

§211.6

which will accomplish certain planned resource management objectives.

(2) Escaped prescribed fire means a prescribed fire which has either exceeded the prescription or has rekindled after it has been declared to be out.

(b) In the absence of a written reciprocal agreement with any fire organization or in situations outside the scope of an agreement, the Forest Service is authorized to render emergency assistance in suppressing fires and in preserving life and property from the threat of fire within the vicinity of Forest Service fire protection facilities under the following conditions:

(1) If a prescribed fire initiated on lands administered by the Forest Service escapes onto lands not administered by the Forest Service, the Forest Service may commit personnel, materials, and equipment without reimbursement or consideration of the fire's continuing threat to National Forest System lands or resources.

(2) When requested, the Forest Service may commit personnel, materials, and equipment on a reimbursable basis on lands not administered by the Forest Service without regard to the fire's threat to National Forest System lands or resources.

[48 FR 44537, Sept. 29, 1983]

§211.6 Cooperation in forest investigations or the protection, management, and improvement of the National Forest System.

(a) *Purpose and scope.* Forest Service officers, when engaged in cooperative activities otherwise authorized, may receive monies from cooperators only for cooperative work in forest investigations or for the protection, management, and improvement of the National Forest System and only in accordance with written cooperative agreements. Management of the National Forest System may include such work as planning, analysis, and related studies, as well as resource activities.

(b) *Reimbursements.* Agency expenditures for work undertaken in accordance with this section may be made from Forest Service appropriations available for such work, with subsequent reimbursement from the cooperator, in accordance with established written agreements. Forest Service of-

36 CFR Ch. II (7-1-11 Edition)

ficers shall issue written bills for collection for cooperator reimbursement payments within the same fiscal year as Forest Service expenditures.

(c) *Bonding.* Each written agreement involving a non-Government cooperator's total contribution of \$25,000 or more to the Forest Service on a reimbursable basis, must include a provision requiring a payment bond to guarantee the cooperator's reimbursement payment. Acceptable security for a payment bond includes Department of the Treasury approved corporate sureties, Federal Government obligations, and irrevocable letters of credit. For the purposes of this section, a non-Government cooperator is an entity that is not a member, division, or affiliate of a Federal, State, local government, a federally recognized Indian Tribe (as defined by the Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. 479a]), or other organizations funding a Forest Service agreement with pass through funding from an entity that is a member, division, or affiliate of a Federal, State, local government, or federally recognized Indian Tribe.

(d) *Avoiding conflict of interest.* Forest Service officers shall avoid acceptance of contributions from cooperators when such contributions would reflect unfavorably upon the ability of the Forest Service to carry out its responsibilities and duties. Forest Service officers shall be guided by the provisions of 18 U.S.C. parts 201-209, 5 CFR part 2635, and applicable Department of Agriculture regulations, in determining if a conflict of interest or potential conflict of interest exists in a proposed cooperative effort. Forest Service ethics officials or the designated Department of Agriculture ethics official should be consulted on conflict of interest issues.

[64 FR 60678, Nov. 8, 1999, as amended at 73 FR 62443, Oct. 21, 2008]

Subpart B [Reserved]

PART 212—TRAVEL MANAGEMENT

Subpart A—Administration of the Forest Transportation System

Sec.
212.1 Definitions.

Forest Service, USDA

§212.1

- 212.2 Forest development transportation program.
- 212.3 Cooperative work.
- 212.4 Construction and maintenance.
- 212.5 Road system management.
- 212.6 Ingress and egress.
- 212.7 Access procurement by the United States.
- 212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.
- 212.9 Principles for sharing use of roads.
- 212.10 Maximum economy National Forest System roads.
- 212.11-212.20 [Reserved]
- 212.21 Pacific Crest National Scenic Trail.

Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

- 212.50 Purpose, scope, and definitions.
- 212.51 Designation of roads, trails, and areas.
- 212.52 Public involvement.
- 212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.
- 212.54 Revision of designations.
- 212.55 Criteria for designation of roads, trails, and areas.
- 212.56 Identification of designated roads, trails, and areas.
- 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

Subpart C—Use by Over-Snow Vehicles

- 212.80 Purpose, scope, and definitions.
- 212.81 Use by over-snow vehicles.

Subpart A—Administration of the Forest Transportation System

AUTHORITY: 16 U.S.C. 551, 23 U.S.C. 205.

§212.1 Definitions.

For the purpose of this part the following terms, respectively, shall mean:

Administrative unit. A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

Area. A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.

Chief. The Chief, Forest Service, Department of Agriculture.

Construction engineering. All work and expense of setting out, controlling, inspecting, and measuring the construction or reconstruction of a forest transportation facility including:

(1) Construction surveys to establish line and grade for the work, to control the work, and to measure quantities;

(2) Redesigning, adjusting, and changing the plans, specifications, and materials to meet conditions;

(3) Inspecting, directing, and controlling operations for compliance with plans and specifications;

(4) Inspecting, testing, and accepting materials and equipment to be installed in the work; and

(5) Inspecting, measuring, and accepting completed work.

Designated road, trail, or area. A National Forest System road, a National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to §212.51 on a motor vehicle use map.

Federal airport funds. Discretionary funds available for airfields in National Forests under section 6(b)(3) of the Act of May 13, 1946 (60 Stat. 173), as amended; 49 U.S.C. 1105(b)(3).

Forest road and trail funds. Funds authorized or appropriated for the purpose of carrying out the provisions of section 205 of the Act of August 27, 1958 (72 Stat. 907), as amended; 23 U.S.C. 205.

Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

Forest transportation atlas. A display of the system of roads, trails, and airfields of an administrative unit.

Forest transportation facility. A forest road or trail or an airfield that is displayed in a forest transportation atlas, including bridges, culverts, parking lots, marine access facilities, safety devices, and other improvements appurtenant to the forest transportation system.

Forest transportation system. The system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands.

§212.1

36 CFR Ch. II (7-1-11 Edition)

Maintenance. The upkeep of the entire forest transportation facility including surface and shoulders, parking and side areas, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

Motor vehicle. Any vehicle which is self-propelled, other than:

- (1) A vehicle operated on rails; and
- (2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

Motor vehicle use map. A map reflecting designated roads, trails, and areas on an administrative unit or a Ranger District of the National Forest System.

National Forest System. As defined in the Forest Rangeland Renewable Resources Planning Act, the "National Forest System" includes all National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010-1012), and other lands, waters or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system.

National Forest System road. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

National Forest System trail. A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

Off-highway vehicle. Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

Over-snow vehicle. A motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow.

Preconstruction engineering. All work and expense of preparing for construc-

tion or reconstruction of a forest transportation facility including:

- (1) Engineering and economic investigations, studies, and reports;
- (2) Reconnaissance surveys;
- (3) Preliminary surveys;
- (4) Preliminary location surveys;
- (5) Soils, foundations, and materials investigations, surveys, and tests;
- (6) Preliminary and final designs;
- (7) Preliminary and final plans, drawings, specifications, and estimates of quantities and cost;
- (8) Final location surveys staked on the ground; and
- (9) Rights-of-way surveys, plans, and descriptions.

Regional forester. A regional forester of the Forest Service.

Road. A motor vehicle route over 50 inches wide, unless identified and managed as a trail.

Road and trail 10 percent funds. Funds available from the permanent appropriation "Roads and Trails for States" under the Act of March 4, 1913 (37 Stat. 843), as amended; 16 U.S.C. 501.

Road construction or reconstruction. Supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.

Road Decommissioning. Activities that result in the stabilization and restoration of unneeded roads to a more natural state.

Temporary road or trail. A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or trail and that is not included in a forest transportation atlas.

Trail. A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.

Travel management atlas. An atlas that consists of a forest transportation atlas and a motor vehicle use map or maps.

Unauthorized road or trail. A road or trail that is not a forest road or trail or a temporary road or trail and that is

Forest Service, USDA

§212.5

not included in a forest transportation atlas.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528, 531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a, et seq., 42 Atty. Gen. Op. No. 7, Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 66 FR 3216, 3217, Jan. 12, 2001; 70 FR 68287, Nov. 9, 2005]

§212.2 Forest transportation program.

(a) *Travel management atlas.* For each administrative unit of the National Forest System, the responsible official must develop and maintain a travel management atlas, which is to be available to the public at the headquarters of that administrative unit.

(b) *Forest transportation atlas.* A forest transportation atlas may be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit. A forest transportation atlas does not contain inventories of temporary roads, which are tracked by the project or activity authorizing the temporary road. The content and maintenance requirements for a forest transportation atlas are identified in the Forest Service directives system.

(c) *Program of work for the forest transportation system.* A program of work for the forest transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

[62 FR 58654, Oct. 30, 1997, as amended at 66 FR 3216, 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005; 73 FR 74613, Dec. 9, 2008]

§212.3 Cooperative work.

(a) Cooperative agreements for all projects which involve financial contributions from cooperators shall be negotiated, approved, and executed in accordance with procedures prescribed by the Chief.

(b) Cooperative funds contributed in advance shall be deposited in the United States Treasury to the credit of the Forest Service Cooperative Fund authorized by the Act of June 30, 1914 (38 Stat. 430), as amended; 16 U.S.C. 498,

or the Act of March 3, 1925 (43 Stat. 1132), as amended; 16 U.S.C. 572, which deposits will be made available for expenditure from the appropriation "Cooperative Work, Forest Service." If a State, county or other governmental agency is unable to contribute funds under the Act of March 3, 1925, as amended, in advance but is able to pay its share subsequent to performance of the work, the subsequent payment of such funds will be deposited to the credit of the Forest Service appropriation from which the expenditures were made or to appropriations for similar purposes currently available at the time of deposit.

[25 FR 6360, July 7, 1960. Redesignated at 62 FR 58654, Oct. 30, 1997]

§212.4 Construction and maintenance.

(a) Construction and maintenance work on forest transportation facilities with appropriated funds shall be directed to what is necessary and economically justified for protection, administration, development, and multiple-use management of the federally owned lands and resources served.

(b) Preliminary engineering and the construction and maintenance of forest transportation facilities shall be performed by force account or let to contract, unless otherwise approved by the Chief. The contract method shall be employed for roads and trails in accordance with section 205(c) of the Act of August 27, 1958 (72 Stat. 907); 23 U.S.C. 205, and for all other facilities when it is advantageous and in the interest of the Government.

(c) No construction work shall be started by force account or let to contract until all necessary rights of way have been secured, and approved by the Attorney General, if required, and cooperative agreements, if any, approved and executed.

[24 FR 10256, Dec. 18, 1959, as amended at 25 FR 6360, July 7, 1960. Redesignated at 62 FR 58654, Oct. 30, 1997; 66 FR 3216, Jan. 12, 2001]

§212.5 Road system management.

(a) *Traffic rules.* Rules set forth under 36 CFR part 261 and this section shall apply to all National Forest System

§212.5

36 CFR Ch. II (7–1–11 Edition)

roads under the jurisdiction of the Forest Service except when in conflict with written agreement.

(1) *General.* Traffic on roads is subject to State traffic laws where applicable except when in conflict with designations established under subpart B of this part or with the rules at 36 CFR part 261.

(2) *Specific.* The following specific traffic rules shall apply unless different rules are established in 36 CFR part 261.

(i) The load, weight, length, height, and width limitations of vehicles shall be in accordance with the laws of the States wherein the road is located. Greater or lesser limits may be imposed and these greater or lesser limits shall be established as provided in 36 CFR part 261.

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR part 261. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, all-terrain vehicles, 4-wheel drive vehicles, off-highway vehicles, and trailers. Types of traffic may include but are not limited to groupings such as commercial hauling, recreation, and administrative.

(iii) Roads, or segments thereof, may be closed to all vehicle use as provided in 36 CFR part 261.

(iv) Additional rules may be imposed as provided in 36 CFR part 261.

(b) Road system—(1) *Identification of road system.* For each national forest, national grassland, experimental forest, and any other units of the National Forest System (§212.1), the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other manage-

ment objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

(2) *Identification of unneeded roads.* Responsible officials must review the road system on each National Forest and Grassland and identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails. Decommissioning roads involves restoring roads to a more natural state. Activities used to decommission a road include, but are not limited to, the following: reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to the road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders, scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes, or other methods designed to meet the specific conditions associated with the unneeded road. Forest officials should give priority to decommissioning those unneeded roads that pose the greatest risk to public safety or to environmental degradation.

(c) *Cost recovery on National Forest System roads.* The Chief may determine that a share of the cost of acquisition, construction, reconstruction, improvement, or maintenance of a road, or segment thereof, used or to be used for commercial hauling of non-Federal forest products and other non-Federal products, commodities and materials, should be borne by the owners or haulers thereof. The Chief may condition the permission to use a road, or segment thereof, upon payment to the United States of the proportionate share of the cost and bearing proportionate maintenance as determined to be attributable to the owner's or hauler's use in accordance with §212.9. This

Forest Service, USDA

§212.6

condition to use roads would apply where the owners or haulers:

(1) Have not shared in the cost of acquisition, construction, reconstruction, or improvements, and

(2) Have not made contributions to pay their proportionate share of the costs.

(d) *Maintenance and reconstruction of National Forest System roads by users—*

(1) *Maintenance.* The Chief may require, but not in conflict with an existing permit, easement, contract, or other agreement, the user or users of a road, including purchasers of Government timber and other products, to maintain the roads in a satisfactory condition commensurate with the particular use requirements of each. The maintenance to be borne by each user shall be proportionate to total use and no individual user shall be required to perform or bear the costs of maintenance other than that commensurate with his use.

(2) *Reconstruction.* The Chief may require, but not in conflict with an existing permit, easement, contract, or other agreement, the user or users of a road to reconstruct it when, at the time the use is requested, reconstruction is determined to be necessary to accommodate his use.

(3) *Deposits in lieu of performance.* If the maintenance or reconstruction cannot be so provided or if the Chief determines that maintenance or reconstruction by a user would not be practical, the Chief may require that sufficient funds be deposited by the user to provide his portion of the total maintenance or reconstruction costs. Deposits made to cover maintenance or reconstruction of roads shall be used for the purposes deposited, except that:

(i) Deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates, and

(ii) Unexpended balances upon accomplishment of the purposes for which deposited shall be transferred to miscellaneous receipts or refunded.

(e) *Deposits for making delayed payments to cooperator.* Any fees or other collections received by the Chief under the terms of an agreement or other document providing for delayed pay-

ments to the Government's cooperator for use of a road shall be placed in a fund available for making these payments.

[39 FR 27649, July 31, 1974, as amended at 42 FR 2957, Jan. 14, 1977; 43 FR 20007, May 10, 1978; 62 FR 58654, Oct. 30, 1997. Redesignated and amended at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

§212.6 Ingress and egress.

(a) *Policy in acquiring and granting access.* To assure effective protection, management, and utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent, the Chief shall as promptly as is feasible obtain needed access thereto and shall grant appropriate access across National Forest and other lands and easements administered by the Forest Service to intermingled or adjacent landowners. Construction, reconstruction or maintenance of a road or highway requires written authorization.

(b) *Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service.* Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service shall be permitted ingress and egress over the same and use of existing National Forest System roads and trails in order to reach their homes and to utilize their property: Provided, such ingress and egress or use shall conform to rules and regulations governing the protection and administration of the lands and the roads or trails to be used.

(c) *Others.* Entering upon the National Forests and other lands administered by the Forest Service and use of existing National Forest System roads and trails shall be permitted for all proper and lawful purposes subject to compliance with rules and regulations

§212.7

36 CFR Ch. II (7-1-11 Edition)

governing the lands and the roads or trails to be used.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885; as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[40 FR 52611, Nov. 11, 1975, as amended at 42 FR 2957, Jan. 14, 1977. Redesignated at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001]

§212.7 Access procurement by the United States.

(a) *Existing or proposed forest roads that are or will be part of a transportation system of a State, county, or other local public road authority.* Forest roads that are or will be part of a transportation system of a State, county, or other local public road authority and are on rights-of-way held by a State, county, or other local public road authority may be constructed, reconstructed, improved, or maintained by the Forest Service when there is an appropriate agreement with the State, county, or other local public road authority under 23 U.S.C. 205 and the construction, reconstruction, improvement, or maintenance is essential to provide safe and economical access to National Forest System lands.

(b) *Acquisition of easements and rights of use.* Except as otherwise provided in the regulations of this part, easements for road and trail construction across non-Federal lands and easements or rights of use over non-Federal roads and trails will be acquired in the name of the United States of America and its assigns. The easements or rights of use may be acquired by purchase, condemnation, donation, or as a reciprocal for permits or easements for roads or trails to be constructed or for easements over or permits to use existing roads or trails.

(c) *Methods of compensation for easements and rights of use acquired by the United States.* Compensation in negotiated acquisitions may be:

(1) By payment from appropriated funds;

(2) Pursuant to reservation in the grant of easement to the United States whereby the grantor reserves the right

to require haulers of Federal timber or other Federal products over the road conveyed or thereafter constructed by the grantor to make payments to the grantor in accordance with the terms of the reservation;

(3) By granting reciprocal rights; or

(4) By a combination of these methods.

(d) *Cooperative construction and use agreements.* Where areas, partly lands administered by the Forest Service and partly private or other ownership are undeveloped or inadequately developed by roads, the Chief will, to the extent feasible and advantageous to the United States, join in planning, constructing, reconstructing, improving, maintaining, and using an adequate road system on the basis of each party bearing the proportion of the cost attributable to the anticipated benefits as set forth in §212.9.

(e) *Condemnation.* Where access across non-Federal land or over a non-Federal road or trail cannot be obtained through negotiations with reasonable promptness, condemnation will be undertaken.

(f) *Access over non-Federal land and use of non-Federal roads or trails on a temporary basis.* The Chief may negotiate a temporary agreement for access over non-Federal land and for use of an existing non-Federal road or trail where there is immediate need for temporary access for limited purposes that can be economically met by such procedure, or where the foreseeable need does not justify the expenditures necessary to provide a permanent road or trail.

(g) *Use and control of interests in roads, trails, and easements acquired by the United States.* Interests in roads, trails, and easements acquired by the United States shall be under the control of the United States, subject to approved reservations, limitations and other provisions set forth in the easement, permit, or other indenture. This control by the United States may include restricting or conditioning the use of the interest owned by the United States in the

Forest Service, USDA

§212.8

road, trail, or easement where necessary.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974; 62 FR 58654, Oct. 30, 1997. Redesignated and amended at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

§212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.

(a) *Permission to construct or use roads across lands and assignable easements owned by the United States and administered by the Forest Service.* If a reciprocal benefit is needed by the United States, permission to construct or use a road across lands and across assignable easements owned by the United States and administered by the Forest Service will be conditioned, except as provided in this section, for any applicant who seeks a permit to construct or use a road across the same, upon the grant to the United States of a reciprocal benefit. Such benefit shall bear:

(1) A reasonable relation to the management of lands administered by the Forest Service; and

(2) A value substantially similar to the value of the estate or interest in lands or easements applied for. In those instances where the values of the interests needed by the United States exceed those applied for by the applicant, the additional interests required by the United States will be acquired as provided in §212.7(b) and (c). Where values needed by the applicant exceed those needed by the United States, the difference in values will be determined under principles set forth below and in §§212.5(c) and 212.9. If a reciprocal benefit is not needed by the United States, or the applicant shows good cause why the reciprocal benefit needed by the United States cannot or should not be granted by him, or the applicant declines to grant the reciprocal benefit requested by the United States or if a

bona fide emergency exists, permission to construct or use a road across lands owned by the United States may be conditioned for any applicant upon reasonable charges and all other terms and conditions required by the Chief to protect the interests of the United States. Permits for such road construction or use will be non-exclusive and will be conditioned upon compliance with their terms and conditions and with the rules and regulations governing the protection and administration of the lands and those applicable to such roads.

(b) [Reserved]

(c) *Replacement of prior grants.* (1) Upon application to the Chief, an easement under the Act of March 3, 1899 (30 Stat. 1233, 16 U.S.C. 525), shall be replaced by an easement under paragraph (d) of this section.

(2) Upon application to the Chief, an easement shall be granted under paragraph (d) of this section as a replacement for any stipulations for ingress and egress issued under the Act of June 4, 1897 or permit or other document evidencing the applicant's right to use a road: *Provided*, The applicant has met the requirements for obtaining such easement as set forth in paragraph (d) of this section.

(d) *Easements for roads crossing lands or easements administered by the Forest Service.* (1) Applications for permanent or temporary easements for specified periods or otherwise to be granted under the Act of October 13, 1964 (78 Stat. 1039, 16 U.S.C. 533), over lands or easements administered by the Forest Service, or over roads thereon will be approved by the Chief for those applicants who have conveyed or provided appropriate easements over roads, assignable easements and lands owned or controlled by them to the United States of America and its assigns and who have already constructed, or will, as scheduled by agreement, construct their proportionate share of the road or road system of which the segments described in the application are parts. The Chief, after approval of the application and the grant of the easement, will cause the same to be entered in the records of the Forest Service, and delivered to the applicant.

§212.9

(2) Notwithstanding paragraph (d)(1) of this section, the Chief may grant to the applicant a permanent or temporary easement for specified periods or otherwise upon such exchange of easements or share-cost arrangement or other reasonable consideration as he may deem appropriate.

(3) The Chief may grant to a State or local subdivision thereof; easements for roads over lands or easements administered by the Forest Service and over roads thereon, when the roads thereon or roads to be constructed thereon will serve said lands and are, or will become a part of the road system maintained by such State or local subdivision for general public use: *Provided*, That easements shall not be granted under authority of this act (78 Stat. 1089), 16 U.S.C. 533 which may be granted under the Highway Act (72 Stat. 916, 23 U.S.C. 317), as amended. The easements shall contain such provisions, terms, and conditions as the Chief may determine are necessary to retain and protect the interests needed by the United States.

(4) All instruments affecting permanent interests in land executed pursuant to this paragraph (d) of this section shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from public domain shall be furnished by the Chief to the Secretary of the Interior.

(5) The Chief may terminate any easement granted under the provisions of the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 534),

(i) By consent of the owner of the easement,

(ii) By condemnation, or

(iii) Upon abandonment after nonuse by the owner of the easement for a period of 5 years. Before any easement is terminated for nonuse or abandonment, the owner of the easement must be given notice and, upon his request made within 60 days after receipt of the notice, a hearing in accordance with

36 CFR Ch. II (7-1-11 Edition)

the provisions of 36 CFR part 211, subpart B.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974; 48 FR 28638, June 23, 1983. Redesignated and amended at 62 FR 58654, Oct. 30, 1997]

§212.9 Principles for sharing use of roads.

The use of roads under arrangements for sharing costs or performance shall be in accordance with the following:

(a) *Road improvement.* Use of a road for commercial hauling, except occasional or minor amounts, will be conditioned upon improvement or supplemental construction of the road to safety and economically serve the contemplated use, unless the Chief determines that the safety and economy of the established and foreseeable use by the United States, its users and co-operators will not be impaired by the use for which application is being made. With the consent of the Chief the applicant may deposit funds in the estimated amount required for the improvements or supplemental construction in lieu of performance. Such funds will be used by the Forest Service to do the planned work. The cost of the improvements or supplemental construction will be taken into account in determining any otherwise required contribution to cover the proportionate share of the cost of road acquisition, construction, reconstruction or improvement attributable to the use.

(b) *Corresponding benefits.* Corresponding benefits which may be accepted by the Chief for sharing road use will be those which bear a reasonable relation to the management of lands administered by the Forest Service. They may be in the form of:

(1) Deposit of funds with the Forest Service for use in paying the cost of road construction, reconstruction, or improvement to be borne by the user;

(2) The grant of a reciprocal right of substantially similar value to the road use sought;

(3) Construction, reconstruction, or improvement by applicant of a road needed for access to and use of lands administered by the Forest Service; or

(4) any combination of these.

(c) *Cost determinations for roads cooperatively constructed under agreements.* When roads are constructed under cooperative agreements to meet mutual needs of the United States and others for access, determinations of the shares of costs to be borne by the United States and the cooperating parties will include consideration of:

(1) The standard of road required for the planned hauling;

(2) The share of planned use;

(3) The location and volume of tributary timber owned by each party and expected to be hauled over the road or roads;

(4) The tributary areas owned or controlled by each party;

(5) Expected use by the public; and

(6) Other appropriate considerations.

(d) *Cost recovery by the United States from others.* When roads are used under permit for commercial hauling instead of under cooperative agreement, any cost to be recovered by the United States will be calculated in proportion to the planned use of the road. The road cost used in such calculation will be the amount or estimated amount expended in the acquisition, construction, reconstruction, and improvement of that capacity of the road required to serve the use needs of all parties that are or reasonably can be expected to use the road. The road costs shall not exceed the replacement value of the road. Such road share-cost payments will be through deposits in advance of use unless the user provides a payment bond satisfactory to the Chief guaranteeing that payments will be made promptly upon billing by the Forest Service.

(e) *Cost sharing with a cooperator.* The costs to achieve the agreed upon road or road system may be met by:

(1) Use of appropriated funds;

(2) Construction, reconstruction, or improvement of roads or segments of roads by purchasers of products from

lands administered by the Forest Service or other users;

(3) Use of deposits made by cooperator with the Forest Service to cover cooperator's agreed share;

(4) Agreement with cooperator pursuant to which cooperator does more than his agreed share of constructing, reconstructing, or improving a road and recovers costs incurred in excess of his agreed share by charging purchasers of products from lands administered by the Forest Service an equitable amount within the limits and to the total amount specified in the agreement; or

(5) A combination of the aforementioned methods.

(f) *Road maintenance and resurfacing.* Cooperators will share the road maintenance and resurfacing costs under suitable agreements to perform, arrange for performance by others, or by making deposits with the Forest Service which will be used to pay the cost of work necessary to keep such roads in satisfactory condition commensurate with use requirements of each cooperator. No cooperator shall be required to perform or bear such costs other than those occasioned by its individual use. Other users will bear costs in accordance with §212.5(d).

(g) *Interests to be acquired by the United States in roads or easements therefor.* Where the United States is to bear or share the cost of constructing or improving, or acquiring a road system, a road, or a segment thereof, or acquires an easement therefor, the interest acquired will:

(1) Be for perpetual use unless the road use falls within the limited classes where temporary roads or roads for limited periods are acceptable;

(2) Provide adequately for foreseeable management, protection, and utilization needs of lands administered by the Forest Service and intermingled and adjacent private and public lands and for the use and development of the resources upon which communities within or adjacent to the National Forest are dependent; and

(3) not be subject to conditions, reservations, or covenants unrelated to the road use, or which seek or might

§212.10

tend to direct or limit policies and procedures for management of lands administered by the Forest Service.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5478, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974. Redesignated and amended at 62 FR 58654, Oct. 30, 1997]

§212.10 Maximum economy National Forest System roads.

The Chief may acquire, construct, reconstruct, improve, and maintain National Forest System roads within and near the National Forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof and for utilization of the other resources thereof. Financing of such roads may be accomplished—

(a) By the Chief utilizing appropriated funds,

(b) By requirements on purchasers of National Forest timber and other products, including provisions for amortization of road costs in contracts,

(c) By cooperative financing with other public agencies and with private agencies or persons, or

(d) By a combination of these methods, provided that where roads are to be constructed at a higher standard than the standard—consistent with applicable environmental laws and regulations—that is sufficient for harvesting and removal of National Forest timber and other products covered by a particular sale, the purchaser of the timber and other products shall not be required to bear the part of the cost necessary to meet the higher standard, and the Chief may make such arrange-

36 CFR Ch. II (7-1-11 Edition)

ments to achieve this end as may be appropriate.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5479, Apr. 16, 1965. Redesignated at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

§§ 212.11-212.20 [Reserved]

§212.21 Pacific Crest National Scenic Trail.

The Pacific Crest National Scenic Trail as defined by the National Trails Systems Act, 82 Stat. 919, shall be administered primarily as a footpath and horseback riding trail by the Forest Service in consultation with the Secretary of the Interior. The use of motorized vehicles may be authorized by the Federal Agency administering the segment of trail involved when use of such vehicles is necessary to meet emergencies or to enable landowners or land users to have reasonable access to their lands or timber rights.

(82 Stat. 919 (16 U.S.C. 1241 *et seq.*))

[43 FR 20007, May 10, 1978]

Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

AUTHORITY: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

SOURCE: 70 FR 68288, Nov. 9, 2005, unless otherwise noted.

§212.50 Purpose, scope, and definitions.

(a) *Purpose.* This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36

Forest Service, USDA

§ 212.52

CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

(b) *Scope.* The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

(c) For definitions of terms used in this subpart, refer to §212.1 in subpart A of this part.

§ 212.51 Designation of roads, trails, and areas.

(a) *General.* Motor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

- (1) Aircraft;
- (2) Watercraft;
- (3) Over-snow vehicles (see §212.81);
- (4) Limited administrative use by the Forest Service;
- (5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (6) Authorized use of any combat or combat support vehicle for national defense purposes;
- (7) Law enforcement response to violations of law, including pursuit; and
- (8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Motor vehicle use for dispersed camping or big game retrieval.* In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain forest roads or trails where motor vehicle use is allowed, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by

an individual who has legally taken that animal.

[70 FR 68288, Nov. 9, 2005, as amended at 73 FR 74613, Dec. 9, 2008]

§ 212.52 Public involvement.

(a) *General.* The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.

(b) *Absence of public involvement in temporary, emergency closures—(1) General.* Nothing in this section shall alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice to provide short-term resource protection or to protect public health and safety.

(2) *Temporary, emergency closures based on a determination of considerable adverse effects.* If the responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area, the responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence. The responsible official shall provide public notice of the closure pursuant to 36 CFR 261.51, including

§212.53

reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

§212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.

The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart.

§212.54 Revision of designations.

Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to §212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in §212.52, the requirements for coordination with governmental entities in §212.53, and the criteria in §212.55, and shall be reflected on a motor vehicle use map pursuant to §212.56.

§212.55 Criteria for designation of roads, trails, and areas.

(a) *General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.* In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.

(b) *Specific criteria for designation of trails and areas.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest

36 CFR Ch. II (7-1-11 Edition)

System lands, the responsible official shall consider effects on the following, with the objective of minimizing:

- (1) Damage to soil, watershed, vegetation, and other forest resources;
- (2) Harassment of wildlife and significant disruption of wildlife habitats;
- (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and
- (4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official shall consider:

- (5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.

(c) *Specific criteria for designation of roads.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall consider:

- (1) Speed, volume, composition, and distribution of traffic on roads; and
- (2) Compatibility of vehicle class with road geometry and road surfacing.

(d) *Rights of access.* In making designations pursuant to this subpart, the responsible official shall recognize:

- (1) Valid existing rights; and
- (2) The rights of use of National Forest System roads and National Forest System trails under §212.6(b).

(e) *Wilderness areas and primitive areas.* National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

§212.56 Identification of designated roads, trails, and areas.

Designated roads, trails, and areas shall be identified on a motor vehicle use map. Motor vehicle use maps shall be made available to the public at the headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as

Forest Service, USDA

§213.1

soon as practicable, on the website of corresponding administrative units and Ranger Districts. The motor vehicle use maps shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

§212.57 **Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.**

For each administrative unit of the National Forest System, the responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that responsible official, consistent with the applicable land management plan, as appropriate and feasible.

Subpart C—Use by Over-Snow Vehicles

AUTHORITY: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

SOURCE: 70 FR 68290, Nov. 9, 2005, unless otherwise noted.

§212.80 **Purpose, scope, and definitions.**

The purpose of this subpart is to provide for regulation of use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands. For definitions of terms used in this subpart, refer to §212.1 in subpart A of this part.

§212.81 **Use by over-snow vehicles.**

(a) *General.* Use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited.

(b) *Exemptions from restrictions and prohibitions.* The following uses are exempted from restrictions and prohibitions on use by over-snow vehicles:

- (1) Limited administrative use by the Forest Service;
- (2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (3) Authorized use of any combat or combat support vehicle for national defense purposes;

(4) Law enforcement response to violations of law, including pursuit; and

(5) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations.

(c) *Establishment of restrictions and prohibitions.* If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions. In establishing restrictions or prohibitions on use by over-snow vehicles, the responsible official shall recognize the provisions concerning rights of access in sections 811(b) and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121(b) and 3170(a), respectively).

PART 213—ADMINISTRATION OF LANDS UNDER TITLE III OF THE BANKHEAD-JONES FARM TENANT ACT BY THE FOREST SERVICE

Sec.

213.1 Designation, administration, and development of National Grasslands.

213.2 Authority for Chief, Forest Service, to group, define, and name national grasslands.

213.3 Protection, occupancy, use, administration, and exercise of reservations.

213.4 Prior rules and regulations superseded.

AUTHORITY: 50 Stat. 525, as amended; 7 U.S.C. 1010–1012.

§213.1 **Designation, administration, and development of National Grasslands.**

(a) The land utilization projects administered by Department of Agriculture designated in paragraph (e) of this section hereafter shall be named and referred to as *National Grasslands*.

(b) The National Grasslands shall be a part of the National Forest system and permanently held by the Department of Agriculture for administration under the provisions and purposes of title III of the Bankhead-Jones Farm Tenant Act.