USDA Forest Service
Attn: Director – MGM Staff
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Docket No: FS-2018-0052

Revision of 36CFR228 Locatable Minerals Regulations

The 43CFR3809 regulations were implemented in 2004, and without any court cases to back them up, implementation was difficult. The situation was the same when BLM implemented their occupancy regulations. Today the regulations are well tested, BLM understands how to administer mining under these regulations, and miners know what to do to comply. The Forest Service is proposing "increased consistency with the BLM's regulations concerning reasonably incident uses, occupancy, and levels of operations (casual use, exploration, mining). These are all positive changes for miners working on the National Forest.

I worked for the Forest Service as a mining technician for 20 years, and am very familiar with the 228 regulations as they apply to the small scale mining industry. The 228 regulations, as written, are interpreted by one ranger in one manner, and by another ranger in another manner. The word "discretion" must be removed from the Forest Service regulations. Also, the Forest Service has no timeframes in the regulations that dictate when they must get their work done. Their existing regulations give them 90 days to approve a Plan of Operation, and since they can't comply with this timeframe because NEPA takes a lot longer than 90 days, they just figure they have no timeframes. The regulations must be specific concerning time frames for authorizations/approvals of Notices and Plans.

The highlight of the changes proposed would be to adopt an expeditious process for reviewing proposed exploration operations affecting 5 acres or less of National Forest system lands. This change would be similar to a BLM Notice, which is not subject to NEPA, will take 30 days instead of 10 years to authorize. I recommend strongly that the USFS separate this provision from the rest of the proposed rulemaking and immediately send it to the Office of Management and Budget (OMB) for a determination of "non-significance" and proceed to publish it in the Federal Register as soon as that determination is made. Since the USFS is adopting a regulation similar to what BLM has been using for almost 20 years, it should be able to obtain a "non-significant" determination.

The Federal Register Notice asks: *Do you agree that this change (adopting BLM's Notice) would be beneficial?* My answer is "yes". One change I would also propose (and this is different than the BLM regulations) is that exploration notice level operations not be prohibited from selling gold.

On page 46454, "c" The Forest Service wants to *"require an appropriate official to initially review all proposed Plans of Operation for completeness"*. This is a concern because if there is a backlog of plans, and the appropriate official is busy or goes on vacation, months or years could go by before

the official has time to give his "opinion" on completeness. There must be a timeframe for completeness review of a submitted Plan (i.e. within 30 days).

The register asks a question on page 46455 under "e". *If you previously concluded that the 36CFR regulations did not require you to give the FS prior notice before you began conducting operations, what issues did you encounter"?* My answer to this is, **road closures**. Some miners have driven out to do assessment only to find their access roads closed. Others were on their claims doing assessment work, and the Forest Service barricaded their roads so they could not get out. An addition to the regulations would be a requirement that the Forest Service post any road they plan to close one year before they close the road. Miners working under casual use would then have the opportunity to inform the Forest Service that they need to have the road remain open (statutory right to access).

On page 46454 Under "f" the Register asks "*what issues were encountered after submitting a Notice of Intent?*" My answer is that the Forest Service, in almost all cases, would not allow testing to take place where the miner proposed and where minerals were located; the Forest Service decided where testing could occur.

Under "g" the Register asks, "*under what circumstances should an operator submit a Notice and under what circumstances should an operator submit a Plan of Operation*?". The answer is that when the work proposed is for exploration and less than 5 acres of ground are involved, a Notice, not subject to NEPA, is appropriate. When exploration has proven out a resource, and the operator wants to begin mining, a mining Plan of Operation should be submitted. Miners who refuse to comply with requirements to resolve a noncompliance, should be required to submit a Plan of Operation, no matter which level of activity (Notice or Plan work) is proposed.

Under the heading *Modifying Approved Plans*, more clarity is always good. However, I have never seen any problems with miners amending their Plans of Operation, or with rangers modifying the plans because of unforeseen circumstances.

One addition to this section, would be for the Forest Service to accept the BLM regulations which pertain to transferring Plans of Operation. BLM requires that both the previous operator and the new operator sign a transfer form. The new operator must take responsibility for all outstanding reclamation and post his own reclamation bond. At that time, the prior operator's bond is returned. Currently, on the Forest, if a miner buys a claim with an approved Plan of Operation, the new miner must start over in gaining operating plan approval. In one instance I know of, the former operator and the new operator both have bonds posted. Double bonding must be clearly prohibited. Also, there must be a timeframe for returning reclamation bonds (i.e. 30 days).

Under the heading of Noncompliance and Enforcement, "b" and "c", BLM's regulations are as "reasonable" as enforcement regulations can be. The agency's actions are based on whether the noncompliance is a significant violation (one that causes environmental harm or danger).

This is the standard that should also apply to the Forest Service regulations. The fines are so high, that if a miner is cited, that miner can request a jury trial.

On page 46456, "1" I agree that this section on enforcement will work, as it has been working on BLM for many years. The key is that the other parts of the regulations discussed above must also be changed, as all parts must fit together. Enforcement must be of reasonable regulations.

On page 46457, "e" I agree that the use and occupancy regulations that BLM uses are clearly laid out. When these regulations first came out, miners could not believe that occupancy included not only a trailer, but a sign or a fence or a tarp. Crazy as they are, once understood by the miners, compliance was possible. There is a concern by casual use operators on the Forest, that they could only stay on site for 14 days. The regulations need to be clear that the standard all miners must be held to is, is the occupancy proposed "reasonably incident" to the work that is proposed? Even a hand operator who works full time at mining, should qualify for occupancy.

Under "a" Changing the word "*bonds*" to "*financial guarantees*" does not appear to be a very important issue to the small scale operator. What is important, is for the Forest Service to accept the same bonding spreadsheet, bond forms and procedures that BLM uses. Miners on the Forest will benefit by having the opportunity to submit third party bond riders, like BLM regulations allow.

Under "c" reclamation bonds should be reviewed every 5 years, or when the operation changes.

On page 46458 "d" concerning mining operations in wilderness and segregated lands, consistency with BLM's regulations is appropriate. BLM is the deciding agency on validity because they administer the mineral estate. Mine operators working on lands that have been segregated from mineral entry should not be required to have a validity exam, although on BLM, it is up to the agency whether to test a claim for validity. When a mineral exam is required, the regulations must be clear that the government must pay for the exam, not the miner.

I appreciate the opportunity to provide these comments on the proposed changes to 36CFR228.

Sincerely,

Jan Alexander

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