



Title: 36 CFR 228 Subpart A, Locatable Minerals

Staff Team: Minerals and Geology Management (MGM)

Directive/Regulation: The Forest Service is proposing to revise the locatable minerals regulations at 36 CFR 228 Subpart A.

Secretary's Memoranda: Increase the productivity of National Forests and Grasslands.

U.S. Forest Service Strategic Goal: Deliver benefits to the public.

Significant/Non-Significant: Significant

Why Do We Need to Change This? The regulations have not kept pace with changing industry practice and numerous legal decisions. The current regulations contain subjective language which results in confusion and inconsistent implementation. They are inconsistent with the Department of the Interior Bureau of Land Management (BLM) surface management regulations at 43 CFR 3809 and 3715 for similar activities.

- The current regulations were developed in 1974 and have only had one minor revision, in 2005.
- The current regulations rely upon subjective language for key thresholds, which leads to inconsistent implementation and confusion.
- Many of the procedures developed since 1974 required by the agency are in policy guidance, spread between manuals, handbooks and guides. As a result, identifying and following procedures related to locatable minerals is difficult for the public, operators, and at times, the Forest Service.
- Under the current regulations, the Forest Service cannot collect a financial guarantee to ensure reclamation for notice-level operations.

What are We Changing: The wholesale revision will bring transparency and consistency of processes into the regulation so the public, the operators, and Forest Service staff will have similar expectations regarding roles, responsibilities, and outcomes. The revision will also bring greater consistency with the BLM surface management regulations.

Anticipated Results/Change: Anticipated changes include:

- Removal of subjective language, to be replaced with clearly defined criteria, similar to the BLM's so-called "5-acre rule", which includes the requirement of a plan of operations and specific agency approval for all operations that are greater than 5 acres of disturbance, among other criteria designed to protect surface resources;
- Operations which do not require agency approval may proceed within specific timeframe, providing timeline certainty to operators who currently have no timelines to rely upon.
- Clear and transparent procedures for operators and line officers to follow;
- Financial guarantee can be collected for all operations that have any surface disturbance beyond that which any forest user who does not require authorization; and

Timeframe: Publish proposed rule in December 2020, final rule by the end of 2021.



Key External Stakeholders: All existing operators, trade associations, and proponents who propose to search for and develop locatable minerals on NFS lands, environmental NGOs.