

**Forest Service Handbook  
National Headquarters - Washington Office  
Washington, DC**

**Forest Service Handbook 2709.11 – Special Uses Handbook  
Chapter 40 - Special Uses Administration**

**Amendment:** 2709.11-2012-1

**Effective date:** December 13, 2012

**Duration:** This amendment is effective until superseded or removed.

**Approved by:** James M. Pena, Associate Deputy Chief, NFS

**Date approved:** December 07, 2012

**Responsible Staff:**

**Posting Instructions:** Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 2709.11-2011-7 to FSH 2709.11\_70.

**Last Change:** 2709.11-2011-7 to FSH 2709.11\_70

**Superseded Document(s):** 2709.11\_40, Amendment 2709.11-2011-6, August 04, 2011

**Digest:** Following is an explanation of the changes throughout the directive by section.

**40.61:** Establishes reporting procedures for when an Authorized Officer is notified by a holder of a special use authorization of an incident or allegation of child abuse or neglect associated with an authorized use and occupancy of National Forest System lands.

Forest Service Handbook 2709.11 – Special Uses Handbook  
Chapter 40 - Special Uses Administration  
Amendment: 2709.11-2012-1  
Effective date: December 13, 2012

**Table of Contents**

<b>40.1 - Authority [Reserved]</b> .....	<b>4</b>
<b>40.2 - Objectives [Reserved]</b> .....	<b>4</b>
<b>40.3 - Policy [Reserved]</b> .....	<b>4</b>
<b>40.4 - Responsibility [Reserved]</b> .....	<b>4</b>
<b>40.5 - Definitions [Reserved]</b> .....	<b>4</b>
<b>40.6 - Inspections</b> .....	<b>4</b>
<b>40.61 - Reporting of Child Abuse and Neglect</b> .....	<b>4</b>
<b>40.7 - Authorization Amendments [Reserved]</b> .....	<b>5</b>
<b>40.8 - Authorization Reissuance [Reserved]</b> .....	<b>5</b>
<b>40.81 - Renewal Upon Expiration [Reserved]</b> .....	<b>5</b>
<b>40.82 - Change in Ownership [Reserved]</b> .....	<b>5</b>
<b>40.83 - Relocation of Uses [Reserved]</b> .....	<b>5</b>
<b>40.9 - Suspension, Termination, and Revocation [Reserved]</b> .....	<b>5</b>
<b>40.91 - Suspension [Reserved]</b> .....	<b>5</b>
<b>40.92 - Termination and Nonrenewal [Reserved]</b> .....	<b>5</b>
<b>40.92a - Disposition of Improvements [Reserved]</b> .....	<b>5</b>
<b>40.93 - Revocation [Reserved]</b> .....	<b>5</b>
<b>40.93a - Term Permits [Reserved]</b> .....	<b>5</b>
<b>40.93b - Permits [Reserved]</b> .....	<b>5</b>
<b>41 - Recreation Special Uses [Reserved]</b> .....	<b>5</b>
<b>42 - Agriculture [Reserved]</b> .....	<b>5</b>
<b>42.1 - Crops [Reserved]</b> .....	<b>5</b>
<b>42.15 - Livestock Area [Reserved]</b> .....	<b>5</b>
<b>42.15a - Rental Fees [Reserved]</b> .....	<b>5</b>
<b>43 - Community And Public Information [Reserved]</b> .....	<b>5</b>
<b>43.2 - Religious Facilities [Reserved]</b> .....	<b>5</b>
<b>43.21 - Cemeteries [Reserved]</b> .....	<b>5</b>
<b>43.4 - Sanitary Systems [Reserved]</b> .....	<b>5</b>
<b>43.42 - Liquid Waste Disposal [Reserved]</b> .....	<b>5</b>
<b>44 - Feasibility, Research, Training, Cultural Resources, and Historical</b> .....	<b>5</b>
<b>44.11 - Preliminary Assessments and Site Inspections at FUDS</b> .....	<b>6</b>
<b>44.11a - Authorities and Agreements</b> .....	<b>6</b>
<b>44.11b - Objective</b> .....	<b>7</b>
<b>44.11c - Background</b> .....	<b>7</b>
<b>44.11d - Access to NFS Lands for Preliminary Assessments and Site Inspections</b> .....	<b>15</b>
<b>44.11e - Dispute Resolution</b> .....	<b>24</b>
<b>44.4 - Cultural Resources and Treasure Trove Uses [Reserved]</b> .....	<b>24</b>
<b>45 - Industry</b> .....	<b>24</b>
<b>45.5 - Arts</b> .....	<b>24</b>
<b>45.51 - Still Photography</b> .....	<b>25</b>

Forest Service Handbook 2709.11 – Special Uses Handbook  
Chapter 40 - Special Uses Administration  
Amendment: 2709.11-2012-1  
Effective date: December 13, 2012

45.51a - Permit Requirements .....	25
45.51b - Evaluation of Proposals .....	26
45.51c - Land Use Fees.....	26
45.52 - Commercial Filming .....	26
45.52a - Permit Requirements .....	26
45.52b - Evaluation of Proposals .....	27
45.52c - Land Use Fees.....	27
45.6 - Mineral Exploration .....	27
45.61 - Geological and Geophysical Exploration .....	27
45.62 - Mineral Material Sale [Reserved] .....	28
46 - Energy Generation and Transmission .....	28
46.1 - Facilities That Qualify for Financing Under the Rural Electrification Act.....	28
46.2 - Wind Energy Facilities .....	28
47 - Transportation [Reserved] .....	28
48 - Communications.....	28
48.2 - Telephone and Telegraph .....	28
48.21 - Telephone and Telegraph Line .....	28
48.22 - Telephone Line Eligible for Financing Pursuant to the Rural Electrification Act (REA) .....	28
48.23 - Fiber Optic Cable .....	28
48.23a - Use Code.....	29
48.23b - Definitions .....	29
48.23c - Administration of Authorizations for Fiber Optic Cable .....	30
48.3 - Other Communications Facilities [Reserved].....	31
48.31 - Other Wire-line Communications Improvement [Reserved].....	31
48.32 - Other Communications Improvements Eligible for Financing Pursuant to the REA .....	31
49 - Water (Non-Power-Generating) [Reserved].....	31
49.2 - Impoundment [Reserved].....	31
49.22 - Dam and Reservoirs [Reserved] .....	31

**40.1 - Authority [Reserved]**

**40.2 - Objectives [Reserved]**

**40.3 - Policy [Reserved]**

**40.4 - Responsibility [Reserved]**

**40.5 - Definitions [Reserved]**

**40.6 - Inspections**

**40.61 - Reporting of Child Abuse and Neglect**

If an Authorized Officer is notified by a holder of a special use authorization of an incident or allegation of child abuse or neglect associated with the authorized use and occupancy, the Authorized Officer shall:

1. Verify that the holder has contacted the local law enforcement and/or social services agency with the authority to take emergency action to protect children who are abused or neglected regarding the incident or allegation; and
2. Place a memorandum in the holder's case file stating:
  - a. The date the Authorized Officer was notified by the holder of the incident or allegation,
  - b. The date the incident occurred or the allegation was made, and
  - c. Whether the appropriate local authorities were notified of the incident or allegation.

The information recorded in the memorandum may be subject to non-disclosure under the Privacy Act, 5 U.S.C. 552a.

- 40.7 - Authorization Amendments [Reserved]**
- 40.8 - Authorization Reissuance [Reserved]**
- 40.81 - Renewal Upon Expiration [Reserved]**
- 40.82 - Change in Ownership [Reserved]**
- 40.83 - Relocation of Uses [Reserved]**
- 40.9 - Suspension, Termination, and Revocation [Reserved]**
- 40.91 - Suspension [Reserved]**
- 40.92 - Termination and Nonrenewal [Reserved]**
- 40.92a - Disposition of Improvements [Reserved]**
- 40.93 - Revocation [Reserved]**
- 40.93a - Term Permits [Reserved]**
- 40.93b - Permits [Reserved]**
- 41 - Recreation Special Uses [Reserved]**
- 42 - Agriculture [Reserved]**
- 42.1 - Crops [Reserved]**
- 42.15 - Livestock Area [Reserved]**
- 42.15a - Rental Fees [Reserved]**
- 43 - Community And Public Information [Reserved]**
- 43.2 - Religious Facilities [Reserved]**
- 43.21 - Cemeteries [Reserved]**
- 43.4 - Sanitary Systems [Reserved]**
- 43.42 - Liquid Waste Disposal [Reserved]**
- 44 - Feasibility, Research, Training, Cultural Resources, and Historical**

## **44.11 - Preliminary Assessments and Site Inspections at FUDS**

### **44.11a - Authorities and Agreements**

1. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9601 et seq.). This act authorizes the President to respond to releases or threatened releases of hazardous substances and/or pollutants or contaminants which may present an imminent and substantial danger to public health or welfare, and to take action as necessary to protect the public health or welfare or the environment.
2. Executive Order 12580, as amended by Executive Order 13016. This Executive order designates the U.S. Department of Agriculture (USDA) as a natural resource trustee and delegates some of the President's response and enforcement authorities under sections 104 and 106 of CERCLA to USDA with respect to certain releases or threatened releases of hazardous substances on or from lands under the jurisdiction, custody, or control of USDA or which may affect resources under the trusteeship of USDA.
3. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. This regulation sets forth procedures to be followed by Federal agencies in responding to releases or threatened releases of hazardous substances, pollutants, or contaminants on or from lands under their control.
4. Defense Environmental Restoration Act (DERA), 10 U.S.C. § 2701 et seq. This act established the Defense Environmental Restoration Program (DERP) and requires the Department of Defense (DOD) to carry out response actions consistent with CERCLA with respect to releases of hazardous substances, pollutants, or contaminants from facilities or sites that were under the jurisdiction of the Secretary of Defense and that were owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances, including formerly used defense sites (FUDS) that are under the jurisdiction of USDA.
5. 7 CFR 2.20(a)(7) and 7 CFR 2.60(a)(39). These regulations delegate many CERCLA authorities from the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment and from the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service with respect to land, facilities, and natural resources under Forest Service control.
6. 36 CFR Part 251, Subpart B. These regulations set forth the necessary procedures, processes, and requirements related to the use and occupancy of NFS lands by any individuals or entities.
7. Forest Service Manual 2164.04c. Delegates CERCLA-related authorities from the Chief of the Forest Service to Regional Foresters (effective November 10, 1994).

8. Statement of Principles for Collaborative Decision Making for Cleanup of Formerly Used Defense Sites on Federal Lands. This document has been negotiated and signed by the U.S. Department of the Army, the U.S. Department of the Interior, and USDA, and is included as exhibit 01(sec. 44.11c). It sets forth agreements in principle between the agencies regarding how coordination should take place with respect to response action at FUDS, including identification, screening, and prioritization; land use planning and response action selection; remedy operation and maintenance; post-response site control; site close-out; and dispute resolution.

#### **44.11b - Objective**

To have the formerly used defense sites (FUDS) on National Forest System (NFS) lands investigated for the presence of hazardous or explosive materials resulting from past Department of Defense (DOD) use of the sites; and to coordinate with the U.S. Army Corps of Engineers (Corps) to facilitate the necessary preliminary assessment (PA) or site inspection (SI) on NFS lands.

#### **44.11c - Background**

1. The Defense Environmental Restoration Act (DERA), 10 U.S.C. § 2701 et seq, established the Defense Environmental Restoration Program (DERP), and requires DOD to carry out response actions consistent with CERCLA with respect to releases of hazardous substances, pollutants, or contaminants from facilities or sites that were under the jurisdiction of the Secretary of Defense and that were owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances, including FUDS that are under the jurisdiction of USDA.
2. The fiscal year 2007 National Defense Authorization Act, (Public Law 109-364, 109th Congress, Oct. 17, 2006), requires the DOD, Corps to complete Pas for military munitions at all FUDS by September 30, 2007, and to conduct Sis for military munitions at all FUDS no later than September 30, 2010.
3. There are over 200 FUDS on National Forest System (NFS) lands. Many of these FUDS are in need of assessment for potential contamination with hazardous, toxic, or radiological waste (HTRW) or for unexploded ordnance, discarded military munitions, or munitions constituents (hereafter “military munitions”).
4. Once a FUDS is identified, the Corps has responsibility under the DERA for inspecting the site and for conducting any necessary response pursuant to DERP and CERCLA to address HTRW or military munitions resulting from DOD activities.
5. The Forest Service has its own response authorities under CERCLA, Executive Order 12580, and the NCP with respect to releases of hazardous substances, pollutants, or contaminants on or from lands under its control.

**Forest Service Handbook 2709.11 – Special Uses Handbook**  
**Chapter 40 - Special Uses Administration**  
**Amendment: 2709.11-2012-1**  
**Effective date: December 13, 2012**

6. The Forest Service and the Corps should coordinate in order to exercise their respective authorities under CERCLA, Executive Order 12580, and the NCP at FUDS on NFS lands.
7. The National Environmental Policy Act (NEPA) is inapplicable to CERCLA response activities conducted by Federal agencies.
8. In conducting response activities to FUDS, the Corps has agreed to follow the Statement of Principles for Collaborative Decision Making for Cleanup of Formerly Used Defense Sites on Federal Lands (Statement of Principles), signed by Department of the Army, the U.S. Department of the Interior, and the U.S. Department of Agriculture, attached as exhibit 01 of this section. The Statement of Principles addresses coordination among Federal agencies with respect to response actions at FUDS.
9. This direction pertains only to performance of non-intrusive preliminary assessments (PAs) and site inspections (SIs) at FUDS on NFS lands, and not to any further response activities that may be necessary on NFS lands.

#### 44.11c - Exhibit 01

### STATEMENT OF PRINCIPLES FOR COLLABORATIVE DECISION MAKING FOR CLEANUP OF FORMERLY USED DEFENSE SITES ON FEDERAL LANDS

#### PREAMBLE

The Department of Defense (DoD) and Federal Land Management Agencies (FLMs)<sup>1</sup> desire to improve the coordination of their respective roles and authorities for the cleanup of Formerly Used Defense Sites (FUDS).<sup>2</sup> The Federal Environmental Work Group, established under the One Cleanup Program Initiative, has developed this Statement of Principles to increase the efficiency and effectiveness of FUDS cleanups affecting federal lands.

#### PURPOSE

DoD and FLMs recognize that lands formerly used for military facilities and training often are now under the management of FLMs. These lands may have contamination<sup>3</sup> as a result of DoD activities or the activities of others. DoD and FLMs jointly acknowledge the need to identify and evaluate such lands and determine who is responsible for any contamination and/or response actions. The appropriate party or parties should address human health, to include explosives safety, and environmental concerns associated with these lands. DoD and FLMs also recognize a need to develop general principles and consensus approaches to the investigation and cleanup of such lands, consistent with existing law.

DoD and FLMs acknowledge that, pursuant to the Defense Environmental Restoration Program (DERP), DoD is required to fund and conduct those response actions necessary to address contamination that resulted from DoD activities at FUDS. It is recognized that the FUDS program is only authorized to address contamination that is the result of DoD activities.

DoD and FLMs intend that this Statement of Principles will lead to more efficient and effective cleanups of FUDS on federal lands.

<sup>1</sup>The FLMs that are parties to this Statement of Principles include the Department of Agriculture (USDA), the Department of the Interior (DOI), and the National Aeronautics and Space Administration (NASA).

<sup>2</sup>FUDS properties are, in general, properties that were under DoD control and such control was transferred from DoD prior to 17 October 1986. Eligibility of a property for the FUDS Program, and DoD responsibilities associated with such a finding, are determined under the U.S. Army Corps of Engineers Engineering Regulation 200-3-1.

<sup>3</sup>For the purpose of this Statement of Principles, contamination includes military munitions where they are known or suspected to be present.

#### 44.11c – Exhibit 01--Continued

##### SITE IDENTIFICATION, SCREENING, AND PRIORITIZATION

- DoD and FLMs recognize that it is important to have a common understanding of sites potentially contaminated as a result of DoD and others' activities. It is also important for the Parties to share plans for ongoing and future cleanup actions.
- DoD and FLMs acknowledge the need for each FLM to participate in the identification, screening, and prioritization of FUDS on lands under the respective FLM's management. DoD and each FLM agree to meet at least annually for this purpose.
- DoD and FLMs agree to reconcile their respective inventories of FUDS. Inventories will be revised and updated annually, or as needed.
- Where there is evidence of contamination at a site, the Parties should agree on whether that site requires further assessment. The Parties should also agree on the nature and extent of such assessment.
- DoD and FLMs agree to coordinate on the conduct and performance of site assessment work for which DoD is responsible on lands under FLM management. Likewise, if an FLM plans to conduct any activity that may affect DoD activities at such lands, it agrees to consult with DoD prior to taking action.

##### LAND USE PLANNING AND CLEANUP DECISIONS

- Federal land management statutes establish the general purposes for which certain federal lands are to be administered. FLM land and resource management plans are developed and implemented in accordance with statutory and regulatory requirements, including compliance with the National Environmental Policy Act (NEPA), and generally specify the range of reasonably anticipated and appropriate future land uses.
- FLMs should consider areas of known contamination in the development and implementation of land and resource management plans to avoid unacceptable exposures to such contamination. At the same time, in planning the response, DoD should consider the conservation and natural resource uses of the land, and the FLMs' trust obligations and statutory responsibilities.
- FLMs agree to provide DoD an opportunity for meaningful consultation, review, and comment on plans for the siting of new facilities or the conduct of new activities at FUDS on federal lands. The Parties acknowledge that it may be appropriate to limit reasonably anticipated and appropriate future land uses in some circumstances or in some areas of the site, where, for example, cost, safety, and/or technical infeasibility limit the ability of DoD to conduct a response

**44.11c – Exhibit 01--Continued**

and thereby may require the imposition of land use controls.<sup>4</sup>

FLMs will invite DoD, and DoD is encouraged, to participate in the development of the reasonably anticipated and appropriate future land uses on properties impacted by FUDS to ensure that the FLMs are fully aware of prior DoD operations, knowledgeable of any potential DoD response activities, and informed on how these response activities may affect land use options. This interaction will also ensure that DoD is fully aware of the current and anticipated future land uses, and informed of the FLMs' management and stewardship responsibilities for the land and resources.

DoD shall conduct response actions to allow reasonably anticipated and appropriate future land uses over as much of the site as possible.

DoD and FLMs acknowledge that there should be joint DoD-FLM acceptance of response actions planned at FUDS on federal lands. To effectuate this goal, and consistent with the Comprehensive Environmental Response, Compensation and Liability Act and the National Oil and Hazardous Substances Pollution Contingency Plan, DoD and FLMs shall identify and mutually agree upon applicable or relevant and appropriate requirements (ARARs) and other advisories, criteria, or guidance to be considered (TBCs) during the response.

Land use controls can impose substantial costs on FLMs, and also inhibit or preclude certain uses entirely. Consequently, before a remedy is selected that involves significant continuing obligations, DoD and the FLM should seek mutual agreement concerning these requirements and responsibilities (including enforcement, monitoring, maintenance, reporting, and funding) for continuing obligations.

DoD and FLMs shall seek mutual agreement on significant cleanup decisions, including, but not limited to, cleanup levels, the selected remedy, and any future land use controls. To facilitate such mutual agreement, DoD shall provide to the FLMs an opportunity for meaningful consultation, review, and comment on significant cleanup decisions. Where DoD and the FLM are unable to reach mutual agreement on significant cleanup decisions, DoD and the FLM will engage in dispute resolution.

**OPERATION AND MAINTENANCE AND POST-REMOVAL SITE CONTROL**

After a remedy is implemented, there may be continuing operation and maintenance (O&M), post-removal site controls, land use controls with a

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<sup>4</sup>Land use controls are any type of physical, legal or administrative mechanism that restricts use of, or limits access to, real property to prevent or reduce risks to human health and the environment.

#### 44.11c – Exhibit 01--Continued

significant maintenance component, or other requirements needed to maintain the protectiveness of the remedy. DoD and FLMs agree to conduct periodic reviews to consider the continuing effectiveness of the remedy, remedy optimization, and new technologies. Requirements and responsibilities, including requirements for periodic reviews, should be clearly set forth and assigned in a written agreement such as a Memorandum of Understanding (MOU) or an inter-agency agreement. Where DoD and the FLM are unable to reach mutual agreement on O&M and post-removal site control, DoD and the FLM will engage in dispute resolution.

#### SITE CLOSE-OUT

DoD and FLMs should agree when no further response action is required at FUDS on federal land and when additional response actions are warranted. Where DoD and the FLM are unable to reach mutual agreement on site close-out or on necessary additional response actions, DoD and the FLM will engage in dispute resolution.

#### DISPUTE RESOLUTION

Each agency agrees to give substantial deference to each other's mission, recognizing their respective expertise and the need to coordinate to ensure protection of public health and safety and the environment.

DoD and FLMs agree that disputes should be resolved informally whenever possible. Disputes should be resolved at the lowest level possible, with elevation to successively higher levels as necessary.

If disputes cannot be settled informally, then formal dispute resolution is appropriate, including procedures outlined in applicable Executive Orders. Where more than one agency has decision-making authority, the agencies recognize that no one agency can unilaterally make final determinations.

#### SAVINGS CLAUSE

This Statement of Principles does not affect federal, state, or tribal regulatory or enforcement powers or authority concerning hazardous waste, hazardous substances, pollutants or contaminants, including imminent and substantial endangerment authorities; nor does it expand or constrict the waiver of sovereign immunity by the United States contained in any environmental statute. This Statement is not intended to, and does not, create any right, benefit, or trust obligation, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

**44.11c – Exhibit 01--Continued**

**GENERAL AUTHORITIES**

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.

Defense Environmental Restoration Program (DERP), 10 U.S.C. §§ 2701 et seq.

For National Forest System lands: National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq.; Endangered Species Act (ESA), 16 U.S.C. §§ 1531 et seq.; National Forest Management Act, 16 U.S.C. §§ 1601-1614; Multiple-Use Sustained-Yield Act, 16 U.S.C. §§ 528-531; and Organic Administration Act, 16 U.S.C. §§ 473-475, 477-482, 551.

For Department of the Interior (DOI) managed lands: NEPA; ESA; Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 et seq.; National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. §§ 668dd et seq.; and National Park Service Organic Act, 16 U.S.C. §§ 1131-1136.


Other potentially applicable environmental laws (e.g., Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.; Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; Clean Air Act, 42 U.S.C. §§ 7401 et seq.; Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; Toxic Substances Control Act, 15 U.S.C. §§ 2610 et seq.; National Historic Preservation Act, 16 U.S.C. §§ 470-470x-6; Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-470mm; Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3000-3013; Native American Religious Freedom Act, 42 U.S.C. §§ 1996-1996a; Coastal Zone Management Act, 16 U.S.C. §§ 1451-1465; Wilderness Act, 16 U.S.C. §§ 1131-1136; Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667; Migratory Bird Treaty Act, 16 U.S.C. §§ 703-713; and Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407).

Executive Orders 12580 and 13016 (Superfund Implementation), 12088 (Federal Compliance with Pollution Control Standards), 12146 (Management of Federal Legal Resources), 13007 (Indian Sacred Sites), and 13175 (Consultation and Coordination with Indian Tribal Governments).

44.11c – Exhibit 01--Continued

STATEMENT OF PRINCIPLES  
FOR COLLABORATIVE DECISION MAKING FOR  
CLEANUP OF FORMERLY USED DEFENSE SITES ON FEDERAL LANDS

DEPARTMENT OF THE ARMY

  
\_\_\_\_\_  
Addison D. Davis, IV  
Deputy Assistant Secretary of the Army  
Environment, Safety and Occupational Health  
OASA (I&E)  
17 JAN 06  
Date

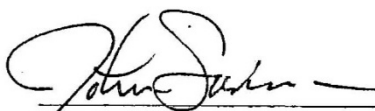
STATEMENT OF PRINCIPLES  
FOR COLLABORATIVE DECISION MAKING FOR  
CLEANUP OF FORMERLY USED DEFENSE SITES ON FEDERAL LANDS

DEPARTMENT OF THE INTERIOR

  
\_\_\_\_\_  
R. Thomas Weimer  
Assistant Secretary for Policy, Management and Budget  
1/10/07  
Date

STATEMENT OF PRINCIPLES  
FOR COLLABORATIVE DECISION MAKING FOR  
CLEANUP OF FORMERLY USED DEFENSE SITES ON FEDERAL LANDS

DEPARTMENT OF AGRICULTURE

  
\_\_\_\_\_  
John Surina  
Acting Assistant Secretary for Administration  
12/29/2005  
Date

#### **44.11d - Access to NFS Lands for Preliminary Assessments and Site Inspections**

1. A preliminary assessment (PA) is a non-intrusive investigative activity designed to collect readily available information about a site and its surrounding area to distinguish, based on limited data, between sites that pose little or no threat to human health and the environment and sites that may pose a threat and require classifying areas for possible further investigation or response action.
2. A site inspection (SI) is an on-site investigation to determine whether there is a release or potential release of hazardous substances, pollutants, or contaminants, and the nature of the associated threats. The purpose of an SI is to augment the data collected in the PA and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate (40 CFR 300.5). A non-intrusive SI consists of some or all of the following activities: a visual inspection of the property, including footprint analysis and geophysical mapping; groundwater sampling from existing wells; a survey with metal detector or other instruments to detect surface and subsurface munitions; spatial analysis and aerial surveys; and the collection of surface soil (up to 2-feet below ground surface) and surface water samples.
3. Non-intrusive preliminary assessments (PAs) and site inspections (SIs), will typically have “such nominal effects on NFS lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations” (36 CFR 251.50(e)(1)).
4. Because of the expected “nominal effects” of these activities, the Forest Service may consent to Corps-conducted PAs and SIs on NFS lands without issuance of a special use authorization, unless site-specific circumstances or conditions exist that indicate to the Forest Service that the planned activities do not meet the criteria in 36 CFR 251.50(e)(1) or if, upon reviewing the Corps’ SI work plan or discussing the Corps’ plans, it becomes apparent to the Forest Service that intrusive activities are contemplated. Under these circumstances, issuance of a special use authorization may be necessary. Even without a special use authorization, the Corps and its contractors must conduct PAs and SIs in a manner that protects national forest resources, such as roads, water, soil, and scenic values.
5. To facilitate the Corps’ access to NFS lands for PAs and SIs, the Forest Service and the Corps have developed standard form letters for the Corps’ request for access to NFS lands and the Forest Service’s response (ex. 01 and 02 of this section).
6. Requests for access should be sent at least 60 days prior to the planned commencement of a PA or SI to the Regional Forester’s office with responsibility for the NFS lands on which the FUDS is located. The request for access must include the types of anticipated activities, the proposed dates for activities, and the date of Technical Project Planning (TPP) process meeting. One principal goal of the TPP is to clearly

**Forest Service Handbook 2709.11 – Special Uses Handbook**  
**Chapter 40 - Special Uses Administration**  
**Amendment: 2709.11-2012-1**  
**Effective date: December 13, 2012**

document project objectives, including Federal land manager-specific and site-specific project objectives to ensure efficient progress through the non-intrusive PA/SI. The TPP meeting agenda must include discussion of proposed activities, including the project schedule and additional meeting dates, the proposed area(s) to be surveyed and identification of sampling locations, equipment to be used, number and types of vehicles, number of people involved, and the name(s) of contractor(s). Project planning must seek to minimize conflicts with seasonal activities and other site-specific and local concerns.

7. Regional Foresters shall consult with their Regional Environmental Engineer and Lands Special Uses Coordinator to designate a Forest Service point of contact (POC) for future coordination with the Corps regarding PA/SI activities at the FUDS. This POC will coordinate with other Forest Service offices that may have interests at the site(s).

8. The Forest Service response letter must be signed by the Regional Forester based on the Regional Forester's delegated CERCLA authority. Forest Service response letters must be sent no later than 30 days after receipt of a request for access from the Corps.

9. Any modifications to the text in the standard form letters must have prior written approval from the Washington Office of the Corps and the Washington Office of the Forest Service.

10. In addition to the response letter, the Forest Service POC shall provide the Corps with a statement of known or anticipated future land use at the FUDS for the Corps review and comment. This statement should be based on the applicable land management plan and other relevant sources of information about future use of the site. Include in the statement any known site-specific information of concern, such as information regarding the presence of munitions at the FUDS and any particular resource or conservation issues associated with the property, or the location of sensitive archaeological, cultural, or ecological resources. Provide the statement to the Corps as early as possible so that it may provide a context for evaluation of risk and consideration and selection of appropriate response activities. The statement may be supplied along with the response letter or at a later time, as indicated on the form letter.

11. The Corps uses the Technical Project Planning Process (TPP) for PAs and SIs. Pursuant to Corps Engineer Manual 200-1-2, "Technical Project Planning Process," the TPP process is a four-phased planning process for identifying project objectives and designing data collection programs, using a multidisciplinary team including regulators and affected parties. The Forest Service POC for a FUDS should help plan and participate in TPP meetings for the FUDS. Consistent with their authorities under CERCLA, DERP, and the Statement of Principles, the Forest Service and the Corps should strive to achieve mutual agreement on PA/SI work plans, PA/SI reports, legal requirements, and project objectives, subject to dispute resolution procedures (see sec. 44.11e). Consult with the regional environmental engineer or with the Office of the General Counsel, Pollution Control Team, with any questions regarding Forest Service authorities and responsibilities at FUDS.

**Forest Service Handbook 2709.11 – Special Uses Handbook**  
**Chapter 40 - Special Uses Administration**  
**Amendment: 2709.11-2012-1**  
**Effective date: December 13, 2012**

12. Correspondence between the Corps and the Forest Service becomes a part of the administrative record (AR) to document the work at the FUDS and the need for any response action or a “no further response action planned” decision at the FUDS. It is the responsibility of the Corps to maintain the AR for the site.

13. The Forest Service POC shall coordinate land management activities at FUDS on NFS lands with the Corps in a manner that promotes a prompt PA and SI and that will facilitate subsequent response to any hazards identified by the PA and SI.

**44.11d - Exhibit 01**

**FORM LETTER FOR THE CORPS' REQUEST FOR ACCESS TO FUDS ON NATIONAL FOREST  
SYSTEM LANDS FOR THE PURPOSE OF CONDUCTING NON-INTRUSIVE PAs AND/OR SIs**

[Insert date]

[Insert name of the involved Regional Forester]

Regional Forester

[Insert the name of Region]

[Insert the units address]

Re: [Insert FUDS name and location]

Dear [insert name of the Regional Forester]:

Our respective staffs have been in contact regarding the conduct of a non-intrusive preliminary assessment and/or site inspection (PA/SI) of Department of Defense (DOD) contamination at the Formerly Used Defense Site (FUDS) [insert FUDS name and location], which is on lands under your management. The U.S. Army Corps of Engineers (Corps) seeks entry upon the National Forest System lands associated with this site to facilitate the non-intrusive PA/SI pursuant to the Defense Environmental Restoration Program. The Corps is conducting site inspections of FUDS with the potential for military munitions nationwide pursuant to Congressional direction (2007 National Defense Authorization Act, Pub. L. 109-364.) A non-intrusive PA/SI may consist of the following activities: on-site record review; a visual inspection of the property, including footprint analysis and geophysical mapping; groundwater sampling from existing wells; a survey with metal detector or other instruments to detect surface and subsurface munitions; spatial analysis and aerial surveys; and the collection of surface soil and surface water samples.

The Corps will coordinate with your agency point of contact (POC) at the site pursuant to the enclosed Statement of Principles for Collaborative Decision Making for Cleanup of Formerly Used Defense Sites on Federal Lands (Statement of Principles).

**44.11d - Exhibit 01--Continued**

The Corps invites your agency to actively participate in the Technical Project Planning (TPP) process and proposes to schedule a TPP meeting at a mutually convenient time on or around [insert proposed dates]. One principal goal of the TPP is to clearly document project objectives, including federal land manager-specific and site-specific project objectives to ensure efficient progress through the non-intrusive PA/SI. The TPP meeting agenda will include discussion of proposed activities, including the project schedule and additional meeting dates, the proposed area(s) to be surveyed and identification of sampling locations, equipment to be used, number and types of vehicles, number of people involved, and the name(s) of contractor(s). Project planning will seek to minimize conflicts with seasonal activities and other site-specific and local concerns as identified by your agency POC, such as mating, nesting and breeding seasons for sensitive species, archeological, historic, and culturally sensitive areas, and peak visitation. Before the Corps may begin work at the Site, your agency POC shall be given the opportunity for meaningful review and comment on the PA/SI work plan and the Corps will respond to any issues or concerns of your agency POC.

The Corps and the [insert the name of the National Forest] have a mutual interest in addressing any DOD contamination at the site. We will operate pursuant to the terms negotiated by our respective Department Headquarters as summarized below, in accordance with the Statement of Principles and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process, and the following terms:

1. The Parties will coordinate at the site as provided in the Statement of Principles and the non-intrusive PA/SI will be conducted in accordance with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. The Statement of Principles provides for coordination on the conduct and performance of site assessment work on lands under FLM management, and for the Corps and federal land managers to seek mutual agreement on significant cleanup decisions. To facilitate such mutual agreement, the Corps shall provide to the facility POC an opportunity for meaningful consultation, review, and comment on assessment and cleanup proposals for significant cleanup decisions.
2. The Corps will provide your agency POC reasonable prior notice of, and an opportunity to participate in meetings and conference calls related to the PA/SI.

**44.11d - Exhibit 01--Continued**

3. The [insert appropriate NFS office] will coordinate to allow the Corps access to conduct the PA/SI. To ensure that the Corps is aware of current and future land uses and important resource issues at the Site, and considers such land uses and resources in conducting its PA/SI and making determinations regarding further action, the [insert appropriate NFS office] will provide the Corps with its statement of current and future land use and important resource issues for Corps review and comment. The [insert appropriate NFS office] will provide the Corps reasonable prior notice of, and an opportunity to participate in significant meetings and conference calls related to any Forest Service actions that might impact Corps activities at the site.
4. With respect to the archaeological, cultural, historic preservation, and natural resource issues, and consistent with the TPP, the Corps agrees to consult and coordinate with your agency POC, the [insert appropriate State department of historic resources], and other stakeholders in accordance with CERCLA and the NCP. The Corps and your agency POC will agree on appropriate access and egress routes prior to Corps' entry in order to prevent any unnecessary impacts to archaeological, cultural, historic preservation or natural resources. The Corps' archaeological, cultural, historic preservation and natural resource activities shall be conducted at the Corps' expense and limited to those actions necessary for the conduct of CERCLA response actions or the protection of natural and archeological, cultural and historic preservation resources during the non-intrusive PA/SI. The Corps requests that [insert name of NFS unit] provide consultation, liaison and other support.
5. As an agency of the United States, the Corps is limited by federal law as to the assumption of liability for its acts or omissions. The Corps agrees, within its legal limitations and limitations of appropriations, to be responsible for claims arising out of the Corps' non-intrusive PA/SI activities. The Corps further agrees, to the extent legally permissible, to use its authorities as required by law for claims and repair of damages associated with such activities. The Corps is obligated to follow the requirements of the Federal Acquisition Regulations (FAR), including incorporating mandatory contract provisions addressing contractor liabilities and responsibilities for the conduct of work in general and specifically on federal property.

**44.11d - Exhibit 01--Continued**

6. Notwithstanding statements within this letter, nothing herein confers any liability upon the Forest Service for claims payable by the Corps under the Federal Torts Claims Act. Provided further that nothing in this letter is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this letter.
7. Your agency POC or other designated representative may accompany the Corps or its representatives, agents, or contractors during the PA/SI unless the presence of such representative(s) presents a physical safety hazard.
8. Consistent with the Statement of Principles, disputes will be resolved informally and at the lowest level possible, with elevation to successively higher levels as necessary.

Following completion of the non-intrusive PA/SI, the Corps will provide you're the Forest Service POC with a draft final PA/SI report, together with the Corps' determination as to whether military munitions are present on the property and proposed future actions to address human and ecological risks, if applicable. [\[Insert name of Forest Service unit\]](#) shall be given an opportunity for meaningful review and comment and the parties will seek mutual agreement on the PA/SI report and need for future action. If it is determined that additional response actions are needed, including any intrusive or subsurface investigations, the Corps will, consistent with the Statement of Principles, coordinate with [\[Insert name of Forest Service unit\]](#) on future activities at the site. The Corps will also be responsible for the administrative record for response actions, in accordance with the requirements of the NCP.

Please confirm your acceptance of these terms to grant access with the agreed upon letter. We look forward to continuing our working relationship with you. Please contact [\[insert name of Corps FUDS Project POC and phone number, and email address\]](#) for any questions or concerns you may have regarding this project.

Sincerely,

District Commander  
USACE

cc: [\[insert appropriate Department FUDS Coordinator\]](#)

**44.11d – Exhibit 02**

**FOREST SERVICE RESPONSE LETTER**

[Insert date]

U.S. Army Corps of Engineers

District Commander

[Insert address]

Re: [Insert FUDS name and location]

Dear [Insert name of Corps District Commander]:

The Forest Service has received your letter regarding the U.S. Army Corps of Engineer's (Corps) planned non-intrusive preliminary assessment and site inspection (PA/SI) of the above-referenced Formerly Used Defense Site (FUDS) to be conducted pursuant to the to the Defense Environmental Restoration Program (DERP) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.

By this letter, the Forest Service agrees to provide access to the site and to the terms and conditions set forth in your letter. The scope of this site access response is limited to the non-intrusive PA/SI only. The Forest Service will participate in the Corps' Technical Project Planning (TPP) Process and will participate in the PA/SI at the site consistent with the terms described in your letter of [insert date of Corps request letter] and the Statement of Principles for Collaborative Decision Making for Cleanup of Formerly Used Defense Sites on Federal Lands (Statement of Principles), CERCLA, and the NCP

If it is determined that response activities or intrusive investigation beyond the non-intrusive PA/SI (including any subsurface sampling) are needed, the Corps and the Forest Service will, consistent with the Statement of Principles, reach further agreement providing for coordination and collaborative decision-making before further actions are carried out. The statement of future land use and important resource issues and any additional site specific information necessary for the Corps to carry out the PA/SI at this site [insert "is enclosed" or "will be provided by (specific date)"]

**Forest Service Handbook 2709.11 – Special Uses Handbook**  
**Chapter 40 - Special Uses Administration**  
**Amendment: 2709.11-2012-1**  
**Effective date: December 13, 2012**

**44.11d - Exhibit 02--Continued**

The Forest Service is pleased that the Corps is devoting its FUDS resources to the site. Our point of contact (POC) is: [\[insert POC name, phone number and email\]](#). Please contact this person directly to participate in the TPP Process or if you have any questions or concerns.

Sincerely,

[\[Insert Regional Foresters name\]](#)  
[\[Insert region name\]](#) Regional Forester

cc: Involved National Forest unit  
FS POC  
FS Regional Environmental Engineer  
Blake Velde, USDA / DA / OPPM

#### 44.11e - Dispute Resolution

Consistent with the Statement of Principles, resolve any disagreements arising during PAs and SIs at the lowest level possible. If a dispute cannot be resolved at that level in a timely manner, elevate it to the Regional Forester. If a dispute cannot be resolved at the Region, elevate it to the Washington Office, Engineering, CERCLA Coordinator, and the USDA Hazardous Materials Management Division. If the dispute cannot be resolved at this level, it may be referred for policy level resolution with the appropriate Under Secretary or Assistant Under Secretary.

#### 44.4 - Cultural Resources and Treasure Trove Uses [Reserved]

#### 45 - Industry

##### 45.5 - Arts

1. Authority.
  - a. Statutory Authority. Cite the Act of May 26, 2000 (16 U.S.C. 460l-6d) for all authorizations issued for still photography or commercial filming uses.
  - b. Regulatory Authority. The processing of proposals and applications and the authorization, administration, and monitoring of still photography and commercial filming activities on National Forest System (NFS) lands are subject to the Forest Service special use regulations at 36 CFR part 251, Subpart B.
2. Definitions. The following terms are used to describe components of still photography and commercial filming activities:
  - a. Actor. An individual who either:
    - (1) Portrays a character or himself/herself in the reenactment of an event or incident, or
    - (2) Narrates a storyline for commercial filming purposes. News broadcasters and correspondents, as well as witnesses, victims, or other parties interviewed by a news broadcaster or correspondent, who appear before a camera in the reporting of breaking news, are not considered actors for purposes of this definition.
  - b. Breaking News. An event or incident that arises suddenly, evolves quickly, and rapidly ceases to be newsworthy.
  - c. Commercial Filming. Use of motion picture, videotaping, sound-recording, or any other type of moving image or audio recording equipment on NFS lands that involves the advertisement of a product or service, the creation of a product for sale, or the use of actors, models, sets, or props, but not including activities associated with

**Forest Service Handbook 2709.11 – Special Uses Handbook**  
**Chapter 40 - Special Uses Administration**  
**Amendment: 2709.11-2012-1**  
**Effective date: December 13, 2012**

broadcasting breaking news. For purposes of this definition, creation of a product for sale includes a film, videotape, television broadcast, or documentary of historic events, wildlife, natural events, features, subjects or participants in a sporting or recreation event, and so forth, when created for the purpose of generating income.

d. Model. An individual who poses for the commercial filming or still photography of a product or service for the purpose of promoting its sale or use. A model may also include inanimate objects, such as vehicles, boats, off-highway vehicles, articles of clothing, food and beverage products, and so forth, placed on NFS lands so that they may be filmed, photographed, or recorded to promote their sale or use.

e. Sets and Props. Items constructed or placed on NFS lands to accommodate commercial filming or still photography, such as backdrops, generators, microphones, stages, lighting banks, camera tracks, vehicles specifically designed to accommodate camera or recording equipment, rope and pulley systems, rigging for climbers, and structures. Sets and props also include trained animals and inanimate objects, such as camping equipment, campfires, wagons, and so forth, when used to stage a specific scene. A set or prop does not include any of the preceding items when they are used to report breaking news, nor does a prop include a hand-held camera or a camera mounted on a tripod.

f. Still Photography. The use of photographic equipment to capture still images on film, digital format, and other similar technologies on NFS lands that:

(1) Takes place at a location where members of the public are generally not allowed or where additional administrative costs are likely, or

(2) Uses models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities.

3. Insurance and Bonding. Where appropriate, the Authorized Officer shall require liability insurance and/or performance bonds necessary to protect the public interest.

## **45.51 - Still Photography**

### **45.51a - Permit Requirements**

A special use permit is not required for still photography when that activity involves breaking news (sec. 45.5). A special use permit:

1. Is required for all still photography (sec. 45.5) activities on National Forest System (NFS) lands that involve the use of models, sets, or props that are not a part of the natural or cultural resources or administrative facilities of the site where the activity is taking place.

**Forest Service Handbook 2709.11 – Special Uses Handbook**  
**Chapter 40 - Special Uses Administration**  
**Amendment: 2709.11-2012-1**  
**Effective date: December 13, 2012**

2. May be required for still photography activities not involving models, sets, or props when the Forest Service incurs additional administrative costs as a direct result of the still photography activity, or when the still photography activity takes place at a location where members of the public generally are not allowed.

When a special use permit is required for a still photography activity and the request is an acceptable use of NFS lands (sec. 45.52), issue a special use permit for still photography activities on Form FS-2700-25, Temporary Special Use Permit, or on Form FS-2700-4, Special Use Permit.

#### **45.51b - Evaluation of Proposals**

A special use permit may be issued (when required by sec. 45.51a) to authorize the use of NFS lands for still photography when the proposed activity:

1. Meets the screening criteria in Title 36, Code of Federal Regulations, section 251.54 (36 CFR 251.54),
2. Would not cause unacceptable resource damage,
3. Would not unreasonably disrupt the public's use and enjoyment of the site where the activity would occur,
4. Does not pose a public health and safety risk, and
5. If it is to occur in a Congressionally designated wilderness area, and the activity contributes to the purposes for which the wilderness area was established.

#### **45.51c - Land Use Fees**

Charge a land use fee for all still photography activities authorized under permit, unless the holder or the activity qualifies for a fee waiver as provided in FSH 2709.11, chapter 30.

Direction on fee administration, calculation, accounting, and expenditure of funds for still photography activities is found in FSH 2709.11, chapter 30.

#### **45.52 - Commercial Filming**

##### **45.52a - Permit Requirements**

1. A special use permit is required for all commercial filming (sec. 45.5) activities on National Forest System lands (NFS). A special use permit is not required for broadcasting breaking news (sec. 45.5).

**Forest Service Handbook 2709.11 – Special Uses Handbook**  
**Chapter 40 - Special Uses Administration**  
**Amendment: 2709.11-2012-1**  
**Effective date: December 13, 2012**

2. Authorize the use of NFS lands for commercial filming activities on form FS-2700-25, Temporary Special Use Permit, or on form FS-2700-4, Special Use Permit, when the commercial filming activity is an acceptable use of NFS lands (sec. 45.52b).

**45.52b - Evaluation of Proposals**

Use the criteria found in section 45.51b for evaluating proposals to use NFS lands for commercial filming activities.

**45.52c - Land Use Fees**

Charge a land use fee for all commercial filming activities, unless the holder or the activity qualifies for a fee waiver as provided in FSH 2709.11, chapter 30.

Direction on land use fee administration, calculation, accounting, and expenditure of funds for commercial filming activities are found in FSH 2709.11, chapter 30.

**45.6 - Mineral Exploration**

For related direction see FSM 2725.6.

This category includes authorizations for the sole purpose of either locating or qualitatively and quantitatively analyzing leasable or saleable minerals or mineral material. It does not include locatable minerals under the 1872 Mining Act (30 U.S.C. 21-54; FSM 2801). No special-use authorization is necessary for locatable mineral prospecting. However, prospectors must file notices of intent to operate in most cases. See FSM 2810 for specific policy on mining claims.

**45.61 - Geological and Geophysical Exploration**

The authority for seismic exploration permits on National Forest System lands is the Organic Administration Act of June 4, 1897 (16 U.S.C. 551; FSM 2701.1). Issue permits in accordance with the special uses regulations at Title 36, Code of Federal Regulations, Part 251, Subpart B, and the direction in FSM 2860.

Authorize exploration for oil and gas and other leasable or saleable minerals under this designation. See FSM 2820 for direction on leasable mineral management. Seismic activity requires a temporary special-use permit, form FS-2700-25. The applicant may make application by sending a letter to the Authorized Officer with sufficient detail to evaluate the proposed action. Permits are not necessary for operation by mineral leaseholders operating within their leased areas. For direction on fees, see chapter 30 of this Handbook.

## **45.62 - Mineral Material Sale [Reserved]**

## **46 - Energy Generation and Transmission**

### **46.1 - Facilities That Qualify for Financing Under the Rural Electrification Act**

This direction covers type site codes 641, 642, 822, and 832 (listed in ch. 50 of this Handbook). Rural electric and rural telephone cooperatives are organized primarily to provide electrical or telephone service to rural areas, but some of these cooperatives now serve urbanized areas and qualify for financing under the Rural Electrification Act (REA) to serve these areas. Some cooperatives have facilities that are not eligible for financing under the REA and therefore do not qualify for a land use fee exemption, except when their facilities are an extension of a facility that qualifies for financing under the REA.

For purposes of 43 U.S.C. 1764(g), which amended the REA, public power districts and other public bodies and private companies or investor-owned utilities are treated as cooperatives (see FSM 2701.1). Some of these organizations have obtained financing under the REA for their facilities, which supply electric power or telephone service to qualified rural areas. Eligibility for a land use fee exemption for these cooperatives is the same as for municipal entities and private companies that qualify for financing under the REA. Eligibility for a land use fee exemption does not depend on the size and cost of the facility or whether the facility is exclusively financed under the REA (ch. 30).

### **46.2 - Wind Energy Facilities**

This designation includes only facilities using wind to generate electric power. See FSH 2709.11, chapter 70 and FSM 2726 for direction on wind energy facilities.

## **47 - Transportation [Reserved]**

## **48 - Communications**

### **48.2 - Telephone and Telegraph**

#### **48.21 - Telephone and Telegraph Line**

See FSM 2728.21 for further direction on authorization of telephone lines.

#### **48.22 - Telephone Line Eligible for Financing Pursuant to the Rural Electrification Act (REA)**

See FSM 2728.22 for further direction.

#### **48.23 - Fiber Optic Cable**

See FSM 2728.23 and FSH 2709.11, section 52.1, clause A-19, for further direction on authorization of fiber optic cable.

#### 48.23a - Use Code

The components of fiber optic cable systems include fiber optic cables, conduits, and individual fibers. Identify all new fiber optic cable uses on National Forest System lands by special use code 823 in the Infra-Special Uses Data System (SUDS) databases at the national and field level. Any fiber optic cable uses previously coded in SUDS to 821 (telephone and telegraph line) must be recoded to 823.

#### 48.23b - Definitions

The following terms are used to describe the components of a fiber optic cable system and the various commercial and noncommercial entities that may own or lease fiber optic cables, conduits, or individual fibers.

Conduit. A term used interchangeably with innerduct to describe housing for a buried fiber optic cable.

Customer. An individual, company, or governmental entity leasing or owning fiber optic cables, conduits, or fibers for internal use only and not reselling or providing communications services to others for profit. Customers typically do not have their own regeneration equipment.

Excess Capacity. Empty innerducts available to house additional fiber optic cables for future use, or dark fiber that is excess to an owner's current needs. An owner may lease or sell empty innerducts or dark fiber to telecommunications service providers or customers.

Fiber. Individual glass strands that carry optical signals.

Fiber Optic Cable. Cable consisting of a central core or filler surrounded by optical fibers and covered with a protective polyethylene jacket. A cable placed in a 1.25-inch innerduct typically contains 144 fibers and measures 0.875 inch in diameter. A cable may also be used as a static line replacement or ground wire for overhead electric transmission lines.

Innerducts. High-density polyethylene tubes, generally 1.25 inches in diameter, which house the fiber optic cable when fiber optic systems are buried in the ground. Empty innerducts can be authorized to the owner and are available for future expansion by the holder or a telecommunications service provider. (See also the definition for "Conduit.")

Regeneration Facility. A building that houses equipment to boost the strength of the optical signal within a fiber optic cable. Regeneration facilities are usually spaced between 50 and 300 miles along the fiber optic right-of-way.

Telecommunications Service Providers. An individual, company, or governmental entity that leases or buys conduit, cable, or dark fiber from the owner of the fiber optic

infrastructure and provides telecommunications services to others for profit. Telecommunications service providers usually, but not always, own their own regeneration equipment and the facilities that house them.

#### **48.23c - Administration of Authorizations for Fiber Optic Cable**

Authorizations for fiber optic cable should provide for a right-of-way width that is at least 10 feet wide and that adequately accommodates the project, including access. The maximum term of an authorization for fiber optic cable is 20 years.

Fiber optic cable proponents often find it economically beneficial to design and construct a fiber optic cable project with excess capacity for fiber, cables, conduit space, and space within fiber optic regeneration or amplification sites (fiber optic facilities). Include clause A-19 (FSH 2709.11, sec. 52.1) in all authorizations for fiber optic cable, other than forms FS-2700-4j and FS-2700-31, which already contain appropriate leasing provisions for fiber optic facilities. Clause A-19 provides that:

1. The holder of an authorization for fiber optic cable may reserve fiber optic cable facilities solely for the holder's use in direct support of the holder's authorized operations and may utilize those reserved facilities during the term of the authorization without additional approval from the Authorized Officer (FSH 2709.11, sec. 52.1, cl. A-19, para. 1);
2. The holder of a fiber optic authorization may lease the authorized fiber optic facilities only with prior written approval from the Authorized Officer. The Forest Service reserves the right to disapprove these lease requests. The holder remains responsible for the lessees' compliance with all the terms and conditions of this permit. The holder must pay a land use fee for leased fiber optic facilities in accordance with the right-of-way fee schedule in 43 CFR 2806.20 (FSH 2709.11, sec. 52.1, cl. A-19, para. 2); and
3. Upon request, the holder must submit to the Authorized Officer a fiber optic facility map reflecting ownership of and leases for all authorized fiber optic facilities, which must be attached to the authorization as an appendix. The fiber optic facility map must specify the total number of installed conduits and fibers, the total number of conduits and fibers in active use, and the type of use (commercial, public purpose, or holder's) for conduits and fibers in active use. The Authorized Officer may request any additional information from the holder deemed necessary for proper administration of the leased fiber optic facilities. The holder must update the fiber optic facility map annually as necessary (FSH 2709.11, sec. 52.1, cl. A-19, para. 3).

If the holder of an authorization for fiber optic cable intends to sell all or part of the authorized facilities, the holder shall give notice of the sale to the Authorized Officer per the terms of the authorization. Upon execution of the sale, the authorization will terminate with respect to the facilities that are sold, and the purchaser shall obtain a new authorization from the Forest Service for those facilities (36 CFR 251.59).

**Forest Service Handbook 2709.11 – Special Uses Handbook**  
**Chapter 40 - Special Uses Administration**  
**Amendment: 2709.11-2012-1**  
**Effective date: December 13, 2012**

A new authorization is required when a fiber optic use is proposed for installation within an existing transportation or utility right-of-way or authorized facility whose primary purpose is not fiber optic telecommunications. A new authorization is not required if the existing authorization provides for fiber optic cable use or if all the fiber optic cables installed will be used solely to support the existing use. An authorization for a fiber optic use that will be installed within an existing transportation or utility right-of-way or authorized facility may be issued only after the Authorized Officer determines that the fiber optic facility will not be inconsistent with the rights and privileges granted to the holder of the authorization for the existing use (36 CFR 251.55(b)(3)).

**48.3 - Other Communications Facilities [Reserved]**

**48.31 - Other Wire-line Communications Improvement [Reserved]**

**48.32 - Other Communications Improvements Eligible for Financing Pursuant to the REA**

See FSM 2728.32 for further direction on authorization of other communications improvements that qualify for financing under the REA.

**49 - Water (Non-Power-Generating) [Reserved]**

**49.2 - Impoundment [Reserved]**

**49.22 - Dam and Reservoirs [Reserved]**