

§ 228.61

they may be extended once for up to an additional 24 months if necessary to complete prospecting. Any application for extension must be submitted no later than 30 days before the expiration of the permit. The application for extension must provide evidence of diligence and state the reasons why additional time is considered necessary to complete prospecting work.

(f) *Refusal to extend permits.* The authorized officer may reject applications for extension of prospecting permits for the following reasons:

(1) *Failure to perform.* Failure of the permittee to perform prospecting or exploration work without adequate justification may result in the denial of an extension; or

(2) *Failure to apply.* If an application for extension is not submitted within the specified period, the permit may expire without notice to the permittee.

(3) *Public interest.* If the authorized officer determines that an extension may not be in the public interest, the application may be rejected.

§ 228.61 Preference right negotiated sales.

(a) *Qualification for sale.* When applying for a preference right negotiated sale, the permittee must demonstrate to the satisfaction of the authorized officer that a suitable deposit of mineral material has been discovered within the area covered by the prospecting permit. Information concerning trade secrets and financial matters submitted by the permittee and identified as confidential will not be available for public examination except as otherwise agreed upon by the permittee.

(b) *Application for sale.* The application must be submitted to the District Ranger's office on or before the expiration date of the prospecting permit or its extension. The authorized officer may grant 30 additional days for submitting the application if requested in writing by the permittee before expiration of the prospecting permit or its extension.

(c) *Terms and conditions of contract.* The terms and conditions will be evaluated on an individual case basis. Only those mineral materials specified in the contract may be removed by the purchaser. Before a preference right ne-

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gotiated contract is awarded, the authorized officer must ensure that an environmental analysis is conducted. All contracts are subject to the conditions under §§ 228.47 through 228.56.

(d) *Acreage limitations.* The authorized officer will determine the amount of acreage in the preference right negotiated sale based on a presentation of the permittee's needs. The maximum acreage allowable to any individual or group must not exceed 320 acres on National Forest lands administered by one Forest Supervisor. The allowable acreage may be in one or more units which are not necessarily contiguous.

(e) *Volume limitations.* Preference right negotiated sales are exempt from volume limitations.

(f) *Contract time allowable.* A contract or a renewal must not exceed 5 years; however, the purchaser may have renewal options at the end of each contract or renewal period. The authorized officer may renew a contract if it is determined that the renewal is not detrimental to the public interest and that the purchaser has demonstrated diligence in conducting operations. The authorized officer may cancel the contract, or the purchaser may forfeit the contract, if no substantial commercial production occurs during any continuous 2-year period after the award of the contract or if the contract terms and conditions are breached. However, if a delay is caused by conditions beyond the purchaser's control, the authorized officer may grant an extension equal to the lost time.

(g) *Contract renewal reappraisal.* At the time of contract renewal, the authorized officer will reappraise the mineral material deposit in accordance with § 228.49.

§ 228.62 Free use.

(a) *Application.* An application for a free-use permit must be made with the appropriate District Ranger's office.

(b) *Term.* Permits may be issued for periods not to exceed 1 year and will terminate on the expiration date unless extended by the authorized officer as in § 228.53(b). However, the authorized officer may issue permits to any local, State, Federal, or Territorial agency, unit or subdivision, including

municipalities and county road districts, for periods up to 10 years.

(c) *Removal by agent.* A free-use permittee may extract the mineral materials through a designated agent provided that the conditions of the permit are not violated. No part of the material may be used as payment for the services of an agent in obtaining or processing the material. A permit may be issued in the name of a designated agent for those entities listed in § 228.62(d)(1), at the discretion of the authorized officer, provided there is binding agreement in which the entity retains responsibility for ensuring compliance with the conditions of the permit.

(d) *Conditions.* Free-use permits may be issued for mineral materials to settlers, miners, residents, and prospectors for uses other than commercial purposes, resale, or barter (16 U.S.C. 477). Free-use permits may be issued to local, State, Federal, or Territorial agencies, units, or subdivisions, including municipalities, or any association or corporation not organized for profit, for other than commercial or industrial purposes or resale (30 U.S.C. 601). Free-use permits may not be issued when, in the judgment of the authorized officer, the applicant owns or controls an adequate supply of mineral material in the area of demand. The free-use permit, issued on a Forest Service-approved form, must include the basis for the free-use as well as the provisions governing the selection, removal, and use of the mineral materials. No mineral material may be removed until the permit is issued. The permittee must notify the authorized officer upon completion of mineral material removal. The permittee must complete the reclamation prescribed in the operating plan (§ 228.56).

(1) A free-use permit may be issued to any local, State, Federal, or Territorial agency, unit, or subdivision, including municipalities and county road districts, without limitation on the number of permits or on the value of the mineral materials to be extracted or removed.

(2) A free-use permit issued to a non-profit 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