

United States Forest Service
United States Department of Agriculture
FS-2018-0052
Concerning 36CFR Part 228

In response to the Forest Service proposed rulemaking request for comment:

This would be an unmitigated disaster for all small mining operations. The Forest Service is proposing to completely overburden small mines with regulations and costly procedures that specifically are designed to eliminate the thousands of small mining operations in the United States. It sounds as if these proposals specifically contradict the intent of Executive Order 13817 which was intended to reduce and clarify regulations hampering miners and mineral exploration.

The original intent of the Mining Law of 1872 was for the Forest Service to assist the miners in their ability to explore useful minerals. Because of the onslaught of regulations in the past and these proposed regulations, the Forest Service is attempting to prohibit miners from extracting vital resources that our nation's sovereignty depends upon.

As stated in the Federal Register/Vol. 83, No. 178, page 46452, "This the Forest Service may not prohibit locatable mineral operations on lands subject to the Mining Law that otherwise comply with applicable law, not regulate those operations in a manner which amounts to a prohibition."

Pg. 46454 Section e,f

In response to the question concerning the Forest Service amending its 3 classifications to becoming consistent with BLM regulations:

The casual use class makes little sense for mining. If there can be no sign of disturbance, very little exploration can be done. There can be no mining without disturbance because mining involves digging which inherently involves some disturbance.

The class of notice level operations is purposefully vague. There is a huge difference between a 5 acre disturbance and a 50 ft disturbance. If something can be dug with a pick and shovel, it can be reclaimed with a pick and shovel. It should not require a plan of operations or a reclamation bond.

A plan level operation that uses heavy equipment to disturb large areas-more than 5 acres-should require a plan of operation and sufficient funding for reclamation.

We have found the Forest Service to be unhelpful and interfering. Because the regulations are vague and subjective, the Forest Service has hindered and harassed us by insisting we comply with regulations that are not consistent with a pick and shovel operation as specified in their own literature or consistent with the Mining Law of 1872 simply at "their discretion. It is very subjective. The classifications need to be clarified, simplified and quantified. We very likely would have completed our project and reclaimed it by now without the interference of the Forest Service.

The problem of the miners plans of operation taking so long to complete and needed to be redone could be rectified if there were clearer guidelines and templates for completion. The guidelines should use common sense and clear, quantitative standards and procedures. If a Forest Service staff person created a clear procedural document, this would alleviate many of the problems. It would be worthwhile to have a staff person make themselves available for answering questions. Meetings could be helpful. The plan of operations needs to be looked at as contract law where both parties are entering into an agreement that is beneficial to both parties. It needs to be cooperative on both sides. If the Forest Service is intent on keeping all miners off Forest Service lands, the meeting would do no good.

In response to the judiciary amendments being considered for non-compliance:

We have concerns about the subjectivity in current Forest Service regulations. It sound as if the Forest Service can issue a suspension order whenever they want to whomever they please if they don't want a miner on Forest Service lands simply by questioning the class level based on the Forest Service discretion. There should be a means of appeal, not simply forced compliance. Likewise, a Forest Service official is subject to civil suit if they are hindering or harassing a miner to the point it inhibits their operation. These amendments could lead to a litigious firestorm as miners fight to reclaim their rights given in the Mining Laws of 1872 and Executive Order 13817.

In response to the Occupancy amendment: It appears that this amendment lumps all miners in the same category. The financial guarantee for a small mining operation with a miner bringing in a trailer for a season of work is vastly different from a commercial mining operation with a large crew, heavy equipment a living structures. Different situations should be addressed.

In conclusion, these proposed amendments are supposed to enhance exploration and extraction of valuable mineral resources on Forest Service land in accordance with Executive Order 13817 but in fact they do the opposite. President Trump's Executive Order intended to stream line and clarify regulations, not compound and confuse them in an attempt to overburden miners.

Sincerely,

Doug McCary
Swauk Mining District Member
Federal Mining Claim ORMC172083