

It is my opinion that current Forest Service regulations and proposed changes warrant a complete reset of Forest Service oversight which may include turning oversight of mineral extraction on all Forest Service managed lands over to the BLM.

While Forest Service regulations 36 CFR part 228, subpart A specify criteria under which the Forest Service provides oversight (of mineral extraction) on lands managed by the Forest Service, interpretation and implementation of NEPA has created arbitrary development and application of rules above and beyond both the Mining Law and 36 CFR part 228, subpart A.

Most of the Forest Service's proposed changes have little or no consideration for small scale miners who make up a large portion of hardrock mining activity. Instead, proposed changes focus on additional meetings, oversight and fees to further inhibit access to mineral development by the small scale, self-initiating miners.

As a result, I would respond specifically to the following:

1. Proposal for additional meetings with Forest Service personnel during development of an operator's plan of operation

The public and miners would be better served if a Plan of Operation were NOT required of anyone whose operation contains less than 2 ½ acres of unreclaimed land (roads not included) and who extracts less than 5 tons of ore. Use of mechanical equipment restricted to 1 mechanized piece of earthmoving equipment.

2. *In addition, the Forest Service is considering whether to amend portions of [36 CFR part 228](#), subpart A, to more closely correspond to [43 CFR part 3710](#), subpart 3715 ([65 FR 37125](#), July 16, *Start Printed Page* 464531996) and [43 CFR part 3800](#), subpart 3809 ([65 FR 70112](#), Nov. 21, 2000), which govern locatable mineral operations conducted on the public lands managed by the BLM, as permitted given the Forest Service's different statutory authorities. Specifically, the Forest Service contemplates increased consistency with the BLM's regulations regarding reasonably incident uses and occupancy, classification of operations (i.e., casual use, notice-level, and plan of operations-level), requirements for operating on segregated or withdrawn lands, special procedures applicable when a mineral or material may be subject to sale under the Materials Act of 1947, [30 U.S.C. 601](#)-04, rather than to appropriation under the mining laws, and noncompliance and enforcement.*

This is an revision effort that has been attempted for over 15 years. Be aware that it includes BLM'S "enforcement" authority for non-compliance and fines. Currently the Forest Service does not have authority to levy fines. Nor should it have.

3. *The operations which do not require an operator to provide notice before operating are identified by [36 CFR 228.4\(a\)\(1\)](#). Those operations include, but are not limited to, using certain existing roads, performing prospecting and sampling which will not cause significant surface resource disturbance, conducting operations which will not cause surface resource disturbance substantially different from that caused by other users of the National Forest System who are not required to obtain another type of written authorization, and conducting operations which do not involve the use of mechanized earthmoving equipment or the cutting of trees unless these operations might otherwise cause a significant disturbance of surface resources. The operations for which an operator must submit a notice of intent to the Forest Service before operating are identified by [36 CFR 228.4\(a\)](#) as those which might, but are not likely to, cause significant disturbance of surface resources. The operations for which an operator must submit and obtain Forest Service approval of a proposed plan of operations before operating are identified by [36 CFR 228.4\(a\)\(3\)-\(a\)\(4\)](#) as those which will likely cause, or are actually causing, a significant disturbance of surface resources.*

Should be re-written to allow use of one mechanized piece of earthmoving machinery with no Plan of Operation in cases where 2 ½ acres or less of surface is affected (roads are not included as affected area) AND less than 5 tons of ore is extracted.

The term “surface disturbance” must be clearly defined to exclude roads.

4. *d. If you do not agree that [36 CFR part 228](#), subpart A, should be amended to increase consistency with the BLM's regulations which establish three classes of locatable mineral operations and specify the requirements which an operator must satisfy before commencing operations in each such class, please identify the classes of locatable mineral operations that you think the Forest Service should adopt. Also please identify all requirements that you think an operator should have to satisfy before commencing the locatable mineral operations that would fall in each such class.*

Three classes of locatable mineral operations should be:

Those not requiring an operator to provide the Forest Service with notice before operating, those requiring a notice of intent (**operations which affect less than 2 ½ acres – excluding roads - extract less than 5 tons of ore and use no more than 1 piece of mechanized earthmoving equipment**), and those requiring a proposed plan of approval (**Operations which extract more than 10 tons of ore, affect more than 5 acres of surface – excluding roads- and have more than 1 piece of mechanized earthmoving equipment**).

5. *b. Nonetheless, the Forest Service has observed that the best proposed plans of operations often are submitted by operators who met with agency officials to discuss the formulation of their proposed plans. Thus, the Forest Service contemplates amending [36 CFR part 228](#), subpart A, to make operators aware that the Forest Service encourages them to meet with the appropriate local Forest Service official when the operator begins formulating a proposed plan to ensure that the operator knows and understands precisely what information a proposed plan of operations must contain for the agency to find it complete. The Forest Service thinks that routinely having such meetings would improve the quality of proposed plans of operation and consequently speed the approval of such plans.*

All forms for submittal should be complete and thorough with simplified explanations and check-off boxes whenever possible. Changes in Forest Service personnel and associated changes in interpretations/priorities can and do affect the criteria under which operators must provide information and/or perform. The more information requested on forms the less opportunity for changing mores and confusion.

6. *The NRC's 1999 report entitled “Hard Rock Mining on Federal Lands” is strongly critical of these current [36 CFR part 228](#), subpart A, limitations upon the Forest Service's ability to require an operator to obtain approval of a modified plan of operations. The NRC's 1999 report finds that “. . . arguments over what should have been ‘foreseen’ or whether a . . . Forest Service officer took ‘all reasonable measures’ in approving the original plan makes the modification process dependent on looking backward. Instead, the process should focus on what may be needed in the future to correct problems that have resulted in harm or threatened harm . . . Modification procedures should look forward, rather than backward, and reflect advances in predictive capacity, technical capacity, and mining technology.”*

Explain to me why an NRC report done in 1999 has ANY relevance what-so-ever. A 19 year-old report is still setting standards for performance?

7. *As the NRC's 1999 report entitled “Hard Rock Mining on Federal Lands” finds, the Forest Service's inability to issue a notice of noncompliance unless the operator fails to comply with [36 CFR part 228](#), subpart A, and that noncompliance is unnecessarily or unreasonably causing injury, loss or damage to National Forest System surface resources “has led to concern about the efficacy of the notice of*

noncompliance in preventing harm to [those] resources. . . .” The fact that [36 CFR part 228](#), subpart A, does not expressly permit the Forest Service to suspend or revoke noncompliant plans of operations also poses an unnecessary risk that the agency would be challenged if it took these actions in order to prevent harm to National Forest System surface resources.

THIS is, IMHO, dangerous territory. Based on a report done in 1999 the “inability to issue a notice of noncompliance unless an operator fails to comply with 36 CFR part 228, subpart A AND noncompliance is unnecessarily or unreasonably causing injury, loss or damage to National Forest System surface resources” is a risk? Extraction of minerals affects the surface. There are additional laws in place which govern logging, water and air quality. Most important, laws and judicial findings have changed significantly in the past 19 years. This report can hardly be called a “current” standard of any type.

8. *The GAO's 1990 report also determines that these unauthorized activities result in a variety of problems, including blocked access to public land by fences and gates; safety hazards including threats of violence; environmental contamination caused by the unsafe storage of hazardous wastes; investment scams that defraud the public; and increased costs to reclaim damaged land or otherwise acquire land from claim holders intent on profiting from holding out for monetary compensation from parties wishing to use the land for other purposes. Accordingly, the GAO's 1990 report urges the Forest Service and the BLM to revise their regulations to limit use or occupancy under the mining laws to that which is reasonably incident.*

The GAO report is from 1990 – 28 years ago? In actuality this is a thinly veiled attempt to prohibit due process to valid claim holders in cases where their claim is on public lands whose use designation is about to change. For example, a claim on property about to be designated as wilderness or traded to BLM or other entity for property that entity may hold.

In summary, this entire Forest Service governance of public lands needs additional administrative review from the highest levels. An adhoc committee of stakeholders (made up of no less than 40% small operation miners) should be formed to provide input during that review. Better yet, lets get the Forest Service out of the business of mineral oversight.