

### § 2812.1-3

the portions of such road system which the applicant directly controls within the meaning of § 2812.0-5(i), the portions thereof which the applicant indirectly controls within the meaning of § 2812.0-5(j), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

#### § 2812.1-3 Unauthorized use, occupancy, or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O & C) lands (as is defined in 43 CFR 2812.0-5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0-5. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, part 2800 of this title.

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#### § 2812.2 Nature of permit.

##### § 2812.2-1 Nonexclusive license.

Permits for rights-of-way for tramroads, do not constitute ease-

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ments, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 2812.6-2 and 2812.8-3, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 2812.8.

##### § 2812.2-2 Right of permittee to authorize use by third parties.

A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement while the prior permit is outstanding, to be bound by the road rules of and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in §§ 2812.4-1, 2812.4-3, and 2812.4-4 of this subpart.

##### § 2812.2-3 Construction in advance of permit.

The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any

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representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by this paragraph. Advance construction will not be authorized unless and until applicant has complied with §§ 2812.1-1, 2812.1-2, 2812.3-1 and 2812.5-1.

### **§ 2812.3 Right-of-way and road use agreement.**

#### **§ 2812.3-1 Rights over lands controlled by applicant.**

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0-6, he may require the applicant, as a condition precedent to the issuance of the permit:

(a) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(b) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of this paragraph such portion as the applicant directly controls of the road system and rights-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or rights-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and rights-of-way.

#### **§ 2812.3-2 Other roads and rights-of-way controlled by applicant.**

In addition to the private road systems and rights-of-way described in § 2812.3-1 in the event the applicant controls directly or indirectly other roads or rights-of-way in any O. and C. area where the authorized officer of the Bureau finds that, as of the time of filing or during the pendency of the application, the United States is unreasonably denied access to its timber for management purposes or where, as of such time, competitive bidding by all prospective purchasers of timber managed by the Bureau in the O. and C. area, or of other Federal timber intermingled with or adjacent to such timber, is substantially precluded by reason of the applicant's control, direct or indirect, of such roads or rights-of-way, the authorized officer may require the applicant to negotiate an agreement granting to the United States and its licensees the right to use, in accordance with the terms and conditions of this paragraph such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

#### **§ 2812.3-3 Form of grant to the United States, recordation.**

Any grant of rights to the United States under this section shall be executed on a form prescribed by the Director which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the appropriate district manager.

#### **§ 2812.3-4 Where no road use agreement is required.**

Where, in the judgment of the authorized officer, it is consistent with the policy set forth in subpart 2811 he may issue a permit without requesting the applicant to grant any rights to the United States under this paragraph.