

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

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

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

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

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

(1) Mineral suitable and used as soil amendment because of a constituent element other than calcium or magnesium carbonate that chemically alters the soil;

(2) Limestone suitable and used, without substantial admixtures, for cement manufacture, metallurgy, production of quicklime, sugar refining,

whiting, fillers, paper manufacture, and desulfurization of stack gases;

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

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

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

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

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

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

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

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

#### § 228.42 Definitions.

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

*Acquired National Forest lands.* National Forest System lands acquired under the Weeks Act of March 1, 1911 (36 Stat. 961), and National Forest System lands with Weeks Act status as provided in the Act of September 2, 1958 (16 U.S.C. 521a).

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

### § 228.43

### 36 CFR Ch. II (7-1-07 Edition)

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

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

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

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

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

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

*Prospecting permit.* A written instrument issued by the Forest Service which authorizes prospecting for a mineral material deposit on acquired National Forest lands within specific areas, under stipulated conditions, and for a specified period of time.

*Single entry source.* A source of mineral materials which is expected to be depleted under a single contract or per-

mit or which is reserved for Forest Service use.

*Unpatented mining claim.* A lode or placer mining claim or a millsite located under the General Mining Law of 1872, as amended (30 U.S.C. 21-54), for which a patent under 30 U.S.C. 29 and regulations of the Department of the Interior has not been issued.

*Withdrawn National Forest lands.* National Forest System lands segregated or otherwise withheld from settlement, sale, location, or entry under some or all of all of the general land laws (43 U.S.C. 1714).

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

#### § 228.43 Policy governing disposal.

(a) *General.* Forest Service policy is to make mineral materials on National Forest lands available to the public and to local, State, and Federal government agencies where reasonable protection of, or mitigation of effects on, other resources is assured, and where removal is not prohibited.

(1) A contract or permit limits processing of the mineral material onsite to the first salable product.

(2) Additional onsite processing may be authorized by a separate permit (36 CFR 251.50).

(3) The authorized officer must ensure that an environmental analysis is conducted for all planned disposals of mineral materials.

(4) Decisions to authorize the disposal of mineral materials must conform to approved land and resource management plans (36 CFR 219.22).

(b) *Price.* Mineral materials may not be sold for less than the appraised value. The authorized officer may assess a fee to cover costs of issuing and administering a contract or permit.

(c) *Conservation.* Adequate measures must be taken to protect, and minimize damage to the environment. Mineral materials may be disposed of only if the authorized officer determines that the disposal is not detrimental to the public interest.

(d) *Ownership.* Title to the mineral materials vests in the purchaser or permittee immediately before excavation, subject to the provisions of §§ 228.47 through 228.56 and other provisions of