



This document is scheduled to be published in the Federal Register on 07/31/2014 and available online at <http://federalregister.gov/a/2014-18020>, and on [FDsys.gov](http://FDsys.gov)

[3411-15-P]

## **DEPARTMENT OF AGRICULTURE**

### **Forest Service**

### **36 CFR Part 262**

### **RIN 0596-AB61**

### **Law Enforcement Support Activities**

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

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**SUMMARY:** This final rule revises regulations regarding removal of obstructions, impoundment of personal property, payment of rewards, and payment for information and evidence in furtherance of an investigation. The revisions will clarify and concisely state the Agency's authority for setting reward amounts and will streamline the rules regarding payment for information and evidence in furtherance of an investigation. The revisions will also shorten the timeframe for impoundment procedures, change the posting requirement, and allow the Forest Service to retain unclaimed or abandoned personal property for administrative use.

**DATES:** The rule is effective [insert date 30 days from the date of publication in the **FEDERAL REGISTER**].

**ADDRESSES:** The public may inspect the record for the final rule at the Office of the Director, Law Enforcement and Investigations, 201 14<sup>th</sup> Street, SW, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday. Visitors are encouraged to call 703-605-4690 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:**

Kenneth Pearson, Assistant Director for Enforcement, at 703-605-4527, or via email at *kenpearson@fs.fed.us*.

Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800-877-8339 between 8 a.m. and 8 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

Forest Service regulations at 36 CFR part 262, in effect since 1977, govern payment of rewards, payments for information and evidence in furtherance of an investigation, impoundment of property, and removal of obstructions from National Forest System lands. On February 16, 1994, the Forest Service published a proposed rule to amend 36 CFR part 262 (59 FR 7880). A final rule was never promulgated. Most of the comments received on the 1994 proposal to amend part 262 involved the meaning of terms used and proposed revisions that would permit the Agency to remove objects that are an impediment or a safety hazard to users of National Forest System lands.

In 2008, the Agency renewed its efforts to amend 36 CFR part 262. In addition to reviewing the comments on the 1994 proposal, the Forest Service reviewed 36 CFR part 262 to determine its applicability in view of changing laws, resource conditions, and other factors affecting management of National Forest System lands. For example, the structure of the Forest Service's Law Enforcement and Investigations staff changed in 1994 to provide for the Director of Law Enforcement and Investigations Staff to report directly to the Chief, rather than to the former Deputy Chief for Administration position

(now the Deputy Chief for Business Operations). Accordingly, the proposed rule vested the authority to make or approve payment of rewards at 36 CFR 262.2 and payments for information and evidence in furtherance of an investigation at 36 CFR 262.3 with the Director of the Law Enforcement and Investigations. The proposed rule also revised limits on maximum amounts and approval authority for payment of rewards.

The Agency published a proposed rule in the **Federal Register** (73 FR 41003, July 17, 2008), for public notice and comment. Only one respondent commented on the proposed rule. This respondent's comment is addressed below. The changes included in the proposed rule are retained in the final rule. Additional revisions for clarity are discussed below.

## **2. Section-by-Section Analysis**

### *36 CFR Part 262, Subpart A*

*Section 262.1 Definitions.* This section contains definitions of terms pertaining to the law enforcement support activities in 36 CFR part 262, including “camping equipment,” “damaging,” “forest officer,” “law enforcement personnel,” “unauthorized livestock,” and “vehicle.” This section replaces current §262.1, which will be redesignated as §262.2.

*Section 262.2 Rewards in connection with fire or property prosecutions.* The Department is redesignating §262.1, “Rewards in connection with fire or property prosecution,” as §262.2 in the final rule. Paragraphs (a)(1) and (a)(2) of current §262.1 set reward amounts for information leading to the arrest and conviction of any person for setting on fire or causing to be set on fire any timber, underbrush, or grass on National Forest System or nearby lands. The reward amounts vary depending on whether the fire

was willfully set. Paragraph (a)(3) of current §262.1 sets a reward amount for information leading to the arrest and conviction of any person charged with destroying or stealing any property of the United States. The revisions to paragraphs (a)(1) through (a)(3) establish new reward payment limitations.

Paragraph (a)(4) of current §262.1 authorizes payment of a reward for information and evidence in furtherance of an investigation of damage to or theft of all or part of a Pacific yew tree. This provision was added in 1991 (56 FR 29182, June 26, 1991) to address an increase in theft of and damage to the Pacific yew. At the time, the Pacific yew was the only known source of the chemical taxol, which is used to treat cancer. Since taxol is now synthetically produced, the demand for the Pacific yew no longer exists, and the tree is no longer being damaged or stolen. Consequently, the Department is removing paragraph (a)(4) from §262.1 in the final rule.

The Department is revising paragraph (b) of current §262.1 to include a cross-reference to 36 CFR 296.17, which, pursuant to Section 8 of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470gg), authorizes payment of a reward from a criminal or civil penalty collected under Section 6 or 7 of ARPA (16 U.S.C. 470ee or 470ff) for information and evidence leading to the criminal conviction or civil liability of the person who paid the penalty.

Paragraph (e) of current §262.1 states: “Applications for reward should be forwarded to the Regional Forester, Research Director, or Area Director who has responsibility for the land or property involved in the trespass.” The final rule amends paragraph (e) to read: “Applications for a reward should be forwarded to the Special Agent in Charge who has responsibility for investigation of the violation of law.” The

Agency is replacing “trespass” with “violation of law” because “trespass” does not encompass the violations of law enumerated in §262.1.

*Section 262.3 Payment for information and evidence in furtherance of investigations.* For simplicity and clarity, the Forest Service is combining §262.2, “Purchase of information in furtherance of investigations,” and §262.3, “Purchase of evidence in furtherance of investigations,” into §262.3 and renaming it “Payments for information and evidence in furtherance of investigations.” Paragraph (a) revised in § 262.3, “Approval of payments,” establishes new dollar limits for payments for information and evidence in furtherance of an investigation and delegations of authority to the Chief of the Forest Service for approval of those payments. Paragraph (b) in revised §262.3, “Limitations,” limits payments for information and evidence to further investigations of felony and misdemeanor violations.

*36 CFR Part 262, Subpart B*

The current heading for this subpart is “Impoundments and Removals.” The Department is revising the heading of subpart B to read, “Administrative Impoundment and Removal.” This revision clarifies that impoundment and removal under 36 CFR part 262, subpart B, of animals or personal property on National Forest System lands are administrative remedies governed by Agency regulations, as opposed to impoundment and seizure of property pursuant to arrests and searches, which are governed by the Federal Rules of Criminal Procedure for the United States District Courts.

*Section 262.12 Impoundment of personal property.* The current regulation sets out the procedure for impounding property that is on National Forest System lands without permission or in violation of law.

For clarity, the Department has split paragraph (a) of §262.12 into two paragraphs, (a) and (b).

Paragraph (b) of current §262.12 states that if the local Forest Officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices and that it be posted in at least one place on the property or in proximity thereto.

The Forest Service is redesignating paragraph (b) as paragraph (c) and revising it to allow impoundment 72 hours after a trespass is discovered and to eliminate the posting requirements in the local newspaper, at the county courthouse, and at local post offices. This revision aligns Forest Service regulations with the regulations of other Federal land management agencies and allows timely removal of property in trespass, thereby protecting National Forest System lands and resources.

The Department is redesignating paragraph (c) as paragraph (d) and is revising it for clarity.

Paragraph (d) of current §262.12 states that if the personal property is not redeemed on or before the date fixed for its disposition, it shall be sold by the Forest Service at public sale to the highest bidder. The Department is redesignating paragraph (d) as paragraph (e) and revising it to give the Forest Service the option to retain and use unclaimed or abandoned personal property for official use, under authority delegated pursuant to the Federal Property and Administrative Services Act, as amended, and its

implementing regulations (40 U.S.C. 552; 41 CFR 102-41.50), rather than having to offer the property for sale. In many cases, the cost of selling the property exceeds its value, and retention of unclaimed personal property for administrative use by the Forest Service could result in substantial savings to the public. The Department also is revising existing paragraph (d) to state, per existing authority, that the Federal Government will bill the property owner for costs associated with impoundment, removal, and storage.

*Section 262.13 Removal of obstructions.* This section currently provides for removal of vehicles or other objects that create an “impediment or hazard to the safety, convenience, or comfort of other users of the National Forest System.” The revised §262.13 adds the authority to remove vehicles or other objects that are abandoned, vandalized, or a fire hazard or that impair access to or use of any area of the National Forest System. This revision addresses the increasing number of automobiles and other large objects being left on National Forest System lands. These abandoned objects need to be removed because they interfere with access to and use of National Forest System lands, may pose a fire or public safety hazard, and are often unsightly.

### **3. Response to Comments**

The 60-day comment period on the proposed rule ended on September 15, 2008. Only one respondent commented on the proposed rule.

*Comment.* The respondent objected to elimination of posting requirements for impoundment of property in trespass. The respondent stated that impoundment and removal of animals or personal property on National Forest System lands are not and should not be administrative remedies governed by Agency regulations. The respondent further stated that the proposed rule would authorize Federal agents to seize and transport

personal property and livestock without adhering to due process afforded by the United States Constitution.

*Response.* The portion of this comment addressing impoundment of livestock is beyond the scope of this rulemaking, which addresses only impoundment of personal property. The final rule retains the requirement in §262.12(b) to post a notice of intention to impound the property in trespass in at least one place in the vicinity of the property if the local Forest Officer does not know the name and address of the owner of property in trespass. Forest Service impoundment regulations have been in place for many years. They are consistent with applicable law and the impoundment regulations of other Federal land management agencies and allow timely removal of property in trespass, thereby protecting National Forest System lands and resources.

*Comment.* The respondent also stated that Federal agents should not seize or transport livestock without strictly adhering to due process requirements under State and Federal law.

*Response.* This comment is beyond the scope of this rulemaking, which does not modify §262.10, Impoundment and disposal of unauthorized livestock.

#### **4. Regulatory Certifications**

##### *Environmental Impact*

This final rule revises law enforcement regulations governing certain activities on National Forest System lands. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. The Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

### *Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review, as amended by E.O. 13422. It has been determined that this final rule is not significant. This final rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this final rule is not subject to review by the Office of Management and Budget under E.O. 12866.

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule amends Forest Service law enforcement regulations governing removal of obstructions, impoundment of personal property, and payment of rewards and payments for information and evidence in furtherance of an investigation and will not impose any requirements on the public. The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by that Act because this final rule will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

### *Federalism and Consultation and Coordination with Indian Tribal Governments*

The Department has considered this final rule under the requirements of E.O. 13132 on federalism. The Department has determined that this final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further determination of federalism implications is necessary at this time.

This final rule does not have tribal implications per E.O. 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with tribes is not required in connection with the final rule.

### *No Takings Implications*

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630 and has determined that this final rule will not pose the risk of a taking of private property.

### *Civil Justice Reform*

The Department has reviewed this final rule under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

### *Energy Effects*

The Department has reviewed the final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

### *Controlling Paperwork Burdens on the Public*

This final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply to this final rule.

### **List of Subjects in 36 CFR Part 262**

Investigations, Law enforcement, National forests, Seizures and forfeitures.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending title 36 of the Code of Federal Regulations, part 262 as follows:

## **PART 262–LAW ENFORCEMENT SUPPORT ACTIVITIES**

1. Revise the authority citation for part 262 to read as follows:

AUTHORITY: 7 U.S.C. 1011(f); 16 U.S.C. 470ee, 470ff, 470gg, 472, 551, 559a;  
40 U.S.C. 552; 41 CFR 102-41.

2. In subpart A, revise §§ 262.1 through 262.3 to read as follows:

### **Subpart A–Rewards and Payments**

Sec.

262.1 Definitions.

262.2 Rewards in connection with fire or property prosecutions.

262.3 Payments for information and evidence in furtherance of investigations.

\* \* \* \* \*

#### **§262.1 Definitions.**

The following definitions apply to subparts A and B:

*Camping equipment.* Personal property used in or suitable for camping, including any vehicle used for transportation and all equipment in possession of a person camping, other than food and beverages.

*Damage.* To injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill, or in any way harm or disturb.

*Forest officer.* An employee of the Forest Service.

*Law enforcement personnel.* An employee of the Forest Service who is a special agent, law enforcement officer, or reserve law enforcement officer.

*National Forest System.* As defined in the Forest and Rangeland Renewable Resources Planning Act of 1974, the “National Forest System” includes all National Forest lands reserved or withdrawn from the public domain of the United States, 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 by the Forest Service as a part of that system.

*Vehicle.* Any device in, upon, or by which any person or property may be transported, including any frame, chassis, or body of any motor vehicle, except devices used exclusively upon stationary rails or tracks.

**§262.2 Rewards in connection with fire or property prosecutions.**

(a) Law enforcement personnel may pay up to \$50,000 as a reward for information and evidence leading to the conviction of any person for:

(1) Willfully or maliciously setting on fire or causing to be set on fire any timber, underbrush, or grass on National Forest System lands or on non-National Forest System lands if the fire endangers or injures National Forest System lands or users;

(2) Kindling or causing to be kindled a fire on National Forest System lands or on non-National Forest System lands if the fire endangers or injures National Forest System lands or users; or

(3) Destroying, damaging, or stealing any property of the United States.

(b) See 36 CFR 296.17 for direction on payment of a reward from a criminal or civil penalty collected under Section 6 or 7 of the Archaeological Resources Protection Act (16 U.S.C. 470ee or 470ff) for information and evidence leading to the criminal conviction or civil liability of the person who paid the penalty.

(c) Officers and employees of the United States Department of Agriculture may not receive rewards under this section.

(d) Submit applications for a reward to the Special Agent in Charge who has responsibility for the investigation involved in the violation of law no later than 3 months after the date of conviction of an offender. Applications submitted after that date will not be considered. To allow all claimants to present their claims within the prescribed limit, the Special Agent in Charge shall not take action with respect to rewards regarding an investigation until 3 months after the date of conviction of an offender.

(e) The Special Agent in Charge reserves the right to refuse payment of a reward when it is determined that collusion or improper methods were used to secure the conviction involved.

(f) The Special Agent in Charge reserves the right to pay only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, but may, depending on the circumstances, determine that payment of a reward for each conviction is justified.

**§262.3 Payments for information and evidence in furtherance of investigations.**

(a) *Approval of Payment.* Law enforcement personnel may pay for information and evidence in furtherance of investigations of felonies and misdemeanors related to Forest Service administration.

(1) Criminal investigators in the GS-1811 series and other law enforcement personnel designated by the Chief of the Forest Service, Director of Law Enforcement and Investigations, or Special Agent in Charge may, without prior approval, pay up to \$1,000 for information and evidence under this section.

(2) Payments over \$1,000 and up to \$5,000 require prior written approval from the Special Agent in Charge.

(3) Payments over \$5,000 and up to \$10,000 require prior written approval from the Director of Law Enforcement and Investigations.

(4) Payments over \$10,000 require prior written approval from the Chief of the Forest Service.

(b) *Limitations.* Payments for information and evidence under this section are restricted to furthering investigations of felony and misdemeanor violations. Payments for information and evidence in furtherance of investigations of infractions are not authorized under this section.

### **Subpart B—Administrative Impoundment and Removal**

3. Revise the heading of subpart B to read as set forth above.

4. Revise the heading of § 262.11 to read as follows:

#### **§262.11 Impoundment of dogs.**

\* \* \* \* \*

5. In § 262.12, revise the section heading and paragraphs (b) and (d) to read as follows:

#### **§262.12 Impoundment of property.**

\* \* \* \* \*

(b) If the local Forest Officer does not know the name and address of the owner of property in trespass, impoundment may be effected at any time 72 hours after a notice of intention to impound the property in trespass is posted in at least one place in the vicinity of the property.

\* \* \* \* \*

(d) The owner of impounded property may redeem it by the date set for its

disposition, but shall remain liable for all costs associated with its impoundment, removal, transportation, and storage. Impounded property that is not redeemed by the date set for its disposition shall become the property of the United States and may be retained by the Forest Service for official use, sold at public sale to the highest bidder, or otherwise disposed of. When impounded property is sold, the forest officer conducting the sale shall furnish the purchaser with a bill of sale or other written instrument evidencing the sale. The original owner shall remain liable for all costs associated with impoundment, removal, transportation, and storage of the property, minus any amount received from the sale of the property.

\* \* \* \* \*

6. Revise §262.13 to read as follows:

**§ 262.13 Removal of obstructions.**

A Forest Officer may remove or have removed a vehicle or other object on National Forest System lands that is abandoned or vandalized or that poses an impediment or hazard to the safety, convenience, or comfort of National Forest System visitors.

June 24, 2014

(Date)

Mary Wagner,  
Associate Chief,  
Forest Service.

[FR Doc. 2014-18020 Filed 07/29/2014 at 11:15 am; Publication Date: 07/31/2014]