

Byron Mallott
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: John Crowther
Department of Natural Resources

FROM: Scott Meriwether, Office of the Lieutenant Governor
465.4081

A handwritten signature in black ink, appearing to be "CM", located to the right of the "FROM:" line.

DATE: February 7, 2017

RE: Filed Permanent Regulations: Department of Natural Resources

Department of Natural Resources update to forest practices regulations re: reforestation
(11 AAC 95.235(e); 11 AAC 95.375; 11 AAC 95.380(a); 11 AAC 95.385(a))

Attorney General File: JU2016200832

Regulation Filed: 2/7/2017

Effective Date: 3/9/2017

Print: 221, April 2017

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTMENT OF NATURAL RESOURCES

The attached six pages of regulations, dealing with reforestation standards and reforestation documentation for commercial forestry operations in Southcentral and Interior Alaska (Forest Practices Regions II and III) in 11 AAC 95.235 and .375-.385, and with documentation for reforestation exemptions statewide in 11 AAC 95.375(g) are adopted and certified to be a correct copy of the regulation changes that the Department of Natural Resources adopts under the authority of AS 41.17.010, AS 41.17.055, AS 41.17.060, AS 41.17.080, AS 41.17.087, AS 41.17.090, and AS 41.17.900 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

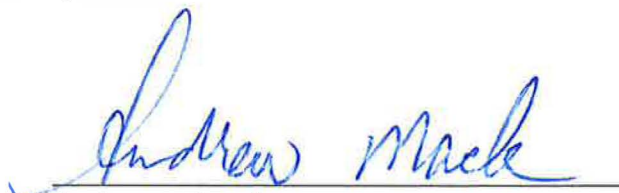
This action is not expected to require an increased appropriation.

In considering public comments, the Department of Natural Resources paid special attention to the cost to private persons of the regulatory action being taken, including reviews of draft regulations with a stakeholders group and the Board of Forestry during development of the draft regulations. No public comments were received regarding costs of the regulations.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

Date:

12/21/2016



Andrew T. Mack
Commissioner

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that¹ on

February 7, 2017, at 205 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Byron Mallott
Lieutenant Governor

Effective: March 9, 2017.

Register: 221, April 2017.

11 AAC 95.235 is amended by adding a new subsection to read:

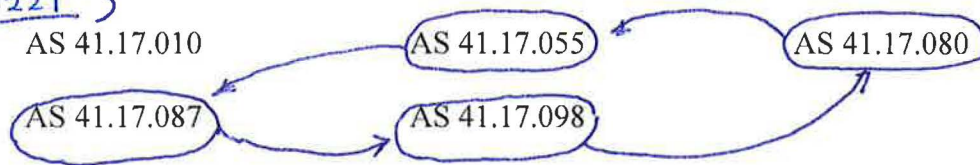
~~11 AAC 95.235. Variation procedures.~~ (e) In evaluating a request for a variation to

reforestation stocking distribution standards under 11 AAC 95.375(d)(5), the state forester will consider non-stockable areas and long-term and short-term site conditions. (Eff. 6/10/93,

Register 126; am 11/20/99, Register 152; am 6/24/2004, Register 170; am 3/9/2017,

Register 221)

Authority: AS 41.17.010



11 AAC 95.375(b) is amended to read:

~~11 AAC 95.375. Reforestation requirement.~~ (b) A landowner shall reforest harvested

forest land to the fullest extent practicable unless [:]

(1) the land will be converted to another use in accordance with 11 AAC 95.200;

(2) the stand is significantly composed of insect and disease-killed, [fire-killed], [fire killed], [wind-thrown], or fatally damaged trees;

(3) in Region I, more than 50 percent of the original basal area of living trees remain after the first entry and those trees are well distributed within the unit after harvest; or a minimum of 160 vigorous, undamaged, well-distributed saplings or merchantable trees per acre of a commercial species, or combination of commercial species, remain on the area harvested; or

(4) in Region II or Region III, vigorous, well-distributed residual commercial trees free from significant damage meet or exceed the following standards, or a combination of trees and seedlings approved by the division, meet the following standards:

Average DBH of Remaining Stand – Inches	Minimum Stocking Standard (in trees per acre)
Greater than <u>or equal to</u> 9	120
6 to 8	170
1 to 5	200

11 AAC 95.375(c) is amended to read:

~~11 AAC 95.375. Reforestation requirement.~~ (c) In areas within Region II or III where the natural amount or distribution of stocking of commercial trees is below the of this section minimum standards in (b)(4) before harvest, the division will consider a variation from the stocking levels required in (d) of this section. An applicant shall submit a request for variation under this section through a detailed plan of operations and shall document pre-harvest stocking level and distribution. (Eff. 6/10/93, Register 126; am 9/6/96, Register 139)

Authority: ~~AS 41.17.010~~ ~~AS 41.17.055~~ ~~AS 41.17.060~~
~~AS 41.17.080~~

11 AAC 95.375(d) is amended to read:

~~11 AAC 95.375. Reforestation requirement.~~ (d) Reforestation must be achieved within five years after harvest in Region I and seven years after harvest in Region II and Region III as follows:

- (1) in Region I, the number of vigorous, undamaged, and well distributed seedlings of commercial tree species must average at least 200 trees per acre and must have survived on site for a minimum of two years;

(2) in Region II or Region III, the number of vigorous, undamaged, and well distributed seedlings of commercial tree species must average a minimum of 450 trees per acre and must have survived on site for a minimum of two years;

(3) in all regions adequate reforestation means a combination of seedlings and residual trees that will meet the standards set out in this subsection and in (b) of this section; [AND]

(4) in Region I, no more than 10 percent of the harvest area or contiguous areas may be below the stocking levels as set out in (1) [OR (2)] of this subsection;

(5) in Region II or III, no more than 20 percent of the harvest area or contiguous areas may be below the stocking levels as set out in (2) of this subsection;

and

lowercase

(6) In Region II or Region III, the division may allow a period of up to 12 years for natural regeneration where site conditions indicate a high likelihood of regeneration success within that period based on information in the detailed plan of operations.

Eff. 6/10/93, Register 126; am 9/6/96, Register 139)

in no boldface or underline for the period
Authority: AS 41.17.010 AS 41.17.055 AS 41.17.060

AS 41.17.080

11 AAC 95.375(f) is amended to read:

~~11 AAC 95.375. Reforestation requirement.~~ (f) Unless otherwise authorized by the division, seeds [SEEDS] used for reforestation must be

in no underlining

(1) from a similar latitude, climatic area, and elevation as the harvested area or

~~[UNLESS OTHERWISE APPROVED BY THE DIVISION]~~

Register 221, April 2017

NATURAL RESOURCES

(2) in Region II or Region III, a mix of seed for native species from similar conditions with seed from up to 10 degrees latitude south of the planting site. ^{at lower latitudes} Seeds from other locations that have been demonstrated to be successful and are approved by the division may be used. [UNLESS OTHERWISE APPROVED BY THE DIVISION].

(3) in Region II or Region III, known invasive species ^{may} shall not be planted.

~~Eff. 6/10/93, Register 126,~~

~~Am 9/6/96, Register 139,~~

Authority: AS 41.17.010

AS 41.17.055

AS 41.17.060

AS 41.17.080

11 AAC 95.375(g) is amended to read:

~~11 AAC 95.375. Reforestation requirement~~ (g) To apply for an exemption from reforestation requirements under (b)(2) of this section, a landowner must request an exemption in the reforestation section of a detailed plan of operations under 11 AAC 95.220(10) or a change in operations under 11 AAC 95.230 and must demonstrate that the affected stand is significantly composed of insect and disease-killed, fire-killed, wind-thrown, or fatally damaged trees. If required by the division, the request must include a description of the sampling procedure, the sampling data, and a data summary. The data summary must show the number of commercial trees per acre that are dead or fatally damaged, and the percentage of commercial trees in the stand that are dead or fatally damaged. Sample plots must be located without bias throughout the affected stand. For stands 1,000 acres or less, the minimum sample density is 10 plots per 100 acres. For stands greater than 1,000 acres, the minimum sample density is six plots per 100 acres. Fewer plots are acceptable if the sample standard error is less than 10 percent of the mean.

Register 221, April 2017 NATURAL RESOURCES

Either fixed diameter or variable plot sampling methods are acceptable. Sample plots must average approximately at least five sample trees of commercial value. Trees must be recorded by diameter class as either dead, damaged by insects, disease, fire, or wind, or not impacted.

[THE DIVISION MAY ACCEPT OTHER] Other documentation or field evidence approved by the division may be used in lieu of sampling [IN CASES WHERE THE EXTENT OF

DAMAGE IS OBVIOUS]. (Eff. 6/10/93, Register 126; am 9/6/96, Register 139; am 3/9/2017, Register 221)

Authority: AS 41.17.010

AS 41.17.055

AS 41.17.060

AS 41.17.080

11 AAC 95.380(a) is amended to read:

11 AAC 95.380. Natural regeneration. (a) If a forest landowner in Region II or III intends to rely on natural regeneration from seed for reforestation, the forest landowner shall ensure a seed source of well-formed, vigorous trees of commercial tree species. The seed source must be capable of distributing an adequate amount of seed throughout the harvest area to meet the reforestation requirements set out in 11 AAC 95.375(d). A forest landowner may not harvest the seed source identified for natural regeneration until the division has received a regeneration report showing that the harvest area has met the reforestation requirements set out in 11 AAC

95.375. (Eff. 6/10/93, Register 126; am 3/9/2017, Register 221)

Authority: AS 41.17.010

AS 41.17.080

11 AAC 95.385(a) is amended to read:

11 AAC 95.385. Regeneration survey and report. (a) A forest landowner in Region II or III shall conduct a regeneration survey or provide alternative documentation, and shall file a regeneration report or alternative.

Register 221, April 2017 NATURAL RESOURCES

documentation with the division. A forest landowner [and owner] in Region I shall file a regeneration report with the division and, if requested by the division, conduct a regeneration survey. A regeneration survey or alternative documentation must be conducted in a manner acceptable to the division. In an area reforested by natural regeneration, planting, or artificial seeding, a regeneration report shall be submitted within

(1) five years after timber harvest in Region I; a visual overview is acceptable in areas of obvious reforestation, however, the division may require a regeneration survey if the division determines the visual overview is inaccurate;

(2) seven years after the timber harvest in Region II or III If the period for natural regeneration is extended to twelve years under 11 AAC 95.375(d)(5), a regeneration report shall be submitted

(A) within five years after the timber harvest to determine whether

if the report shows deficiencies in reforestation, the division will direct the forest landowner to correct them; the reforestation requirements are likely to be met; and

(B) within twelve years after the timber harvest to document that the

reforestation requirements

standards have been met. If either report or field verification shows deficiencies in reforestation, the division will direct the forest landowner to correct them. (Eff.)

6/10/93, Register 126

no bold or underline beneath period
3/9/2017, Register 221

Authority: AS 41.17.010

AS 41.17.055

AS 41.17.080

MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: February 7, 2017

File No.: JU2016200832

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Department of Natural Resources
update to forest practices regulations
re: reforestation (11 AAC 95.235(e);
11 AAC 95.375; 11 AAC 95.380(a);
11 AAC 95.385(a))

We have reviewed the attached regulations from the Department of Natural Resources against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated February 7, 2016 from the Regulations Attorney. The regulations update forest practices requirements regarding reforestation.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The October 14, 2016 public notice and the December 21, 2016 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc w/enc: (via email)

Hon. Andrew T. Mack, Commissioner
Department of Natural Resources

John Crowther, Regulations Contact
Department of Natural Resources

Martha W. "Marty" Freeman
Division of Forestry
Department of Natural Resources

Thomas E. Lenhart, Assistant Attorney General
Natural Resources Section

MEMORANDUM


State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: February 7, 2017

FILE NO.: JU2016200832

TELEPHONE NO.: 465-3600

FROM: Susan R. Pollard 
Chief Assistant Attorney General
and Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority
regarding regulations review on
Department of Natural Resources
update to forest practices
regulations re: reforestation
(11 AAC 95.235(e); 11 AAC
95.375; 11 AAC 95.380(a);
11 AAC 95.385(a))

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General and
Assistant Regulations Attorney
Legislation/Regulations Section

NOTICE OF PROPOSED CHANGES ON REFORESTATION STANDARDS AND
REFORESTATION DOCUMENTATION IN SOUTHCENTRAL AND INTERIOR ALASKA
AND ON DOCUMENTATION FOR REFORESTATION EXEMPTIONS STATEWIDE
IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

BRIEF DESCRIPTION

The Department of Natural Resources (DNR) proposes to change regulations on reforestation for commercial forestry operations.

The DNR proposes to adopt regulation changes in Title 11 of the Alaska Administrative Code, dealing with reforestation standards and reforestation documentation for commercial forestry operations in Southcentral and Interior Alaska (Forest Practices Regions II and III) in 11 AAC 95.235 and .375-.385, and with documentation for reforestation exemptions statewide in 11 AAC 95.375(g).

- (1) 11 AAC 95.235 is amended to add criteria for evaluating a request for a variation to reforestation stocking standards in Regions II and III.
- (2) 11 AAC 95.375(b) is amended to ensure that all size classes of trees are considered in determining whether reforestation standards are met in Regions II and III.
- (3) 11 AAC 95.375 (d) is amended to
 - allow an extended period for natural regeneration to meet the reforestation standards where site conditions indicate that natural regeneration is likely to succeed in Regions II and III, and
 - to increase the percentage of a harvest area that may be below the stocking standard in Regions II and III. This corresponds to natural variation in stocking and wildlife habitat benefits from patchiness in forest cover.
- (4) 11 AAC 95.375(f) is amended to
 - allow landowners to include a mix of seed from native tree species grown up to 10 degrees latitude south of the planting area in Regions II and III. This reflects recent research on seedling growth and survival as a result of warming climates, and
 - prohibit planting known invasive trees species on commercial forest operations regulated by the Forest Resources and Practices Act in Regions II and III.
- (5) 11 AAC 95.375(g) is amended to allow applicants for reforestation exemptions in all regions to use various methods approved by the Division of Forestry to document areas of dead and dying trees. This reflects rapid development of remote sensing technologies since adoption of the original regulation requiring ground-based surveys.
- (6) 11 AAC 95.380 is amended to clarify that paragraph (a) applies specifically to natural regeneration from seed.

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))¹

1. Adopting agency: Department of Natural Resources
2. General subject of regulation: Reforestation on commercial forest operations
3. Citation of regulation (may be grouped): 11 AAC 95.235, and .375-.385
4. Department of Law file number, if any: JU2016200832

5. Reason for the proposed action:

- () Compliance with federal law or action (identify): _____
- () Compliance with new or changed state statute
- () Compliance with federal or state court decision (identify): _____
- (X) Development of program standards
- () Other (identify): _____

6. Appropriation/Allocation: n/a

7. Estimated annual cost to comply with the proposed action to:

A private person: no additional required costs

Another state agency: no additional required costs

A municipality: no additional required costs

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year	Subsequent
	FY <u>18</u>	Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/		
Program receipts	\$ <u>0</u>	\$ <u>0</u>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>

9. The name of the contact person for the regulation:

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Martha W. Freeman, Board of Forestry Liaison, of the Department of Natural Resources, Division of Forestry, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 11 AAC 95.235 and .375-.385 regarding reforestation standards and documentation has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Resources Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

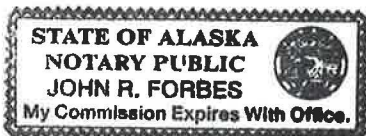
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 11/2/16

Martha W Freeman

Martha W. Freeman
DNR Division of Forestry
Board of Forestry Liaison

Subscribed and sworn to before me at Anchorage, AK on 11/2/16



John R Forbes
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Martha W. Freeman, Natural Resources Specialist V for the Department of Natural Resources, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Natural Resources has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Natural Resources regulations dealing with reforestation standards and reforestation documentation for commercial forestry operations in Southcentral and Interior Alaska (Forest Practices Regions II and III) in 11 AAC 95.235 and .375-.385, and with documentation for reforestation exemptions statewide in 11 AAC 95.375(g).

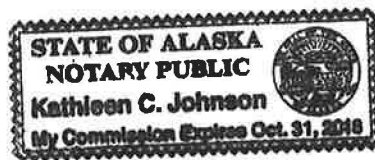
Date: 1-3-17

Martha W Freeman

Martha W. Freeman
Natural Resource Specialist V
DNR Division of Forestry

Subscribed and sworn to before me at Anchorage, Alaska on
January 3, 2017.

Kathleen C Johnson
Notary Public in and for the State of Alaska



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\$547.82

AFFIDAVIT OF PUBLICATION

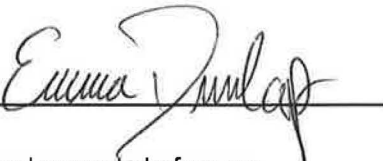
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

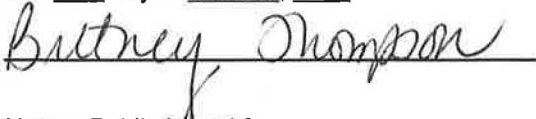
October 14, 2016

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed



Subscribed and sworn to before me
this 14th day of October, 2016



Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES ON REFORESTATION STANDARDS AND REFORESTATION DOCUMENTATION IN SOUTHCENTRAL AND INTERIOR ALASKA AND ON DOCUMENTATION FOR REFORESTATION EXEMPTIONS STATEWIDE IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

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- (1) 11 AAC 95.235 is amended to add criteria for evaluating a
request for a variation to reforestation stocking standards in
Regions II and III.
- (2) 11 AAC 95.375(b) is amended to ensure that all size classes of
trees are considered in determining whether reforestation
standards are met in Regions II and III.
- (3) 11 AAC 95.375 (d) is amended to
 - allow an extended period for natural regeneration
to meet the reforestation standards where site
conditions indicate that natural regeneration is
likely to succeed in Regions II and III, and
 - to increase the percentage of a harvest area that
may be below the stocking standard in Regions II
and III. This corresponds to natural variation in
stocking and wildlife habitat benefits from
patchiness in forest cover.
- (4) 11 AAC 95.375(f) is amended to
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south of the planting area in Regions II and III. This
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survival as a result of warming climates, and
 - prohibit planting known invasive trees species on
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III.
- (5) 11 AAC 95.375(g) is amended to allow applicants for
reforestation exemptions in all regions to use various methods
approved by the Division of Forestry to document areas of
dead and dying trees. This reflects rapid development of
remote sensing technologies since adoption of the original
regulation requiring ground-based surveys.
- (6) 11 AAC 95.380 is amended to clarify that paragraph (a) applies
specifically to natural regeneration from seed.
- (7) 11 AAC 95.385 is amended to
 - allow forest landowners in Regions II and III to use
various methods approved by the Division of
Forestry to document compliance with the
reforestation standards. This reflects rapid
development of remote sensing technologies since
adoption of the original regulation requiring ground-
based surveys; and
 - require regeneration reports after five years and at
the end of the reforestation period for sites where
an extended period is allowed for natural
regeneration in Regions II and III.

DATA FROM PAIN

2275 Health & Fitness

DAYCARE \$700 month I am a CMA
and CPR Certified that has an exten-
sive background in the medical
field. I can offer a fun safe environ-
ment for children. Mon.-Fri. 7:00
am to 6:00pm. I have had back-
grounds checks from the AK and
Providence Hospital. No State 907-
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