S.C. 1701, 1715, 1716, and 1740, and other applicable laws.

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[119]), 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.


§ 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.


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.


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.

(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 non-binding 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 an 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 215 or 36 CFR part 251, subpart C.

§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
§ 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

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994]
§ 254.9 Appraisals.

(a) 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.

(b) 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.

(c) 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.
§ 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 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 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.

(3) 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.
§ 254.11 Arbitration.

(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.
§ 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.

(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.

§ 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 215 or 36 CFR part 251, subpart C, 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.

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 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 the public interest will be best served by terminating such use pursuant to 36 CFR 251.60.

§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.
§ 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;
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

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.

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.

§ 254.32 Encroachments.

(a) Conveyances under this subpart are limited to tracts of 10 acres or less to resolve encroachments by persons:

(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) Forest Service officials shall consider the following factors when determining whether to convey lands upon which encroachments exist:

(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.

§ 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:
§ 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 $150,000.

(d) Compensation for lands conveyed shall be of at least equal value, or in the case of exchange, 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.

§ 254.36 Determining public interest.

(a) The requirements of § 254.35 and of one of § 254.32, § 254.33, or § 254.34 must be met before a determination of public interest can be 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.

§§ 254.37–254.39 [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 determination.

§ 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 recording, 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. 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.


§ 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
Forest Service, USDA § 261.2

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 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.

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.

Paleontological resource means any evidence of fossilized remains of multicellular invertebrate and vertebrate animals and multicellular plants, including imprints thereof. Organic remains primarily collected for use as fuel such as coal and oil are Paleontological Resources, but are excluded from the prohibitions under the rule.

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, artificial 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 Land 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, lean-tos, 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, for 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.

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 non-commercial 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 socio-economic 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.

§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.

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(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.


EFFECTIVE DATE NOTE: At 73 FR 79392, Dec. 29, 2008, § 261.5 was revised, effective Jan. 28, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was 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:

§ 261.5 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 prescribed 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.

§ 261.6 Timber and other forest products.

The following are prohibited:

(a) Cutting, removing, 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 any permit or 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.

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.

§ 261.10 Occupancy and use.

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 vertebrate fossil or removing any paleontological resource for commercial purposes without a special use authorization.

(j) Excavating, damaging, or removing any cave resource from a cave without a special use authorization, or removing any cave resource for commercial purposes.


§ 261.9 Property.

The following are prohibited:

(a) Altering the condition of any soil that is part of a soil conservation unit designated by the Secretary of Agriculture under the soil conservation law, or any soil conservation unit established by the Forest Service.

(b) Violating the provisions of the Forest Service Manual, the Forest Service, USDA § 261.10

(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.


§ 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.


§ 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.


§ 261.10 Occupancy and use.

The following are prohibited:
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(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 of 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 lands 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.


§ 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...
§ 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.

§ 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 part 212, subpart C, 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 Use by over-snow vehicles.

It is prohibited to possess or operate an over-snow vehicle on National Forest System lands in violation of a restriction or prohibition established pursuant to 36 CFR part 212, subpart C, provided that the following uses are exempted from this section:

(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) Use by over-snow vehicles 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.

[70 FR 68291, Nov. 9, 2005]

§ 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.
§ 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 seeing eye dog, 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 seeing eye dog.

(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.


§ 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.


§ 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.
§ 261.50 Orders.

(a) The Chief, each Regional For-ester, each Experiment Station Direc-
tor, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue or-
ders which close or restrict the use of any National Forest System road or trail within the area over which he has jurisdiction. An order may close an area to entry or may re-
strict 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 For-
ester, each Experiment Station Direc-
tor, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue or-
ders 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.
(f) Any other person meeting exemption requirements specified in the order.
(g) Going into or being upon an area.
(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 properly installed, maintained and in effective working order meeting either:
   (1) Department of Agriculture, Forest Service Standard 5100-1a; or
   (2) Appropriate Society of Automotive Engineers (SAE) recommended practice J 335(b) and J 350(a).
(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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

(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.

§ 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 under 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 (d) or (e) of this section is prohibited.

(d) 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.

(e) Entering, going, riding, or floating within the scope of any commercial operation or business upon any portion or segment of the Chattooga River 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]
262.2 Purchase of information in furtherance of investigations.

262.3 Purchase of evidence in furtherance of investigations.

262.4 Audit of expenditures.

262.5 Disposal of purchased property.

Subpart B—Impoundments and Removals

262.10 Impoundment and disposal of unauthorized livestock.

262.11 Impounding of dogs.

262.12 Impounding of personal property.

262.13 Removal of obstructions.


Subpart A—Rewards and Payments

§262.1 Rewards in connection with fire or property prosecutions.

(a) Hereafter, provided Congress shall make the necessary appropriation or authorize the payment thereof, the Department of Agriculture will pay the following rewards:

(1) Not exceeding $5,000 for information leading to the arrest and conviction of any person on the charge of willfully or maliciously setting on fire, or causing to be set on fire, any timber, underbrush, or grass upon the lands of the United States within the National Forest System or nearby.

(2) Not exceeding $1,000 for information leading to the arrest and conviction of any person on the charge of having kindled or caused to be kindled a fire on lands of the United States within the National Forest System or nearby, and leaving said fire which escapes before the same has been totally extinguished.

(3) Not exceeding $5,000 for information leading to the arrest and conviction of any person charged with destroying or stealing any property of the United States; and

(4) Not exceeding $10,000 for information leading to the arrest and conviction of any person charged with damaging or stealing the Pacific yew tree, Taxus brevifolia, or any portion thereof, including but not limited to bark, twigs, needles and other foliage.

(b) A reward may be paid to the person or persons giving the information leading to such arrest and conviction upon presentation to the Department of Agriculture of satisfactory evidence thereof, subject to the necessary appropriation as aforesaid, or otherwise as may be provided.

(c) Officers and employees of the Department of Agriculture are barred from receiving such rewards.

(d) The Department of Agriculture reserves the right to refuse payments of any claim for reward when, in its opinion, collusion or improper methods have been used to secure arrest and conviction. The Department also reserves the right to allow only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, unless the circumstances entitle the person to a reward on each conviction.

(e) Applications for reward should be forwarded to the Regional Forester, Research Director, or Area Director who has responsibility for the land or property involved in the trespass. However, no application will be considered unless presented to a responsible Forest Service officer within three months from the date of conviction of an offender. In order that all claimants for rewards may have an opportunity to present their claims within the prescribed limit, the Department will not take action with respect to rewards for three months from the date of the conviction of an offender.


§262.2 Purchase of information in furtherance of investigations.

(a) Approval of payments. Payments for purchase of information to further investigations of felonies and misdemeanors related to Forest Service administration are authorized for each transaction as follows:

(1) Criminal investigators in the GS-1811 series and such other personnel as the Chief of the Forest Service or a Regional Forester may designate, may, without prior approval, pay up to but not exceeding $200 for the purchase of information under this section.
(2) For payments of amounts over $200 but not exceeding $500, advance approval of the Forest Supervisor is required.

(3) For payments of amounts over $500 but not exceeding $2,500, advance approval of the Regional Forester is required.

(4) For payments of amounts over $2,500, advance approval of the Chief of the Forest Service is required.

(5) For purchase of information to further investigations within a Regional Office, Forest and Range Experiment Station, State and Private Forestry Area Office, or the National Office, payments in excess of $200 must be approved in advance by the Chief of the Forest Service or by such other personnel as the Chief may designate.

(b) Limitations. Purchase of information under this section is restricted to furthering investigations of felony and misdemeanor violations. Payment for information to further investigations of petty offenses as classified in title 18 U.S.C., section 1, are not authorized under this section.

\[48 \text{ FR } 26604, \text{ June 9, 1983}; 48 \text{ FR } 34262, \text{ July 28, 1983}\]

§ 262.3 Purchase of evidence in furtherance of investigations.

(a) Approval of payments. Payments for purchase of evidence to further investigations of felonies and misdemeanors related to Forest Service administration are authorized for each transaction as follows:

1. Criminal investigators in the GS-1811 series and such other personnel as the Chief of the Forest Service or a Regional Forester may designate, may, without prior approval, pay up to but not exceeding $400 for the purchase of evidence under this section.

2. For payments of amounts over $400 but not exceeding $1,000, advance approval of the Forest Supervisor is required.

3. For payments of amounts over $1,000 but not exceeding $5,000, advance approval of the Regional Forester is required.

4. For payments of amounts over $5,000, advance approval of the Chief of the Forest Service is required.

5. For purchase of evidence to further investigations within a Regional Office, Forest and Range Experiment Station, State and Private Forestry Area Office, or the National Office, payments in excess of $400 must be approved in advance by the Chief of the Forest Service or by such other personnel as the Chief may designate.

(b) Limitations. Purchase of evidence under this section is restricted to furthering investigations of felony and misdemeanor violations. Payment for evidence to further investigations of petty offenses as classified in title 18 U.S.C., section 1, are not authorized under this section.

\[48 \text{ FR } 26605, \text{ June 9, 1983}; 48 \text{ FR } 34262, \text{ July 28, 1983}\]

§ 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.

\[48 \text{ FR } 26605, \text{ June 9, 1983}\]

§ 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.

\[48 \text{ FR } 26605, \text{ June 9, 1983}\]

Subpart B—Impoundments and Removals

§ 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
§ 262.11 Impounding 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.

§ 262.12 Impounding of personal property.

(a) Automobiles or other vehicles, trailers, boats, and camping equipment and other inanimate personal property
Forest Service, USDA

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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) In the event the local Forest officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. A copy of this notice shall also be posted in at least one place on the property or in proximity thereto.

(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) If the personal property is not redeemed on or before the date fixed for its disposition, it shall be sold by the Forest Service at public sale to the highest bidder. If no bid is received, the property, or portions thereof, may, in the discretion of the responsible Forest officer, be sold at private sale or be condemned and destroyed or otherwise disposed of. When personal property is sold pursuant to this regulation, the Forest officer making the sale shall furnish the purchaser a bill of sale or other written instrument evidencing the sale.

(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.


§ 262.13 Removal of obstructions.

A Forest officer may remove or cause to be removed, to a more suitable place, a vehicle or other object which is an impediment or hazard to the safety, convenience, or comfort of other users of an area of the National Forest System.


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.

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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.
§ 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.

(b) 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,
§ 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

§ 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.


§ 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.

(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]
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 nominated 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 292—NATIONAL RECREATION AREAS

Subpart A—General

Sec. 292.1–292.10 [Reserved]

Subpart B—Whiskeytown-Shasta-Trinity National Recreation Area

292.11 Introduction.
292.12 General provisions; procedures.
292.13 Standards.

Subpart C—Sawtooth National Recreation Area—Private Lands

292.14 Introduction.
292.15 General provisions—procedures.
292.16 Standards.

Subpart D—Sawtooth National Recreation Area—Federal Lands

292.17 General provisions.
292.18 Mineral resources.

Subpart E—Hells Canyon National Recreation Area—Private Lands

292.20 Purpose and scope.
292.21 Definitions.
292.22 Land category assignments.
292.23 Standards of compatible land use and development.
292.24 Determination of compliance and noncompliance.
292.25 Information requirements.
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 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
§ 292.13 Standards.

(a) The standards set forth in §§ 292.11 through 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 described 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


§ 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.
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.
6. 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.
7. 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.
8. 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.
9. 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.
§ 292.15

(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. Any landowner who is adversely affected by a decision of the Area Ranger under these regulations may file an appeal under the provisions of 36 CFR part 251, subpart C.

(m) Judicial review. The United States District Court for the District of Idaho shall have jurisdiction to review these regulations upon a complaint 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).

§ 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.
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(xii) Mobile or semimobile homes permitted only in existing mobile home parks.

(xiii) Nonreflective roofs on new buildings.

(xiv) All new steps and walks constructed of wood.

(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.

(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:
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(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.  

Subpart D—Sawtooth National Recreation Area—Federal Lands


§ 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
(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 or modification. The Area Ranger may suspend or terminate 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 operation plan, the operator may be required to modify the operating plan in order 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...
§ 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:


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 development 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.


Recreational facilities are facilities associated with or required for outdoor use.
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.

(b) 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.
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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.
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(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 83430. 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


Source: 59 FR 36892, July 19, 1994, unless otherwise noted.
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.

§ 292.43 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.

§ 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.

(b) Wilderness Lands. 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 the 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 HCNRA.

(1) Timber may be harvested on river segments classified ‘scenic’ or ‘recreational’ to protect and enhance the
§ 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.

(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:


*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 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-Oreleans 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.

 §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 supporting 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
§ 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 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 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, assignees, 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 in 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 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

§ 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.
Forest Service, USDA

§ 293.5

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.

§ 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
§ 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, 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.

§ 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.

§ 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.


§ 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.

§ 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 Three Mile 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 Oskononton 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 portage 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 skis 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.

§ 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.


PART 294—SPECIAL AREAS

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§ 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. 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 liverys, 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.

§ 294.3–294.9 [Reserved]

Subpart B—State Petitions for Inventoried Roadless Area Management


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 from the affected Governor.

(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;
§ 294.15
(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.

§ 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 Federal 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

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 ridgetop; 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;
§ 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. 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...
§ 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.

(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).

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<th>Forest</th>
<th>Idaho roadless area</th>
<th>WLR</th>
<th>Primitive</th>
<th>BCR</th>
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Roberts ..........................
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Dixie Summit—Nut Hill ..
East Meadow Creek ......
Gospel Hump .................
Gospel Hump Adjacent
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John Day .......................
Lick Point .......................
Little Slate Creek ...........
Little Slate Creek North
Mallard ...........................
North Fork Slate Creek
O’Hara—Falls Creek .....
Rackliff—Gedney ...........
Rapid River ....................
Salmon Face .................
Selway Bitterroot ...........
Silver Creek—Pilot Knob
West Fork Crooked
River.
West Meadow Creek .....
Big Creek Fringe ...........
Caton Lake ....................
Chimney Rock ...............
Cottontail Point/Pilot
Peak.
Council Mountain ...........
Crystal Mountain ............
Cuddy Mountain ............
French Creek .................
Hells Canyon/7 Devils
Scenic.
Horse Heaven ................
Indian Creek ..................
Meadow Creek ..............
Needles ..........................
Patrick Butte ..................
Placer Creek ..................
Poison Creek .................
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Snowbank ......................
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### PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

#### Sec.

296.1 Purpose.

296.2 Authority.

296.3 Definitions.

296.4 Prohibited acts and criminal penalties.

296.5 Permit requirements and exceptions.

296.6 Application for permits and information collection.

296.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

296.8 Issuance of permits.

296.9 Terms and conditions of permits.

296.10 Suspension and revocation of permits.

296.11 Appeals relating to permits.

296.12 Relationship to section 106 of the National Historic Preservation Act.

296.13 Custody of archaeological resources.

296.14 Determination of archaeological or commercial value and cost of restoration and repair.

296.15 Assessment of civil penalties.

296.16 Civil penalty amounts.

296.17 Other penalties and rewards.

296.18 Confidentiality of archaeological resource information.

296.19 Report.

296.20 Public awareness programs.

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### Notes

- WLR: Primitive
- BCR: GFRG: SAHTS: FPSA:
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. 4701), 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. 470i) 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, 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, arms, 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.
Forest Service, USDA § 296.5

(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.


[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 paragraph.

(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]

§ 296.4 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
§ 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 and Indian lands and 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.

(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 dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources.

(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 ensure 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.
§ 296.7 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. The 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.

(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.
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 manager 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.

§ 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
Forest Service, USDA § 296.9

at least one year of experience in research concerning archaeological resources of the prehistoric period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the historic 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
§ 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. 470). 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.

.§ 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;
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(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 served 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)(2) 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;
§ 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.

§ 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
§ 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.

§ 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 Archaeology 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).

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.
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.
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All changes in this volume of the Code of Federal Regulations that were made by documents published in the Federal Register since January 1, 2001, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


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**Note:** The above table represents the regulatory changes for 2003 and 2004. The format is consistent with the style of the federal register, showing the page numbers where the changes were published and the regulatory text affected. This is a simplified representation for educational purposes. For a comprehensive understanding, one should refer to the actual federal register text.
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