

Comments on FS-2018-0052

Department of Agriculture
USFS
36 CFR Part 228
RIN-0596-AD32
Locatable Minerals

October 15, 2018

Comments Requested:

1. Classification of locatable mineral operations:

c. Yes, I agree with the 3 categories of locatable mineral operations currently in use by both the USFS and the BLM. I especially agree that the USFS should conform to the current BLM requirements expected of an operator prior to any surface disturbance of consequence. This would require an operator to notify the USFS, get approval of the work proposal and post a financial guarantee (bond)- just as with the BLM, prior to any work on the property.

f. USFS does not recognize a NOI (BLM definition), so this category would allow small operations, without undue burden of detailed environmental studies (NEPA level). This would expedite the process for small operations which would allow the submittal of a NOI, post a bond and have the property reclaimed (as is the case with the BLM).

g. A NOI for small areas of less than 5 acres, without any sensitive areas (based on both parties' decision). A POO is appropriate for areas where greater than 5 acres would be disturbed, especially with wetlands, NREC areas, and National Wildlife refuges.

2. Submitting, Receiving, Reviewing, Analyzing, & Approving Plans of Operations:

a. Mitigation plans. Yes, specify in the NOI or POO, but make a list of the requirements necessary to protect the environment (I believe this is in place currently, but may need to be made a more obvious part of the process).

b. Yes, meetings with the USFS staff when an operator is formulating a plan for surface disturbance or drilling is/would be helpful to allow for time saving (money saved) prior to work being undertaken. However, this means that local USFS staff need to be available in a timely manner and in a convenient place. Often staff have been re-assigned which causes delays.

c. I agree that it is necessary to complete the disturbance/drilling plans prior to undertaking NEPA review, as this has been a big bottleneck in past work. The number of staff available for the review of the plan has also been a bottleneck. Meeting with USFS staff may eliminate some of the delays caused by incomplete permits, but need to have same staff reviewing the plans, without changing the person/office in charge, which is causing current problems.

e. USFS could provide a template or example of what is expected/needed in a successful plan. However, even easier, would be bringing the NOI process into play, this expediting the whole process for small operations/projects, leaving more time for staff to review the POO's.

f. & g. The delay in the NEPA process was due to a revolving door at 2 offices in Nevada as well as staff that were assigned to other offices seemingly in an arbitrary manner, leaving POO decisions in the a state of indecision as new staff had to go back to review the earlier work, and even decide they had to undertake their own environmental reviews (even if this information was provided). Staff should not be allowed to start over, as the regs in place at the outset should be the regs that are used to complete the POO.

3. Modifying Approved Plans of Operations:

c. Yes, changes in geologic understanding – mapping, sampling, or drilling- may provide a company with information which would require and/or push them to request in a POO.

d. No, an approved POO, is based on a bond amount and this amount had has been budgeted and submitted by a company of JV partner who expects to begin work under the current guidelines. Changing a POO after an approval should only be allowed if BOTH the USFS & the company/individual agree it is in the best interest of BOTH parties.

e. If natural disasters, affect the area permitted, floods, landslides, then a change in the POO might be needed, but again BOTH parties would probably agree.

4. Noncompliance and Enforcement:

a. Yes, serve a notice of non-compliance as is currently the process.

c. follow BLM non-compliance regs including the temporary suspension order and/or nullifying the NOI or POO. Main issue is how long it will take the USFS to lift a temporary ban due to staffing levels, as I assume, someone will need to visit the site to verify compliance and remove the suspension.

i. Notify operator of suspension with a certified letter or in person (preferred, as the non-compliance may have already been address). Company representative will need to guarantee compliance, and if the company/individual does not maintain a good record with the USFS, may be required to provide monthly, quarterly or yearly updates prior to continuing work without penalty. If company continues to ignore the compliance issue, and is assessed a second violation, the company may be required to post a supplemental bond after review by an independent third party.

5. Reasonably Incident Use and Occupancy:

e. Yes, follow undertake the process to bring USFS regs related to mining laws into compliance with the existing BLM regs, before attempting to make any additional requirements related to the Incident Use and Occupancy.

6. Financial Guarantees:

a. A yearly review of the realistic cost of the reclamation bond is appropriate as the BLM does an annual review by visiting the site to review the re-contouring and re-seeding of the disturbance.

b. In the case of POO's and in the obvious degradation of the site during an annual reclamation visit or post-closure. BLM already can request additional dirt work or re-seeding so this is not a new concept. If there is degradation by floods or fire, then the operator should be given credit for the work he did prior to this unexpected circumstance and not penalized for this "act of God".

c. Yearly review is appropriate as this is currently the case with the BLM.

7. Operations on Withdrawn or Segregated Lands

d. Yes, Treat locatable mineral operations on segregated and/or withdrawn lands the same, as the status of either can be changed by governmental agencies or an act of Congress. This is especially true in areas where locatable minerals have been known to exist and have become off-limits due to Federal actions beyond the control of the local governments. The local governments should have a say in these restrictions before they are imposed or released.

8. Procedures for Minerals or Materials that May be Salable Mineral Material, Not Locatable Minerals

d. Yes, Again follow the BLM regs as these are already in place and managed by BLM staff. Do not duplicate the process. The USFS should hand over this duty to the BLM, the current land managers.

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