

timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations.

Subpart B—Leasable Minerals

§§ 228.20–228.39 [Reserved]

Subpart C—Disposal of Mineral Materials

SOURCE: 49 FR 29784, July 24, 1984, unless otherwise noted.

§ 228.40 Authority.

Authority for the disposal of mineral materials is provided by the Materials Act of July 31, 1947 (30 U.S.C. 601 *et seq.*), as amended by the Acts of August 31, 1950 (30 U.S.C. 603–604), July 23, 1955 (30 U.S.C. 601, 603), and September 25, 1962 (30 U.S.C. 602), and by the following: the Act of June 4, 1897 (16 U.S.C. 477); the Act of March 4, 1917 (16 U.S.C. 520); the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); the Act of September 1, 1949 (section 3) (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508b); the Act of June 28, 1952 (section 3) (66 Stat. 285); the Act of September 2, 1958 (16 U.S.C. 521a);

the Act of June 11, 1960 (74 Stat. 205); the Federal Highway Act of August 27, 1958 (23 U.S.C. 101 *et seq.*); and the Alaska National Interest Lands Conservation Act of December 2, 1980 (section 502) (16 U.S.C. 539a).

§ 228.41 Scope.

(a) *Lands to which this subpart applies.* This subpart applies to all National Forest System lands reserved from the public domain of the United States, including public domain lands being administered under the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); to all National Forest System lands acquired pursuant to the Weeks Act of March 1, 1911 (36 Stat. 961); to all National Forest System lands with Weeks Act status as provided in the Act of September 2, 1958 (16 U.S.C. 521a); and to public lands within the Copper River addition to the Chugach National Forest (16 U.S.C. 539a). For ease of reference and convenience to the reader, these lands are referred to, throughout this subpart, as *National Forest lands*.

(b) *Restrictions.* Disposal of mineral materials from the following National Forest lands is subject to certain restrictions as described below:

(1) *Segregation or withdrawals in aid of other agencies.* Disposal of mineral materials from lands segregated or withdrawn in aid of a function of another Federal agency, State, territory, county, municipality, water district, or other governmental subdivision or agency may be made only with the written consent of the governmental entity.

(2) *Segregated or withdrawn National Forest lands.* Mineral materials may not be removed from segregated or withdrawn lands where removal is specifically prohibited by statute or by public land order. Where not specifically prohibited, removal of mineral materials may be allowed if the authorized officer determines that the removal is not detrimental to the values for which the segregation or withdrawal was made, except as provided in paragraph (b)(1) of this section. Where operations have been established prior to the effective date of this Subpart and where not prohibited by statute, they may be permitted to continue.

Nothing in this subparagraph is intended to prohibit the exercise of valid existing rights.

(3) *Unpatented mining claims.* Provided that claimants are given prior notice and it has been determined that removal will neither endanger nor materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto on the claims, disposal of mineral materials may be allowed from:

(i) Unpatented mining claims located after July 23, 1955; and/or

(ii) Unpatented mining claims located before July 23, 1955, and on which the United States has established the right to manage the vegetative and other surface resources in accordance with the Multiple Use Mining Act of July 23, 1955 (30 U.S.C. 601, 603, 611-615).

(4) *Acquired Bankhead-Jones lands.* Mineral materials on lands which were acquired under the authority of the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010-1012), and which lie outside the exterior boundaries of National Forests, or on acquired lands which are being administered under the Act and which also lie outside the exterior boundaries of National Forests, may be disposed of under these regulations only to public authorities and agencies, and only on condition that the mineral materials are used for public purposes (7 U.S.C. 1011(c)).

(c) *Mineral materials to which this subpart applies.* This subpart applies to mineral materials which consist of petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Such mineral materials include deposits which, although they have economic value, are used for agriculture, animal husbandry, building, abrasion, construction, landscaping, and similar uses. This subpart also applies to other materials which may not be minerals but are produced using mining methods, such as peat. The categories of these materials, including representative examples, are:

(1) *Agricultural supply and animal husbandry materials.* This category includes, but is not limited to, minerals and vegetative materials used as or for: Soil conditioners or amendments ap-

plied to physically alter soil properties such as direct applications to the soil of carbonate rocks, soil containing "trace elements" and peat; animal feed supplements; and other animal care products.

(2) *Building materials.* Except for minerals identified as *Uncommon Varieties*, this category includes, but is not limited to, minerals used as or for: Paint fillers or extenders; flagstone, ashlar, rubble, mortar, brick, tile, pipe, pottery, earthenware, stoneware, terrazzo, and other nonstructural components in floors, walls, roofs, fireplaces, and the like; and similar building uses.

(3) *Abrasive materials.* This category includes, but is not limited to, minerals used for: Filing; scouring; polishing; sanding; and sandblasting.

(4) *Construction materials.* This category includes, but is not limited to, minerals such as sand, gravel, clay, crushed rock and cinders used as or for fill; borrow; rip-rap; ballast (including all ballast for railroad use); road base; road surfacing; concrete aggregate; clay sealants; and similar construction uses.

(5) *Landscaping materials:* This category includes, but is not limited to minerals and peat used as or for: Chips, granules, sand, pebbles, scoria, cinders, cobbles, boulders, slabs, and other components in retaining walls, walkways, patios, yards, gardens, and the like; and similar landscaping uses.

(d) *Minerals not covered by this subpart.* Mineral materials do not include any mineral used in manufacturing, industrial processing, or chemical operations for which no other mineral can be substituted due to unique properties giving the particular mineral a distinct and special value; nor do they include block pumice which in nature occurs in pieces having one dimension of two inches or more which is valuable and used for some application that requires such dimensions. Disposal of minerals not covered by this subpart is subject to the terms of the United States Mining Laws, as amended (30 U.S.C. 22 *et seq.*), on those portions of the National Forest System where those laws apply. Such minerals may include:

(1) Mineral suitable and used as soil amendment because of a constituent

§ 228.42

36 CFR Ch. II (7-1-13 Edition)

element other than calcium or magnesium carbonate that chemically alters the soil;

(2) Limestone suitable and used, without substantial admixtures, for cement manufacture, metallurgy, production of quicklime, sugar refining, whiting, fillers, paper manufacture, and desulfurization of stack gases;

(3) Silica suitable and used for glass manufacture, production of metallic silicon, flux, and rock wool;

(4) Alumino-silicates or clays having exceptional qualities suitable and used for production of aluminum, ceramics, drilling mud, taconite binder, foundry castings, and other purposes for which common clays cannot be used;

(5) Gypsum suitable and used for wallboard, plaster, or cement.

(6) Block pumice which occurs in nature in pieces having one dimension of two inches or more and which is valuable and used for some application that requires such dimensions; and

(7) Stone recognized through marketing factors for its special and distinct properties of strength and durability making it suitable for structural support and used for that purpose.

(e) *Limitations on applicability.* (1) The provisions of paragraphs (c) and (d) of this section shall not apply to any mining claims for which a Mineral Entry Final Certificate was issued on or before January 16, 1991. Nor shall these provisions apply to any mining claim located on or before July 23, 1955, which has satisfied the marketability test for locatable minerals from on or before July 23, 1955, until the present date.

(2) A use which qualifies a mineral as an uncommon variety under paragraph (d) overrides classification of that mineral as a common variety under paragraph (c) of this section.

[49 FR 29784, July 24, 1984, as amended at 55 FR 51706, Dec. 17, 1990]

§ 228.42 Definitions.

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

Acquired National Forest lands. National Forest System lands acquired under the Weeks Act of March 1, 1911 (36 Stat. 961), and National Forest System lands with Weeks Act status as

provided in the Act of September 2, 1958 (16 U.S.C. 521a).

Authorized officer. Any Forest Service officer to whom authority for disposal of mineral materials has been delegated.

Common-use area. Generally, a broad geographic area from which nonexclusive disposals of mineral materials available on the surface may be made to low volume and/or noncommercial users.

Community site. A site noted on appropriate Forest records and posted on the ground from which nonexclusive disposals of mineral materials may be made to low volume and/or noncommercial users.

Contract. A signed legal agreement between the Forest Service and a purchaser of mineral materials, which specifies (among other things) the conditions of a competitive, negotiated, or preference right sale of mineral materials to the purchaser.

Mineral materials. A collective term used throughout this subpart to describe petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Common varieties do not include deposits of those materials which are valuable because of some property giving them distinct and special value, nor do they include "so-called 'block pumice'" which occurs in nature in pieces having one dimension of two inches or more and which is valuable and used for some application that requires such dimensions.

Permit. A signed legal document between the Forest Service and one who is authorized to remove mineral materials free of charge, which specifies (among other things) the conditions of removal by the permittee.

Preference right negotiated sale. A negotiated sale which may be awarded in response to the finding and demonstration of a suitable deposit of mineral material on acquired National Forest lands as the result of exploratory activity conducted under the authority of a prospecting permit.

Prospecting permit. A written instrument issued by the Forest Service which authorizes prospecting for a mineral material deposit on acquired National Forest lands within specific