FOREST SERVICE MANUAL
WASHINGTON

TITLE 2800 - MINERALS AND GEOLOGY

Amendment No. 2800-94-2

Effective March 17, 1994

POSTING NOTICE. Amendments are numbered consecutively by title and calendar year. Post by document name. Remove entire document and replace with this amendment. Retain this transmittal as the first page of this document. The last amendment to this Title was Amendment 2800-94-1 to 2820 Contents.

This amendment supersedes Amendment 2800-90-5 to FSM 2822-2822.32e and Amendment 2800-90-1 to FSM 2822.4-2822.65.

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2822-2822.32e	18	-
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Digest:

2822.04b - This amendment to 2822.04b incorporates direction formerly contained in interim directive 2820-92-1, allowing the authority for leases, permits, and licenses to be redelegated to Forest Supervisors.

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Chief

CHAPTER 2820 - MINERAL LEASES, PERMITS, AND LICENSES

2822 - MINERAL LICENSES, PERMITS, AND LEASES ADMINISTERED BY DEPARTMENT OF THE INTERIOR. The Department of the Interior has the major role in issuing and supervising operations on mineral licenses, permits, and leases. The Forest Service cooperates with the Interior agencies to ensure that management goals and objectives are achieved, that impacts upon surface resources are mitigated to the maximum degree possible, and that the land affected is rehabilitated.

2822.01 - Authority. The principal authorities which relate to the exploration and development of leasable minerals are:

1. The Act of March 4, 1917 (39 Stat. 1150, as supplemented; 16 U.S.C. 520).

2. The Mineral Lands Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181-287).

3. Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 913; 30 U.S.C. 351-359).

4. President's Reorganization Plan No. 3 of 1946 (60 Stat. 1097; 5 U.S.C. Appendix).

5. Geothermal Steam Act of 1970 (84 Stat. 1566; 30 U.S.C. 1001-1025).

6. Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1083; 30 U.S.C. 181-287).

7. Surface Mining Control and Reclamation Act of 1977 (91 Stat 445; 30 U.S.C. 1201-1328).

8. National Materials and Mineral Policy, Research and Development Act of 1980 (94 Stat. 2305; 30 U.S.C. 1601-1605).

Other authorities amend or supplement those listed, and there are many special acts which apply to specific lands or specific minerals. The principal acts are described in FSM 1011 and 2801, and special acts are identified and described as required in FSM 2822.02-04d.

2822.02 - Objective. (FSM 2802.)

2822.03 - Policy. The Forest Service considers mineral exploration and development to be important parts of its management program. It cooperates with the Department of the Interior (USDI) in administering lawful exploration and development of leasable minerals. While the Forest Service is mainly involved with surface resource management and protection, it recognizes that mineral exploration and development are ordinarily in the public interest and can be compatible in the long term, if not immediately, with the purposes for which the National Forest System lands are managed.

2822.04 - Responsibility. Although the Forest Service is responsible for National Forest System lands which were reserved from public domain lands, the Mineral Leasing Act of 1920 authorizes the Secretary of the Interior to issue leases and permits without the consent of the Secretary of Agriculture. Thus, the Forest Service has no statutory responsibility for issuing or supervising prospecting permits or leases on these

lands. Under the Organic Administration Act (16 U.S.C. 551) the Secretary of Agriculture is authorized to make such rules and regulations as are needed to govern the use and occupancy of the National Forests, and to ensure their preservation. By exchange of letters in April and May 1945 with the Department of the Interior, the Forest Service reviews permit and lease applications and makes recommendations to protect surface resources and to prevent conflict with other activities, plans and programs of the Forest Service, and other users. Although not required by statute, the Secretary of the Interior generally accepts Forest Service recommendations regarding public domain leasable minerals. The Federal Coal Leasing Amendments Act of 1975 amends the 1920 Act in regard to public domain coal. Under that act, a coal exploration license or lease may not be issued without the consent of the surface managing agency and without including those conditions upon which consent is given. This applies also to the approval of a licensee's or lessee's operating plan.

In contrast to the 1920 Act, the Mineral Leasing Act for Acquired Lands (Act of Aug. 7, 1947) requires consent by the Secretary of Agriculture prior to the leasing of an acquired mineral estate in National Forest System lands. The Forest Service further has the right to specify terms and conditions under which a lease will be issued to protect the surface resources and to provide for their continued use for other program purposes. By mutual consent, the Secretaries of Agriculture and the Interior have extended those terms to all minerals in National Forest System lands subject to the President's Reorganization Plan No. 3 of 1946.

The Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025) requires that geothermal leasing on National Forest System lands be subject to the consent of, and subject to conditions prescribed by, the Secretary of Agriculture to protect the lands for the purpose for which they were withdrawn or acquired. The Secretary of the Interior is not authorized to issue prospecting permits for geothermal resources which might occur in National Forest System lands.

The National Forest Roads and Trails System Act of 1964 (16 U.S.C. 532-538) authorizes the Forest Service to operate and manage the Forest Development Road System and to require commercial users to perform construction, reconstruction, or maintenance commensurate with their use. When evaluating lease applications of any kind, the responsible Forest officer must determine those existing system roads that may be used, and evaluate new access requirements to determine which roads should become a part of the Forest Development Road System. Use of the road system by lessees is one of the areas where the greatest potential exists for conflict of use; therefore, it is incumbent on the Forest Service to make such recommendations or stipulations as are necessary to protect the integrity of the road system and to provide for its use and protection. The Forest Service shall issue appropriate permits for use of system roads both inside and outside the lease area. Special-use authorization is required for road construction outside the lease area.

2822.04a - Chief. The Chief retains the authority to make recommendations--or to give or deny consent--regarding issuance and special conditions for leases, permits, and licenses for mineral deposits in lands designated as experimental forests and ranges or natural areas (36 CFR 251.23).

2822.04b - Regional Foresters. Regional Foresters are responsible for providing the Forest Service response to BLM proposals to issue mineral leases, permits, and licenses for all lands other than those reserved to the Chief (2822.04a). The Regional Forester shall advise the appropriate office of USDI as to whether the Forest Service recommends, consents to, or does not object to issuance of a lease, permit, or license, and must enclose appropriate special stipulations. The authority for leases, permits, and licenses may be redelegated to Forest Supervisors providing they have the necessary expertise to accomplish the work. Within the Regional staff, this authority may not be redelegated below the Director having specific responsibility for minerals. The Regional Forester shall ensure that a lease, permit, or license adequately reflects requirements set forth in statutes, regulations, and existing agreements. This includes formal agreements for protection of municipal water supplies (36 CFR 251.9).

For lease applications involving lands within experimental forests and ranges, the Regional Forester shall obtain the concurrence of the appropriate Station Director prior to advising the Chief of proposed Forest Service requirements or recommendations.

Regional Foresters shall establish the time frames for processing mineral lease, permit, and license actions using the following criteria: (1) meet Forest Service commitments in national and Regional interagency agreements; (2) meet Forest Service requirements for evaluation and integration with surface resources; (3) be responsive to public needs; and (4) accomplish actions in a cost effective manner.

The Regional Forester may work directly with the appropriate official of the USDI in regard to technical matters concerning leases, permits, and licenses on lands under Forest Service jurisdication. This responsibility may be redelegated to the Forest Supervisor.

The Regional Forester is responsible for maintaining current records of mineral leases, prospecting permits, and coal exploration licenses. The records shall include the data required for Report FS-2800-A, Semi-annual Lease Status Report. Responsibilities for recordkeeping and reporting shall be redelegated as necessary to ensure that each organizational level obtains data and maintains records sufficient for carrying out its responsibilities.

2822.04c - Forest Supervisors. The Forest Supervisor shall review for adequacy proposed operating plans received from the USDI. Such reviews should be made in close coordination with the USDI responsible officers. Upon completion of a review, the Forest Supervisor shall advise the USDI responsible officer of the Forest Service decision, and of terms and conditions required for protection of surface resources, and for access, construction, or use and protection of existing roads. The appropriate type of Forest Service decision and the appropriate USDI responsible officials are as follows:

Resource	Type of Decision	USDI Agency/Officer
Coal	Consent	OSM/Regional Director

		BLM/District Supervisor
Geothermal	Consent	BLM/Area District Supervisor
Oil and gas		
Public Domain	Concurrence	BLM/District Supervisor
Acquired	Consent	
		BLM/District Supervisor
Other		
Public Domain	Concurrence	BLM/District Supervisor
Acquired	Consent	BLM/District Supervisor

This responsibility may be redelegated unless the operating plan would require one of the following:

1. A bond of $100,000 or more.

2. The preparation of an environmental impact statement.

3. Operations in designated wildernesses, Administration-endorsed wilderness proposals, congressionally designated wilderness study areas, and further planning areas identified in the Roadless Area Review and Evaluation (RARE II) decision document. The Regional Forester shall be promptly informed about proposed operating plans affecting these lands.

The Forest Supervisor has general responsibilities for orderly administration of licenses, permits, and leases. These include record keeping, observation to see that stipulations are being honored, and general coordination between lease or permit holders, other users, and Government agencies (FSM 2822.62). These duties may be redelegated to the District Ranger.

2822.04d - District Rangers. The District Ranger shall:

1. Review and evaluate license, lease, and permit applications and operating plans.

2. Recommend to the Forest Supervisor whether or not a mineral lease, permit, or license should be issued and the terms and conditions needed to protect and reclaim surface resources, if issued.

3. Evaluate operating plans within the delegated authority.

4. When an operating plan is approved, coordinate Forest Service surface management responsibilities with the USDI District official who is responsible for administering the license, permit, or lease.

2822.05 - Definition. For the purposes of this Chapter, the term area of operation (AO), used in the various Forest Service and Department of the Interior cooperative agreements, is defined as the immediate area within the lease, permit, or license on which

drilling, mining, and related mineral developments and activities occur, including necessary storage or processing facilities, access roads, pipelines and utility rights-of-way approved in the plan of operations.

2822.1 - Lands and Minerals to Which Applicable. National Forest System lands are generally available for exploration and mining unless specifically precluded by an act of Congress or other formal withdrawal. Which mineral leasing act applies depends on the type of lands and minerals involved.

There are three basic categories of lands and mineral deposits subject to the leasing acts:

1. Leasable minerals (as defined in the 1920 act) with public domain status (FSM 2822.11).

2. Leasable minerals (as defined in the 1947 act) with acquired status (FSM 2822.12).

3. Hard-rock minerals which have been acquired (as defined in the 1946 President's Reorganization Plan 3; FSM 2822.13).

Note that the type of mineral estate is specified rather than simply the type of land. That is because the mineral estate may have been severed from the land and therefore have a different status. For simplification, in this chapter, it is assumed that acquired land has acquired minerals and public domain land has public domain minerals. For guidance on minerals with private ownership, see FSM 2830.

2822.11 - Leasable Minerals With Public Domain Status. The 1920 Mineral Lands Leasing Act, as amended (30 U.S.C. 181--287), authorizes the leasing of coal, phosphate, sodium, potassium, oil, oil shale, gas, and (in Louisiana and New Mexico) sulphur. The 1970 Geothermal Steam Act added geothermal resources to the list of leasable resources. The 1920 and 1970 acts apply to minerals on the following lands:

1. Lands Reserved From Public Domain.

2. Lands Received in Exchange for Public Domain Lands or Timber. Under the General Exchange Act of March 20, 1922 (42 Stat. 465; 16 U.S.C. 485), or special exchange acts.

3. Lands With Minerals Reserved Under Special Authority. Mineral estates reserved to the United States in the original patent remain public land minerals and continue to be leasable under the 1920 act unless their status is changed by specific act of Congress (30 U.S.C. 182). Reacquisition of the lands does not change the public domain status of the minerals. The following acts require a reservation of all minerals or of specified minerals to the United States:

a. Acts of March 3, 1909, and June 22, 1910, as amended (30 U.S.C. 81, et seq.), providing for nonmineral entry of public lands (exclusive of Alaska) withdrawn, classified, or valuable for coal.

b. Act of April 23, 1912 (37 Stat. 90; 30 U.S.C. 77), providing for homestead entry of Alabama lands classified as coal lands.

c. Acts of July 17, 1914, as amended, and of March 4, 1933 (30 U.S.C., 121-124), providing for agricultural entry of lands withdrawn or classified as containing phosphate, nitrate, potash, oil, gas, asphaltic minerals, sodium, and/or sulphur. (Title to these minerals may pass with patent to mining claims located prior to February 25, 1920: Act of July 20, 1956 (70 Stat. 592; 30 U.S.C. 122).)

d. Stock Raising Homestead Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299). Providing for stockraising homestead entry of certain lands, subject to a reservation of coal and other minerals.

e. Act of March 8, 1922 (42 Stat. 414; 43 U.S.C. 912), providing for disposal of forfeited railroad right-of-way land and related sites with reservations to the United States of all oil, gas, and other minerals.

f. Act of December 22, 1928, as amended (45 Stat. 1069; 43 U.S.C. 1068), authorizing sale of lands held under color of title; reserves coal and all other minerals with exceptions under certain conditions.

g. Act of February 23, 1932 (47 Stat. 53; 43 U.S.C. 178), authorizing sale of lands adjacent to Spanish or Mexican land grants in New Mexico, reserving to the United States coal and all other minerals.

2822.12 - Leasable Minerals With Acquired Status. The Mineral Leasing Act for Acquired Lands (Act of August 7, 1947) is the leasing authority for acquired federally owned deposits of coal, phosphate, sodium, potassium, oil, oil shale, gas, and sulphur. The 1970 Geothermal Steam Act added geothermal resources to the list of leasable resources. The 1947 and 1970 acts apply to the following lands:

1. Lands purchased under the provisions of the Weeks Law as amended, or received in exchange for such land or timber thereon (Act of March 1, 1911, 36 Stat. 962, as amended; 16 U.S.C. 515-516).

2. Lands donated under section 7 of the Clarke-McNary Act (Act of June 7, 1924, 43 Stat. 654; 16 U.S.C. 569).

3. Lands purchased or donated under the Act of March 3, 1925, as amended (43 Stat. 1133, 16 U.S.C. 555).

4. Lands purchased under any of the so-called receipts acts.

5. Acquired lands administered under Title III, Bank-head-Jones Farm Tenant Act (Act of July 22, 1937, 50 Stat. 525; 7 U.S.C. 1010-1012).

6. Lands received in exchange for public domain land under Title III, Bankhead-Jones Farm Tenant Act. Such lands attain "acquired land" status (Item 1, Executive Order 10175 of October 25, 1950).

7. Acquired lands added to the National Forest System by other acts of Congress.

8. Acquired lands transferred to the Department of

Agriculture by other agencies for administration by the Forest Service.

9. Lands reacquired and added to the Carson and Santa Fe National Forests by the act of June 28, 1952 (66 Stat. 284) (formerly comprising the North Half Lobato Grant and the El Pueblo Tract). Applies to minerals reserved in the original patent.

10. Unpatented homestead or other entries purchased under the National Industrial Recovery Act (NIRA), the Emergency Relief Appropriation Act (ERA), or Title III of the Bank-head-Jones Farm Tenant Act and added to the Siuslaw National Forest by the act of November 25, 1940 (54 Stat. 1210).

11. Special categories of land and/or minerals:

a. Puerto Rico. The 1947 act does not apply. However, the authority to dispose of these minerals in Weeks law, Title III, NIRA, ERA, and certain other acquired lands was transferred to the Secretary of the Interior by the President's Reorganization Plan 3 of 1946 (5 U.S.C. Appendix).

b. Alaska. Oil and gas deposits "owned or hereafter acquired by the United States in lands beneath nontidal navigable waters in Alaska" are subject to the act of July 3, 1958 (72 Stat. 322-325). Any such land transferred to the State of Alaska shall be excluded from the act. The Forest Service has no jurisdiction over any such lands.

c. Deposits in Lands Excluded by Act. Jurisdiction rests in the Secretary of the Interior if the deposits occur in lands excluded by the 1947 act but included in the 1946 Reorganization Plan. The 1947 act superseded that authority of the Plan as to the specific mineral deposits and lands covered by the 1947 act.

d. Deposits Acquired but Under Lease at Time of Acquisition. Such deposits are subject to the terms of the out-standing lease. If the United States acquires the lessor's interest in a lease, the lease must be transferred to the Secretary of the Interior for administration. If the United States acquires a mere royalty interest, the Forest Service will accept the payments for deposit into the appropriate account. If the lessor's interest in an outstanding lease is reserved to the vendor, the United States may have a future interest subject to lease under the 1947 act.

e. Oil and Gas Deposits not Subject to 1947 Act. Acquired lands of the United States not specifically subject to leasing under the 1947 act may be leased in certain situations. Other than set out in item c above, however, the authority is not vested in the Secretary of the Interior. Authority is vested in the agency or department having jurisdiction over the land to take protective measures in cases where land owned by the United States and not subject to disposition under the mineral leasing laws is found to contain oil or gas deposits which are being drained by adjoining owners (40 Op. Atty. Gen. 41). Jurisdiction over such oil and gas deposits may be transferred to the Secretary of the

Interior by public land order. However, transfer is not mandatory. If transfer is made, the Department of the Interior procedure for competitive leasing of acquired lands is followed.

2822.13 - Hard-Rock Minerals With Acquired Status. Under authority of the Act of March 4, 1917, (the function of which was transferred from the Secretary of Agriculture to the Secretary of the Interior by the President's Reorganization Plan 3 of 1946), prospecting permits and leases may be issued for hard-rock minerals acquired by the United States. Other special acts authorize exploration and development of hard-rock minerals in certain acquired lands not subject to the general mining laws. By law or regulation, hard-rock minerals are made subject to development under or in general accord with the plan; therefore, they are included here. The plan, therefore, covers all valuable minerals with acquired status except "leasables" as listed in FSM 2822.12.

In Minnesota, on National Forest lands reserved from the public domain, deposits of hard rock minerals are subject to disposal under the act of June 30, 1950. Because the act authorizes leasing and development subject to conditions similar to those prescribed for like deposits covered by the reorganization plan, the Secretary of the Interior has prescribed the same regulations to the extent they are not inconsistent (43 CFR 3565).

2822.14 - Leasing Activities in Special Areas.

2822.14c - National Recreation Areas. For each National Recreation Area (NRA), the applicable legislation must be examined to determine its specific requirements concerning leasing. FSM 2806.6 lists the NRA's, gives references, and indicates briefly the relevance to mineral leasing.

2822.14d - National Wild and Scenic Rivers System. The Wild and Scenic Rivers Act (82 Stat. 906, as amended, 16 U.S.C. 1271-1287) provides that, subject to valid existing rights, Federal lands constituting the river bed or bank, or situated within one-quarter mile of the bank of a river specifically designated as a wild river are withdrawn from operation of the mining and mineral leasing laws. When specifically designated as Scenic and Recreation River Areas, Federal lands are not withdrawn from the operations of the various mineral leasing laws by the statute. Proposals for leasing these lands must be carefully evaluated to prevent pollution and unnecessary impairment of the scenery.

Congress may designate rivers and their immediate environs for study to determine if they are suitable for inclusion into the National Wild and Scenic Rivers System. These study areas, averaging 320 acres per mile on both sides of the river, are not normally withdrawn from the mineral leasing acts. Leases, permits, and licenses may be issued with appropriate surface resource stipulations which will essentially preserve the existing characteristics of the study area until a final decision is made.

2822.14e - Municipal Watersheds. For each area covered by a formal agreement for the protection of a municipal watershed, examine the applicable agreement to determine if it prohibits or requires restrictions on mining and leasing activities. Provisions of such agreements must be honored. Leasing is also, in certain areas, prohibited by acts of Congress.

2822.14f - Custer National Forest. The Surface Mining Control and Reclamation Act of 1977 provides that subject to valid existing rights, no surface coal mining operations may be permitted within the boundaries of the Custer National Forest. See also FSM 2822.15.

2822.14g - Other Special Areas. FSM 2806.7 lists numerous acts affecting specific areas. The applicable legislation should be reviewed for each site to determine its effect on mineral leasing.

2822.15 - Prohibitions on Surface Coal Mining Operations. The Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445; 30 U.S.C. 1201) provides for cooperation between the Secretary of the Interior and the States in regulation of surface coal mining, including surface operations and surface impacts incidental to or resulting from underground coal mining. This law has detailed provisions regarding permit requirements, environmental protection standards, reclamation plan requirements, reclaiming abandoned mines, and designation of areas as unsuitable for surface coal mining operations. The responsibility for these provisions is given to the Secretary of the Interior and to the States; however, the Forest Service is necessarily involved wherever there are operations on National Forest System lands.

Of direct concern to the Forest Service is the prohibition on surface coal mining operations as defined in the Act. Section 522 (30 U.S.C. 1272) involves the designation of areas unsuitable for surface coal mining operations. Subsection (e) states:

. . . subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted:

> (1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;
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> (2) on any Federal lands within the boundaries of any National Forest: Provided, however, That surface coal mining operations may be permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations, and
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> (a) surface operations and impacts are incident to an underground coal mine; or
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> (b) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those National Forests west of the 100th meridian, that surface mining is in compliance with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1975, the National Forest Management Act of 1976, and the provisions of this Act: And provided further, That no surface coal mining operations may be permitted within the boundaries of the Custer National Forest.

Section 528 (30 U.S.C. 1278) modifies the above quoted provisions as follows:

The provisions of this Act shall not apply to . . . the extraction of coal for commercial purposes where the surface mining operation affects two acres or less.

2822.2 - Withdrawals From Mineral Leasing.

2822.21 - Purpose and Justification. Withdrawals shall be requested only in circumstances where there are sensitive, unique surface resources that cannot be adequately protected under current public laws and Federal regulations.

Withdrawals may be requested in wilderness and primitive areas for the same reasons as for other lands. However, withdrawals may not be requested merely to protect the existing wilderness character within a wilderness or primitive area.

There should be relatively few requests for withdrawals from operation of the mineral leasing laws, because the land and surface resources ordinarily can be protected by proper stipulations, or because detrimental leasing can be prevented by recommendations or refusal to consent to applications. However, where there are numerous or repeated offers or applications to lease certain lands where leasing would be incompatible with existing or planned uses, it may be advantageous to request withdrawal. It will not, ordinarily, be necessary to request withdrawals of small special areas such as campgrounds, scenic areas, or roadside zones. Use in such areas can be controlled by adverse recommendations, refusal to consent to leasing, or restrictive stipulations.

A withdrawal shall preclude leasing within the specified area for those minerals covered. All pending and future applications for the minerals on withdrawn lands shall be denied without the right of appeals. The order of withdrawal shall be public notification that leasing will not be permitted.

A withdrawal may be sought to prevent renewal or extension of existing leases, if anticipated uses under lease are incompatible with Forest Service plans and programs. For land with existing oil and gas leases, a Secretarial order shall not prevent an extension, but extension can be prevented by a public land order withdrawal.

2822.22 - Withdrawal Requests and Procedures. A request for withdrawal from mineral leasing must be forwarded to the Chief the same as a request for withdrawal from the general mining laws (FSM 2760). The application form must be modified to suit the request, and the justification for the request must be included. Withdrawal from mineral leasing may be accomplished only as provided by section 204 (43 U.S.C. 1714) of the Federal Land Policy and Management Act. Each request should include the data required by USDI (FSM 2762). A withdrawal request may cover all minerals, all leasable minerals, or specific leasable minerals.

There is no assurance that a request for withdrawal from mineral leasing will receive favorable consideration by the Secretary of the Interior.

2822.3 - Rights and Responsibilities of Permittees, Lessees, and

Licensees.

2822.31 - Rights. For the leasable minerals other than geothermal resources, coal, oil shale, or oil and gas, USDI may issue a prospecting permit which grants the permittee the exclusive right to prospect on and explore the lands involved to determine the existence of, workability of, and/or commercial value of the mineral deposits therein. For coal, USDI may issue a coal exploration license which grants the same rights regarding coal, except it is not an exclusive right. For geothermal resources and oil and gas on National Forest System lands, USDI has no authority to issue prospecting permits, but the Forest Service may issue a prospecting permit (FSM 2821).

A mineral lease grants the right to extract and dispose of a specific mineral or minerals in lands covered by the lease, subject to various terms and conditions.

Specific rights include those discussed in FSM 2822.31a-.31e.

2822.31a - Priority and Preference Rights. Priority of applications for prospecting permits is based on time of filing. Where simultaneous applications or offers are received through mail or over the counter, priority is determined by public drawing.

A permittee, upon making a discovery of a valuable deposit of phosphate, sodium, or potassium (or hard-rock minerals on acquired lands) generally may apply for a preference right lease. A lease may be issued if (1) the deposit was discovered under terms of a permit issued for that specific mineral, (2) the land is shown to be chiefly valuable for that mineral (not applicable to phosphate), (3) the land is available for noncompetitive leases, and (4) the permittee follows special conditions that may apply and makes appropriate application within the time allowed.

A holder of an oil and gas lease who makes a discovery of sulphur on that lease obtains a preference right to a sulphur lease.

The Federal Coal Leasing Amendments Act of 1975 (30 U.S.C. 201(b)) provides that the Secretary of the Interior may issue an exploration license for coal, but it may convey no preference right to a coal lease. The licensee must provide the Secretary of the Interior with all data obtained under the license, but the Secretary is authorized to maintain the confidentiality of the information until after a lease sale on the explored land.

Applicants for an available noncompetitive oil and gas or geothermal steam lease obtain priority by chronological order of filing. In the case of simultaneous filings, the priority is determined by public drawing.

2822.31b - Terms and Rights to Extension of Permit or Lease. In general, permits are issued for a term of 2 years and, with justification, may be extended for 2 years. There are the following exceptions:

1. There is no provision for issuance of exploration permits for sulfur, except for public domain deposits in New Mexico and Louisiana.

2. There is no provision for extension of a sulfur or sodium exploration permit.

3. Phosphate permits may be extended up to 4 years.

4. A coal-exploration license is for a term of not more than 2 years.

Generally, leases are issued for specific primary terms with automatic extensions while producing. The holder of a nonproducing lease is generally entitled to a preference right to renew at the end of the primary term for a like or lesser period or to a continuation, subject to readjustment of terms and to filing of application.

Coal leases have a primary term of 20 years. Except as stated below, primary terms are not specified in the regulations.

Asphalt leases have a primary term of 10 years and may be continued so long thereafter as the lessee complies with the terms and conditions of the lease.

For hard-rock minerals, the term may not exceed 20 years.

Noncompetitive oil and gas leases have a primary term of 10 years with automatic extension for so long afterward as oil or gas is being produced in paying quantities.

The holder of a nonproducing oil and gas lease, not within the known geologic structure (KGS) of a producing oil field and gas field, is entitled to an extension of 5 years duration, and as long thereafter as oil or gas is being produced in commercial quantities from that lease. If the lease is within the known geologic structure of a producing field, the extension term is 2 years and as long thereafter as oil or gas is being produced in commercial quantities. Leases will not be renewed if the land has been withdrawn from leasing, unless drilling operations were commenced prior to the withdrawal and were in operation on the date of expiration, or if lessee had not been notified of the withdrawal at least 90 days prior to lease termination.

The holder of a geothermal lease that is producing steam in commercial quantities at the end of the primary term (10 years) is entitled to a continuation for as long as steam is produced in commercial quantities--up to a maximum of 40 years of extension. Thereafter the lessee has a preferential right to a renewal for a second 40-year term, subject to revised terms and conditions. A lease may be further extended after it has ceased commercial steam production so long as one or more valuable byproducts are produced in commercial quantities, but not more than 5 years.

A holder of a nonproducing geothermal lease may obtain an extension of 5 years if drilling was started prior to the end of the primary term, and if operations are being diligently prosecuted at the end of the term.

The holder of a geothermal lease may apply for a lease for another leasable mineral discovered on the geothermal lease-hold.

2822.31c - Rights to Minerals. A prospecting permit or coal-exploration license authorizes the removal of only so much of the specified mineral as necessary for prospecting and determining the character, workability, and quality of the deposit.

A lease grants exclusive rights to drill for, mine, extract,

remove, and dispose of the mineral or minerals named in the lease. Minerals recovered as a byproduct, or incidentally to the recovery of the primary minerals, may be specifically excepted. For instance, an oil and gas lessee obtains no right to helium; the United States reserves the ownership and right to extract helium from all gas products. Likewise, the United States reserves ownership and right to extract oil, hydrocarbon gas, and helium from geothermal steam.

2822.31d - Rights to Fringe Area Minerals. In general, a holder of a lease for coal, potassium, or phosphate is entitled to a noncompetitive lease of fringe areas if it is shown that the mineral deposits extend into the fringe areas and make a normal part of a mining unit, that the fringe areas lack sufficient reserves for independent development, and there is a lack of competitive interest from other operators.

2822.31e - Rights to Use of Surface. A prospecting permit and coal-exploration license generally grant rights only to access and to such activities and construction necessary to access. A mineral lease grants a dominant right to use the surface of the leased land for the production of the specified mineral, subject to existing rights. Under a lease, structures and other improvements necessary for operations may be constructed, such as roads, pipelines, and electric power lines, subject to all terms, conditions and stipulations of the lease. No special-use permit is required for such necessary improvements within lands under license, permit, or lease.

A license, permit, or lease does not authorize exclusive use or occupancy of land, the taking of timber, indiscriminate and wasteful use of the surface and its resources, or uses not associated with the specific purpose of the lease.

A license, permit, or lease grants no right to roads or other use of the surface or resources off the contract area. A special-use permit, or other appropriate authorization, must be obtained for off-lease uses and for on-lease uses not granted by the lease. The Forest Service should normally grant such authorization if beneficial or necessary to the full enjoyment of the license, permit, or lease, subject to the same limitations and standards of use as required for other users.

A determination must be made in advance of granting licenses, permits, or leases, as to which access routes proposed for construction would be appropriate for inclusion in the Forest Development Road System. Where existing system roads are to be used, provisions should be made for their protection, use, and maintenance (FSM 7730). If a planned mineral operation will breach an existing system road or otherwise impair its use for National Forest purposes, provision must be made for its relocation by the mineral proponent or modification of the proposed mineral operation.

2822.32 - Responsibilities.

2822.32a - Compliance With National Forest Rules and Regulations. Licensees, permittees, and lessees, their contractors, subcontractors, operators, or assignees must comply with all general National Forest rules and regulations or any other rules and regulations applicable, the same as any other person occupying or using such lands or crossing over them. Failure to comply will subject them to possible citation for trespass. For

further direction, see FSM 2822.62 and 2822.63.

2822.32b - Compliance With Contract Terms. Licensees, permittees, and lessees and those operating under them or through assignment must comply with all terms of the license, permit, or lease. A breach may lead to cancellation or termination. They must take all reasonable precautions to prevent waste, damage to deposits of mineral, and injury to life or property.

2822.32c - Compliance With Stipulations and Special Conditions. Licensees, permittees, and lessees, their contractors and subcontractors, operators, or assignees must comply with the standard stipulation, all special stipulations, and any other requirement of the contract made by the Forest Service for the protection of the land and its resources and other users. The Forest Service has the ultimate responsibility for ensuring protection of surface resources on National Forest System lands. However, except in emergency, the USDI has the responsibility of obtaining compliance with stipulations and terms of the contract.

2822.32d - Compliance With Operating Regulations. Licensees, permittees, and lessees must comply with the operating regulations of the USDI as prescribed in the appropriate part of 30 CFR 200. The USDI is responsible for the supervision of all operations authorized by a license, permit, or lease issued by that Department.

2822.32e - Reclamation of Surface and Property Prior to Termination or Cancellation. Licensees, permittees, and lessees are responsible for the reclamation of the surface as prescribed in the approved operating plan. They must make the operating area safe. They must comply with the terms, stipulations, and operating regulations prior to abandonment. Upon failure of licensees, lessees, or permittees properly to comply, their surety will be required to perform outstanding obligations.

2822.4 - Application and Issuance Procedures for Permits, Licenses, and Leases. The Bureau of Land Management (BLM) exercises the authority of the Secretary of the Interior for leasing of federally owned minerals. The regulations of the Secretary of the Interior for leasing mineral deposits in public lands and National Forest System lands are contained in title 43 of the Code of Federal Regulations, parts 3000 through 3568.6.

All applications for coal exploration licenses, prospecting permits, and mineral leases must be filed with the appropriate BLM State office. In States in which there is no land office, applications or offers must be filed in the designated office, as follows:

1. For North and South Dakota--Billings, Montana.

2. For Nebraska and Kansas--Cheyenne, Wyoming.

3. For Oklahoma and Texas--Santa Fe, New Mexico.

4. For Washington--Portland, Oregon.

5. For all other States in which there is no land office--Eastern States Office, Alexandria, Virginia 22304.

The BLM processes applications to determine if they meet the specific requirements in the regulations regarding filing fees,

prepayment of rentals, a statement of the offeror's or applicant's holdings, and statement of citizenship. The requirements differ in some respects for each leasable mineral. For example, determine whether or not:

1. The lands in an oil and gas lease application are within the known geological structure (KGS) of a producing oil or gas field.

2. The lands in a geothermal lease application are in a known geothermal-resource area (KGRA).

3. The lands in a coal lease application are in a known recoverable coal resources area (KRCRA).

4. Further prospecting is necessary to prove the existence or workability of a potentially economic mineral deposit.

5. An applicant for a preference-right lease has qualified as to finding a commercially valuable deposit under a prospecting permit.

Also recommendations must be made on rental, tenure of lease, royalty rate, and minimum production.

2822.41 - Forest Service Evaluation and Report. For each acceptable application for a lease or prospecting permit (or proposal for competitive bidding), the USDI forwards a copy of the serial register page, a request for a mineral report, and/or a request for title report (BLM form 3100-7) for acquired lands, with or without a copy of the application/proposal to the appropriate Regional Forester.

The appropriate Forest Service official shall review the current land management plan for direction regarding mineral-related uses. Considering this direction, the Forest Service official shall conduct an environmental analysis, using the procedures in FSM 1950, to evaluate what impact the proposed action would have on the surface resources and other users. The study should include and consider the following factors, where applicable:

1. Statutory authorities.

2. Existing and planned uses.

3. Dedications.

4. Impact on surface resources.

5. Damage to watershed.

6. Degree of surface disturbance and difficulty in restoration.

7. Special values, such as wilderness character, archeological sites, cultural resources (FSM 2361), and endangered wildlife habitat.

8. Access needs, including system roads to be used or constructed.

9. Term of the lease and probable nature of operations.

10. Economic considerations, such as relative values of minerals and surface resources and scarcity of and demand for minerals.

11. Range of alternatives available for operations and land uses and for environmental protection.

If the application is for a prospecting permit which may result in a preference-right lease (FSM 2822.31a) without the Forest Service having a second consent, the environmental analysis must evaluate--to the extent practical--the impact of hypothetical development and production, including new onsite and offsite facilities and/or existing improvements, not just the impact of the exploration program. This requires a Forest Service mineral expert's judgment regarding conceivable depth, locations, sizes, and character of mineral deposits.

If the application is for a prospecting permit and the Forest Service will have the opportunity to refuse or consent prior to the issuance of any preference-right lease, the environmental analysis should address the expected environmental impacts of a hypothetical mining operation. But it need not contain as thorough a discussion as in those cases where the Forest Service does not have second consent. The Forest Service has full opportunity to decide whether or not to consent to a preference-right lease only for hard-rock minerals on acquired lands (Act of March 4, 1917; 39 Stat. 1150 as supplemented; 16 U.S.C. 520).

Prior to issuance of a coal lease, the area (with certain exceptions) must be covered by a comprehensive land management plan, in which the proposed coal development is considered. After completion of the environmental analysis, the report shall be forward through channels, to the official responsible for the Forest Service decision (FSM 2822.04a, .04b). Each preparing and reviewing line officer shall recommend an alternative, concur with or change previous recommendations, and provide an explanation for that position. Proper stipulations must be provided for each reasonable alternative, even though it is not recommended, in case the responsible Forest Service officer or the USDI does not concur with previous recommendations. The responsible Forest Service official (FSM 2822.04a, .04b) shall submit to the appropriate office of the USDI a report including the following items:

1. A statement of the Forest Service position regarding the proposed action. For coal and geothermal resources on all lands and for all minerals on acquired land, the position will be either denial or consent with stipulations. For all other leasable minerals on public domain lands, the Forest Service position will be in the form of recommendations that leasing or prospecting be denied or permitted with specific terms, with appropriate documentation of environmental analysis.

2. Terms and conditions of use (stipulations) to be attached to a license, permit, or lease if issued.

3. A title report (BLM form 3100-7) if the deposits to be leased have acquired status.

2822.42 - Stipulations for Protection of Lands and Other Uses. Include the following Stipulation for Lands of the National Forest System Under Jurisdiction of the Department of Agriculture in all license, prospecting permit, and lease issuance responses

to Bureau of Land Management State Directors:

STIPULATION FOR LANDS OF THE NATIONAL FOREST SYSTEM
UNDER JURISDICTION OF
DEPARTMENT OF AGRICULTURE

The licensee/permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of the Interior in the license/prospecting permit/lease. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of a permit/operation plan by the Secretary of the Interior, (2) uses of all existing improvements, such as Forest development roads, within and outside the area licensed, permitted or leased by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by a permit/operating plan approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to

at

Telephone No.:

Who is the authorized representative of the Secretary of Agriculture.

Signature of Licensee/Permittee/Lessee

The Forest Supervisor shall recommend to the Regional Forester such additional stipulations as are necessary to protect the use, management, administration, and development of the National Forest System lands and the Forest Development Road Systems. Stipulations should be held to a minimum consistent with those purposes.

When leasing is not prohibited by law, for areas allocated for further planning in the Roadless Area Review and Evaluation (RARE II) decision document and for which land management plans are not complete, include stipulations that will encourage an active exploration program yet minimize the impact on wilderness characteristics and thus preserve wilderness options. The following stipulation is required for such lands:

Further Planning Area Stipulation

The following described lands embraced in this (lease, permit, license) were identified in the Roadless Area Review and Evaluation (RARE II) decision document as requiring further planning:

Future planning may identify all or part of these lands as suitable for wilderness, and the lands so identified may ultimately be designated as wilderness. Information made available to the Forest Service regarding discoveries of mineral deposits on these lands will be considered in the planning process and may be key factors in the land allocation.

This clause shall become inoperative in the event this area is determined as not suitable for wilderness.

Any terms of this (lease, permit, license) to the contrary notwithstanding, the following terms shall apply to the above described lands:

1. Only exploration activities for the purpose of discovering and disclosing the extent of mineral deposits is allowed, until development and production operations are specifically concurred in by the Forest Service based on a land management plan and/or a specific environmental analysis of an operating plan.

2. Exploration plans other than for geophysical activities, must be specifically approved by the USDI and concurred in by the Forest Service. Plans for geophysical exploration must be approved by the Forest Service. The Forest Service should agree to reasonable access for conducting necessary exploration operations.

3. Any lands covered by this (lease, permit, license) which Congress designates as wilderness shall become subject to the provisions of the applicable wilderness legislation, and the Secretary of Agriculture's regulations and Forest Service policies pertaining thereto.

4. The (lessee, permittee, licensee) is responsible, as deemed necessary, to protect own interest, for initiating requests to the USDI for suspension of (lease, permit, license) term, rental, or minimum royalties. The Forest Service does not intend that the inclusion of this stipulation be construed as a basis to deny a request for suspension.

5. Until these lands are allocated to nonwilderness purposes, by a land management plan or specific environmental analysis and decision, mineral-related operations are subject to the following terms:

a. Construction of access ways and operation sites shall not be permitted in areas of extremely high environmental sensitivity where such construction would cause serious and irreparable environmental damage.

b. Access way construction shall be permitted only where existing access ways are inadequate or other methods of access are impractical.

c. Access ways shall be built to a standard no higher than required for safe passage of equipment and support personnel, and to protect surface resources.

d. The access ways and other areas of operation shall be reclaimed, as soon as they have served their purpose, to a condition as near as practical to the surface condition existing prior to the authorized use of the lands.

This stipulation is hereby accepted.

(Date) (Signature)

The further planning area stipulation does not stand alone. It is to be used, as appropriate, in addition to standard and other special stipulations that may be needed for surface resource protection.

Give particular care to stipulations for surface reclamation and revegetation. Although obligated to perform rehabilitation by the license, permit, or lease, operators thereunder may be given the opportunity, but cannot be forced, to enter into cooperative agreements whereby the Forest Service will perform all or part of the rehabilitation work.

2822.43 - Lease Terms and Conditions. The terms and conditions for all leases include:

1. Right of the United States to authorize easements for mining or other public purpose across leased lands.

2. Right of the United States to sell, lease, or other-wise dispose of the surface or to dispose of any other resource in the lands, provided the rights of the lessee are not unreasonably interfered with.

3. Right of the United States to charge royalties (except oil and gas and geothermal) and readjust other terms and conditions at the end of the primary period of lease or any extension thereof.

4. Right of the United States to waive any breach, unless otherwise provided by law.

5. Right of the United States to accept relinquishment, subject to protection of public interest and continued obligation for accrued payments and preservation of mines and related works.

6. Right of lessee to remove, within a 90-day period, equipment not needed to preserve operation, or forfeit to the United States.

7. Provision for 30-day notification of default before beginning court proceedings for cancellation and protection of property, and employees at lessee's expense upon lessee's failure to act promptly to prevent such damage or danger.

2822.44 - Bonds. The USDI does not always require a bond for prospecting permits. Therefore, the Regional Forester should consider recommending that USDI require a bond for prospecting permits, especially if the type of prospecting or any authorized surface use is likely to cause damage, to require cleanup or removal of equipment or structures, or to require performance of other work which the permittee might leave undone. In consulting

with the USDI supervisor about the approval of operating plans, give consideration to enlarging the amount of inadequate bonds to ensure that they are commensurate with the scope of the operations.

The USDI generally requires bonds for operating leases. Unless requested to do so by the Forest Service, the USDI ordinarily will not require a bond for an ordinary noncompetitive oil and gas lease as long as it is inactive. However, a $10,000 bond is required to be posted prior to drilling.

Any bond required by the USDI serves also to guarantee the performance of the stipulations for the protection of lands under the jurisdiction of this Department. The authority for this is Section 7 of the Forest Service Omnibus Act of June 20, 1958 (72 Stat. 217; 16 U.S.C. 579c). The word "permittee" in the act includes permittees operating on lands administered by the Forest Service under licenses, leases, and permits issued by the USDI. The act provides that moneys received by the United States are thereby appropriated and available until expended to cover the rehabilitation. USDI may be asked to increase the amount of the bond, if desirable, to give added protection to surface interests. Recoveries from these bonds may be used, the same as from a bond filed with the Forest Service, to complete performance of improvement, protection, or rehabilitation work required by the permit or lease. Upon failure to perform, after due notification, make request to BLM to notify surety and obtain recovery. The USDI shall either pay directly for remedial work or transfer the moneys obtained to the Forest Service who shall apply them in satisfaction of damages or deficiencies.

2822.45 - Rejection of Applications. The Regional Forester should consider a recommendation or decision against the issuance of a permit, lease, or license if the environmental analysis shows that the proposed mineral activities would (1) seriously interfere with other resource values, (2) be incompatible with the purposes for which the area is being used or administered, or (3) permanently destroy or render useless the land for the purpose for which used or dedicated. Further criteria for a negative decision is when the value of the land, and its resources, for the purpose for which it is being used outweighs the foreseeable benefits that would be derived from extraction of the mineral resources, and the existing use cannot be adequately protected by stipulation.

A report to the appropriate USDI office containing a negative recommendation or decision must describe the specific reasons for objecting to the issuance of a license, permit, or lease. Wilderness designation shall not be sole justification for decisions against leasing, permitting, or licensing through 1983, or such time as the Congress may otherwise establish. All environmental, land use and resource values must be considered. The USDI usually rejects applications for which the Forest Service recommends against issuance. For coal, geothermal resources, and all acquired minerals, such rejection is required by law. The Bureau of Land Management need not issue a permit, lease, or license upon which the Forest Service has given a favorable report.

2822.46 - Appeals. An aggrieved party may seek administrative review of a decision of a Forest Officer under 36 CFR 211.18. This may occur when the Secretary of Agriculture's consent for a license, permit, or lease is required by law and the Forest

Service, in exercising the Secretary's authority, refuses to consent to its issuance.

More frequently, an aggrieved party appeals the decision of the Secretary of the Interior since he has the final authority to refuse to issue a lease, permit, or license. This is true for leases, licenses, and permits which require the consent of the Secretary of Agriculture as well as those which do not.

2822.47 - Issuance of Noncompetitive Lease, Permit, or Coal Exploration License. The USDI may issue a prospecting permit, mineral lease, or license after (1) clearance with the Forest Service (2) all the requirements of the regulations have been met, and (3) appeals and any other necessary actions have been taken. The following types of licenses, permits, and leases are covered by this procedure:

1. Coal Exploration Licenses. Authorized for exploration without entitlement to preference-right lease.

2. Prospecting Permits. Authorized for leasable minerals except coal, sulphur, oil and gas, and oil shale; and also authorized for hard-rock minerals on acquired lands.

3. Preference-Right Leases. Authorized for phosphate, sodium, sulphur, and potassium, and also for hard-rock minerals on acquired lands (FSM 2822.31).

4. Noncompetitive Oil and Gas Leases. Authorized if land is outside the known geologic structure of a producing oil and gas field (KGS).

5. Noncompetitive Geothermal Leases. Authorized if land is outside of a known geothermal resource area (KGRA).

2822.48 - Issuance of Competitive Leases. By law and regulation, certain mineral lands can be leased only by competitive procedures, including advertisement, bidding at public auction or by sealed bids as provided by notice of sale, and award of lease. The USDI can initiate such sales upon a showing of competitive interest or upon a determination of the Secretary of the Interior that it would be in the public interest. The authority of the Secretary of Agriculture to make recommendations, to deny or consent to leasing, and/or to attach stipulations, is exercised before the lands are advertised or posted as "Available for Filing." The regulations on preference right and competitive leases are found in 43 CFR 3520.

Specific requirements are:

1. Coal. There is now no provision for preference right leasing: All coal leasing must be by competitive bidding, except where there are rights to preference right leases established prior to the Federal Coal Leasing Amendments Act.

2. Oil and Gas. When the lands subject to lease are within a known geologic structure of a producing oil or gas field (KGS), they must be leased by competitive bidding.

3. Geothermal Steam. When the lands subject to lease are within a known geothermal resource area (KGRA), they must be leased by competitive bidding.

4. Phosphate. Competitive bidding is required if the USDI has determined that further exploration is not necessary prior to development, or if there is competitive interest.

5. Oil Shale. Oil shale can be developed under a lease, after advertisement of intention by the applicant. The law provides for lease of such deposits under rules and regulations of the Secretary of the Interior. The Secretary's rules and regulations do not require competitive bidding.

6. Sulfur. Leasing by competitive bid procedure is not required by law or regulation. However, since there is also no provision for prospecting permits (except in New Mexico and Louisiana), all leases are by competitive bidding except for preference right leases issued as a result of discovery under an oil and gas lease.

7. Potassium. The regulations provide for leasing by competitive bidding, except for preference right leases issued as a result of a discovery under terms of a prospecting permit.

8. Sodium. The regulations provide for competitive bidding except for preference right leases issued as a result of prospecting permits.

9. Asphalt. All leases shall be issued through competitive bidding only.

10. Hard-Rock Minerals. The mineral leasing laws and regulations apply to Federally owned hard-rock minerals on acquired lands. Leasing is by competitive bidding except for preference right leases issued as a result of discoveries under prospecting permits.

2822.5 - Surrender, Termination, and Cancellation of Licenses, Permits, and Leases. These actions are the responsibility of the USDI. Prospecting permits may be canceled upon failure of the permittee to prospect with due diligence. Leases generally may be canceled for breach of lease terms--including Forest Service stipulations, or for violation of regulations, or unlawful uses.

Any coal lease which is not producing in commercial quantities at the end of 10 years terminates. Each coal lease is subject to the conditions of diligent development and continued operation, except where interrupted by factors not attributable to the lessee. The authorized officer of the USDI may cancel such leases without resort to court action.

Oil and gas leases may be canceled without court proceedings upon 30 days notice of lessee's failure to comply with lease terms, unless the land covered by lease is known to contain valuable deposits of oil and gas.

Oil and gas leases on which there is no well capable of producing oil and gas in paying quantities automatically terminate by law if the lessee fails to pay the rental on or before the anniversary date of the lease.

Any geothermal resource lease on which there is no commercial production, or a producing well, or actual drilling operations being diligently prosecuted, shall expire at the end of its primary term.

The Secretary of the Interior is authorized to accept the surrender of any lease. Under certain conditions, rentals may be prorated when the surrender was not filed on the anniversary date.

The USDI, acting upon the recommendation of the Forest Service, is responsible for bringing action to terminate leases by lawsuits or otherwise as required by law, regulation, or lease terms.

2822.6 - Supervision of Operations on Permits, Licenses, or Leases.

2822.61 - Actions by USDI. The USDI is responsible for the supervision of operations for all licenses, leases, and permits; however, the USDI will notify and cooperate with the Forest Service in regard to surface uses and location of structures (FSM 2822.62). The authority and responsibility of the USDI is basically the same for acquired land and public domain land.

Operations are supervised by an agency of the USDI. The primary aspects of the USDI supervision include the following:

1. Technical Supervision. Approval of operating plans, inspection to ensure orderly and efficient production, accumulation of economic and scientific records and data, and calculation of reserves.

2. Rents and Royalties. Billing and collection of rents and royalties on producing leaseholds, determination of specific royalty rates, and evaluating applications for waiver or reduction of rental or royalty payments.

3. Suspension of Production. Actions on applications for relief from operation and production requirements.

4. Compliance With Lease Terms. Inspection to prevent or to discover violations of regulations or default in production, removal, or protection of the mineral resources.

5. Readjustment of Lease Terms. Prior to expiration of lease and in anticipation of lease extension.

6. Drainage Agreements. Determination of drainage of oil and gas in lands owned by the United States to wells drilled on adjacent lands.

7. Unit or Cooperative Agreements. Approval and administration of such agreements for the development and operation for the recovery of oil and gas.

8. Storage. Authorization of subsurface storage of oil or gas in public domain lands.

9. Reclamation. Coordination with the Forest Service regarding reclamation performance standards.

2822.62 - Actions by Forest Service. The Forest Service is responsible for the protection and management of the surface resources of the National Forest System lands, even though under a license, permit, or lease for mineral-related activities. Remedial actions within an area under a license, permit, or lease are administered by the USDI, except in emergency situations.

However, the Forest Service shall continue to have major responsibilities in regard to road locations, road use and maintenance timber cutting, fire protection and suppression, wildlife management, and location of structures.

Specific responsibilities are:

1. Records. The Regional Forester shall maintain at all times up-to-date status records of BLM proposals to issue licenses, prospecting permits and leases, and of BLM issued licenses, prospecting permits and leases. In addition, each Ranger should maintain an up-to-date record of active and inactive licenses, permits and leases on the District.

2. Report FS-2800-A, Semi-annual Lease Status Report. The Regional Forester shall submit to the Chief semi-annually the following information entitled:

a. Existing Leases, Licenses, or Prospecting Permits on NFS Lands.

b. Pending Proposals for Leases, Licenses, or Prospecting Permits on NFS Lands.

The Deputy Chief for the National Forest System issues semi-annual reporting instructions by letter.

3. Review and Advise on Operating Plans. The Forest Supervisor, or District Ranger when delegated, shall review and advise to the USDI on the adequacy of a lessee's (or licensee's or permittee's) operating plan in protecting and reclaiming the surface resources, including roads, as required by the terms and conditions of the lease, permit, or license.

4. Inspection. Treat each permit, lease, or license similar to special uses or other land-use authorizations for the purpose of inspections, except that situations of noncompliance with the approved operating plan will be referred to BLM for action. The Forest Supervisor or District Ranger shall ensure that the lessee (or licensee or permittee) does not violate the land management provisions, including road use, of licenses, permits, or leases, make unauthorized uses, or usurp the surface rights reserved to the United States. Any unauthorized land use outside the area of surface use or area of operations may be handled as a violation of the Secretary's regulation.

In cases of misuse, unauthorized use, or any other breach of lease, license, or permit terms affecting land management, the Forest Supervisor shall notify the appropriate Supervisor in USDI who advises the lessee (or licensee or permittee) that the use is not proper and requests correction or discontinuance. If the violation or improper use is one which is imminently likely to endanger public health or safety, life or property, or to cause irreparable damage to resources, the Forest Supervisor (or District Ranger when delegated) shall directly contact the responsible licensee, permittee, or lessee, and also notify the appropriate Supervisor in USDI. Such notification shall be by telegraph wire or telephone if the situation is of serious nature. Verbal notices or other informal notices must be followed with notice by registered letter. Such notice shall state specifically the nature of the violation, the corrective action to be taken, the period within which it must be accomplished, and whether operations must be shut down in the

interim. Notices which would cause shut down of drilling operations shall only be issued after consultation with an appropriate BLM authorizing officer. A copy of such formal notice shall be sent to the appropriate supervisor and to the State Director of the Bureau of Land Management. If serious violation or misuse persists, a formal report should be prepared for forwarding by the Regional Forester to the State Director, Bureau of Land Management. It should be along the lines of Forest Service trespass reports, since court action is required to cancel a producing lease.

Such joint actions with the Department of the Interior shall not preclude the enforcement of applicable regulations of the Department of Agriculture by other means. The Forest Supervisor is responsible for advising a surety or initiating action to collect damages or bring about reclamation where surface bonds have been filed with the Forest Service.

2822.63 - Cooperative Agreements. The USDI and the Forest Service have entered into cooperative agreements to further consistent and orderly coordination at the field level on operating leases involving National Forest System lands. These agreements, which are consistent with regulations, further describe the specific roles of each agency and assign specific functions to specific offices or positions. The agreements are contained in FSM 1500.

Basically, the agreements confirm the primary interest of the Forest Service in all aspects of surface resource management and the role of the Forest Supervisor as coordinator of Forest activities. They also confirm the role of the USDI Supervisor as the specific manager of the mineral resource, and sole administrator of the mineral contract terms and conditions. Wherever actions or policies involve both surface and mineral resources, direct communication and assistance are specified between the two agencies, but the USDI supervisor will ordinarily be the Federal representative in contact with a licensee, permittee, or lessee.

2822.64 - Rents and Royalties. Generally, specific rental rates are established for lands under license, permit, or lease; however, different rates apply to different minerals. Prior to production, rents are collected by the Bureau of Land Management. When a lease becomes productive, the account is transferred to USDI for collection of rents and royalties.

Royalty rates are generally set on a case-by-case basis by the USDI, although minimum and maximum rates are set for some minerals, and oil and gas have rates specified by law or regulation. The Secretary of the Interior is authorized to waive, suspend, or reduce the rental or minimum royalty for the purpose of encouraging the greatest ultimate mineral recovery in the interest of conservation of natural resources.

All money received from rentals, bonuses, and royalties under terms of the mineral leasing laws are paid into the Treasury of the United States, from which specified distributions are made. For receipts from leasable minerals on public domain, the distribution is as follows: 50 percent to the State of origin (except 90 percent to Alaska) for uses as the legislature of the State may direct, 40 percent (except for Alaska) to the reclamation fund created by the 1902 Reclamation Act, and 10 percent credited to miscellaneous receipts and held in the

Treasury. For receipts from minerals in acquired lands--except from geothermal leases--25 percent is returned to the State for the benefit of the schools and roads of the county or counties in which the lands are situated. An additional 10 percent is made available to the Secretary of Agriculture for roads and trails in the National Forests from which the revenues were derived. (The 10 percent allocation does not apply to Title III revenues.) The remainder of the funds stays in the Treasury for nonspecified use.

Receipts from geothermal leasing are distributed in the same manner as other receipts from those lands (FSM 6531.12b).

2822.65 - Federal and State Coordination in Coal Program. The Secretary of the Interior has signed cooperative agreements with the governors of States involved with Federal coal leasing, which provide for those States to administer reclamation regulations to Federal lands under coal lease. The States administer their regulations in cooperation with the USDI Supervisor. The Forest Service should cooperate fully with the State agencies, but Forest Service management concerns shall be officially conveyed to USDI who is the sole Federal representative in regard to the enforcement of the terms and conditions of the coal lease.