

CHAPTER 2850 - MINERAL MATERIALS

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This chapter sets forth the policy and procedures for the sale and free use of mineral materials, which include the common varieties of sand, gravel, stone, and similar materials.

2850.1 - Authority. Regulations at 36 CFR 228, Subpart C establish the policy and standards for the disposal of mineral materials. The regulations also set forth standards for the protection of National Forest lands affected by mineral material activities.

2850.11 - Acquired Lands. The authority to dispose of mineral materials from lands acquired under the Weeks Act of March 1, 1911 (36 Stat. 961) stems from the Act of March 4, 1917 (16 U.S.C. 520), which has historically been interpreted as allowing prospecting permits. After several transfers, that authority was revested in the Secretary of Agriculture by the Act of June 11, 1960 (74 Stat. 205) for Weeks Act lands and for those lands given Weeks Act status by the Act of September 2, 1958 (16 U.S.C. 521a). Those lands acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, and which lie outside the exterior boundaries of National Forests, do not have Weeks Act status.

2850.12 - Public Domain Lands. The Materials Act of 1947 (30 U.S.C. 601 et seq.) specifically requires competitive bidding for mineral materials on public domain lands unless (1) it is impracticable to obtain competition or (2) a Federal, State, or local Government agency is to use the mineral materials in a public works improvement program and the public exigency does not permit the delay that would result from advertising 36 CFR 228.57(b). In such cases, negotiated sales are allowable. Neither the act nor its legislative history indicates that any preference-right type of disposal was ever contemplated for public domain lands.

2850.2 - Objective. To meet the demand for mineral materials consistent with the management of other surface resources.

2850.3 - Policy

1. Dispose of mineral materials only when the authorized officer determines that the disposal is not detrimental to the public interest and that the benefits to be derived from a proposed disposal exceed the total cost and impacts of resource disturbance.

2. Maintain an inventory of mineral materials at all times.

3. Estimate demand for mineral materials annually for at least the next 10-year period. Do not allow disposals of mineral materials for external use if there are not enough probable reserves to meet estimated in-Service demand.

4. After March 1985, an approved development plan must cover mineral materials for in-Service use, except as noted in FSM 2853.21.

5. Use mineral materials from in-Service sites for Forest Service projects unless the authorized officer provides written justification to the effect that it is more economical to purchase commercial supplies.

6. Recover administrative costs associated with disposals of mineral materials.

#### 2850.4 - Responsibility

2850.41 - Director, Minerals and Geology Management Staff. The Deputy Chief of the National Forest System has assigned staff responsibility for Service-wide coordination and advice on disposal of mineral materials to the Director of the Minerals and Geology Management Staff, Washington Office.

2850.42 - Regional Foresters. In addition to the responsibilities set forth in 36 CFR 228, Subpart C, Regional Foresters must respond to the periodic surveys by the U.S. Bureau of Mines regarding the type and quantity of certain mineral material removed.

2850.43 - Authorized Officers. In carrying out the responsibilities set forth in 36 CFR 228, Subpart C, authorized officers shall:

1. Conduct sales and issue free-use permits for mineral materials in amounts or values as delegated by the Regional Forester.

2. Establish fees as needed to recover agency administrative costs associated with sales and free-use disposals.

#### 2851 - SALES

2851.1 - Contract Form. Execute all sales on Form FS-2800-9, Contract for the Sale of Mineral Materials. (The Office of Management and Budget (OMB) has approved the information collection requirements of Form FS-2800-9.) Note any conditions peculiar to a sale and sale area as necessary. Alternative forms must be approved by OMB.

2851.2 - Prospecting Permit. An authorized officer may issue a prospecting permit for National Forest lands acquired under the Weeks Act or given Weeks Act status if existing information about the mineral material resource is insufficient or lacking. This permit grants the holder the exclusive right to explore for and to demonstrate the existence of a suitable mineral material deposit. If a deposit is already well known, there is no justification for issuing a prospecting permit. In this case, conduct a competitive sale or a negotiated sale if competition is impracticable 36 CFR 228.57(b)(2); a preference right negotiated sale is not appropriate in this circumstance. Use Form FS-2700-3, Special-Use Application and Report, properly annotated, for prospecting permits.

2851.3 - Preference Right Negotiated Sale. An authorized officer may grant a preference right to a noncompetitive disposal in recognition of the time and expense incurred by the permittee in discovering a suitable deposit on acquired lands. Upon a prospecting permittee's demonstration of a suitable deposit on acquired lands and its confirmation by an authorized officer, the permittee has a preference right to apply for a negotiated sale. However, award of a preference right negotiated contract is by no means automatic.

Before awarding such a contract, the authorized officer must approve the permittee's operating plan and ensure that the required environmental analysis has been performed. If the environmental impacts outweigh the benefits of a sale, do not

award a contract.

2851.4 - Acquired Lands Limitation. On lands acquired or administered under the Bankhead-Jones Farm Tenant Act and lying outside the exterior boundaries of National Forests, limit disposals of mineral materials to public authorities and agencies that need the mineral materials for public purposes 7 U.S.C. 1011(c); 36 CFR 228.41(b)(4). All other types of disposals (competitive and negotiated sales, preference right negotiated sales, and free use) may be conducted on lands acquired under the Weeks Act or lands given Weeks Act status.

2852 - FREE USE. (36 CFR 228.62). Use Form FS-2700-3, Special-Use Application and Report, for free-use disposals that will exceed 100 cubic yards (or weight equivalent) to any one permittee in any 12 consecutive months. Use Form SF-299, Application for Transportation and Utility Systems and Facilities on Federal Lands, for those lands in Alaska described on that form. The Office of Management and Budget must approve alternative forms. Do not give away without charge more than 5,000 cubic yards (or weight equivalent) to a nonprofit association, corporation, or individual in any 12 consecutive months 36 CFR 228.62(d)(2). Establish lower limits if necessary for effective resource management.

2853 - IN-SERVICE USE

2853.1 - Inventory and Planning. Prepare and keep current at least an Order 3 mineral materials inventory (FSM 2881) for both proven and probable resources. Prepare an estimate each year of the demand for mineral materials for the next 10 years. In so doing, consider for both in-Service and external needs the allocation of mineral materials that will yield the greatest public benefit.

2853.2 - Development and Site Management

2853.21 - Development Plan. Prepare a development plan for each mineral materials resource site proposed for in-Service development. This plan must include reclamation guidelines and proposed post-mining use(s). Exempt from development plans are sites from which it is expected that less than 5,000 cubic yards (or weight equivalent) will be removed during any 12 consecutive months.

2853.22 - Operating Plan. Before any operations begin at any in-Service mineral materials resource site, prepare an operating plan (36 CFR 228.56) based on detailed geologic investigations. This plan, including specific reclamation measures, must be in accordance with any direction prescribed in the land and resource management plan and must be responsive to the findings of an environmental analysis. Update the operating plan as needed.

2853.23 - Monitoring. Following entry, review the condition of the site to determine if reclamation measures were effective. Estimate the quantity and quality of the remaining mineral material.

2854 - COMMUNITY SITES AND COMMON-USE AREAS

2854.1 - Purpose. (36 CFR 228.64). The Forest Service establishes, maintains, and ultimately closes community sites or pits and common-use areas from which it is possible to make

simple nonexclusive disposals. Establish these areas, where needed, to provide sources of mineral materials for small volume and/or noncommercial users who may have neither the equipment nor the capital to invest in an exclusive disposal site. Concentrate these uses into limited areas to minimize environmental impacts and administrative costs.

Community pits are those designated for long-term disposal of specific deposits of mineral materials. Common-use areas are broad geographic areas designated for the removal of mineral materials that occur on the surface throughout the area. Removal of these materials does not result in appreciable surface disturbance, and reclamation is not normally necessary.

2854.2 - Method of Disposal. Dispose of mineral materials from community sites and common-use areas by negotiated sale or free-use permit. Process these disposals on approved forms (FS-2800-9 or FS-2700-3) with appropriate annotation.

2854.3 - Term. The maximum term for any single authorized nonexclusive use is 90 days; establish shorter terms as needed.

2855 - OPERATING PLANS. All surface-disturbing operations under mineral materials contracts or permits require an operating plan. A plan has no special format; its complexity and length may vary with the scope of the proposed operation and with the anticipated environmental impacts. The only requirement is that the plan must include the information specified at 36 CFR 228.56. Any revisions to the original operating plan require approval of an authorized officer. Prepare operating plans for in-Service pits, community sites, and common-use areas 36 CFR 228.64(b). Purchasers and permittees submit their own operating plans in all other cases.

#### 2856 - APPRAISAL

2856.1 - Requirements. Appraise all mineral materials for sale to determine fair market value 36 CFR 228.48(a). Do not sell mineral materials for less than the appraised value 36 CFR 228.43(b), 36 CFR 228.48(a). For guidance on appraisal procedures, refer to FSM 5410. To minimize costs and to provide information for planning and budgeting purposes, make and record only an estimate of the amount and value of mineral materials for disposal by free-use permit.

2856.2 - Fair Market Value. Mineral material appraisals and resulting reports help establish fair market value for a particular deposit for the purpose of setting a sale price or for measuring the value of materials produced from National Forest lands. For purposes of appraising mineral materials, fair market value is defined as:

the highest price (in dollars per cubic yard or weight equivalent) that a particular deposit will bring in the open market, provided that there is a reasonable time allowed for a ready, willing, and able seller to find a ready, willing, and able buyer, both acting without compulsion, both acting intelligently, and both fully informed as to the uses, advantages, and disadvantages of the deposit.

In the case of mineral materials, the point of sale is the location of the particular deposit in the ground. The fair market value is usually the in-place value or pit selling price.

2856.21 - Market Data Approach. In most cases, use the market data approach of appraising mineral materials. If possible, make comparisons between active or recently active local operations by contractors, sand and gravel companies, or landowners involving similar materials. Do not use sales between interrelated corporations unless it can be established that the prices were not discounted. Consider appropriate transactions involving governmental bodies as buyers or sellers; however, analyze these transactions carefully to determine whether the prices paid represent fair market value. In some instances, government transactions may represent the only ones available for comparison.

2856.22 - Comparability Factors. Consider comparability factors that may affect the appraised value of mineral materials. These include time, location, quality, access, supply and demand, and environmental constraints.

2857 - BONDING. (36 CFR 228.51). FSM 6506 lists the types of bonds that are acceptable to the Forest Service. Have the bond in hand before approving operations. Contracts or permits may not be denied to purchasers or permittees with histories of poor compliance; therefore, design bond requirements to cover all risks.

2858 - RECLAMATION. All contracts and permits must contain requirements for the reclamation of disturbed areas 36 CFR 228.47(f). Furthermore, operating plans must contain some discussion of the intended reclamation (36 CFR 228.56). Consider the costs of reclamation in determining the amount of bond required (36 CFR 228.51). Reclamation is the responsibility of the purchaser or permittee; however, the Forest Service is responsible for reclamation of community sites and common-use areas.

2859 - REPORTING. At least annually, collect a report of the volume in cubic yards (or weight equivalent) from each purchaser and permittee (Report FS-2800-F, Amount of Mineral Materials).

In response to the periodic surveys by the U.S. Bureau of Mines, Regional Foresters must report the type and quantity of certain mineral material removed, whether sold, supplied free of charge, or used by the Forest Service within or outside of National Forest boundaries (Report FS-2800-G, Summary of Mineral Materials Transactions). Send copies of these responses to the Washington Office, Minerals and Geology Management Staff, as part of the integrated program development and budget