- ☐ Disability benefits (if not yet in pay status);
- ☐ Early retirement benefit or retirement-type subsidy;
- ☐ Benefit payment options other than a qualified joint-and survivor annuity (QJSA);
- ☐ Recent benefit increases (i.e, occurring in past 5 years);
- ☐ Other similar benefits, rights, or features under the plan {provide identification}

_____

_____

_____

Employer Surcharge

The law requires that all contributing employers pay to the plan a surcharge to help correct the plan's financial situation. The amount of the surcharge is equal to a percentage of the amount an employer is otherwise required to contribute to the plan under the applicable collective bargaining agreement. With some exceptions, a 5% surcharge is applicable in the initial critical year and a 10% surcharge is applicable for each succeeding plan year thereafter in which the plan is in critical status.

Where to Get More Information

For more information about this Notice, you may contact [*enter name of plan administrator*] at [*enter phone number and address (including e- mail address if appropriate)*]. You have a right to receive a copy of the rehabilitation plan from the plan.

Signed at Washington, DC, this 18th day of March, 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E8–5855 Filed 3–24–08; 8:45 am]

BILLING CODE 4510–29–C

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 223, 228, 261, 292, and 293

RIN 0596–AB98

Locatable Minerals Operations

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would revise the regulations for locatable minerals operations conducted on National Forest System lands. The revised rule would apply to prospecting, exploration, development, mining and processing operations, and reclamation under the Mining Law of May 10, 1872, as amended. The Forest Service invites written comments on this proposed rule.

DATES: Comments must be received by May 27, 2008. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by May 27, 2008.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director, Minerals and Geology Management (MGM) Staff, (2810), Mail Stop 1126, Washington, DC 20250–1125; by electronic mail to *36cfr228a@fs.fed.us*; by fax to (703) 605–1575; or by the electronic process available at Federal eRulemaking portal at *http://www.regulations.gov*. If comments are sent by electronic mail or by fax, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the proposed rule; explain the reasons for any recommended changes; and, where possible, reference the specific wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on the proposed rule in the Office of the Director, MGM Staff, 5th Floor, Rosslyn Plaza Central, 1601 North Kent Street, Arlington, Virginia, on business days between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead at (703) 605–4646 to facilitate entry into the building.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0596–New, the docket number, date, and page number of this issue of the **Federal Register**. Comments should be sent to the address listed in the above paragraph.

FOR FURTHER INFORMATION CONTACT: Mike Doran, Minerals and Geology Management Staff, (208) 373–4132. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for Proposed Rule

Locatable mineral operations on National Forest System (NFS) lands have been regulated under the rules now at 36 CFR part 228, subpart A, since 1974. Under these rules, the Forest Service requires operators proposing to conduct such operations to file with the agency a notice of intent, or a plan of operation, or to amend a plan of operation, as appropriate, whenever the

proposed mineral operations might or would likely cause significant disturbance of surface resources.

The regulations at 36 CFR part 228, subpart A, apply to all prospecting, exploration, and mining operations, whether within or outside the boundaries of a mining claim, conducted under the Mining Law of May 10, 1872, as amended. These regulations were originally promulgated in 1974 as 36 CFR part 252, and were based on the Forest Service's authority under the Organic Administration Act of 1897. The rules were redesignated as 36 CFR part 228, subpart A, in 1981. In 2005, a final rule clarifying when a plan of operations is required (§ 228.4(a)) also was adopted. However, the regulations have not been significantly revised since 1974.

The Forest Service recognizes that prospectors and miners have a statutory right, not a mere privilege, under the Mining Law of May 10, 1872, the Surface Resources Act of 1955, 30 U.S.C. 611–615 (sometimes referred to as the Multiple Use Mining Act of 1955 or as Public Law 167), and the Organic Administration Act of 1897, to go upon certain National Forest System lands for the purposes of locatable mineral exploration, development, and production. The Forest Service may not unreasonably restrict the exercise of that right. Under the revised regulation, Forest Service administrators would at all times apply the test of reasonableness, in that the regulations and their administration cannot extend beyond what is needed to preserve and protect the National Forests from needless surface resource damage. Particular consideration would be given to the economics of operations, the stage of the operations, along with other factors in applying the test of reasonableness.

The regulations at 36 CFR part 228, subpart A, have served the Forest Service fairly well in bonding and otherwise administering exploration, mining, and processing operations on National Forest System lands. However, since 1974, several inefficiencies and problems associated with these regulations have become apparent and field managers are asking that the regulations be revised and updated.

This proposed rule would implement recommendations contained in the 1999 National Research Council (NRC) publication ''Hard Rock Mining on Federal Lands.'' This publication resulted when Congress asked the NRC to assess the adequacy of the regulatory framework for locatable mineral operations on Federal lands. In September 1999, the NRC published its conclusions and recommendations. Although the report concluded that the overall regulatory structure for locatable mineral operations on Federal lands is effective, the report recommended revision of several aspects of the Forest Service's regulations. Some of the concerns identified by the NRC are the same concerns the Forest Service has about the existing regulations, specifically, revising the regulations to improve the process for modifying and suspending injurious operations and adjusting reclamation bonds. The report also recommended major changes in the way the Forest Service approves exploratory operations causing less than 5 acres of surface resource disturbance. In response to this recommendation, the Forest Service proposes to adopt regulations similar to the Bureau of Land Management's (BLM) regulations governing notice level operations set forth in 43 CFR subpart 3809.

The Forest Service contacted representatives of the mining industry about its effort to revise 36 CFR part 228, subpart A. The Forest Service briefed those representatives as to what the agency then saw as its six main concerns with its current locatable mineral operations. These were:

(a) New provisions that essentially formalize the current process for, reviewing and approving proposed plans of operations;

(b) Streamlining the process for approving short-term, low impact operations;

(c) New provisions that improve the process and criteria for modification of an approved plan of operations;

(d) Providing additional detail with respect to the process the Forest Service uses to inspect operations and to remedy the operator's or the operations' noncompliance with applicable requirements;

(e) A new provision that explains the Forest Service's and the operator's responsibilities under the Clean Water Act in connection with the review and approval of proposed plans of operations; and

(f) Providing additional detail with respect to the process the Forest Service uses to review and adjust reclamation bonds to ensure that those bonds cover the full cost of reclaiming National Forest System lands.

Description of Substantive Proposed Changes by Section

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

Section 223.14 Where Timber May Be Cut

Section 223.14(d) would be amended to add a citation to 36 CFR part 228, subpart A, to permit certain cutting of timber on a mining claim pursuant to a bonded notice as well as a plan of operations, and to otherwise reflect 36 CFR part 228, subpart A, as it would be revised by this proposed rule.

PART 228—MINERALS

Subpart A—Locatable Minerals

Section 228.3 Definitions

Eleven new terms would be added to the definitions section. Definitions of the terms ''occupancy,'' ''permanent structure'', and ''residence'' would be set forth in § 228.3 to provide consistent interpretations for the public and for Forest Service personnel. These definitions would help reduce confusion about the propriety of proposed occupancy and residence on National Forest System lands in connection with locatable mineral operations, part of which has resulted from imprecise language in some Federal court decisions concerning such occupancy and residence. The three new definitions also would make the Forest Service regulations more consistent with the BLM Occupancy and Use regulations for Locatable minerals, 43 CFR subpart 3715. In addition, these definitions would be consistent with amendments to 36 CFR part 261, subpart A, proposed by this proposed rule.

The term ''reasonably incident'' would be defined to clarify that, by law, mineral operators are restricted to using only reasonable methods of surface disturbance that are appropriate to their stage of operations regardless of the validity of any mining claim on which the operations take place. This clarification is warranted by case law (such as *United States* v. *Richardson*, 599 F. 2d 290 (1979); cert. denied, 444 U.S. 1014 (1980)) and the Surface Resources Act of 1955 (30 U.S.C. 612). Reasonable and necessary uses of the National Forest System lands must employ sound and accepted practices to avoid or minimize adverse environmental impacts. These uses also must employ sound, accepted operational methods appropriate for the applicable stage of mining operations, including prospecting, exploration, production (mining and processing), or

reclamation. The Forest Service General Technical Report INT–35, *Anatomy of a Mine, from Prospect to Production* (section 10–7), describes and gives examples of the reasonable stages of a mining operation.

The proposed term ''reclamation'' would be redefined to include seasonal and interim measures and long-term treatment after mineral operations have ceased.

The term ''reclamation bond'' would be included to clarify that interest earning escrow accounts may be used to cover the costs of long-term reclamation measures.

The term ''significant disturbance of surface resources'' would be defined at § 228.3(n) of the proposed rule to provide general criteria for evaluating the significance of the disturbance of surface resources. However, as discussed in a portion of the June 6, 2005, **Federal Register** notice for the final rule amending 36 CFR 228.4(a) (70 FR 32713) quoted below, it is impossible to define this term definitively given the variability of National Forest System lands.

''Questions and Answers developed by the Forest Service when the 1974 rule was originally adopted explained that a definition cannot be given that would apply to all lands subject to these regulations. Disturbance by a particular type of operation on flat ground covered by sagebrush, for example, might not be considered significant. But that same sort of operation in a high alpine meadow or near a stream could cause highly significant surface resource disturbance. The determination of what is significant thus depends on a case-by-case evaluation of proposed operations and the kinds of lands and other surface resources involved. In general, operations using mechanized earthmoving equipment would be expected to cause significant disturbance. Pick and shovel operations normally would not. Nor would explosives used underground, unless caving to the surface could be expected. Use of explosives on the surface would generally be considered to cause significant disturbance. Almost without exception, road and trail construction and tree clearing operations would cause significant surface disturbance. The Department continues to believe that a universal definition of the term 'significant disturbance' cannot be established for NFS lands. The lands within the NFS subject to the United States mining laws stretch from Alaska on the north, the Mississippi River on the east, the border with Mexico on the south, and the Pacific Ocean on the west. NFS lands within that large area occur in widely diverse climates, hydrogeologic conditions, landforms, and vegetative types. Due to the great variability of NFS ecosystems, identical operations could cause significant disturbance in one situation and insignificant disturbance in another.

However, the record for the 1974 rulemaking at 36 CFR part 228, subpart A, does identify tests that are of use in deciding whether proposed disturbance of NFS resources constitutes 'significant disturbance' for purposes of that rule. A March 28, 1974, letter from Forest Service Chief John McGuire to Senator Ted Stevens in response to Senator Stevens' comments on the rule proposed in 1973 explains that 'significant disturbance' refers to operations 'for which reclamation upon completion of [that operation] could reasonably be required,' and to operations that could cause impacts on NFS resources that reasonably can be prevented or mitigated.''

Nonetheless, locatable mineral operations that fall within the criteria set forth in proposed § 228.3(n) would be judged as likely to cause a significant disturbance of surface resources absent unusual circumstances. It also should be understood that an operation not meeting these criteria might nonetheless be likely to cause ''significant disturbance of surface resources'' given the nature of the lands and surface resources that would be affected by proposed operations. Thus, even when proposed operations would not be judged as likely to cause significant disturbance of surface resources under the general criteria set forth in § 228.3(n), individualized evaluation of proposed operations might reveal that those operations indeed would be likely to cause ''significant disturbance of surface resources.''

The **Federal Register** notice for the final rule amending 36 CFR § 228.4(a) further notes that the March 28, 1974, letter from Forest Service Chief John McGuire ''also emphatically makes the point that the Forest Service's locatable mineral regulations do not use the term 'significant' in the same manner as that term is used in the National Environmental Policy Act.'' It continues to be necessary to distinguish between ''significant'' disturbance of National Forest System surface resources and ''significant'' effects on the quality of the human environment. The Forest Service does not interpret a determination that locatable mineral operations are likely to cause significant disturbance of surface resources as an automatic invocation of Section 102(2)(C) of the National Environmental Policy Act of 1969, thus requiring preparation of an environmental impact statement (or an environmental assessment). This was never intended when what is now 36 CFR part 228, subpart A, was originally promulgated nor is it intended now.

As the **Federal Register** notice for the final rule amending 36 CFR 228.4(a) additionally observed, ''Judicial decisions rendered in the 30 years since the rule at 36 CFR part 228, subpart A was promulgated also give context to the meaning of the term 'significant disturbance [of surface resources].' For example, it is well established that the construction or maintenance of structures, such as cabins, mill buildings, showers, tool sheds, and outhouses on NFS lands, constitutes a significant disturbance of NFS resources. *United States* v. *Brunskill*, 792 F.2d 938, 941 (9th Cir. 1986); *United States* v. *Burnett*, 750 F. Supp. 1029, 1035 (D. Idaho 1990).'' These decisions demonstrate the erroneousness of equating a ''significant'' disturbance of National Forest System surface resources and a ''significant'' effect on the quality of the human environment. It is extremely unlikely that the maintenance, or even the construction, of such structures standing alone would require preparation of either an environmental impact statement or an environmental assessment unless the National Forest System lands at issue possess some noteworthy status such as being part of a proclaimed wilderness or the designated habitat for a threatened or an endangered species.

Of course, some operations that would be likely to cause significant disturbance of National Forest System surface resources also would be likely to cause significant effects on the quality of the human environment. Thus, some few, by no means all, proposed operations would be expected to require preparation of environmental impact statements. More frequently, but not uniformly or even regularly, proposed operations that would be likely to cause significant disturbance of National Forest System surface resources would trigger preparation of an environmental assessment, which might or might not be the basis for a Finding of No Significant Impact. (Whenever an environmental assessment or environmental impact statement would be required, it would be prepared by the Forest Service.)

The Forest Service requests comments on the adequacy of the proposed definition of ''significant disturbance of surface resources'' and its discussion set forth above in drawing the distinction between significant disturbance of

National Forest System surface resources and significant effects on the quality of the human environment.

The proposed term ''surface use determination'' describes a management tool currently used by the authorized officer to determine if a proposed or ongoing use is reasonably incident. The inquiry would consist of an examination and a report completed by a certified mineral examiner that would provide information, conclusions and recommendations to the authorized officer regarding whether a proposed or existing use is logically sequenced, reasonably incident, and otherwise consistent with existing laws and regulations.

This proposed rule defines the term ''United States mining laws'' as the Mining Law of May 10, 1872, as amended and supplemented. This definition reflects the fact that the 1872 Act has since been affected by many other laws. One such law, the Organic Administration Act of 1897, is specifically mentioned for two reasons. It reapplied the United States mining laws to National Forest System lands following their reservation from the public domain and it provides the Forest Service with authority to promulgate these regulations. Another cited law, the Surface Resources Act of 1955, is specifically mentioned because it confirms requirements implicit in the 1872 Act itself. One such requirement is that operators must use reasonable methods of surface disturbance that are appropriate given the warranted stage of locatable mineral operations.

Section 228.4 Submission of Notices of Intent To Operate, Bonded Notices, and Plans of Operation

This section would be sequentially reorganized to first address operations that would cause little or no disturbance of surface resources, then operations that might cause significant disturbance of surface resources, and finally operations that are likely to cause significant disturbance of surface resources.

An operator would not be required to contact the Forest Service before beginning operations that would cause little or no disturbance of surface resources.

An operator would be required to submit a notice of intent to operate before beginning operations that might cause significant disturbance of surface resources. Among the operations that would require a notice of intent to operate are those that would involve occupancy of National Forest System lands lasting longer than the local forest stay limit and those involving motorized use of closed roads. Submission of a notice of intent for occupancy exceeding the local forest stay limit would be required because such occupancy along with the related mining operations might cause significant disturbance of surface resources. Submission of a notice of intent for motorized use of closed roads similarly would be required because such use along with the related mining operations might cause significant disturbance of surface resources. The notice of intent to operate also would provide an efficient means of evaluating, and when reasonably necessary, regulating occupancy that would exceed local forest stay limits and motorized use of closed roads.

An operator would be required to have either a complete bonded notice then in effect or an approved plan of operations then in effect before beginning operations likely to cause significant disturbance of surface resources. The criteria for deciding which of these instruments the operator would be required to have would be based upon the duration and the extent of the likely significant disturbance of surface resources. The subset of proposed operations likely to cause significant disturbance of surface resources which the rule addresses by means of a complete bonded notice, rather than an approved plan of operations, are those that would neither so disturb more than 5 acres at any point in time nor last more than 2 years. This proposed rule requires an operator to have an approved plan of operations before beginning other operations likely to cause significant disturbance of surface resources which do not satisfy both of these criteria.

The new bonded notice category of operations that this proposed rule creates is similar to the BLM's ''notice'' category of operations. However, the bonded notice category of operations would differ in one respect from the BLM's notice category of operations. The BLM restricts use of a notice to exploratory operations. The Forest Service proposes to allow use of a bonded notice for all short-term, low impact operations. As the rule is proposed, it is conceivable that some small mining operations would actually progress to the removal of the valuable locatable mineral deposit and the completion of reclamation under the terms of one or more bonded notices.

Section 228.5 Bonded Notice—Completeness Review

The proposed rule would provide that upon receipt of a bonded notice, the authorized officer, who usually would be the District Ranger, would perform a completeness review to determine whether the proposed operations satisfy the environmental protection requirements in § 228.9, assuming that the proposed operations do not require an approved plan of operations, and respond to the operator within 15 days.

The proposed rule generally provides that when a proposed bonded notice is found to be complete and to meet the requirements of § 228.9, the District Ranger would inform the operator that the notice would take effect upon receipt of an adequate reclamation bond. However, § 228.5(a)(5) of the proposed rule would provide that in cases where an operator has established a pattern of noncompliance with requirements applicable to past or ongoing operations, the operator may be required to have an approved plan of operations rather than a complete bonded notice. A process, which would require the authorized officer to seek the operator's input, would be established by the proposed rule to decide whether it would be appropriate to require the operator to obtain an approved plan of operations. The Forest Service specifically requests comment on the inclusion and formulation of § 228.5(a)(5) in the final rulemaking.

Under the proposed rule, once a bonded notice takes effect, the operator would be able to begin the proposed operations.

The proposed rule provides that when the authorized officer determines that operations being conducted in accordance with a complete bonded notice are resulting in significant disturbance of surface resources not fully described by that notice, the operator would be required to obtain a new complete bonded notice or an approved plan of operations, whichever would be appropriate.

Adopting the new bonded notice category of operations would meet recommendations contained in the NRC's 1999 report ''Hard Rock Mining on Federal Lands.'' One of these recommendations is that: ''Forest Service regulations should allow exploration disturbing less than 5 acres to be approved or denied expeditiously, similar to notice-level exploration activities on BLM lands.'' (pg. 97). Another of these recommendations is that: ''The BLM and the Forest Service should plan for and implement a more timely permitting process, while still protecting the environment.'' (pg. 122).

Currently, an approved plan of operations is required for operations that would be subject to a bonded notice under the proposed rule. The existing approval process for a plan of

operations often takes several months to two years. Adopting the bonded notice category of operations would shorten the Forest Service's review of identical low impact, short-term operations freeing up specialists needed to process more complex proposed plans of operations and to administer locatable mineral operations on the ground.

While the bonded notice category of operations would streamline the permitting process for less impactive short-term, operations, the proposed rule also ensures that any adverse impacts that operations conducted under a bonded notice might have on National Forest System lands would be minimized. All operations that would be conducted under a bonded notice would have to meet the environmental protection requirements set forth in § 228.9. All operations that would be conducted under a bonded notice also would have to be properly bonded.

Section 228.6 Plan of Operations—Approval

The procedures for the Forest Service's review of and response to a proposed plan of operations would be very similar to those that would be applicable to a proposed bonded notice.

Section 228.6(h) would include substantially different standards for requiring modification of a plan of operations than those set forth in the current rule. These changes are necessary because the provisions of the current rule governing modification of an approved plan of operations have been interpreted inconsistently. Questions have also been raised as to when incidental changes of operations authorized by the Forest Service rise to the level of requiring modification of the approved plan of operations. The current rule also contains limited and often ineffective criteria for requiring modification of an approved plan of operations. The NRC recognized the existence of such problems and recommended that: ''The BLM and the Forest Service should revise their regulations to provide more effective criteria for modifications to plans of operation, where necessary, to protect the federal lands.'' (pg. 99). The proposed rule would address the NRC's recommendation by correcting these shortcomings.

Currently, 36 CFR part 228, subpart A, contains criteria for requiring modification of a plan of operations that look backward to focus on what should have been ''foreseen'' when the plan of operations was approved. In this proposed rule, the criteria for requiring modification of a plan of operations allows for a correction of problems manifested after the approval of the plan of operations and would keep approved operations abreast of changed circumstances. These criteria would draw upon those adopted by the Forest Service almost a decade ago in regulations governing locatable mineral operations within the Smith River National Recreation Area, 36 CFR part 292, subpart G. Under the proposed rule, modification of an approved plan of operations might be required to reflect advances in predictive capability, technical capacity, and mining technology. Modification of an approved plan of operations also might be required to address uses of National Forest System land that are no longer, or have become, reasonably incident.

The proposed rule also would reflect the Forest Service's conclusion that it is not reasonable for an operator to continue to conduct any aspect of locatable mineral operations that is causing irreparable or unnecessary injury, loss or damage to National Forest System surface resources even if that aspect of the operations was previously approved by the authorized officer. Thus, the proposed rule would allow the authorized officer to require an operator to suspend any aspect of operations that is causing such injury, loss or damage while the process of modifying the approved plan of operations is ongoing.

Section 228.6(i) would note the Clean Water Act (CWA) obligations that an operator or the Forest Service itself must meet in connection with the approval of a plan of operations. In 2006, a Federal District Court held that the Forest Service cannot approve a proposed plan of operations that may result in a discharge to navigable waters until the operator has obtained a proper 401 CWA certification and presented it to the authorized officer unless the certification requirement has been properly waived. The proposed rule would alert operators and authorized officers to the applicability of this requirement. (The Forest Service Manual has also been amended to include direction for complying with the CWA (FSM 2817.23a)).

Section 228.8 Inspecting Operations and Remedying Noncompliance

The Forest Service has experienced some difficulty in enforcing compliance with the current regulations. A consistent and clearly understood response to noncompliance is needed. The NRC report stated: ''* * * the committee is persuaded that more consistent and accessible procedures for deciding when to refer apparent violations to other agencies and the ability to issue reasonable administrative penalties, subject to the appropriate due process, would improve the efficiency of agency operations and enhance the protection of then environment.'' (pgs.102–103).

This section would list enforcement steps the authorized officer can take if the operator fails to comply with a notice of noncompliance. This proposed rule notes, as is true today, that the authorized officer may initiate a civil action, issue a Violation Notice under 36 CFR part 261, or use the reclamation bond to take all necessary measures to protect the environment specified by the notice of noncompliance.

Section 228.9 Environmental Protection Requirements

This proposed rule would update and revise the environmental protection requirements applicable to locatable mineral operations. A new paragraph, § 228.9(e), would reference the requirements of the Endangered Species Act (ESA). This change would be made because some people have asserted that the ESA does not apply to locatable mineral operations given that the ESA is not mentioned in the currently applicable requirements for environmental protection.

Some operators also do not understand that the Forest Service may require bond coverage that includes the cost of removing any abandoned equipment or other property from National Forest System lands. Some have argued that since the current regulations do not specifically state that removal of equipment is part of reclamation, the operator cannot be required to post a bond for the removal of that equipment. As in the current rule, a separate section of this proposed rule (§ 228.11) would require removal of structures and equipment upon the cessation of operations. However, to prevent further confusion, a new paragraph, § 228.9(i), would be included in the proposed rule to make it clear that a required element of reclamation is the removal of structures and equipment from National Forest System lands. Section 228.13(c)(1), would govern reclamation bonding and also would specify that the cost of complying with proposed § 228.9(i) would be factored into a reclamation bond's required coverage.

This section also would be revised to make the environmental protection requirements applicable to bonded notices as well as plans of operations.

Section 228.10 Reasonably Incident Uses

This new section would allow an authorized officer to require an operator to cease uses of National Forest System lands that are not reasonably incident to locatable mineral prospecting, exploration, development, mining, processing, or reclamation. This proposed rule would establish a process for evaluating the reasonableness of operations or incidental uses, and to initiate a surface use determination.

Uses such as occupancy and in particular, residence, would be evaluated under this section to determine whether those uses are necessary based on the nature or stage of ongoing or proposed operations. These proposed requirements and requirements proposed elsewhere in this proposed rule are modeled upon the BLM's parallel rule (43 CFR subpart 3715) governing occupancy and reasonably incident uses and operations on the public lands.

Section 228.11 Cessation of Operations

This section would be revised to give the authorized officer a clearly stated process and criteria to use when responding to a proposed or actual cessation or temporary closure of operations. The Forest Service has noticed inappropriate characterizations of closures or cessations of operations as ''temporary.'' These characterizations sometimes appear to be attempts to delay or avoid taking appropriate interim or final actions to clean up and otherwise close and reclaim completed or abandoned operations. These changes would address any such abuse.

Section 228.12 Access for Operations

This section would be revised to clarify that all access must be reasonable. A clarification also would be added stating that the Forest Service may elect to regulate access on National Forest System lands for associated work on lands patented under the United States mining laws pursuant to 36 CFR part 228, subpart A. The vehicle for regulating such access would be either a complete bonded notice or an approved plan of operations.

Section 228.13 Reclamation Bonds for Bonded Notices and Plans of Operation

The revisions in this section would clearly identify the different types of financial instruments that can be used as a reclamation bond. This proposed rule would retain the use of statewide or nationwide blanket bonds while including a new mechanism to insure the adequacy of any blanket bond.

The current regulations do not contain an appropriately detailed process for the administration of reclamation bonds, which results in inconsistent administration of such bonds. As it would be revised, this section would lay out a clear process and definitive standards for administering reclamation bonds. This would facilitate consistent administration of reclamation bonds by Forest Service authorized officers.

Questions have been raised as to whether the authorized officer has authority to require periodic reviews of reclamation bonds, and to require appropriate adjustments of reclamation bonds based upon those reviews. To forestall such questions in the future, the proposed rule would be expanded to set forth detailed language providing criteria and a process for the authorized officer's review of reclamation bonds. The proposed rule would permit review of a reclamation bond's adequacy whenever the authorized officer believes it is necessary. However, the proposed rule would require the authorized officer to seek input from the operator before requiring any adjustment of the bond.

The proposed rule would provide that value should not be attributed to any property that an operator places or creates on National Forest System lands for purposes of determining the cost to fully reclaim such lands in accordance with § 228.13(c). Any other approach would not be reasonable. The operator not only is entitled, but would be required, to remove such property in accordance with § 228.9(i) of the proposed rule. The value of any property impermissibly abandoned on the area of operations also could not be determined in advance. An operator might not own property placed or constructed on National Forest System lands. Even if the operator owned such property initially, ownership of it could pass to another person during the course of the operations voluntarily by sale or involuntarily by bankruptcy. When operations are lengthy, property that was initially valuable may be worth less than the cost to remove it when the operations cease or are concluded. Liability could also be associated with any such abandoned property that the United States would not accept.

This proposed rule would require mandatory bonding for all bonded notices as well as all newly approved plans of operation.

Under current practice, few, if any, operations requiring an approved plan of operations are authorized today without reclamation bond coverage given serious problems that have arisen with respect to previously approved operations for which a bond was not required. However, approved plans of operations are in effect for which a reclamation bond was not required. This proposed rule would require an operator to furnish a bond complying with the requirements of the proposed rule for all existing operations subject to an approved plan of operations, including those for which a reclamation bond initially was not required. Operators would be given 180 days after the effective date of the final rule to furnish such a bond. The BLM also required bonds for existing operations subject to an approved plan of operations to be brought into compliance with the bonding requirements of its revised 43 CFR subpart 3809 regulations within 180 days of that rule's effective date.

As it would be revised, this proposed rule would provide for use of escrow accounts to cover long-term monitoring, maintenance, or treatment measures to prevent or otherwise minimize on-site or off-site damage. The BLM has successfully used this kind of financial instrument to bond such obligations as long-term water treatment (see 43 CFR 3809.556).

This proposed rule also would be expanded to set forth specific criteria and a formal process that the authorized officer must use in deciding whether to permit the release of a reclamation bond or to require the replacement or forfeiture of a reclamation bond. The authorized officer also would be obligated to seek the operator's input before requiring the replacement or forfeiture of a reclamation bond.

Section 228.14 Operations on Withdrawn or Segregated National Forest System Lands Including National Forest Wilderness

The provisions in the current rule governing operations in National Forest Wilderness are reorganized for clarity. Another clarification is made concerning information gathering about any type of mineral as authorized by the Wilderness Act on lands which that Act has withdrawn from appropriation under the United States mining laws. Although the United States mining laws do not govern such information gathering, this proposed rule would make the procedures set forth in this subpart applicable to that work given the similar methods by which such information is gathered.

Proposed paragraphs (f) through (i) of this section would establish the requirements for conducting locatable mineral operations on all National Forest System lands segregated or withdrawn from the operation of the

United States mining laws. National Forest System lands are withdrawn or segregated pursuant to many authorities and there is no logical reason to distinguish between lands segregated or withdrawn from appropriation under one versus another authority.

These proposed provisions specify that operations generally are allowable on all National Forest System lands segregated or withdrawn from the mining laws only to the extent that a person has valid existing rights to proceed, regardless of whether the operations may proceed under a complete bonded notice or an approved plan of operations. Thus, the proposed rule allows the Forest Service to protect genuine valid existing rights (by requiring a determination that such rights exist) while at the same time protecting areas that have been withdrawn or are being proposed to be withdrawn from operation of the mining laws. However, these proposed provisions specify that the Forest Service may allow limited activities before the existence of valid existing rights is established or disproven, including certain limited sampling and limited annual assessment work.

Proposed paragraph (f) of this section would require the Forest Service to prepare a mineral examination report before approving a plan of operations for proposed operations on National Forest System lands withdrawn from the operation of the mining laws. Additionally, this section would grant the Forest Service the discretion to prepare a mineral examination report before confirming that a bonded notice is complete or approving a plan of operations for proposed operations on National Forest System lands that have been segregated under section 204 of FLPMA (43 U.S.C. 1714) for consideration of a withdrawal. This section also would provide that when a mineral examination report finds that a mining claim is invalid but the operator declines to alter the proposed operations to avoid the segregated or withdrawn National Forest System lands in question, the Forest Service will request that the BLM promptly initiate contest proceedings to determine the validity of all such mining claims.

However, in specified limited circumstances proposed paragraph (g) would allow the Forest Service to approve a plan of operations before a mineral examination report for a claim located on withdrawn lands has been prepared. Specifically, the Forest Service may allow operations to take samples to confirm or corroborate mineral exposures that were physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier; and to perform any minimum necessary annual assessment work under 43 CFR 3851.1. This section also would permit an operator to conduct the same limited operations on segregated lands under either a bonded notice that the Forest Service has confirmed is complete or a plan of operations that the Forest Service has approved.

Proposed paragraph (h) allows the Forest Service to suspend the time limit the agency would take for final action on a proposed plan of operations until the existence of valid existing rights is finally established or disproven pursuant to paragraph (f) of this section, whether by virtue of the mineral examination report, a mineral contest, or federal court proceedings. The section also provides for the suspension of the time limit for the Forest Service to confirm that a proposed bonded is complete under identical terms.

Proposed paragraph (i) requires an operator to cease all operations, except required reclamation, when the absence of valid existing rights is finally established pursuant to paragraph (f) of this section, whether by virtue of the mineral examination report, a mineral contest, or federal court proceedings.

Section 228.16 Applicability of This Subpart

This section would specify how the revised rule would apply to classes of operations such as approved and ongoing operations, preexisting proposed plans of operation, preexisting unapproved modifications of approved plans, and other preexisting operations. This section would directly parallel the applicability of the BLM's revised 43 CFR subpart 3809 regulations to the same classes of ongoing or proposed locatable mineral operations.

PART 261—PROHIBITIONS

Section 261.2 Definitions

The definition of ''operating plans'' set forth in this section would be revised to include bonded notices within its scope. A new definition of ''residence,'' patterned upon the definition of ''residence'' which would be set forth at 36 CFR part 228.3(m), also would be added to this section.

Section 261.10 Occupancy and Use

Paragraphs (a), (b) and (l) of this section would be revised to apply to bonded notices as well as to plans of operation. This change has no substantive effect. These paragraphs presently apply to operations requiring an approved plan of operations. Operations that would be conducted under a complete bonded notice should the proposed rule be adopted, presently require an approved plan of operations under 36 CFR part 228, subpart A. Thus, whether or not the proposed rule is ultimately adopted, the same operations would be subject to these three paragraphs.

New paragraphs (p) and (q) also would be added to this section. Paragraph (p) would prohibit the use or occupancy of National Forest System land or facilities without a complete bonded notice or an approved plan of operations when the operations require such a bonded notice or plan of operations. Paragraph (q) would prohibit the use of National Forest System land as storage sites without a complete bonded notice or an approved plan of operations when the operations would require such a bonded notice or an approved plan of operations.

PART 292—NATIONAL RECREATION AREAS

Subpart D—Sawtooth Natural Recreation Area—Federal Lands

Section 292.17 General Provisions

This section would be amended to add a citation to 36 CFR part 228, subpart A.

Subpart G—Smith River National Recreation Area

Section 292.63 Plan of Operations—Supplementary Requirements

This section would be amended to reflect the revised requirements that would be set forth at proposed 36 CFR part 228.4(f)(1) through (f)(4) and proposed 36 CFR part 228.9. This section also would be revised to employ the same terminology that would be set forth at 36 CFR part 228, subpart A.

PART 293—WILDERNESS—PRIMITIVE AREAS

Section 293.2 Objectives

This section would be amended to add a citation to 36 CFR part 228, subpart A.

Section 293.15 Gathering Information About Resources Other Than Minerals

This section would be amended to add a citation to 36 CFR part 228, subpart A.

Regulatory Certifications

Regulatory Planning and Review

This proposed rule has been reviewed under USDA procedures and Executive Order 12866, amended by Executive Order 13422, Regulatory Planning and

Review. It has been determined that this proposed rule is not significant. This proposed rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial small entities flexibility assessment has been made and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBRFEA. Therefore, a regulatory flexibility analysis is not required.

Environmental Impacts

This proposed rule revises and updates the regulations for locatable mineral operations on the National Forests. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instruction.'' This proposed rule clearly falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement. A final determination will be made simultaneously with the adoption of the final rule.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], FS announces its intention to request an approval of a new information collection (and recordkeeping requirements—if applicable). Upon OMB approval, this collection will be merged into 0596–0022.

Title: Proposed Revision of 36 CFR part 228, Subpart A—Locatable Minerals.

OMB Number: 0596–New.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection.

Abstract: The United States General Mining Laws, as amended, govern prospecting for and appropriation of metallic and most nonmetallic minerals on approximately 122 million acres of National Forest set up by proclamation from the public domain. These laws give individuals the right to search for and extract valuable mineral deposits, and secure title to the lands involved. A prospector may locate a mining claim upon the discovery of a valuable mineral deposit. Recording that claim in the local county courthouse and with the appropriate BLM State Office affords protection to the mining claimant from subsequent locators. A mining claimant is entitled to reasonable access to the claim for further prospecting, mining, or necessary related activities, subject to other applicable laws and regulations. Locatable mineral regulations are specific rules and procedures for use of the surface of National Forest System lands, in connection with mineral operations authorized by the United States mining laws, to minimize adverse environmental impacts to surface resources.

The information collection required for: a notice of intent to operate; proposed initial, modified, or supplemental plan of operations; and cessation of operations, is approved and assigned Office of Management and Budget Control (OMB) No. 0596–0022. The information collection required for a proposed bonded notice in this proposed rule has been submitted to OMB as a new collection.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 100.

Estimated Total Annual Burden on Respondents: 600 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Federalism

The agency has considered this proposed rule under the requirements of Executive order 13132, Federalism. The agency has made a preliminary assessment that this proposed rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the agency will consider if any additional consultations will be needed with the State and local governments prior to adopting a final rule.

Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this proposed regulation or that would impede full implementation of this proposed rule. Nevertheless, in the event that such a conflict were to be identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department

would not require the use of administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not be required.

List of Subjects

36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National Forests, Reporting and recordkeeping requirements.

36 CFR Part 228

Environmental protection, Mines, Miners, National Forests, Natural resources, Oil and gas exploration, Public lands—mineral resources, Public lands-rights-of-way, Reclamation, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

36 CFR Part 261

Law enforcement, National Forests.

36 CFR Part 292

Mineral resources, Recreation and recreation areas.

36 CFR Part 293

National Forests, Wilderness areas.

Therefore, for the reasons set forth in the preamble, the United States Department of Agriculture proposes to amend 36 CFR chapter II to read as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

2. Revise paragraph (d) of § 223.14 to read as follows:

§ 223.14 Where timber may be cut.

* * * * *

(d) Timber on an unpatented mining claim may be cut by the claimant only for the actual development of the claim or for uses consistent with the purposes for which the claim was entered. Any severance or removal of timber, other than severance or removal to provide clearance, must be in accordance with a complete bonded notice then in effect or an approved plan of operations then in effect as provided by part 228, subpart A of this chapter, and with sound principles of forest management.

* * * * *

PART 228—MINERALS

3. Revise the authority citation for part 228 to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 482, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 681, as amended (30 U.S.C. 601); 61 Stat. 914, as amended (30 U.S.C. 352); 69 Stat. 368, as amended (30 U.S.C. 611); and 94 Stat. 2400.

4. Revise Subpart A to read as follows:

Subpart A—Locatable Minerals

Sec.

228.1 Purpose.
228.2 Scope.
228.3 Definitions.
228.4 Submission of notices of intent to operate, bonded notices, and plans of operations.
228.5 Bonded notice—completeness review.
228.6 Plan of operations—approval.
228.7 Availability of information to the public.
228.8 Inspecting operations and remedying noncompliance.
228.9 Environmental protection requirements.
228.10 Reasonably incident uses.
228.11 Cessation of operations.
228.12 Access for operations.
228.13 Reclamation bonds for bonded notices and plans of operation.
228.14 Operations on withdrawn or segregated National Forest System lands including National Forest Wilderness.
228.15 Administrative appeals.
228.16 Applicability of this subpart.

Subpart A—Locatable Minerals

§ 228.1 Purpose.

It is the purpose of the regulations in this subpart to set forth rules and procedures under which use of the surface of National Forest System lands for operations authorized by the United States mining laws must be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. The United States mining laws, which confer a statutory right to enter upon certain Federal lands to search for locatable minerals, apply to National Forest System lands reserved from the public domain pursuant to the Creative Act of 1891, Sec. 24, 26 Stat. 1095, 1103 (1891), by virtue of the Organic Administration Act of 1897, 16 U.S.C. 482. It is not the purpose of the regulations in this subpart to provide for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior.

§ 228.2 Scope.

(a) This subpart applies to operations hereafter conducted on National Forest System lands under the United States mining laws as they affect surface resources on such lands which are under the jurisdiction of the Secretary of Agriculture: *Provided, however,* That any area of National Forest System lands covered by a special act of Congress (16 U.S.C. 482a–482q) is subject to the provisions of this subpart and the provisions of the special act, and in the case of conflict the provisions of the special act will apply.

(b) Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to locatable mining operations the authorized officer determines are similar or parallel to requirements of this subpart will be accepted as compliance with the applicable requirements of this subpart.

§ 228.3 Definitions.

For the purposes of this subpart the following terms, respectively, mean:

(a) *Authorized officer.* The Forest Service officer to whom authority to review and approve a plan of operations has been delegated.

(b) *Day.* For purposes of computing time periods, the term ''day'' refers to Mondays through Fridays, beginning the next one of these days after the event from which the time computation period begins to run. However, when the time computation period ends on a day a Federal holiday appointed by the President or the Congress of the United States is observed, the period is extended to the end of the next day not a Federal holiday.

(c) *Minimize.* Limiting operations conducted to those reasonably incident and, where practical, preventing or reducing the adverse impact of reasonably incident operations.

(d) *Mining claim.* Any unpatented mining claim or unpatented mill site authorized by the United States mining laws.

(e) *Occupancy.* Being present on or employing National Forest System lands for any of the following activities or purposes:

(1) The construction, maintenance, placement, protection, repair, retention or use of a residence as defined by

§ 228.3(m) for any purpose: *Provided, however,* That a temporary structure or a temporary shelter supplying living or sleeping quarters for any person camping in connection with locatable mineral operation is not occupancy unless such camping will exceed any stay limit applicable to the National Forest System lands on which such temporary structure or temporary shelter is situated;

(2) Regular use of any area, whether or not enclosed or covered in any way, for the storage of equipment, machinery, parts, process materials, spent materials, supplies, tools and vehicles;

(3) The construction, maintenance, placement, repair, retention or use of any barrier to access, including but not limited to, enclosures, fences, gates and signs;

(4) Use of a caretaker, guard or watchman to monitor, protect, or safeguard property, objects, workings, facilities, or the public; and

(5) Use of a means of transportation on a road or another access facility the Forest Service has closed to such use.

(f) *Operations.* All functions, work, and activities in connection with prospecting, exploration, development, mining or processing of locatable mineral resources, reclamation and closure, and all uses reasonably incident thereto, including roads, other means of access and occupancy, on National Forest System lands subject to the regulations in this subpart, regardless of whether said operations take place within or outside the boundaries of a mining claim.

(g) *Operator.* A person conducting or proposing to conduct operations.

(h) *Permanent structure.* Structures fixed to the ground by any of the various types of foundations, slabs, piers, poles, and other means and structures placed on the ground that can only be moved through disassembly of the structure into its component parts or by techniques commonly used in moving houses. Tents and lean-tos are temporary, not permanent, structures.

(i) *Person.* Any individual, partnership, corporation, association, or other legal entity.

(j) *Reasonably incident.* A shorthand reference to the statutory standard ''prospecting, mining or processing operations and uses reasonably incident thereto'' (30 U.S.C. 612(a)).

(1) Reasonably incident includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable locatable mineral deposit, and reclamation of lands affected by such actions or expenditures of labor, using work, activities, functions, practices, facilities, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.

(2) Uses not reasonably incident include, but are not limited to, all uses not: Allowed pursuant to the United States mining laws or other applicable laws; necessary or reasonable on National Forest System lands; realistically calculated to lead to the extraction and beneficiation of valuable locatable minerals; required for the applicable stage of prospecting, exploration, development, mining or processing operations; warranted given the extent of available information on the mineral deposit; or warranted given the extent, or lack, of ongoing operations.

(k) *Reclamation.* Measures taken to, where practical, prevent or otherwise minimize onsite and off-site damage to the environment and National Forest System surface resources. It includes concurrent, seasonal, interim, and ultimate actions, including, if necessary, monitoring, maintenance and long-term treatment after mineral operations have ceased. These measures must shape, stabilize, revegetate, or otherwise treat lands affected by operations in order to achieve a safe and environmentally stable condition.

(l) *Reclamation bond.* Surety bonds, cash, negotiable securities of the United States, or escrow accounts posted by an operator to cover the full cost of reclaiming National Forest System lands affected by operations conducted subject to a complete bonded notice or an approved plan of operations.

(m) *Residence.* Any structure or shelter, whether temporary or permanent, including, but not limited to, buildings, buses, cabins, campers, houses, lean-tos, mills, mobile homes, motor homes, pole barns, recreational vehicles, sheds, shops, tents and trailers, which is being used, capable of being used, or designed to be used, in whole or in part, full or part-time, as living or sleeping quarters by any person, including a guard or watchman.

(n) *Significant disturbance of surface resources.* Disturbance of National Forest System surface resources requiring the use of reclamation measures in order to return National Forest System lands and surface resources affected by operations to a safe and environmentally stable condition or influencing materially the administration of National Forest System lands or surface resources affected by operations during their pendency. Significant disturbance of surface resources generally results from operations employing mechanized earth-moving equipment, truck-mounted drilling equipment, explosives or chemicals; requiring access road construction or reconstruction; requiring construction of buildings, impoundments and other support facilities; occurring within areas of National Forest System lands or waters known to contain Federally listed threatened or endangered species or their designated critical habitats; or occurring within areas of National Forest System lands withdrawn from the operation of the United States mining laws. Significant disturbance of surface resources also generally occurs when operations cause fire, health or safety hazards on National Forest System lands; preclude or restrict other uses of National Forest System surface resources; prevent or obstruct free passage or transit over National Forest System lands; involve residency, other than permitted camping, on National Forest System lands; injure or destroy any scientifically important paleontologic remains or any historical or archaeological structure, resource, or object; or necessitate closing National Forest System lands or facilities to users other than an operator or exempting an operator from closure of National Forest System lands or facilities to other users. An operation that will cause significant disturbance of National Forest System surface resources occasionally may, but often will not, significantly affect the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) and its implementing regulations (40 CFR parts 1500–1508).

(o) *Surface use determination.* An inquiry conducted by a certified Forest Service Mineral Examiner as to whether specified uses of National Forest System lands are reasonably incident.

(p) *United States mining laws.* A reference to the Mining Law of May 10, 1872 (30 U.S.C. 21–54), as amended and supplemented by laws including the Organic Administration Act of 1897 (16 U.S.C. 478, 482 & 551) and the Surface Resources Act of 1955 (30 U.S.C. 611–614).

§ 228.4 Submission of notices of intent to operate, bonded notices, and plans of operations.

(a) *Operations not requiring prior notice.* (1) Except as provided by paragraphs (a)(2) through (a)(4) of this section, an operator is not required to give notice to the Forest Service before:

(i) Beginning operations that will be limited to the use of vehicles on existing public roads or roads used and

maintained for National Forest System purposes;

(ii) Beginning prospecting and sampling that will not cause significant disturbance of National Forest System surface resources and will not involve removal of more than a reasonable amount of a mineral deposit for analysis and study which generally might include searching for and occasionally removing small mineral samples or specimens, gold panning, metal detecting, non-motorized hand sluicing, using battery operated dry washers, and collecting mineral specimens using hand tools;

(iii) Marking and monumenting a mining claim;

(iv) Beginning underground operations that will not cause significant disturbance of National Forest System surface resources;

(v) Beginning operations, which in their totality, will not cause disturbance of National Forest System surface resources substantially different than that caused by other National Forest System users who are not required to obtain a special use authorization, contract, or other written authorization from the Forest Service before beginning such use; or

(vi) Beginning operations that will not involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise might cause significant disturbance of National Forest System surface resources.

(2) Operations involving occupancy of National Forest System lands, as defined by § 228.3(e), are not subject to paragraph (a)(1) of this section.

(i) The construction, maintenance, placement, protection, repair, retention or use of a temporary structure or a temporary shelter supplying living or sleeping quarters for any person camping in connection with locatable mineral operation is not occupancy providing that such camping will not exceed any stay limit applicable to the National Forest System lands on which the temporary structure or temporary shelter is situated. Accordingly, prior notice is not required for an operation involving camping which otherwise meets the requirements of paragraphs (a)(1)(i) through (a)(1)(vi) of this section unless the operation is subject to any of paragraphs (a)(2)(ii) through (a)(4) of this section.

(ii) An operator proposing to construct, maintain, place, protect, repair, retain or use a permanent structure located on National Forest System lands must submit a proposed plan of operations pursuant to paragraph (d)(1)(ii)(A) of this section.

(iii) Otherwise, an operator proposing to conduct operations involving occupancy of National Forest System lands, including use of a means of transportation on a road or another access facility the Forest Service has closed to such use, must submit of a notice of intent to operate in complaince with paragraphs (b)(3) through (b)(6) of this section.

(3) An operator proposing to conduct any operation subject to paragraph (c)(1)(ii) of this section shall submit a proposed bonded notice in compliance with paragraph (c)(3) through (c)(5) of this section.

(4) An operator proposing to conduct any operation subject to paragraphs (d)(1)(ii)(B) through (d)(1)(ii)(E) of this section shall submit a proposed plan of operations in compliance with paragraphs (d)(2) through (d)(4) of this section.

(b) *Operations requiring a notice of intent to operate.* (1) Except as provided by paragraph (b)(2) of this section, an operator must submit a notice of intent to operate when the operator proposes to conduct operations that:

(i) Might cause significant disturbance of National Forest System surface resources; or

(ii) Would involve occupancy of National Forest System lands as defined by § 228.3(e), including, but not limited to:

(A) Use of a means of transportation on a road or another access facility the Forest Service has closed to such use; and

(B) Construction, maintenance, placement, protection, repair, retention or use of a residence as defined by § 228.3(m) unless:

(*1*) The residence is a permanent structure as defined by § 228.3(h) for which the operator must submit a proposed plan of operations pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) The residence is a temporary structure or a temporary shelter supplying living or sleeping quarters for any person camping in connection with locatable mineral operation providing that such camping will not exceed any stay limit applicable to the National Forest System lands on which the temporary structure or temporary shelter is situated. Accordingly, a notice of intent is not required for an operation involving such residence which meets the requirements of paragraphs (a)(1)(i) through (a)(1)(vi) of this section unless the operation is subject to paragraphs (a)(2)(ii) through (a)(4) of this section.

(2) An operator is not required to submit a notice of intent to operate if:

(i) The operations may proceed without prior notice pursuant to paragraph (a) of this section.

(ii) The operator elects to submit a proposed bonded notice or a proposed plan of operations instead of a notice of intent to operate;

(iii) The proposed operations are not likely to cause significant disturbance of National Forest System surface resources;

(iv) The operator is required to submit a proposed bonded notice because the proposed operations are subject to paragraph (c)(1)(ii) of this section; or

(v) The operator is required to submit a proposed plan of operations because the proposed operations are subject to paragraph (d)(1)(ii) of this section.

(3) A notice of intent to operate must provide information sufficient to identify the proposed area of operations, the nature of the proposed operations, and the proposed mode of transportation and route of access to the area of operations.

(4) The operator must transmit the notice of intent to operate to the District Ranger having jurisdiction over the area within which the proposed operations will be conducted.

(5) The operator must not begin the operations described by the notice of intent to operate sooner than 15 days after the notice was received by the District Ranger except as provided by paragraphs (b)(6)(i) and (b)(6)(ii) of this section.

(6) Within 15 days of receiving a notice of intent to operate, the District Ranger will notify the operator if the proposed operations cannot begin until—

(i) The operator has submitted a proposed bonded notice pursuant to paragraph (c) of this section and the requirements of § 228.5 are satisfied; or

(ii) The operator has submitted a proposed plan of operations pursuant to paragraph (d) of this section and the requirements of § 228.6 are satisfied.

(c) *Operations requiring a proposed bonded notice.* (1) Except as provided by paragraph (c)(2) of this section, an operator must submit a proposed bonded notice when the operator proposes to conduct operations that:

(i) Will likely cause significant disturbance of National Forest System surface resources providing that such disturbance will last no longer than two years and will occur on no more than 5 acres of unreclaimed National Forest System lands at any point in time; or

(ii) Will occur partially or wholly on national Forest System lands segregated from appropriation under the United States mining laws providing that the disturbance of National Forest System

surface resources the operations will likely cause will last no longer than two years and will occur on no more than 5 acres of unreclaimed National Forest System lands at any point in time.

(2) An operator is not required to submit a proposed bonded notice if:

(i) The operations may proceed without prior notice pursuant to paragraph (a) of this section.

(ii) The operations may proceed under a notice of intent to operate pursuant to paragraph (b) of this section.

(iii) The operator elects to submit a proposed plan of operations instead of a proposed bonded notice; or

(iv) The operator is required to submit a proposed plan of operations because the operations are subject to paragraph (d)(1)(ii) of this section.

(3) A proposed bonded notice must contain the information specified by paragraph (f) of this section as foreseen for the entire operation for the full estimated period of activity.

(4) The operator must transmit the proposed bonded notice to the District Ranger having jurisdiction over the lands on which the proposed operations would be conducted.

(5) The operator must not begin the operations described by the proposed bonded notice before the bonded notice has been determined to be complete pursuant to § 228.5(b)(1) and the requirements of § 228.5 are otherwise satisfied.

(d) *Operations requiring a proposed plan of operations.* (1) An operator must submit a proposed plan of operations when the operator proposes to conduct operations that:

(i) Will likely cause significant disturbance of National Forest System surface resources lasting no longer than two years or occurring on more than 5 acres of unreclaimed National Forest System lands at any point in time; or

(ii) Always require an approved plan of operations because those operations:

(A) Will involve the construction, maintenance, placement, protection, repair, retention or use of a permanent structure on National Forest System lands;

(B) Will occur partially or wholly on National Forest System lands withdrawn from appropriation under the United States mining laws, including lands within National Forest Wilderness;

(C) Will occur partially or wholly on National Forest System lands segregateed or withdrawn from appropriation under the United States mining laws, if the disturbance of National Forest System surface resources that the operation will likely cause will last longer than two years or will occur on more than 5 acres of unreclaimed National Forest System lands at any point in time;

(D) Will sever or remove timber on National Forest System lands for purposes other than providing clearance; or

(E) Are subject to § 228.5(a)(5)(iii)(B).

(2) A proposed plan of operations must contain the information specified by paragraph (f) of this section as foreseen for the entire operation for the full estimated period of activity.

(i) If the development of a plan of operations for an entire operation is not possible when the proposed plan is prepared, the operator must:

(A) File an initial plan of operations describing the proposed operations to the degree reasonably foreseeable then; and

(B) Thereafter, file one or more supplemental plans of operations when the operations the operator proposes to conduct are not approved by the current plan of operations.

(ii) A supplemental plan of operations provided for by paragraph (d)(2)(i)(B) of this section is subject to all provisions set forth in this subpart applicable to an initial plan of operations.

(3) The operator must transmit the proposed plan of operations to the District Ranger having jurisdiction over the lands on which the proposed operations would be conducted.

(4) The operator must not begin the operations described by the proposed plan of operations before the plan of operations has been approved pursuant to § 228.6(c)(1) and the requirements of § 228.6 are otherwise satisfied.

(e) *Demanding a complete bonded notice or an approved plan of operations.* The District Ranger will notify the operator that the operator must:

(1) Hold a complete bonded notice which is in effect or an approved plan of operations which is in effect, whichever is appropriate, if the District Ranger determines the operator intends to commence or previously began operations that are likely to cause or are causing significant disturbance of National Forest System surface resources without a required bonded notice or plan of operations; or

(2) Obtain a new complete bonded notice which has taken effect, or a new, modified or supplemental plan of operations which has taken effect, whichever is appropriate, if significant disturbance of National Forest System surface resources which is not fully described by a complete bonded notice currently in effect or which is not approved by a plan of operations currently in effect is likely to occur or is occurring.

(f) *Proposed bonded notice and plan of operations content requirements.* A proposed bonded notice or a proposed plan of operations must include:

(1) The name and legal mailing address of all operators (and all claimants if they are not the operators) and their lessees, assigns, or designees.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, the location, and, if applicable, the route, of all existing and proposed roads, trails, bridges, landing areas for aircraft, and other access facilities to be used in connection with the operations, and the approximate location and size of areas where National Forest System surface resources will be disturbed.

(3) Information sufficient to describe or identify the type of operations proposed and how they would be conducted, the proposed mode of transportation to be used, the type and standard of all existing and proposed roads, trails, bridges, landing areas for aircraft, and other access facilities, the proposed period during which the proposed operations will occur, and proposed measures to be taken to meet the environmental protection requirements set forth in § 228.9.

(4) A preliminary estimate of the cost of reclaiming National Forest System lands calculated in accordance with § 228.13(c) but based only upon the reclamation requirements set forth in § 228.9(i) and (k), along with an explanation sufficient to show how the estimate was calculated.

(g) *Collection of information.* The information collection required for: a notice of intent to operate; proposed initial, modified, or supplemental plan of operations; and cessation of operations, is approved and assigned Office of Management and Budget Control (OMB) No. 0596–0022. The information collection required for a proposed bonded notice has been submitted to OMB as a new collection.

§ 228.5 Bonded notice—completeness review.

(a) The District Ranger will promptly review a proposed bonded notice submitted in accordance with § 228.4(c)(1) and, as part of that review, consider whether:

(1) The proposed bonded notice satisfies the environmental protection requirements set forth in § 228.9;

(2) The proposed bonded notice adequately minimizes the adverse environmental impacts of the proposed operations on National Forest System surface resources;

(3) The proposed bonded notice includes the information specified by § 228.12(d);

(4) The proposed bonded notice properly estimates the cost of reclaiming all National Forest System lands that would be affected by the proposed operations; and

(5) The operator or any person acting on the operator's behalf has established a pattern of noncompliance with requirements applicable to past or ongoing operations.

(i) If the District Ranger finds such a pattern of noncompliance, the District Ranger may recommend the applicable Forest Supervisor require the operator to submit a proposed plan of operations in lieu of the proposed bonded notice. The District Ranger's recommendation must be accompanied by a statement setting forth in detail the supporting facts and reasons for the recommendation, copies of which will be sent to the operator when they are sent to the Forest Supervisor.

(ii) The operator will have not less than 15 days to respond and show cause why the Forest Supervisor should not require the operator to submit a proposed plan of operations.

(iii) The Forest Supervisor will render a decision on the District Ranger's recommendation within 30 days of receiving the operator's response to the recommendation or the closure of the period for the operator to submit such a response.

(A) If the Forest Supervisor disagrees with the District Ranger's recommendation, the Forest Supervisor will direct the District Ranger to resume prompt review of the proposed bonded notice.

(B) If the Forest Supervisor agrees with the District Ranger's recommendation, the Forest Supervisor will advise the operator the proposed bonded notice will not receive further review and the operator must submit a proposed plan of operations in lieu of the notice if the operator wishes to conduct the proposed operations.

(b) Within 15 days of receipt of a proposed bonded notice, the District Ranger will notify the operator that:

(1) The bonded notice is complete;

(2) The proposed operations do not require a bonded notice;

(3) The proposed operations require an approved plan of operations;

(4) The Forest Service is reviewing the proposed bonded notice, more time is necessary to conclude the review for the reasons specified, and the District Ranger will complete the review within an additional 15 day period: Provided, however, That days during which the area of operations is inaccessible for inspection will not be counted when computing the 15 day period; or

(5) The proposed bonded notice is incomplete identifying the deficiencies the operator must remedy to meet the requirements of this subpart.

(c) If the proposed bonded notice is incomplete and the operator submits additional information in response to a notification pursuant to paragraph (b)(5) of this section, the District Ranger will repeat the review process set forth in paragraphs (a) and (b) of this section as necessary until the District Ranger takes an action specified by paragraphs (b)(1) through (3) of this section.

(d) When the District Ranger advises the operator in writing that a bonded notice is complete, the operator must furnish the District Ranger a reclamation bond complying with § 228.13(a) through (c). If the District Ranger determines the reclamation bond the operator submitted is consistent with the complete bonded notice and § 228.13(a) through (c), the District Ranger will promptly inform the operator in writing that as of such day the complete bonded notice is in effect and the operations described by the notice may begin. The operator must conduct the operations in compliance with the complete bonded notice and the requirements set forth in this subpart.

(1) A complete bonded notice has a two year term which begins on the bonded notice's effective date.

(2) All operations described by the bonded notice, including reclamation, must be concluded within the two year period specified by paragraph (d)(1) of this section.

(3) A complete bonded notice may not be extended. If the operator requires additional time to complete operations subject to § 228.4(c), the operator must submit a new bonded notice to the District Ranger in accordance with § 228.4(c)(2) and (3).

(e) An operator must not segment logically related exploratory operations within a particular area by filing a series of proposed bonded notices for the purpose of avoiding the requirement to submit a proposed plan of operations.

(f) The District Ranger may hold a portion of the reclamation bond for a complete bonded notice provided by the operator in accordance with § 228.13(a) through (c) and paragraph (d) of this section for monitoring purposes no longer than two years following completion of reclamation. However, the District Ranger will promptly return any portion of the reclamation bond covering reclamation activities not requiring monitoring to the operator in accordance with § 228.13(f)(2).

(g) Holding a complete bonded notice in effect does not relieve the operator from compliance with all other applicable Federal and State laws, including but not limited to the Federal Water Pollution Control Act (Clean Water Act), as amended (33 U.S.C. 1251–1387), the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), and the Endangered Species Act (16 U.S.C. 1531–1536, 1538–1540).

§ 228.6 Plan of operations—approval.

(a) The District Ranger will promptly acknowledge receipt of a proposed plan of operations submitted in accordance with § 228.4(d)(1) to the operator.

(b) The authorized officer will promptly review a proposed plan of operations. As part of the review, the authorized officer will:

(1) Consider whether the proposed plan of operations satisfies the environmental protection requirements set forth in § 228.9;

(2) Consider whether the proposed plan of operations adequately minimizes the adverse environmental impacts of the proposed operations on National Forest System surface resources;

(3) Consider whether the proposed plan of operations includes the information specified by § 228.12(d);

(4) Consider whether the proposed plan of operations properly estimates the cost of reclaiming all National Forest System lands that would be affected by the proposed operations;

(5) Evaluate the operator's compliance with paragraph (i)(3) of this section; and

(6) Conduct an environmental analysis of the proposed plan of operations and determine whether preparation of an environmental assessment or an environmental impact statement is required.

(i) An initial, supplemental or modified plan of operations occasionally may, but often will not, require preparation of an environmental assessment or an environmental impact statement. Environmental impacts of proposed operations will vary substantially depending on whether the nature of the operations is exploration, development, or processing, and on the scope of operations (such as size of operations, construction required, length of operations and equipment required), causing varying degrees of disturbance and impacts to vegetative resources, soil, water, air, or wildlife.

(ii) The Forest Service will prepare any required environmental assessment or environmental impact statement.

(c) Within 30 days of receipt of a proposed plan of operations, the

authorized officer will notify the operator that:

(1) The plan of operations is approved;

(2) The proposed operations do not require an approved plan of operations;

(3) The authorized officer is reviewing the proposed plan of operations, more time is necessary to conclude the review for the reasons specified, and the authorized officer will complete the review within an additional 60 day period: *Provided, however,* That days during which the area of operations is inaccessible for inspection will not be counted when computing the 60 day period;

(4) The proposed plan of operations cannot be approved until an environmental assessment has been prepared and, if appropriate, a finding of no significant impact has been made, or a final environmental impact statement has been prepared; or

(5) The proposed plan of operations is inadequate identifying the deficiencies the operator must remedy to meet the requirements of this subpart.

(d) If the proposed plan of operations is inadequate and the operator submits additional information in response to a notification pursuant to paragraph (c)(5) of this section, the authorized officer will repeat the review process set forth in paragraphs (b) and (c) of this section as necessary until the authorized officer takes an action specified by paragraph (c)(1) or (c)(2) of this section.

(e) When the authorized officer advises the operator in writing that the plan of operations is approved, the operator must provide to the authorized officer a reclamation bond complying with § 228.13(a) through (c). If the authorized officer determines the reclamation bond the operator submitted is consistent with the approved plan of operations and § 228.13(a) through (c), the authorized officer will promptly direct the operator to sign the approved plan of operations if the operator has not already done so.

(f) After the requirements of paragraph (e) of this section have been met, the authorized officer will promptly countersign and date the approved plan of operations and inform the operator in writing the approved plan of operations is in effect and the operations approved by the plan may begin. The operator must conduct the operations in compliance with the approved plan of operations and the requirements set forth in this subpart.

(g) Before an approved plan of operations takes effect, the authorized officer will approve those operations required for timely compliance with Federal and State laws providing such operations will be conducted so as to minimize their adverse environmental impacts on National Forest System surface resources.

(h) The authorized officer may require an operator to obtain approval of a modified plan of operations under following procedures.

(1) The authorized officer will not require an operator to submit and obtain approval of a modified plan of operations unless the authorized officer determines that:

(i) As approved, the operations do not adequately minimize adverse impacts;

(ii) As approved, the operations do not, or likely will not, meet the environmental protection requirements specified by § 228.9;

(iii) The approved operations are causing unforeseen significant disturbance of National Forest System surface resources;

(iv) The approved plan of operations must be brought into conformance with applicable federal law or regulation, including newly adopted federal law or regulation;

(v) The approved plan of operations needs to respond to new information not available when the plan was approved; or

(vi) Errors or omissions were made when the plan of operations was approved.

(2) An authorized officer considering whether to require an operator to obtain approval of a modified plan of operations will:

(i) Provide notice to the operator in writing which:

(A) Sets forth the reasons why the authorized officer believes modification of the approved plan of operations is required; and

(B) Gives the operator not less than 30 days to respond and show cause why the authorized officer should not require modification of the approved plan of operations;

(ii) Consider the operator's response and all other information in the administrative record in deciding whether to require modification of the approved plan of operations; and

(iii) Issue a decision stating whether modification of the approved plan of operations is required, and if the decision requires modification of the approved plan of operations, the decision also will:

(A) Explain its basis;

(B) Identify all required modifications to the plan of operations;

(C) Specify the date by which the operator must submit the proposed modified plan of operations; and

(D) Identify any opportunity for the operator to file an administrative appeal of the decision.

(3) A modified plan of operations provided for by introductory text of paragraph (h) of this section is subject to all provisions set forth in this subpart applicable to an initial plan of operations, except as otherwise provided by § 228.16.

(4) Operations may continue in accordance with the approved plan of operations until a modified plan is approved, unless the authorized officer determines the operations are:

(i) Unnecessarily or unreasonably causing injury, loss or damage to National Forest System surface resources; or

(ii) Causing irreparable injury, loss or damage to National Forest System surface resources; and advises the operator of those measures needed to avoid such damage.

(i) If the operations to be conducted under a plan of operations:

(1) Can reasonably be expected to result in a point source discharge into waters of the United States, the operator may be required to obtain permits under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251–1387) (Clean Water Act sections 402, 404).

(2) Will result in the discharge of dredged or filled materials into waters of the United States, the operator may be required to obtain permits under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251–1387) (Clean Water Act sections 402, 404).

(3) May result in any discharge into the navigable waters, the operator must obtain the certification required by Clean Water Act section 401(a)(1) from the appropriate Federal or state entity and present a copy of the certification to the authorized officer.

(i) Pursuant to Clean Water Act section 401, the Forest Service cannot approve a proposed plan of operations until the operator has obtained the required certification and presented it to the authorized officer unless the certification requirement has been waived by the appropriate Federal or State entity.

(ii) If the appropriate Federal or state entity denies a required Clean Water Act section 401(a)(1) certification, the Forest Service cannot approve a proposed plan of operations.

(j) Holding an approved plan of operations in effect does not relieve the operator from compliance with all other applicable Federal and State laws, including but not limited to the Federal Water Pollution Control Act (Clean Water Act), as amended (33 U.S.C. 1251–1387), the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*), and the Endangered Species Act (16 U.S.C. 1531–1536, 1538–1540).

(k) When the operator considers the operations, including reclamation, approved by the plan of operations to have been completed, the operator may notify the authorized officer. If the authorized officer agrees, the authorized officer will advise the operator in writing that the operator's obligations under the plan of operations have been completed and the plan has been closed.

§ 228.7 Availability of information to the public.

Except as provided herein, all information and data submitted by an operator pursuant to the regulations of this subpart is available for examination by the public at the Office of the District Ranger in accordance with the provisions of 7 CFR 1.1 through 1.24, and §§ 200.6 through 200.8 of this chapter. Specifically identified information and data submitted by the operator as confidential concerning trade secrets or privileged commercial or financial information will not be available for public examination, except upon a determination made pursuant to the procedures at 7 CFR 1.12, that such information is not exempt by law from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552. Information and data generally found to be exempt from disclosure that accordingly may be withheld from public examination includes, but is not limited to:

(a) Known or estimated outline of the mineral deposits and their location, attitude, extent, outcrops, and content;

(b) Known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws; and

(c) Other commercial information which relates to competitive rights of the operator.

§ 228.8 Inspecting operations and remedying noncompliance.

(a) Forest Service officers will periodically inspect operations to determine whether an operator is complying with the regulations of this subpart and, if applicable, a complete bonded notice or an approved plan of operations.

(b) If an operator fails to comply with the regulations of this subpart or, if applicable, a complete bonded notice or an approved plan of operations and the operator's noncompliance unnecessarily or unreasonably is causing injury, loss or damage to National Forest System surface resources, the authorized officer will serve a notice of noncompliance upon the operator or, if applicable, the operator's designated agent in person or by certified mail. The notice of noncompliance must:

(1) Identify all requirements with which the operator's noncompliance unnecessarily or unreasonably is causing injury, loss or damage to National Forest System surface resources;

(2) Specify the actions which the operator must take to come into compliance with the requirements identified pursuant to paragraph (b)(1) of this section and to remedy all injury, loss or damage to National Forest System surface resources which resulted from the operator's noncompliance with those requirements; and

(3) Specify one or more dates by which the operator must complete the actions specified pursuant to paragraph (b)(2) of this section. Generally, an operator will not be given more than 30 days to complete actions specified pursuant to paragraph (b)(2) of this section: *Provided, however,* That days on which the authorized officer determines the area of operations is inaccessible will not be included when computing the period the operator is allowed to complete those actions.

(c) The authorized officer will take additional enforcement actions if the operator fails to comply with a notice of noncompliance within the time provided by the notice unless the authorized officer determines there was good cause for the operator's failure to comply. The additional enforcement actions include, but are not limited to, one or more of the following:

(1) Requesting the initiation of a civil action in a United States District Court seeking appropriate relief such as declaratory relief, injunctive relief and monetary damages;

(2) Issuing a Violation Notice citing the operator for violating a prohibition set forth in part 261 of this chapter; and;

(3) Attaching the reclamation bond provided by the operator and using the proceeds to take all necessary measures to complete the actions specified by the notice of noncompliance pursuant to paragraph (b)(2) of this section.

§ 228.9 Environmental protection requirements.

The operator must conduct all operations, where practical, so as to minimize the adverse environmental impacts on National Forest System surface resources. Environmental protection requirements operations must satisfy include, but are not limited to:

(a) *Air quality.* The operator must comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

(b) *Water quality.* The operator must comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 *et seq.*).

(c) *Solid wastes.* The operator must:

(1) Comply with applicable Federal and State standards for the disposal and treatment of solid wastes as defined by the Resources Conservation and Recovery Act, as amended (42 U.S.C. 6901 *et seq.*);

(2) Remove from National Forest System lands, dispose of, or treat all non-mine garbage, refuse, or waste to minimize, so far as is practical, its impact upon the environment and National Forest System surface resources; and

(3) Deploy, arrange, dispose of, or treat all tailings and other mine wastes resulting from the operations so as to minimize their adverse impact upon the environment and National Forest System surface resources.

(d) *Scenic values.* The operator must, so far as is practical, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) *Endangered species of fish, wildlife and plants.* The operator must take all measures required by the Endangered Species Act, as amended (16 U.S.C. 1538) to protect federally listed threatened or endangered species of fish, wildlife and plants and, if applicable, their designated critical habitats.

(f) *Fisheries and wildlife habitat.* In addition to complying with the water quality requirements set forth in paragraph (b) of this section, the solid waste requirements set forth in paragraph (c) of this section, and the endangered species requirements set forth in paragraph (e) of this section, the operator must take all practical measures to maintain and protect fisheries and wildlife habitat that may be affected by the operations.

(g) *Roads.* The operator must construct and maintain all roads so as to assure adequate drainage and, where practical, to prevent or otherwise minimize damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, when a road is no longer required for the operations, the operator must:

(1) Close the road to normal vehicular traffic;

(2) Remove bridges and culverts associated with the road;

(3) Construct cross drains, dips, or water bars required to prevent or control water flow over or from the road surface; and

(4) Reshape the road surface to, so far as is practical, the contour closest to the stable natural contour;

(h) *Maintenance and public safety.* Throughout the operations, the operator must maintain all structures, equipment, and facilities in a safe, neat, and workmanlike manner. Where the operations cause hazardous sites or conditions, the operator must mark them by signs or other identification, isolate them by fences, or otherwise make them inaccessible to protect the public in accordance with Federal and State laws and regulations.

(i) *Removal of structures and equipment.* Within the applicable period specified by paragraph (k)(2) of this section, the operator must remove all structures, whether temporary or permanent, facilities, and personal property, including equipment, located within the area of operations and otherwise clean up the area of operations. The United States, at its discretion, may take title to any property the operator does not remove from the area of operations within the applicable period. Such property of the United States is subject to removal and disposition at the Forest Service's discretion consistent with applicable laws and regulations.

(j) *Prevention and control of fire.* The operator must:

(1) Comply with all applicable Federal and State fire laws and regulations;

(2) Take all practical measures to prevent and suppress fires on the area of operations; and

(3) Require all persons, including but not limited to employees, contractors and subcontractors, who conduct or support the operations to comply with paragraphs (j)(1) and (j)(2) of this section.

(k) *Reclamation.* The operator must reclaim National Forest System lands disturbed by the operations by taking concurrent, seasonal, interim and long-term measures to, where practical, prevent or otherwise minimize onsite and off-site damage to the environment and National Forest System surface resources.

(1) The operator must begin reclamation at the earliest possible time during the operations.

(2) The operator must complete reclamation:

(i) Within the two-year term of a complete bonded notice provided by § 228.5(d)(1); or

(ii) Except as otherwise provided by an approved plan of operations, within one year of the exhaustion of the valuable mineral deposit, the conclusion of the operations, or a cessation of the operations that is not seasonal.

(3) The reclamation measures taken by the operator must, where practical:

(i) Prevent or control erosion and landslides;

(ii) Prevent or control water runoff;

(iii) Isolate, remove or control hazardous materials;

(iv) Reshape and revegetate disturbed areas;

(v) Reshape road surfaces to the contour closest to the stable natural contour;

(vi) Rehabilitate fisheries and wildlife habitat; and

(vii) Protect groundwater.

§ 228.10 Reasonably incident uses.

(a) The operator must not occupy or use National Forest System lands for any purpose not reasonably incident to locatable mineral prospecting, exploration, development, mining, processing, or reclamation except as provided by § 228.12(e).

(b) The operator must not:

(1) Prevent or obstruct free passage or transit over National Forest System lands by any person except to the extent allowed for reasonable security and safety measures which are consistent with this subpart; or

(2) Conduct the following activities, which are not reasonably incident uses of National Forest System lands: Cultivating crops or produce; rearing or pasturing animals; storing, treating, processing, or disposing of non-mineral, hazardous, or toxic materials or waste generated elsewhere and brought onto National Forest System lands; operating rental, trade or manufacturing concerns; recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals; searching for buried treasure, treasure trove, or archaeological specimens; operating hobby or curio shops, cafes, or tourist stands; maintaining, managing or hosting hunting or fishing camps; or providing outfitting or guiding services.

(c) When the authorized officer believes one or more proposed or current uses of National Forest System lands, other than those uses listed in paragraph (b) of this section, would not be or are not reasonably incident, the authorized officer may initiate a surface use determination.

(1) When the authorized officer initiates a surface use determination, the authorized officer will:

(i) Notify the operator in writing that a surface use determination will be conducted;

(ii) Identify the proposed or current uses of National Forest System lands the authorized officer believes may not be reasonably incident;

(iii) Give the operator not less than 30 days to respond and show why the specified uses of National Forest System lands would be or are reasonably incident; and

(iv) Consider, where current uses of National Forest System lands are the subject of the surface use determination, any request included in the operator's response for the authorized officer to allow one or more of such uses to continue while the surface use determination process is ongoing providing that the response contains a detailed explanation of the reasons why the operator's request should be granted.

(2) The authorized officer will not allow an operator to continue a current use of National Forest System lands which is the subject of an ongoing surface use determination if such use:

(i) Is unnecessarily or unreasonably causing injury, loss or damage to National Forest System surface resources; or

(ii) Is causing irreparable injury, loss or damage to National Forest System surface resources.

(3) An operator allowed, while the surface use determination process is ongoing, to continue a use of National Forest System lands considered by the surface use determination, must not take any action resulting, or likely to result, in an increase in the scope, extent, frequency, state of completion, or impact of such use.

(4) The certified Forest Service mineral examiner will consider the operator's response in completing the surface use determination. The mineral examiner also will prepare a report finding whether the uses of National Forest System lands examined in the surface use determination are reasonably incident and explaining the basis for such findings.

(5) The authorized officer will issue a decision, taking into consideration the findings of the surface use determination report, as to whether each use of National Forest System lands examined in the report is reasonably incident.

(i) The decision will explain any difference between the authorized officer's basis for concluding that a use of National Forest System lands is not reasonably incident and the basis of the

surface use determination report's finding with respect to such use.

(ii) If the authorized officer concludes that any use of National Forest System lands examined in the surface use determination is not reasonably incident to locatable mineral prospecting, exploration, development, mining, processing, reclamation or closure, the authorized officer's decision also will:

(A) Direct the operator to cease such use of National Forest System lands;

(B) Specify actions which the operator must take to remedy all injury, loss or damage to National Forest System surface resources which resulted from such use of National Forest System lands; and

(C) Specify one or more dates by which the operator must comply with paragraphs (c)(5)(ii)(A) and (B) of this section.

(iii) The Forest Service will promptly provide the authorized officer's decision and the surface use determination report to the operator.

§ 228.11 Cessation of operations.

(a) When an operator proposes a cessation of operations that is not seasonal and the applicable approved plan of operations contains provisions governing such a cessation of operations, the operator must immediately file a statement with the District Ranger:

(1) Specifying the date when the operator expects the cessation of operations to end;

(2) Providing an estimate of the extended duration of the operations;

(3) Indicating which, if any, of the structures, equipment and facilities within the area of operations the operator intends to remove during the cessation; and

(4) Indicates which, if any, of the structures, equipment and facilities within the area of operations the operator intends to retain during the cessation.

(b) When an operator proposes a cessation of operations that is not seasonal and the applicable approved plan of operations does not contain provisions governing such a cessation of operations, the operator must immediately file a statement with the District Ranger:

(1) Including the information specified by paragraphs (a)(1) through (4) of this section;

(2) Including a schedule for the removal, as soon as practical, of all items identified by the operator in accordance with paragraph (a)(3) of this section;

(3) Identifying all measures the operator proposes to take to comply with §§ 228.9 and 228.10 during such cessation of operations; and

(4) Including a schedule for the performance of all measures identified by the operator pursuant to paragraph (b)(3) of this section.

(c) Where a cessation of operations statement is filed pursuant to paragraph (b) of this section, the authorized officer will:

(1) Review any schedule the operator proposes pursuant to paragraph (b)(2) of this section for the removal of items and specify any practical revision of the schedule which the operator must implement to minimize damage to the environment and National Forest System surface resources;

(2) Review the measures the operator proposes to take pursuant to paragraph (b)(3) of this section and specify all different or additional practical measures which the operator must take to minimize damage to the environment and National Forest System surface resources;

(3) Review the schedule the operator proposes pursuant to paragraph (b)(4) of this section for the implementation of all measures identified by the operator and specify any practical revision of the schedule which the operator must implement to minimize damage to the environment and National Forest System surface resources;

(4) Specify a practical schedule for the operator's implementation of all measures required by the authorized officer pursuant to paragraph (c)(2) of this section; and

(5) Authorize any departure from the requirements of § 228.9(k)(2)(ii) which the authorized officer deems appropriate.

(d) If the duration of a cessation of operations will exceed one year, the process set forth in paragraphs (a) through (c) of this section, as applicable, must be completed at the beginning of the second and successive years.

(e) Throughout any cessation of operations, the operator must maintain a reclamation bond complying with § 228.13(a) through (c). When a cessation of operations will exceed, or has exceeded, one season and the applicable approved plan of operations does not specify the amount of bond coverage the operator must maintain during a cessation of operations that is not seasonal, the operator also must:

(1) Augment the existing reclamation bond by the amount the authorized officer required to cover the operator's interim obligations pursuant to this section; or

(2) Provide a separate reclamation bond complying with the applicable requirements of § 228.13(a) through (c) in the amount the authorized officer required to cover the operator's interim obligations pursuant to this section.

(f) If the authorized officer determines an operator has ceased operations, the cessation is not attributable to seasonal considerations, and the operator has not filed a cessation of operations statement with the District Ranger pursuant to paragraphs (a) or (b) of this section, the authorized officer will require the operator to comply with the applicable paragraph within 30 days.

§ 228.12 Access for operations.

(a) An operator is entitled to reasonable access to conduct locatable mineral operations on National Forest System lands providing that such access:

(1) Is not prohibited by Federal law or regulation; and

(2) Complies with applicable requirements set forth elsewhere in this chapter, including, but not limited to, § 228.14, and parts 212 and 261 of this chapter.

(b) The operator must utilize existing means of access when it is economically and technically practical.

(c) The operator must not construct, reconstruct, or improve a road, trail, bridge, landing area for aircraft, or another access facility located on National Forest System lands before a complete bonded notice or an approved plan of operations providing for such work takes effect.

(d) A complete bonded notice or an approved plan of operations must:

(1) Identify the means of access the operator will use in conducting operations on National Forest System lands;

(2) Specify the location, and, if applicable, the route, of all roads, trails, bridges, landing areas for aircraft, and other access facilities located on National Forest System lands which the operator must use in conducting the operations; and

(3) Specify the design standards for all roads, trails, bridges, landing areas for aircraft, and other access facilities located on National Forest System lands the operator must use in conducting the operations.

(e) When an operator is conducting operations on National Forest System lands, the Forest Service may elect to regulate access on National Forest System lands sought by the operator to perform associated work on lands for which a patent has been issued pursuant to the United States mining laws by means of a complete bonded notice or an approved plan of operations. Such access to perform associated work on private lands is

subject to the requirements of this subpart provided that:

(1) Nothing in this subpart is deemed to abridge any independent right the operator has to such access; and

(2) Nothing in this subpart is deemed to confer an independent right to such access upon the operator.

§ 228.13 Reclamation bonds for bonded notices and plans of operation.

(a) The operator must provide the Forest Service a reclamation bond before a complete bonded notice or an approved plan of operations takes effect pursuant to § 228.5(d) or § 228.6(e), respectively. The reclamation bond must comply with this paragraph and paragraph (b) of this section, and be in the amount calculated pursuant to paragraph (c) of this section.

(1) An operator who will be authorized to conduct a single operation requiring a complete bonded notice or an approved plan of operations must furnish an individual reclamation bond.

(2) An operator, who will be authorized to conduct operations under two or more bonded notices, plans of operations, or a combination thereof, may furnish:

(i) An individual reclamation bond for any complete bonded notice or approved plan of operations; or

(ii) A blanket reclamation bond covering statewide or nationwide operations, providing the amount of the reclamation bond is at least equal to the cost to reclaim all operations covered by the reclamation bond as calculated pursuant to paragraph (c) of this section.

(A) Upon the authorized officer's request, the operator must provide information demonstrating the amount of a blanket reclamation bond is at least equal to the aggregate cost to reclaim all operations covered by that reclamation bond.

(B) The operator must immediately inform all District Rangers administering lands on which operations covered by a blanket reclamation bond are currently authorized whenever the amount of such reclamation bond becomes less than the aggregate cost to reclaim all operations covered by the reclamation bond.

(b) One form of reclamation bond an operator may furnish is a surety bond naming the USDA Forest Service as a beneficiary, satisfies the requirements of Treasury Department Circular 570, and is available in full to the Forest Service.

(1) In lieu of furnishing a surety bond as the required reclamation bond, the operator may use a depository of funds approved by the Forest Service to:

(i) Deposit cash in an amount equal to the required dollar amount of the reclamation bond; or

(ii) Deposit negotiable securities of the United States having a market value at the time of deposit not less than the required dollar amount of the reclamation bond.

(2) The operator can use any combination of acceptable surety bonds, cash or negotiable securities of the United States as the reclamation bond providing the total amount of these instruments equals the estimated cost to reclaim National Forest System lands calculated pursuant to paragraph (c) of this section.

(3) When reclamation an operator is required to complete includes long-term monitoring, maintenance, or treatment measures to prevent or otherwise minimize onsite or off-site damage to National Forest System surface resources, the operator also may establish an escrow account in a depository of funds approved by the Forest Service to finance those measures, providing the escrow account's annual earnings will be adequate to perform all such required measures annually on National Forest System lands. When the operator establishes an acceptable escrow account, the amount of the reclamation bond the operator must furnish pursuant to paragraph (a) of this section will be reduced by the amount of the reclamation cost attributable to the performance of required long-term monitoring, maintenance, or treatment measures as estimated pursuant to paragraph (c) of this section.

(c) After the District Ranger or another authorized officer advises the operator in writing that a bonded notice is complete or a plan of operations is approved pursuant to § 228.5(d) or § 228.6(e), respectively, the operator must provide the Forest Service officer an estimate of the cost to reclaim National Forest System lands along with an explanation sufficient to show how the estimate was calculated.

(1) The estimate must set forth the cumulative cost of fully reclaiming all National Forest System lands affected by the operations in accordance with the requirements of § 228.9(i), § 228.9(k), and the applicable complete bonded notice or approved plan of operations, assuming the Forest Service were to hire a contractor to perform all required reclamation.

(2) In estimating the cost to reclaim fully National Forest System lands, no value will be given to any property, such as structures, whether temporary or permanent, other facilities and personal property, including equipment, that an operator is required to remove from the area of operations in accordance with § 228.9(i).

(3) The operator's estimate of the cost to reclaim National Forest System lands must be acceptable to the Forest Service.

(d) The operator must maintain a reclamation bond complying with the requirements of this section until the reclamation bond is fully released pursuant to paragraph (e) of this section or the reclamation bond is completely forfeited pursuant to paragraph (f) of this section.

(e) When the authorized officer believes there has been a change in conditions relevant to reclamation of an operation conducted pursuant to an approved plan of operations, the officer may reassess the adequacy of the existing reclamation bond. The authorized officer will consider whether the residual amount of the reclamation bond equals the current cost of all remaining required reclamation as estimated by the authorized officer in accordance with paragraph (c) of this section. The authorized officer also will consider whether the reclamation bond otherwise currently satisfies paragraphs (a) and (b) of this section.

(1) When the authorized officer finds the residual amount of the reclamation bond exceeds the current cost of all remaining required reclamation, as estimated by the authorized officer in accordance with paragraph (c) of this section, within 30 days the authorized officer will:

(i) Calculate the amount of the reclamation bond to be released by subtracting such estimated cost of reclamation from the residual amount of the reclamation bond;

(ii) Release, or send the person who provided or holds the reclamation bond written authorization to release, the amount of the reclamation bond calculated in accordance with paragraph (e)(1)(i) of this section; and

(iii) Send the operator a copy of any letter described in paragraph (e)(1)(ii) of this section.

(2) When the authorized officer believes the current cost of all remaining required reclamation, as estimated by the authorized officer in accordance with paragraph (c) of this section, exceeds the residual amount of the reclamation bond or such reclamation bond otherwise does not satisfy paragraphs (a) and (b) of this section, the authorized officer will:

(i) Provide notice to the operator in writing which:

(A) Sets forth the reasons why the authorized officer believes augmentation of the reclamation bond's

amount or other adjustment of the reclamation bond is required;

(B) Explains the assumptions and calculations the authorized officer utilized in proposing any augmentation of the reclamation bond's amount; and

(C) Gives the operator not less than 30 days to respond and show cause why the authorized officer should not require augmentation or adjustment of the reclamation bond.

(ii) Consider the operator's response and all other information in the administrative record in deciding whether to require augmentation or adjustment of the reclamation bond.

(iii) Issue a decision stating whether augmentation or adjustment of the reclamation bond is required, and if the decision requires augmentation or adjustment of the reclamation bond, the decision also will:

(A) Explain its basis;

(B) Specify any required augmentation of the reclamation bond's amount or any other adjustment of the reclamation bond;

(C) Specify the date by which the operator must provide the authorized officer proof the reclamation bond has been augmented or adjusted in accordance with the terms of the authorized officer's decision; and

(D) Identify any opportunity for the operator to file an administrative appeal of the decision.

(3) If the operator fails to comply with a decision requiring augmentation or other adjustment of the reclamation bond issued pursuant to paragraph (e)(2)(iii) of this section by the date specified in the decision, or any extension thereof, the authorized officer will take appropriate enforcement action in accordance with § 228.8.

(f) The authorized officer will release, or send the person who provided or holds the reclamation bond written authorization to release, the reclamation bond, in whole or in part, as specified, after:

(1) The operator replaces the existing reclamation bond, in whole or in part, with a new reclamation bond satisfying the requirements of paragraphs (a) through (c) of this section, in which case the amount of the previous bond that will be released is calculated by subtracting the current cost of all remaining required reclamation, as estimated by the authorized officer in accordance with paragraph (c) of this section, from the total of the residual amount of the previous bond plus the amount of the new bond; or

(2) The Forest Service accepts any portion of final reclamation as having been completed in accordance with § 228.9(i), § 228.9(k), and the complete bonded notice or the approved plan of operations then in effect, in which case the amount of the reclamation bond that will be released is calculated by subtracting the current cost of all remaining required reclamation, as estimated by the authorized officer in accordance with paragraph (c) of this section, from the residual amount of the reclamation bond.

(g) An authorized officer considering forfeiture of an operator's reclamation bond will:

(1) Initiate forfeiture of all or part of the reclamation bond as necessary to complete reclamation of National Forest System lands affected by the operations in accordance with the requirements of § 228.9(i), § 228.9(k), and the applicable complete bonded notice or approved plan of operations when:

(i) The operator refuses or is unable to complete reclamation required by § 228.9(i), § 228.9(k), and the applicable complete bonded notice or approved plan of operations;

(ii) The operator fails to take an action on which the continuation of the reclamation bond is conditioned;

(iii) A petition has been filed under the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, by the operator or the operator's creditors; or

(iv) The authorized officer determines reclamation is necessary to prevent environmental damage resulting from the operator's cessation of operations.

(2) Provide notice to the operator, and the reclamation bond surety, if applicable, in writing which:

(i) Sets forth the reasons why the authorized officer believes forfeiture of the reclamation bond is warranted;

(ii) Identifies the required reclamation the operator has not performed;

(iii) Specifies the amount of the bond to be forfeited based on the current cost of all required reclamation as estimated by the authorized officer in accordance with paragraph (c) of this section;

(iv) Gives the operator not less than 15 days to respond and show cause why the authorized officer should not forfeit the operator's reclamation bond; and

(v) Advises the operator may avoid forfeiture if, within 20 days or the period otherwise specified by the authorized officer, the operator:

(A) Begins the required reclamation in accordance with § 228.9(i), § 228.9(k), and the complete bonded notice or the approved plan of operations;

(B) Demonstrates, in writing, to the authorized officer's satisfaction that the operator will promptly complete the required reclamation in accordance with § 228.9(i), § 228.9(k), and the complete bonded notice or the approved plan of operations; or

(C) Demonstrates, in writing, to the authorized officer's satisfaction how another person will promptly complete the required reclamation and how this person has the ability to do so in accordance with § 228.9(i), § 228.9(k), and the complete bonded notice or the approved plan of operations.

(3) Consider any response submitted by the operator and all other information in the administrative record in deciding whether to forfeit the reclamation bond, in whole or in part.

(4) Issue a decision stating whether forfeiture of the reclamation bond will occur, and if the decision provides for forfeiture of the reclamation bond, the decision also will:

(i) Explain its basis;

(ii) Specify the amount of the reclamation bond that will be forfeited; and

(iii) Identify any opportunity for the operator to file an administrative appeal of the decision.

(5) Take appropriate enforcement action in accordance with § 228.8 when required reclamation is not promptly completed in accordance with § 228.9(i), § 228.9(k), and the complete bonded notice or the approved plan of operations after the operator demonstrated pursuant to paragraph (g)(2)(v)(B) or paragraph (g)(2)(v)(C) of this section the operator or another person, respectively, would promptly complete such reclamation.

(6) Refund to the operator, or if applicable the reclamation bond surety, any amount of the forfeited reclamation bond exceeding the cost of completing the required reclamation.

§ 228.14 Operations on withdrawn or segregated National Forest System lands including National Forest Wilderness.

(a) The United States mining laws apply to each National Forest Wilderness for the period specified by the Wilderness Act or subsequent establishing legislation to the same extent these laws were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System.

(b) A person who holds a mining claim valid immediately prior to the inclusion of the lands encompassed by the mining claim within a National Forest Wilderness will be:

(1) Accorded the rights provided by the United States mining laws as applicable before the lands were added to the National Wilderness Preservation System; and

(2) Permitted access to such mining claim, providing the mining claim is wholly within the Wilderness, by means

consistent with the preservation of the Wilderness that have been or are being customarily used to access other valid mining claims completely surrounded by National Forest Wilderness.

(c) A person who holds a mining claim located on or after the date on which the lands encompassed by the mining claim were added to the National Wilderness Preservation System will:

(1) Be accorded the rights provided by the United States mining laws as then applicable to the land subject to all provisions specified by the establishing legislation; and

(2) Have no right or interest, subject to valid existing rights, in or to any locatable mineral deposit discovered, through prospecting, exploration, or otherwise uncovering the deposit, after the date on which the United States mining laws ceased to apply to the Wilderness.

(d) Within a National Forest Wilderness, an operator must:

(1) Limit the operations conducted to those then authorized by the United States mining laws, subject to valid existing rights;

(2) Conduct all operations in compliance with an approved plan of operations then in effect and the regulations set forth in this subpart;

(3) Refrain from constructing roads prior to obtaining written authorization to do so from the appropriate Forest Supervisor in accordance with § 228.12(c); and

(4) Have the right to cut and use the volume of mature timber needed for the extraction, removal, and beneficiation of a valuable locatable mineral deposit, providing:

(i) Such timber is not otherwise reasonably available; and

(ii) Such timber is cut in compliance with § 223.30 of this chapter and provisions set forth in the approved plan of operations reflecting sound principles of forest management, which as a minimum require the operator to:

(A) Harvest the timber in a manner which minimizes soil movement and damage from water runoff; and

(B) Take precautionary measures, including disposal of slash, to minimize damage to surface resources from forest insects, disease or fire related to the timber harvest.

(e) As authorized by the Wilderness Act, 16 U.S.C. 1133(d)(2), the Chief, Forest Service, will allow any activity, including prospecting, for the purpose of gathering information about minerals occurring within National Forest Wilderness:

(1) Drawing no distinction as to whether those minerals would be subject to location under the United States mining laws absent their withdrawal from those laws pursuant to 16 U.S.C. 1133(d)(3) or subsequent establishing legislation;

(2) Specifying no person will have any right or interest in or to any mineral deposit discovered through such activity; and

(3) Requiring that such activity be:

(i) Conducted in accordance with an approved plan of operations and all requirements of this subpart applicable to a proposed or approved plan of operations; and

(ii) Carried on in a manner compatible with the preservation of the wilderness environment as specified by the approved plan of operations.

(f) After the date on which the lands are withdrawn from appropriation under the United States mining laws, the authorized officer will not approve a plan of operations until the Forest Service has prepared a mineral examination report to consider whether the mining claim was valid before the withdrawal, and whether it remains valid. The authorized officer also may require preparation of a mineral examination report before approving a plan of operations or determining that a bonded notice is complete for operations on segregated National Forest System lands. When the report finds that a mining claim is invalid and the operator declines to revise the proposed operations to avoid the withdrawn or segregated National Forest System lands in question, the Forest Service will also request that BLM promptly initiate contest proceedings to determine the validity of all mining claims in question.

(g) If the Forest Service has not completed a mineral examination report being prepared in accordance with paragraph (f) of this section, if a completed mineral examination report prepared in accordance with paragraph (f) of this section finds that a mining claim is invalid, or if the validity of a mining claim subject to paragraph (f) of this section is the subject of a mineral contest or a federal judicial proceeding:

(1) Insofar as the National Forest System lands in question have been withdrawn from the operation of the United States mining laws, the authorized officer may:

(i) Approve a plan of operations for proposed operations on a disputed mining claim that are limited to taking samples to confirm or corroborate mineral exposures that were physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier; and

(ii) Approve a plan of operations for the operator to perform the minimum necessary annual assessment work on a disputed mining claim.

(2) Insofar as National Forest System lands in question have been segregated from the operation of the United States mining laws, the authorized officer may:

(i) Take the actions specified in paragraphs (g)(1)(i) and (ii) of this section; and

(ii) Review for completeness a bonded notice for proposed operations on a disputed mining claim that are limited to taking samples to confirm or corroborate mineral exposures that were physically disclosed and existing on the mining claim before the segregation date.

(h) While a mineral examination report is being prepared, initiation of a mineral contest is being considered, or the validity of the mining claim is the subject of a mineral contest or federal judicial proceeding, the Forest Service may suspend the time limit for responding to a proposed bonded notice or acting on a proposed plan of operations set forth in § 228.5(b) and § 228.6(c), respectively.

(i) When a mining claim has been conclusively determined to lack valid existing rights, whether by virtue of a Forest Service mineral examination report, a mineral contest, of Federal judicial proceedings, the operator must cease all operations, except required reclamation.

§ 228.15 Administrative appeals.

Decisions made by Forest Service officers pursuant to part 228, subpart A may be subject to appeal by the operator in accordance with part 251, subpart C, of this chapter.

§ 228.16 Applicability of this subpart.

(a) *Newly proposed operations.* This subpart applies to all operations proposed by an operator or after [Insert Effective Date of the Final Rule].

(b) *Preexisting notice of intent to conduct operations.* The operator may continue to conduct operations for 2 years after [Insert Effective Date of the Final Rule] under the terms of a notice of intent to conduct operations and the regulations in effect immediately before that date (see 36 CFR parts 200 to 299, revised as of July 1, 2007) providing:

(1) Such notice of intent to conduct operations was properly filed with the Forest Service more than 15 days prior to [Insert Effective Date of the Final Rule], the authorized officer has not since advised the operator the operations require an approved plan of operations, and such notice of intent to conduct operations remains in effect on

[Insert Effective Date of the Final Rule]; or

(2) Such notice of intent to conduct operations was properly filed with the Forest Service 15 or fewer days before [Insert Effective Date of the Final Rule] unless the District Ranger, within 15 days of receiving the notice of intent to conduct operations, advises the operator that the proposed operations require an approved plan of operations.

(c) *Preexisting proposed plans of operation.* Where an operator had properly filed a proposed plan of operations with the Forest Service before [Insert Effective Date of the Final Rule] but such plan of operations had not been approved or had not taken effect before that date, the operator is subject:

(1) To the provisions of this subpart except the plan of operations content requirements, § 228.4(f)(4), and the environmental protection requirements, § 228.9; and

(2) To the plan of operations content requirements and the requirements for environmental protection set forth in the regulations in effect immediately before [Insert Effective Date of the Final Rule]. (See 36 CFR 228.4(c) and (d), and 36 CFR 228.8 (2007).)

(d) *Preexisting approved plan of operations.* Where an operator had obtained approval of plan of operations before [Insert Effective Date of the Final Rule] and such plan of operations remains in effect on that date, the operator:

(1) Shall post a reclamation bond complying with the requirements of this subpart no later than [*Insert Date 180 Days After the Effective Date of the Final Rule*] unless—

(i) The operator had posted a bond prior to [Insert Effective Date of the Final Rule] which complied with the regulations in effect immediately before that date (see 36 CFR 228.13 (2007)); and

(ii) The bond complying with paragraph (d)(1)(i) of this section remains in effect and satisfies the requirements of this subpart.

(2) Is otherwise subject to the provisions of this subpart except the plan of operations content requirements, § 228.4(f)(4), and the environmental protection requirements, § 228.9.

(3) Is subject to the plan of operations content requirements and the requirements for environmental protection set forth in the regulations in effect immediately before [Insert Effective Date of the Final Rule]. (See 36 CFR 228.4(c) and (d), and 36 CFR 228.8 (2007).)

(4) Is subject to the terms and conditions of such approved plan of operations.

(e) *Preexisting unapproved modifications of approved plans of operation.* Where an operator had properly filed with the Forest Service a proposed modification of a plan of operations that had been approved and had taken effect before [Insert Effective Date of the Final Rule] and remains in effect, but such modification had not been approved or had not taken effect before that date, the operator is subject:

(1) To the provisions of this subpart, including paragraph (d)(1) of this section, except the plan of operations content requirements, § 228.4(f)(4), and the environmental protection requirements, § 228.9;

(2) To the plan of operations content requirements and the requirements for environmental protection set forth in the regulations in effect immediately before [Insert Effective Date of the Final Rule]. (see 36 CFR 228.4(c) and (d), and 36 CFR 228.8 (2007)); and

(3) With respect to all operations not governed by the plan of operations modification, to the terms and conditions of the unmodified plan of operations.

(f) *Newly proposed modifications of preexisting approved plans of operation.* Where an operator, on or after [Insert Effective Date of the Final Rule] files with the Forest Service a proposed modification of a plan of operations that had been approved and had taken effect before that date and remains in effect, the operator is subject either to paragraph (f)(1) or (f)(2) of this section, depending upon the scope of the proposed modification. In either case, the operator also is subject to paragraph (f)(3) of this section.

(1) If the proposed modification will govern operations subject to the previously approved plan of operations, the operator may seek to show to the authorized officer's satisfaction that it is impractical for economic, environmental, safety, or technical reasons to apply the plan of operations content requirements, § 228.4(f)(4), and the environmental protection requirements, § 228.9, to the plan of operations modification.

(i) When the authorized officer finds such impracticality, the operator, with respect to the operations that will be governed by the modification, is subject:

(A) To the provisions of this subpart except the plan of operations content requirements, § 228.4(f)(4), and the environmental protection requirements, § 228.9; and

(B) To the plan of operations content requirements and the requirements for environmental protection set forth in the regulations in effect immediately before [Insert Effective Date of the Final Rule] (See 36 CFR 228.4(c) and (d), and 36 CFR 228.8 (2007)).

(ii) When the authorized officer does not find such impracticality, the operator is subject to this subpart with respect to the operations governed by the modification.

(2) If the proposed modification will govern new operations or additional acreage, the operator is subject to this subpart with respect to such operations and such acreage.

(3) With respect to all operations not governed by the plan of operations modification, the operator is subject:

(i) To the provisions of this subpart, including paragraph (d)(1) of this section, except the plan of operations content requirements, § 228.4(f)(4), and the environmental protection requirements, § 228.9;

(ii) To the plan of operations content requirements and the requirements for environmental protection set forth in the regulations in effect immediately before [Insert Effective Date of the Final Rule] (see 36 CFR 228.4(c) and (d), and 36 CFR 228.8 (2007)); and

(iii) To the terms and conditions of the preexisting approved plan of operations.

(g) *Other preexisting operations.* This subpart applies to all preexisting operations not subject to paragraphs (b) through (f) of this section that were not completed before [Insert Effective Date of the Final Rule] in accordance with the terms and conditions of any applicable notice of intent to conduct operations or approved plan of operations, or in compliance with the regulations in effect immediately before [Insert Effective Date of the Final Rule]. (See 36 CFR parts 200 to 299, revised as of July 1, 2007.)

(h) *Optional applicability.* An operator may choose to have this subpart apply to any notice of intent to conduct operations or any plan of operations submitted to the Forest Service before [Insert Effective Date of the Final Rule], where not otherwise required.

PART 261—PROHIBITIONS

5. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

Subpart A—General Prohibitions

6. In § 261.2, revise the definition of ''operating plan'' and add a definition of ''residence'' to read as follows:

§ 261.2 Definitions.

* * * * *

Operating plan means the following documents, providing the document has been issued, approved, or found complete by the Forest Service: A plan of operations as provided for by 36 CFR part 228, subparts A and D, and 36 CFR part 292, subparts C and G; a supplemental plan of operations as provided for by 36 CFR part 228, subpart A, and 36 CFR part 292, subpart G; a complete bonded notice as provided for by 36 CFR part 228, subpart A; an operating plan as provided for by 36 CFR part 228, subpart C, and 36 CFR part 292, subpart G; an amended operating plan and a reclamation plan as provided for by 36 CFR part 292, subpart G; a surface use plan of operations as provided for by 36 CFR part 228, subpart E; a supplemental surface use plan of operations as provided for by 36 CFR part 228, subpart E; a permit as provided for by 36 CFR 251.15; and an operating plan and a letter of authorization as provided for by 36 CFR part 292, subpart D.

* * * * *

Residence means any structure or shelter, whether temporary or permanent, including, but not limited to, buildings, buses, cabins, campers, houses, lean-tos, mills, mobile homes, motor homes, pole barns, recreational vehicles, sheds, shops, tents and trailers, which is being used, capable of being used, or designed to be used, in whole or in part, full or part-time, as living or sleeping quarters by any person, including a guard or watchman.

* * * * *

7. In § 261.10, revise paragraphs (a), (b) and (l); and add paragraphs (p) and (q) to read as follows:

§ 261.10 Occupancy and use.

* * * * *

(a) Constructing, improving, maintaining, occupying, placing, repairing, reconstructing, retaining, or using any kind of road, trail, structure, fence, gate, enclosure, communications equipment, or other improvement on National Forest System land or facilities without a special-use authorization, contract, complete bonded notice, or approved operating plan when such authorization is required.

(b) Constructing, improving, maintaining, placing, protecting, repairing, reconstructing, retaining, or using a residence on National Forest System land unless authorized by a special-use authorization, a complete bonded notice, or an approved operating plan when such authorization is required.

* * * * *

(l) Violating any term or condition of a special-use authorization, contract, complete bonded notice, or an approved operating plan.

* * * * *

(p) Use or occupancy of National Forest System land or facilities without a complete bonded notice or an approved operating plan when such authorization is required.

(q) Storing equipment, machinery, parts, process materials, spent materials, supplies, tools and vehicles without a complete bonded notice or an approved operating plan when such authorization is required.

PART 292—NATIONAL RECREATION AREAS

Subpart D—Sawtooth National Recreation Area—Federal Lands

8. The authority citation for part 292, subpart D continues to read as follows:

Authority: Sec. 1, 30 Stat. 35, 36, as amended, 16 U.S.C. 478, 551; sec. 11, 86 Stat. 612, 16 U.S.C. 460aa–10.

9. Revise the first sentence of paragraph (a) of § 292.17 to read as follows:

§ 292.17 General provisions.

(a) The use, management and utilization of natural resources on the Federal lands within the Sawtooth National Recreation Area (SNRA) are subject to the General Management Plan and the laws, rules, and regulations pertaining to the National Forests with the exception that part 228, subpart A of this chapter does not apply to these resources. * * *

* * * * *

Subpart G—Smith River National Recreation Area

10. The authority citation for part 292, subpart G continues to read as follows:

Authority: 16 U.S.C. 460bbb *et seq.*

11. In § 292.63, revise the introductory text of paragraph (c) to read as follows:

§ 292.63 Plan of operations—supplementary requirements.

* * * * *

(c) *Minimum information on proposed operations.* In addition to the requirements of paragraph (b) of this section, a proposed plan of operations must provide the information required by § 228.4(f)(1) through (f)(4) of this chapter which includes information about the proponent and a detailed description of the proposed operation. If the operator and mining claim owner are different, the operator also must submit a copy of the authorization or agreement under which the proposed operations are to be conducted. In addition, a proposed plan of operations must include measures to meet the environmental protection requirements, including acceptable reclamation, set forth at § 228.9 of this chapter. A proposed plan of operations also must include the following:

* * * * *

12. Revise paragraph (e) of § 292.64 to read as follows:

§ 292.64 Plan of operations—approval.

* * * * *

(e) Upon completion of the review of the plan of operations, the authorized officer will ensure the minimum information required by § 292.63(c) has been addressed and, pursuant to § 228.6(c) of this chapter, notify the operator in writing whether or not the plan of operations is approved.

* * * * *

PART 293—WILDERNESS—PRIMITIVE AREAS

13. The authority citation for part 293 continues to read as follows:

Authority: 16 U.S.C. 551, 1131–1136 and 92 Stat.1649.

14. In § 293.2, revise the first sentence of the introductory text to read as follows:

§ 293.2 Objectives.

Except as otherwise provided by the regulations of this part and part 228, subpart A of this chapter, National Forest Wilderness will be so administered as to meet the public purposes of recreational, scenic, scientific, educational, conservation, and historical uses; and it also will be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. * * *

* * * * *

15. In § 293.15, revise the second sentence of paragraph (a) to read as follows:

§ 293.15 Gathering information about resources other than minerals.

(a) * * * Prospecting for minerals or any activity for the purpose of gathering information about minerals within National Forest Wilderness is subject to the regulations set forth at part 228, subpart A of this chapter.

* * * * *

Dated: March 14, 2008.

Joel D. Holthrop,

Deputy Chief, National Forest System.

[FR Doc. E8–5746 Filed 3–24–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AP60

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 9 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (Amendment 9), incorporating the public hearing document and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce and is requesting comments from the public. The goal of Amendment 9 is to remedy deficiencies in the FMP and to address other issues that have arisen since Amendment 8 to the FMP became effective in 1999. Amendment 9 would establish multi-year specifications for all four species managed under the FMP (mackerel, butterfish, *Illex* squid (*Illex*), and *Loligo* squid (*Loligo*)) for up to 3 years; extend the moratorium on entry into the *Illex* fishery, without a sunset provision; adopt biological reference points recommended by the Stock Assessment Review Committee (SARC) for *Loligo*; designate essential fish habitat (EFH) for *Loligo* eggs based on best available scientific information; and prohibit bottom trawling by MSB-permitted vessels in Lydonia and Oceanographer Canyons.

DATES: Comments must be received on or before May 27, 2008.

ADDRESSES: A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 9 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 9, including the FSEIS, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The FSEIS/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal*http://www.regulations.gov;*

- Fax: (978) 281–9135, Attn: Carrie Nordeen;
- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MSB Amendment 9.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

SUPPLEMENTARY INFORMATION:

Background

This amendment is needed to remedy deficiencies in the FMP and to address other issues that have arisen since Amendment 8 to the FMP (64 FR 57587, October 26, 1999) became effective in 1999. Although Amendment 8 was partially approved in 1999, NMFS noted that the amendment inadequately addressed some Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements for Federal FMPs. Specifically, the amendment was considered deficient with respect to: Consideration of fishing gear impacts on EFH as they relate to MSB fisheries; designation of EFH for *Loligo* eggs; and the reduction of bycatch and discarding of target and non-target species in the MSB fisheries.

An earlier draft of Amendment 9, adopted by the Council on February 15, 2007, contained several management measures intended to address deficiencies in the MSB FMP that relate to discarding, especially as they affect butterfish. Specifically, these management measures would have attempted to reduce finfish discards by MSB small-mesh fisheries through mesh size increases in the directed *Loligo* fishery, removal of mesh size exemptions for the directed *Illex* fishery, and establishment of seasonal Gear Restricted Areas (GRAs). However, these specific management alternatives were developed in 2004, prior to the butterfish stock being declared overfished.

In February 2005, NMFS notified the Council that the butterfish stock was overfished and this triggered Magnuson-Stevens Act requirements to implement rebuilding measures for the stock. In response, Amendment 10 to the FMP was initiated by the Council in October 2005. Amendment 10 contains a rebuilding program for butterfish with management measures designed to reduce the fishing mortality on butterfish that occurs through discarding. Management measures that reduce the discarding of butterfish are expected to also reduce the bycatch of other finfish species in MSB fisheries. On June 13, 2007, the Council recommended that all management measures developed as part of Amendment 9 to correct deficiencies in the FMP related to bycatch of finfish, especially butterfish, be considered in Amendment 10. Accordingly, no action is proposed in Amendment 9 to address these issues. Through the development and implementation of Amendment 10, each of the measures to reduce the bycatch of finfish will be given full consideration. Additionally, Amendment 10 will include updated analyses on the effects of the alternatives and, as Amendment 10 is expected to be implemented soon after Amendment 9, no meaningful delay in addressing the bycatch deficiencies in the FMP should occur.

The final version of Amendment 9 contains alternatives that consider allowing for multi-year specifications and management measures, extending or eliminating the moratorium on entry to the directed *Illex* fishery, revising the biological reference points for *Loligo*, designating EFH for *Loligo* eggs, implementing area closures to reduce gear impacts from MSB fisheries on EFH of other federally-managed species, increasing the incidental possession limit for *Illex* vessels during a closure of the *Loligo* fishery, and requiring real-time electronic reporting via vessel monitoring systems in the *Illex* fishery. The Council held four public meetings on Amendment 9 during May 2007. Following the public comment period that ended on May 21, 2007, the Council