In consideration of the above, the Corps is proposing to amend Part 334 of Title 33 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 226; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.200 is amended by revising the heading, revising the last sentence in paragraph (a)(1), revising paragraphs (b)(2) and (b)(3) and (c), to read as follows:

**§ 334.200 Chesapeake Bay, Point Lookout to Cedar Point; aerial and surface firing range areas, U.S. Naval Air Station, Patuxent River, Maryland, danger zones.**

(a) * * *

(1) * * * Aerial and surface firing and dropping of nonexplosive ordnance will be conducted throughout the year.

* * * * *

(b) *Target areas.* * * *

(2) A circular area with a radius of 1,000 yards having its center at latitude 38°02′18″, longitude 76°09′26″, identified as Hannibal Target.

(3) *The regulations.* Nonexplosive projectiles and bombs will be dropped at frequent intervals in the target areas. Hooper and Hannibal target areas shall be closed to navigation at all times, except for vessels engaged in operational and maintenance operations as directed by the Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland. No person in the water, vessel or other craft shall enter or remain in the closed areas or climb upon the targets, except with prior written approval of the Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland.

(c) The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Patuxent River, Maryland, and such agencies as he/she may designate.

Dated: August 29, 1997

**Robert W. Burkhardt,**

*Colonel, Colonel of Engineers, Executive Director of Civil Works.*

[FR Doc. 97–23384 Filed 9–5–97; 8:45 am]

BILLING CODE 3710–92–M

## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 292

**RIN 0596–AB39**

## National Recreation Areas; Smith River National Recreational Area

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

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

**DATES:** Comments must be received in writing by November 7, 1997.

**ADDRESSES:** Send written comments to Director, Minerals and Geology Management Staff, MAIL STOP 1126, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090. All comments, including names and addresses when provided, will be placed in the record and are made available for public inspection and copying.

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

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

**SUPPLEMENTARY INFORMATION:** The Smith River National Recreation Area (SRNRA) was established by the Smith River National Recreation Area Act of 1990 (the Act) (16 U.S.C. 460bbb *et seq.*). The purposes of the Act are to ensure, ''* * * the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River Watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources * * *.'' In order to meet the purposes of the Act, Congress directed the Forest Service to administer the SRNRA to, among other things, provide for a broad range of recreation uses and improve fisheries and water quality. Subject to valid existing rights, Congress prohibited locatable mineral operations, prohibited mineral leasing (including leasing of geothermal resources), and limited the extraction of mineral materials within the SRNRA to situations where the material extracted is used for construction and maintenance of roads and other facilities within the SRNRA and in certain areas specifically excluded from the SRNRA by the Act.

The SRNRA consists of approximately 300,000 acres of National Forest System lands in the Six Rivers National Forest in northern California. The Act divided the SRNRA into eight distinct management areas and specified a management emphasis for each. There are also four areas within the exterior boundary of the SRNRA that are expressly excluded from the provisions of the Act.

One of the eight management areas established by the Act is the Siskiyou Wilderness, most of which was established on September 26, 1984. The Gasquet-Orleans Corridor was added to the Siskiyou Wilderness by the Act in 1990. The Act specified that the Siskiyou Wilderness be managed pursuant to the provisions of the Wilderness Act. In accordance with section 4(d)(3) of the Wilderness Act, the federal lands within the Siskiyou Wilderness (excluding the Gasquet-Orleans Corridor addition) were withdrawn from the operation of the mining and mineral leasing laws, subject to valid existing rights, as of September 26, 1984.

The Act also redesignated the following rivers or river segments and some of their tributaries as components of the National Wild and Scenic Rivers System: (1) The Smith River; (2) the Middle Fork of the Smith River; (3) the North Fork of the Smith River; (4) the Siskiyou Fork of the Smith River; and (5) the South Fork of the Smith River. These same rivers and most of the designated tributaries had previously been designated components of the Wild and Scenic Rivers System on January 19, 1981, pursuant to section 2(a)(ii) of the Wild and Scenic Rivers Act. The Act designated as wild segments two tributaries which had not been designated on January 19, 1981—Peridotite Creek, tributary to the North Fork of the Smith River; and Harrington Creek, tributary to the South Fork of the Smith River which is within the Siskiyou Wilderness. The Act also

changed the classification of some tributaries designated in 1981 from recreational to scenic or wild. For example, the lower 2.5 mile segment of Myrtle Creek, tributary to the Middle Fork of the Smith River, was reclassified as wild. In the Act, Congress directed that these wild and scenic rivers and their designated tributaries be administered in accordance with the Act and the Wild and Scenic Rivers Act. In the event of a conflict between the provisions of these two statutes, Congress specified that provisions of the more restrictive statute would apply. In accordance with section 9(a)(iii) of the Wild and Scenic Rivers Act, the federal lands within segments of wild and scenic rivers classified ''wild'' are withdrawn from the operation of the mining and mineral leasing laws, subject to valid existing rights.

Consequently, there are three different dates of withdrawal which apply to federal lands within the SRNRA. Federal lands within segments of the aforementioned five wild and scenic rivers that were originally classified ''wild'' were withdrawn from the operation of the mining and mineral leasing laws subject to valid existing rights on January 19, 1981, pursuant to the Wild and Scenic Rivers Act. Federal lands within the Siskiyou Wilderness (excluding the Gasquet-Orleans Corridor addition) not previously withdrawn were withdrawn subject to valid existing rights on September 26, 1984, pursuant to the Wilderness Act. The remaining federal lands in the SRNRA (including segments of the aforementioned wild and scenic rivers that had originally been classified ''scenic'' or ''recreational'' and the Gasquet-Orleans Corridor addition to the Siskiyou Wilderness) were withdrawn subject to valid existing rights on November 16, 1990, pursuant to the Act.

Mining and prospecting for minerals have been an important part of the history of the Smith River area since the 1850's. Mining operations within the Smith River area historically have been small-scale placer gold exploration and recovery operations within the bed and banks of the Smith River and its main tributaries. Panning, sluicing, and dredging operations occur predominantly during the summer months. In recent years, large, low-grade nickel-cobalt resources in the uplands of the Smith River watershed have attracted attention. As of May 1997, there were approximately 305 mining claims, covering about 7,700 acres of National Forest System lands within the SRNRA. However, none of these claims are for mill site locations. There are no active operations on lands with outstanding mineral rights. As of July 1, 1997, two plans of operations have been approved for the 1997 operating season.

In section 8 of the Act, Congress addressed to what extent mineral operations would be authorized within the SRNRA. Section 8(a) of the Act withdrew all federal lands in the SRNRA from the operation of the United States mining and mineral leasing laws (including laws governing the leasing of geothermal resources) subject to valid existing rights. As noted earlier, the withdrawal would apply only to those federal lands which had not previously been withdrawn under the authority of the Wild and Scenic Rivers Act or the Wilderness Act.

Section 8(b) of the Act precluded the issuance of patents for locations and claims made under United States mining laws prior to the establishment of the SRNRA.

Section 8(c) of the Act prohibited locatable mineral operations within the SRNRA except where valid existing rights are present. This subsection also prohibited the issuance of new mineral leases for lands in the SRNRA and, except where valid existing rights are present, prohibited operations on existing mineral leases for lands in the SRNRA. Section 8(c) further prohibited the issuance of new contracts or permits for lands in the SRNRA authorizing the extraction of mineral materials such as stone, sand, and gravel unless those mineral materials are to be used in the construction and maintenance of roads and other facilities within the SRNRA and/or the excluded areas. Finally, section 8(c) prohibited operations conducted pursuant to existing mineral material contracts and permits, except where valid existing rights are present.

Section 8(d) directed the Secretary to promulgate supplementary regulations to promote and protect the purposes for which the SRNRA was designated.

The only locatable mineral development activities that may occur in the SRNRA are (1) those for the purpose of gathering information to confirm or demonstrate a discovery of a valuable mineral deposit made prior to the date that the lands at issue were withdrawn from the operation of the United States mining laws; (2) those for the purpose of obtaining evidence for a mineral contest hearing; and (3) those for which the Forest Service has confirmed that valid existing rights are present and for which the Forest Service has issued the required authorization for the proposed operations.

Mineral material operations may also occur in the SRNRA pursuant to contracts or permits issued on or after November 16, 1990, providing that the mineral materials are to be used in the construction and maintenance of roads and other facilities within the SRNRA and/or the excluded areas. Exercise of outstanding mineral rights may also occur in the SRNRA after the Forest Service has confirmed that those rights are present and has issued any required authorization for those proposed operations.

On or about November 8, 1994, California Nickel Corporation (the ''Corporation''), the largest mining claim holder in the SRNRA, filed suit against the Department of Agriculture in the United States District Court for the Northern District of California alleging violations of the Act (*California Nickel Corporation* v. *Glickman*, No. C94–3904 DLJ (N.D. Cal.)). Specifically, the Corporation alleged that the Department had unreasonably delayed in promulgating the subject regulations which are required under the Act. The Forest Service did not disagree that Section 8(d) requires the promulgation of regulations; and, in fact, the agency had made some preliminary progress in developing regulations prior to the initiation of this lawsuit.

Following the publication of final supplementary regulations by the Forest Service in the **Federal Register** on April 3, 1996, the Corporation amended its complaint to challenge the substance of the final regulations. Among other things, the Corporation alleged that the final rule was arbitrary and capricious and violated the due process protections afforded under the United States Constitution.

The Government disagreed. However, on March 14, 1997, the district court agreed with the Corporation and set aside the April 3, 1996, final supplementary regulations. Specifically, the court held that the provision in the final rule which limited to five years the period for which a plan of operations may be approved was arbitrary and capricious, because the agency had failed to adequately address whether such a provision might result in a taking of private property. The court additionally held that the failure to establish a timetable for the Forest Service's review of plans of operations was arbitrary and capricious, because the rationale for not having a timetable had not been adequately presented. Finally, the court held that the Forest Service's failure to include a provision in the final rule that would enable an operator to obtain review by the Department of the Interior of a Forest Service determination that the operator did not possess valid existing rights was a denial of due process.

Although the Department respectfully disagrees with the district court's analysis of the legal sufficiency of the April 3, 1996, final rule, it chose not to seek an appeal before the Court of Appeals for the Ninth Circuit, since it would inevitably add more time to what has already become a lengthy process. Rather, the decision was made to modify those provisions of the April 3, 1996, final rule which the district court deemed objectionable, in a way that would ensure that the purposes for which Congress established the SRNRA would not be compromised. This new proposed rule reflects that balance.

**Provisions of the Proposed Rule**

This proposed rule has been prepared pursuant to section 8(d) of the Act and it addresses the concerns identified by the district court in its March 14, 1997, decision. The proposed rule would supplement existing Forest Service regulations pertaining to locatable mineral operations and mineral material operations in the SRNRA and provide new regulations pertaining to outstanding mineral rights on National Forest System lands in the SRNRA. Accordingly, mineral operations in the SRNRA would be subject not only to the provisions of this rule, but also to the applicable provisions of 36 CFR parts 228, 251, and 261, among others. The proposed rule clearly states that if there is a conflict or inconsistency between this rule and other applicable regulations, this rule would take precedence to the extent permitted by law.

The proposed rule divides mineral operations in the SRNRA into three categories—operations for locatable minerals under the United States mining laws, operations for outstanding mineral rights, and operations for mineral materials. The Act withdrew all federal lands within the SRNRA from operation of the mineral leasing laws, including the laws governing the leasing of geothermal resources, subject to valid existing rights. Since no new leases can be issued and there are no existing mineral leases within the SRNRA, leasing will not be discussed in the proposed rule. In addition, there are no reserved mineral rights in the SRNRA; consequently, there is no need to address this category of mineral ownership in the proposed rule. In the event that reserved mineral rights are established at some later date in the SRNRA, the agency will evaluate the applicable regulations currently set forth at 36 CFR 251.15 to determine whether sufficient protection can be afforded for the values for which the SRNRA was established. If not, then the agency would evaluate the need for further amendments to this rule.

The proposed rule is specifically designed to supplement existing locatable mineral regulations at 36 CFR part 228, subpart A, and thus to provide a greater degree of protection for the natural resource values identified in the SRNRA than would be provided under current regulations alone. This additional protection would be accomplished through: (1) The expansion of the types of mineral operations subject to the requirement for a plan of operations; (2) the establishment of additional reclamation standards; (3) the recognition that the Forest Service may disapprove a plan of operations; (4) a procedure to modify a previously approved plan of operations; and (5) expedited suspension procedures when harm or damage to resources or to people is imminent or is occurring. These and the other provisions of the proposed rule would enable the Forest Service to administer mineral operations in the SRNRA consistent with the purposes for which the area was established.

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

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

*Section 292.60, Purpose and Scope*

Paragraph (a) of the proposed rule in § 292.60 explains that the purpose of this rule is to establish the rules and procedures for regulating mineral operations on National Forest System lands in the SRNRA so that they are in conformance with the Act. Paragraph (b) explains that rules and procedures in this rule apply only to mineral operations on National Forest System lands in the SRNRA. Paragraph (c) notes that this rule supplements existing Forest Service regulations and that mineral operations on National Forest System lands in the SRNRA will continue to be subject to other applicable regulations governing these activities, particularly parts 228, 251, and 261 of this chapter. Paragraph (d) states that, to the extent allowable by law, the provisions of this rule shall take precedence over the provisions of other applicable regulations if there is a conflict or inconsistency between them. Finally, paragraph (e) states that certain mineral operations approved before the effective date of this proposed rule would continue to operate under the conditions of approval, including the specified period of operations, providing that those operations are based on the existence of valid existing rights.

*Section 292.61, Definitions*

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

*Section 292.62, Valid Existing Rights*

Proposed § 292.62(a) sets forth the definition of ''valid existing rights'' which the agency will use in making its determination concerning whether an applicant may engage in mining activity in the SRNRA. The date of withdrawal of National Forest System lands in the SRNRA from the operation of the mining and mineral leasing laws differs depending on whether the lands are within segments of the five wild and scenic rivers and their tributaries originally classified ''wild'', the Siskiyou Wilderness (excluding the Gasquet-Orleans Corridor addition), or the rest of the SRNRA (including the scenic and recreational segments of the five wild and scenic rivers and their designated tributaries and the Gasquet-Orleans Corridor addition to the Siskiyou Wilderness). These withdrawal dates are critical in the determination of valid existing rights.

Proposed § 292.62(b) clarifies the limitation of a mineral operation that the operator is permitted to conduct in order to confirm discovery of a valuable mineral deposit. This provision would authorize the approval of a plan of operations for limited mineral operations for the purposes of gathering information to confirm or demonstrate the discovery of a valuable mineral deposit made prior to the date that the lands at issue were withdrawn from the operation of the United States mining laws. Such operations may be necessary in certain circumstances to meet the requirements of § 292.64(a) or to obtain evidence for an upcoming mineral contest hearing. Case law discusses the limited circumstances where an operator may conduct mining operations in areas withdrawn from mineral entry prior to a final determination of valid existing rights (*United States* v. *Mavros,* 122 IBLA 297 (1992) and *United States* v. *Crowley,* 124 IBLA 374 (1992)). First, an operator must demonstrate that there has been an exposure of valuable minerals. If such a showing is made, authorization may be granted for the mining claimant to enter the claim(s) to gather information to

substantiate that a discovery existed as of the date of withdrawal and, if necessary, the date of an impending contest hearing. The scope of the mineral operations which may be approved pursuant to this section is limited to confirming the pre-existing discovery of a valuable mineral deposit and confirming the extent of the mineral deposit. Mineral operations which constitute prospecting or exploration or any other type of activity to disclose a deposit not exposed prior to the withdrawal are not allowed. Examples of the type of limited activities for information gathering purposes that have been found permissible include drilling to sample a previously disclosed valuable mineral deposit or reopening a caved portion of a previously driven adit to take samples of the mineral that had been exposed prior to withdrawal of the lands from mineral entry. However, an operator has no right to conduct any mining activities on land withdrawn from mineral entry to find mineralization rather than to confirm the existence and extent of valuable mineral deposits previously found.

*Section 292.63, Plan of Operations Supplementary Requirements*

Proposed § 292.63(a) would reduce the amount of discretion that the authorized officer currently has under 36 CFR 228.4(a) in determining whether a plan of operations or a notice of intent is required for a proposed mineral operation. In addition to the requirements of 36 CFR 228.4 for submitting a plan of operations or a notice of intent, this proposed rule would require a plan of operations for some mineral operations that in other locations may have been routinely conducted under a notice of intent. For example, to operate mechanical or motorized equipment such as a suction dredge and sluice under the proposed rule would require a plan of operations. Given the special status of the SRNRA and the special statutory management direction for the area set by Congress, further regulation of these kinds of operations is necessary in order to maintain the resource values which prompted its designation.

Many information requirements specified in proposed § 292.63(b) are for the same information that has been routinely gathered by the Forest Service from Bureau of Land Management records, county records, and the operator when a plan of operations is submitted for an area withdrawn from the operation of the United States mining laws subject to valid existing rights. Requiring the operator to submit this information as part of the plan of operations should decrease the cost and the amount of time it takes for the Forest Service to collect the information, and, thereby, to make a valid existing rights determination.

Proposed § 292.63(c) outlines the minimum operating information that must be included in a plan of operations in the SRNRA. The information requirements found at 36 CFR 228.4(c) and 228.8 that are generally applicable for a plan of operations on National Forest System lands are also applicable to a plan of operations proposed within the SRNRA. In addition to these specific information requirements, this proposed rule would require an operator who is not the claim owner to submit a copy of the authorization granting the operator permission to conduct operations on a mining claim owned by another party.

Proposed § 292.63(c) (1), (2), and (3) would require an operating plan to address environmental protection requirements of § 228.2 by identifying hazardous materials, toxic materials, and similar chemical substances to be used during mineral operations and how they will be disposed of; identifying the character and composition of mineral wastes that will be used or generated and a proposed method or strategy for the placement, control, isolation, or removal of the wastes; and how public health and safety are to be maintained. Proposed § 292.63(c) (1), (2) and (3) are proposed in order to protect natural resources from unnecessary environmental damage and to protect human health and safety as well as wildlife from unnecessary or dangerous risk from exposure to hazardous or toxic substances. There are significant environmental problems associated with past mining activities and practices that could have been avoided or mitigated if preliminary waste characterization or the proper storage, use and disposal of hazardous substances had occurred. For example, mining activities when sulfide minerals (e.g., pyrite, marcasite, and pyrrhotite) are present are likely to produce acid rock drainage resulting in contamination of waters of the United States and destruction of fish, amphibians, biota, and vegetation. Improper storage or use of mercury or cyanide in gold recovery operations have resulted in contamination of soils and surface and ground water and may adversely affect fish and wildlife, as well as pose a risk to human health and safety. Suction dredge operations utilize petroleum products, which if improperly used, stored or disposed of, result in contamination of soils and water and, potentially, groundwater, as well as adversely affecting fish and wildlife. The SRNRA has habitat for threatened and endangered species. It is also a popular recreation area. If mine waste is characterized at the plan of operations stage, then that information can be used to determine the appropriate mine design and to determine the treatment and disposal of waste and tailings to mitigate impacts and prevent unnecessary environmental damage and risks to people, fish, and wildlife. Likewise, if hazardous materials and other toxic materials, including but not limited to pesticides, herbicides, and petroleum products, are described at the plan of operations stage, then that information can be used to prevent improper use, storage, and disposal.

Proposed § 292.63(c)(3) would require reclamation concurrent with operations to the extent practicable. The existing regulations at 36 CFR 228.8(g) allow the authorized officer several options for determining when reclamation activities can occur. These activities can take place upon depletion of the mineral deposit, during the operation if practicable, or within one year after the operations have concluded, unless the authorized officer allows for a longer time. In contrast, reclamation activities for mineral operations under the proposed rule would occur concurrently with the mineral operations whenever practicable. A requirement for concurrent reclamation would allow for the land disturbed by the mining activity to be reclaimed in the shortest possible time. This requirement is consistent with the statutory requirements to protect and preserve the values of the SRNRA.

*Section 292.64, Plan of Operations*

Proposed § 292.64 establishes the procedures by which a plan of operation for mineral operations on mining claims in the SRNRA would be processed.

Proposed § 292.64(a) explains that the first item considered by the authorized officer, except when the plan is for limited mineral operations for purposes described in § 292.62(b), is whether the plan contains sufficient information for the Forest Service's review of the operator's claim that valid existing rights are present. For reasons of efficiency, it is logical for the authorized officer to first determine whether valid existing rights are present before reviewing that part of the plan which describes how the operator proposes to develop the mineral deposit. The proposed rule specifies that within 120 days of the submission of a plan of operations, the authorized officer must notify the operator in writing whether

the information provided was sufficient for the Forest Service's review of the operator's claim that valid existing rights are present. If the authorized officer concludes that additional information from the operator is necessary to review the operator's claim that valid existing rights are present, he or she shall inform the operator of what information needs to be provided. Upon the submission of all such information, the authorized officer shall promptly notify the operator in writing of the anticipated date of completion of the valid existing rights determination, which shall not be more than two years from the date of the notice. If the operator fails to provide sufficient information for the Forest Service's review of the operator's claim that valid existing rights are present, the Forest Service has no obligation to evaluate whether the operator has valid existing rights or to process the operator's proposed plan of operations.

An on-the-ground examination and written report by a certified mineral examiner is required for the agency to make a determination of valid existing rights for unpatented mining claims located within the SRNRA. The field examination and report may often take as much as two years to complete, due to such factors as the weather, accessibility of field sites, the availability of qualified personnel, preparation of environmental documents for sampling, and research and analysis.

The season for conducting field work in the SRNRA in order to determine valid existing rights is limited to approximately five months, May through September, due to the weather. This area annually receives about 80–90 inches of rain, predominantly from October through April. Back country roads and trails to mining claims may become impassable, and rain swollen rivers and streams cannot be safely sampled for gold placer deposits until the waters recede in the spring. During the winter, the agency determines the schedule for field examinations of mining claims; therefore, mining plans of operations that are submitted to the Forest Service during the spring or summer months cannot be scheduled until the following winter.

The scheduling of mining claim examinations is also greatly affected by the availability of certified review mineral examiners and mineral examiners. Forest Service manual direction on locatable minerals (FSM 2803) requires that only Forest Service certified review mineral examiners and mineral examiners conduct examinations involving mining claim validity and valid existing rights determinations. There are fifty-five (55) certified review mineral examiners and mineral examiners nationwide, but only five (5) in the Pacific Southwest Region of the Forest Service where the SRNRA is located. Generally, a certified mineral examiner schedules a field examination for a case involving validity with one year advance notice. Complex and/or large-scale mining cases may require two or more mineral examiners working together to complete the project. Therefore, the on-the-ground examination of a mining claim that is required for determination of valid existing rights may have to be scheduled to take place the calendar year following the submission of a plan of operations.

Field examination also may have to be preceded by a review of the environmental impacts associated with the field activity pursuant to the National Environmental Policy Act. Environmental impacts needs to be assessed whenever fieldwork entails trenching or some other form of excavation to prepare the site for sampling that might result in a disturbance of surface resources. The timeframes for conducting such a review would typically depend on a number of factors including, among other things, the magnitude and type of the proposed sampling, the location and accessibility of the site, other scheduled field examinations, and budgetary and staff constraints. Generally, however, a field examination would be scheduled sometime during the field season of the year after the plan of operations is submitted.

There are only two Certified Review Mineral Examiners in the Pacific Southwest Region. After the field examination is complete, the Forest Service must analyze the data collected and prepare a written report. The analysis typically involves estimating the quantity and quality of the minerals in the deposit, compiling market data, calculating development and production costs (including reclamation and environmental mitigation costs), and preparing discounted cash flow or similar analyses. Additional time may be needed to prepare maps and exhibits and to present the data and findings in a written report that must be approved by a certified review mineral examiner. The report preparation can take several months, depending upon the complexity of the case.

Proposed § 292.64(a) also would permit the authorized officer, upon a finding of good cause, to notify the operator in writing that an extension of time will be necessary to complete the valid existing rights determination. Situations which might warrant an extension include, but are not limited to: (1) Inaccessibility of the mining claims for a substantial part of a field season from May through September due to fire, flooding, landslides, or other natural conditions; (2) unavailability of specialists needed to conduct a mineral examination or prepare a mineral report due to other non-discretionary duties or medical leave; and (3) significant delays in performing surface disturbing activities on the mining claim required for the mineral examination in order to comply with environmental statutes and regulations.

Proposed § 292.64(b) explains that if the authorized officer determines that valid existing rights are not present, that officer must notify the operator of the determination, the reasons for the determination, that the development activities as stated in the plan of operations cannot be conducted, and that the Forest Service will transmit its mineral report to the Bureau of Land Management (BLM) in the United States Department of the Interior for review along with a request that the BLM initiate a mineral contest action against the pertinent mining claims. This is consistent with long-standing agency practice.

Proposed § 292.64(c) provides that determinations by the authorized officer that valid existing rights are not present will be regarded as final agency action not subject to further review or administrative appeal. This is also consistent with long-standing agency practice that adverse determinations referred to the Bureau of Land Management are not decisions subject to appeal since the BLM retains the statutory authority to make the final determination.

Proposed § 292.64(d) explains that if the authorized officer determines that valid existing rights are present, then the officer will notify the operator of the determination and that the review of the operational details of the plan will proceed. The authorized officer may, if he or she desires, inform the operator of the estimated time he or she thinks will be necessary to complete the evaluation of the plan of operations. Although the agency is committed to processing the plan of operations as expeditiously as possible, there are two reasons the proposed rule does not specify the time by which the review will be completed.

First, the time to complete the review of a plan of operations will vary dramatically from case to case depending upon the scope of the mining activity contemplated by the operator and the legal requirements with which the Forest Service must comply in

conducting the review. The review of some proposals for small-scale mining activities that will have a *de minimis* effect on SRNRA lands and resources could be completed in a few weeks. The review of proposals for large-scale mining operations which would have substantial effects on SRNRA lands and resources, on the other hand, may take a few years to complete. This disparity is based primarily on the legal requirements associated with agency evaluation of proposed actions which could have a major environmental impact. Specifically, compliance with the requirements of the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA), among others, can frequently take several years.

In most instances, a review of large-scale mining operations in the SRNRA would necessarily entail the preparation of an environmental impact statement (EIS) pursuant to NEPA, consultation with the National Marine Fisheries Service and/or the United States Fish and Wildlife Service regarding the effect of the proposed operation on threatened and endangered species pursuant to the ESA, and consultation with the Advisory Council on Historic Preservation regarding the effect of the activity on sites included in the National Register of Historic Places pursaunt to the NHPA. Thus, given the extreme variability in the time it will take to complete its review, the Forest Service has concluded that it would be inappropriate to establish in this rule a ''one size fits all'' timeframe for reviewing plans of operations irrespective of the type of mining operation proposed or the potential impact the activity might have on SRNRA lands and resources.

Second, as noted above, where large-scale mining operations are contemplated, the Forest Service is legally required to consult with several other federal agencies as part of its review of the plan of operations. Although these other agencies share the Forest Service's desire to fulfill their obligations as quickly and efficiently as possible, the Forest Service recognizes that it has no control over how these other agencies determine their priorities and allocate their resources. Thus, it is deemed inappropriate for the Forest Service to establish a definite time for completing its review of a plan of operations since completing this task depends, at least in part, on input from, and consultations with, other agencies that are beyond the purview of this regulation and outside the Department of Agriculture.

Proposed § 292.64(e) states that after the minimum informational requirements concerning the operational part of the plan of operations has been submitted, the authorized officer shall notify the operator in writing at the conclusion of the review whether the plan has been approved or disapproved. These information requirements are necessary for the authorized officer to adequately evaluate the operational portion of the proposed plan of operations.

Proposed § 292.64(f) would require the authorized officer to explain the basis for a decision not to approve the plan of operations. It is current agency policy for the agency to notify the operator whether the proposed plan of operations is approved or not, and if not, a written explanation why it can not be approved.

Proposed § 292.64(g) would require the authorized officer to establish the time period for which a plan of operations would be approved. The time period would be determined on a case-by-case basis but would be based upon the minimum amount of time that would be reasonably necessary to complete the activities set forth in the plan of operations.

Proposed § 292.64(h) is a provision that would enable the authorized officer to review and modify a previously approved plan of operations under a strictly limited set of circumstances. For example, a modification may be necessary to bring a previously approved plan of operations into conformance with applicable law and regulation. Or, a modification may be necessary to address new information such as the listing of a new species as threatened or endangered which was not listed the time the plan was approved.

Proposed § 292.64(i) explains that substantive changes to an already approved plan of operations proposed by the operator must be reviewed and approved by the authorized officer. Under this paragraph, the operator has the option to submit a modification of an approved plan of operations, as provided for in 36 CFR 228.4(e), which clearly identifies the elements that are different from the previously approved plan of operations, or to submit a supplemental plan of operations pursuant to 36 CFR 228.4(d).

*Section 292.65, Plan of Operations Suspension*

Proposed § 292.65 authorizes the authorized officer to suspend operations under an approved plan of operations, if the operator is not in compliance with applicable law, regulations, or the terms and conditions of the approved plan. If an operator is found to be in noncompliance, the authorized officer must provide the operator with the reasons why the mineral operation is not in compliance with the laws, regulations, or the approved plan of operations; specify what the operator has to do to come into compliance; and specify a reasonable time period to abate the noncompliance. Generally, the operator will have at least 30 days from the date of the notice to correct the noncompliance before a suspension becomes effective. However, for those instances that present an imminent threat of harm to public health, safety, or the environment or where such harm is already occurring, the authorized officer can take immediate action to alleviate the threat or damage. The immediate suspension procedures would allow the authorized officer to take steps to avoid or minimize the risk of harm to persons and the environment. Under the immediate suspension procedures, the authorized officer would be required to notify the operator of the suspension and provide an opportunity for response only after the harm or risk of harm has been abated.

*Section 292.66, Operating Plan Requirements*

Proposed § 292.66 establishes that operating plans are required for operations involving outstanding mineral rights; that is, mineral rights owned by a party other than the surface owner at the time the surface estate was conveyed to the Federal government.

Proposed § 292.66(a) specifies that all individuals who want to exercise outstanding mineral rights in the SRNRA must submit an operating plan to the authorized officer.

Proposed § 292.66(b) specifies the information that an operator must provide in order to conduct mineral operations involving outstanding mineral rights where the surface estate is National Forest System land within the SRNRA. The operating plan must include specific information, such as: (1) The name and legal mailing address of the operator, owner, and any lessees, assigns, and designees; (2) evidence of ownership of the outstanding mineral rights; (3) sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, and the location and size of areas to be disturbed, including existing or proposed structures, facilities and other improvements; (4) a description of the type of operations including a schedule for construction and drilling; (5) identification of the hazardous materials

and any other toxic materials to be used during the operation and the proposed means for disposing of such substances; (6) identification of the character and composition of the mineral wastes that will be used or generated and a proposed method or strategy for their handling; and (7) a reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations, including descriptions of how public health and safety would be maintained and how the area of surface disturbance would be reclaimed. The information required in § 292.66(c) (1) and (2) is needed in order for the authorized officer to determine that the individuals or entities proposing the operations hold the mineral rights. The information required in § 292.66(c)(3) is needed in order for the authorized officer to determine that the proposed operations would occur on the mineral estate, as well as what uses off the mineral estate would require additional authorizations. The information required in § 292.66(c) (4) through (7) is needed for the same reasons set forth in the discussion at proposed § 292.63(c) (1) through (3), namely to protect the land and resources of the SRNRA from unnecessary environmental damage, protecting humans and wildlife from unnecessary or dangerous risk from exposure to hazardous or toxic substance, as well as ensuring that reclamation would return the surface to a condition or use that is consistent with the Six Rivers National Forest Land and Resource Management Plan.

*Section 292.67, Operating Plan Approval*

Proposed § 292.67 establishes the procedures by which operating plans for outstanding mineral rights in the SRNRA would be processed. The requirements of the proposed section reflect long-standing agency administrative practice.

Proposed § 292.67(a) requires the authorized officer to review that portion of the operating plan related to substantiating outstanding mineral rights and notify the operator whether the necessary information required to substantiate ownership of outstanding mineral rights has been provided to the Forest Service. If more information must be provided by the operator, the authorized officer must specify what is needed. If sufficient information has been submitted, the authorized officer would notify the operator in writing of the anticipated date that the review would be completed. Before an operator is allowed to conduct mineral operations in withdrawn lands, the agency must determine that the operator has a legal right to conduct the proposed activity. This process has been used by the agency for many years.

Proposed § 292.67(b) would specify that if outstanding mineral rights have not been verified, the authorized officer would notify the operator of the finding, the reasons for such a finding, and that the proposed operation cannot be conducted. This is the standard operating procedure used by the agency for many years.

Proposed § 292.67(c) would specify that if outstanding mineral rights have been verified, the authorized officer would notify the operator that outstanding mineral rights have been verified and that the Forest Service would begin a review of the proposed operating plan. For the same reasons as set forth in the discussion at proposed § 292.67(c) with respect to plans of operations, the proposed rule does not include a time period by which the Forest Service must complete the review of operating plans involving outstanding minerals rights. Since the time to review operating plans may vary greatly depending on the scope of the proposed mining activity, and since other agencies besides the Forest Service may have a role to play in the review process, the agency did not think it was appropriate to include a provision requiring the completion of the review by a date certain. Again, however, the agency is committed to doing everything within its authority to process operating plans as quickly as possible subject, of course, to the legal requirements with which it must comply.

Proposed § 292.67(d) explains that the authorized officer shall focus the review of the operating plan on whether the proposed development activities are consistent with the rights granted by the deed and with this provisions specified in the Six Rivers National Forest Land and Resource Management plan and whether the development activities will utilize the least amount of surface lands necessary for the operations.

Proposed § 292.67(e) would specify that upon completion of the review of the operating plan, the authorized officer would notify the operator of the authorized officer's findings. If the findings indicate that the proposed operating plan is consistent with the rights granted by the deed of conveyance, consistent with the Six Rivers National Forest Land and Resource Management Plan, and uses only that portion of the surface that is absolutely necessary, the operating plan would be approved by the Forest Service. If the findings indicate that the proposed operating plan does not meet one or more of these three criteria, the authorized officer must explain how the proposed operating plan is inconsistent with one or more of the three criteria and negotiate proposed changes with the operator. This is a long-standing procedure used by the agency to determine whether or not the operator has a legal right to conduct the proposed minerals activity on the private land. The intended affect is to ensure that the rights of the private land owner and the Forest Service are considered in the decisionmaking process.

Proposed § 292.67(f) would require that another operating plan be submitted if additional operations, not already included in an approved operating plan, are proposed and that the process as outlined in § 292.67(d) would be followed. This provision is similar to provisions in 36 CFR 228.5(c) and 292.64(i) of the proposed rule. By requiring similar information and review of operations for outstanding mineral rights as required for locatable minerals, the Forest Service can ensure that the values for which the SRNRA was established are protected. Also, operators can be assured that requirements for modifications to an operating plan are consistent with requirements of other mineral activities, and thus compatible with direction in the forest plan.

*Section 292.68, Mineral Material Operations*

Proposed § 292.68 provides that disposals of mineral materials would continue to be governed by the existing mineral material regulations set forth at 36 CFR part 228, subpart C, but that any disposals made after the establishment of the SRNRA would be approved only if the material is not within a designated wilderness area and is to be used for construction and maintenance of roads and other facilities within the SRNRA or in one of the four excluded areas identified by the Act.

*Section 292.69, Reclamation*

Proposed § 292.69 states that when it is practicable, reclamation activities will be conducted concurrently for all mineral operations in the SRNRA. Reclamation was previously addressed under the plan of operations supplementary requirements, but now is proposed as a separate section to make it clear that concurrent reclamation is applicable to all mineral operations and that, in contrast to most operations, concurrent reclamation is not just an option for consideration, but is a normal operating procedure in the NRA. This requirement is consistent with the

special protection that Congress intended for the area.

*Section 292.70, Indemnification*

This section would provide a means of protecting the United States from liability as a result of claims, demands, losses, or judgments caused by an operator's use or occupancy. In addition, the operator would be required to pay the costs incurred by the Forest Service or other agencies resulting from noncompliance with an approved plan of operations or an approved operating plan.

Operators have not had to bear any of the costs incurred by the Forest Service to administer mineral operations on National Forest System lands even if operations were not being conducted under the approved conditions. Proposed § 292.70(c) would require those operators who do not abide by the conditions of an approved plan of operations or operating plan to pay the costs incurred by the Forest Service resulting from noncompliance. Congress has specifically allowed for mineral activities in this special area. This cost provision is a monetary incentive to help ensure that operators who have the legal right to conduct mineral operations in the NRA abide by the requirements approved for their operation.

**Regulatory Impact**

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

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

**Environmental Impact**

The Forest Service has reviewed the environmental assessment (EA) that was prepared for the SRNRA supplementary mining regulations previously published on April 3, 1996, and determined that no additional analysis is necessary for this rulemaking because the proposed changes to the rule will have no effect on the quality of the human environment. A copy of the EA is available upon request by calling the contact listed earlier in this rulemaking under **FOR FURTHER INFORMATION CONTACT**.

**Controlling Paperwork Burdens on the Public**

Section 292.63(b) of this proposed rule specifies that in addition to the requirements of § 228.4, an operator must provide information to support valid existing rights as part of a plan of operations. Also, proposed § 292.66(b) requires those who wish to exercise outstanding mineral rights to submit an operating plan. The Office of Management and Budget approved the information collection, titled 36 CFR part 292, subpart G—Smith River National Recreation Area, prior to publication of the final SRNRA supplementary regulations in the **Federal Register** on April 3, 1966, and assigned OMB Approval No. 0596–0138. That approval remains in effect.

Section 292.63 (c)(1)—(c)(3) of this proposed rule specifies that in addition to the requirements of §§ 228.4 and 228.8, an operator must provide information identifying hazardous and toxic materials and similar chemical substances to be used during the mineral operations and how they will be disposed of; the character and composition of mineral wastes that will be used or generated and the proposed method or strategy for handling those wastes; and how public health and safety will be maintained. This information requirement was not part of the final supplementary SRNRA rule published in the **Federal Register** on April 3, 1996, and is not covered under other approved information requirements. Therefore, in accordance with the rules of 5 CFR part 1320 and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service is modifying its description of OMB No. 0596–0138 and requesting Office of Management and Budget review and approval of the information that would be required by § 292.63 (c)(1)—(c)(3).

Although §§ 292.63 (c)(1)—(c)(3) of the proposed rule requires the operator to submit more information with a plan of operations than is required by part 228, subpart A, this is information that the operator needs to provide in order to conduct the mineral operations. Therefore, these provisions will require little additional effort by the operator. The agency estimates that an operator preparing a plan of operations will spend an average of 2 hours gathering and submitting the information related to the use and disposal of hazardous materials, the nature and handling of the mineral waters, and maintenance of public health and safety. Respondents are operators planning mining operations on federal land in the SRNRA. An estimated 2 respondents respond each year, resulting in an estimated total annual burden of 4 hours. Reviewers who wish to comment on these information requirements should submit their views to the Forest Service at the address listed earlier in this document as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**No Takings Implications**

In compliance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, a Takings Implication Assessment (TIA) of this proposed rule has been prepared and considered in determining whether to proceed with the proposed rule as currently drafted. The TIA concluded that the agency action of publishing a proposed rule for public notice and comment did not present a risk of a taking.

**Unfunded Mandates Reform**

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

**Civil Justice Reform Act**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted, (1) all State and local laws and regulations that are in conflict with this

proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to his proposed rule; (3) it would not require administrative proceedings before parties could file suit in court challenging its provisions.

**List of Subjects in Part 292**

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

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

## PART 292—NATIONAL RECREATION AREAS

### Subpart G—Smith River National Recreation Area

Sec.



## Subpart G—Smith River National Recreation Area

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

### 292.60 Purpose and scope.

(a) *Purpose.* The regulations of this subpart set forth the rules and procedures by which the Forest Service regulates mineral operations on National Forest System lands within the Smith River National Recreation Area as established by Congress in the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

(b) *Scope.* The rules of this subpart apply only to mineral operations on National Forest System lands within the Smith River National Recreation Area.

(3) *Applicability of other rules.* The rules of this subpart supplement existing Forest Service regulations concerning the review, approval, and administration of mineral operations on National Forest System lands including, but not limited to, those set forth at parts 228, 251, and 261 of this chapter.

(d) *Conflicts.* In the event of conflict or inconsistency between the rules of this subpart and other parts of this chapter, the rules of this subpart take precedence, to the extent allowable by law.

(e) *Applicability to ongoing operations.* The authorized officer may permit operations conducted pursuant to:

(1) An operating plan or a plan of operations that was approved prior to the effective date of these regulations to continue under the specified conditions of approval or issuance, provided that valid existing rights to extract the minerals are present or the operations are for the purposes specified in § 292.62(b), provided further that the authorized officer requires modification of such operations:

(i) To bring the plan into conformance with changes in applicable federal law or regulation;

(ii) 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

(iii) To correct errors or omissions made at the time the plan was approved; for example, to ensure compliance with applicable federal law or regulation.

(2) A permit or contract for the disposal of mineral materials which was issued prior to the effective date of these regulations to continue under the specified conditions of issuance, provided that the authorized officer requires the modification of such operations:

(i) To bring the plan into conformance with changes in applicable federal law or regulations;

(ii) 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

(iii) To correct errors or omissions made at the time the plan was approved; for example, to ensure compliance with applicable federal law or regulation.

### § 292.61 Definitions.

The special terms used in this subpart have the following meaning:

*Act* means the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

*Authorized officer* means the Forest Service officer to whom authority has been delegated to take actions pursuant to the provisions of this subpart.

*Hazardous material* means any hazardous substance, pollutant, contaminant, hazardous waste, and oil or other petroleum products, as those terms are defined under any 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, and South Fork Smith River, and their designated tributaries, except Peridotite 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-Orleans 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 (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) *Limited operations to confirm discovery.* Upon receipt of a proposed plan of operations as defined in § 292.63 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 Untied States mining laws, the authorized officer may authorize limited mineral operations 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. Such authorization shall be limited in scope and duration so as to 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.

**Locatable Minerals**

**§ 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 part, 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 to support 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) 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 36 CFR 228.4 (c)(1) through (c)(3) which includes information about the proponent and a detailed description of the proposed operation. In addition, if the operator and claim owner are different, the operator must submit a copy of the authorization or agreement under which the proposed operations are to be conducted. A plan of operations must also address the environmental requirements of 36 CFR 228.8 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 used during the mineral operation, and the proposed means for disposing of such substances;

(2) 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, or removal; and

(3) An identification of how public health and safety are to be maintained.

**§ 292.64 Plan of operations approval.**

(a) *Timeframe for review.* Except as provided in paragraph (b) of § 292.62, 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 one hundred and twenty (120) 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 two (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) If the authorized officer concludes that there is not sufficient evidence of valid existing rights, he or she shall so notify the operator in writing. In the notice, the authorized officer shall set forth the reasons for the determination, inform the operator that the proposed mineral operation cannot be conducted, and advise the operator that the Forest Service will promptly notify the Bureau of Land Management of its 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) that there is not sufficient evidence of valid existing rights is a final agency action not subject to further agency or Department of Agriculture review or administrative appeal.

(d) If the authorized officer concludes that there is sufficient evidence of valid existing rights, he or she shall so notify the operator in writing the review of the remainder of the proposed plan will proceed.

(e) Upon completion of the review of the plan of operations, the authorized officer shall ensure that the minimum information required by § 292.62(c) has been addressed and, pursuant to § 228.5(a) of the 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 can not 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;

(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.

(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 by the authorized officer pursuant to § 292.64 of this part.

**§ 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) Otherwise, the authorized officer must first notify the operator in writing of the basis for the suspension and provide the operator with a reasonably sufficient time to respond to the notice of the authorized officer or to bring the mineral operations into conformance with applicable laws, regulations, or the terms and conditions of the approved plan of operations.

(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, assigns, and designees;

(2) A copy of the deed or other legal instrument that conveyed the outstanding mineral rights;

(3) Sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, including but not limited to, existing and/or proposed roads or access routes identified for use, any new proposed road construction, and the approximate location and size of the areas to be disturbed, including existing or proposed structures, facilities, and other improvements to be used;

(4) A description of the type of operations which includes, at a minimum, a list of the type, size, location, and number of structures, facilities, and other improvements to be used;

(5) An identification of the hazardous 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 of 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.

### Indemnification

#### § 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 for 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. Such costs may include, but need not be limited to, attorneys' fees and expenses.

Dated: September 2, 1997.

**Robert Lewis, Jr.,**

*Acting Associate Chief.*

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## POSTAL SERVICE

### 39 CFR Part 111

### Eligibility Requirements for Certain Nonprofit Standard Mail Matter

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule will amend the standards for mail matter eligible to be sent at the Nonprofit Standard Mail rates. Specifically, mail matter that seeks or solicits contributions or membership dues payments and offers a premium item such as a tote bag or umbrella will be considered eligible for the Nonprofit Standard Mail rates provided that certain criteria are met. The Postal Service has determined that a revision to the standards in this manner is consistent with the treatment of similar solicitations by other agencies, most notably the Internal Revenue Service and the Federal Trade Commission.

**DATES:** Comments must be received on or before October 8, 1997.

**ADDRESSES:** Written comments should be mailed or delivered to Manager, Business Mail Acceptance, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6801 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jerome M. Lease, 202–268–5188.

**SUPPLEMENTARY INFORMATION:** Nonprofit organizations authorized to mail at the Nonprofit Standard Mail rates commonly offer premium items when soliciting contributions or membership in their organizations. These premiums, often referred to as ''backend premiums'' since they are offered in return for a contribution, donation, or membership dues payment, include such items as tote bags, umbrellas, t-shirts, and coffee mugs.

By statute, material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service, other than separately restricted travel, insurance, and financial instruments such as credit cards, is ineligible for the nonprofit rates of postage unless certain prescribed exceptions are met. 39 U.S.C. 3626(j)(1)(D). In accordance with its responsibility to administer the statute, the Postal Service promulgated new standards effective October 1, 1995.

Domestic Mail Manual (DMM) E670.5.4d. provides that Nonprofit Standard Mail rates may not be used for the entry of material that advertises a product or service unless the sale of the product or the provision of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the Nonprofit Standard Mail rates. In the implementation of these rules, the Postal Service has concluded that ''utilitarian'' items such as tote bags, umbrellas, coffee mugs, t-shirts, and similar items are not normally considered substantially related to an organization's qualifying purposes.

Since the adoption of the regulations implementing the statute, the Postal Service has consistently held that backend premiums are to be considered advertising for the product offered as a premium. This policy was discussed in **Federal Register** articles promulgating the new rules. See 60 FR 22270, 22272 (May 5, 1995); 59 FR 23158, 23162 (May 5, 1994). It has also been followed in publications such as USPS Publication 417 (Nonprofit Standard Mail Eligibility) and training in this area. Backend premiums are similar to typical advertisements because they invite a transaction which provides funds to the sender, but are dissimilar from typical advertisements because the value of the premium is usually much less than the required donation or other payment. Although cognizant of the argument that the donor is motivated by eleemosynary purposes, rather than a desire for the article, the transaction can also be viewed as part donation and part sale, which, in the view of the Postal Service, makes the offer an advertisement under the statutory restrictions. This interpretation of the statute is, at least in part, supported by IRS policy, which requires donors declaring charitable deductions to subtract the value of premiums from donations.

Recently, the Postal Service has become aware of new developments which warrant review of the policy concerning backend premiums. Notably, an advisory opinion by the Federal Trade Commission held that telephone fundraising calls in which certain backend premiums are offered are not ''telemarketing'' because they are not ''conducted to induce the purchase of