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**Forest Service Handbook 2809.15 – Minerals and Geology Handbook
Chapter 10 - Surface Use Determinations**

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Digest: Following is an explanation of the changes throughout the directive by section.

2809.15: Establishes new Handbook, FSH 2809.15, Minerals and Geology Handbook.

10: Establishes code and caption for the new chapter, "Surface Use Determinations." Clarifies direction for obtaining protection of surface resources from activities conducted under the authority of the 1872 Mining Law, as amended.

10.5: Defines key terms used in surface use determinations.

11: Establishes procedures authorized officers should follow when investigating the reasonableness, logic, or justification of proposed or existing activities.

12: Describes the elements of a logically sequenced mining operation.

13: Describes the necessary content, level of detail, evaluation, and conclusions and recommendations for a surface use determination.

14: Clarifies direction on changing proposed plans of operation.

15: Clarifies direction on modifying existing plans of operation.

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10.1 - Authority

1. See FSM 2801 and 2817.01 for further direction on authorities for surface management procedures under Title 36, Code of Federal Regulations, Part 228 - Minerals, Subpart A - Locatable Minerals (36 CFR part 228, subpart A).

2. The 1955 Multiple Use Mining Act (30 U.S.C. 612) restricts mining operators to using reasonable methods of surface disturbance that are appropriate to their stage of operation (*United States v. Richardson*, 599 F. 2d 290 (1979); cert. denied, 444 U.S. 1014 (1980)). This legal principle is reinforced by the Forest Service in 36 CFR part 228, which provide procedures for authorizing operations on the National Forests which are reasonably incidental to mining, but requires that such operations be conducted so as to minimize adverse environmental impacts.

3. In addition, *United States v. Nogueira*, (403 F.2d 816 (9th Cir. 1968)), the court stated:

While the right of a mining claimant under a valid discovery has been said to be that of exclusive possession, such possession can be maintained against the United States only for mining purposes.

Hence, if it can be shown that the claim is not being occupied and used for mining related purposes, then action can be taken to end the trespass. This action can be taken in the Federal District Court; *the claim in question does not need to be declared invalid*. (See FSM 2818.3 for the proper use of validity determinations.)

10.2 - Objectives

See FSM 2802 and 2817.02 for direction on objectives for surface management procedures under Title 36, Code of Federal Regulations, part 228 - Minerals, subpart A - Locatable Minerals (36 CFR part 228, subpart A).

10.3 - Policy

See FSM 2803 and 2817.03 for further direction on policies for surface management procedures under Title 36, Code of Federal Regulations, part 228 - Minerals, subpart A - Locatable Minerals (36 CFR part 228, subpart A).

10.4 - Responsibility

See FSM 2817.04 for direction on positions with responsibilities in the locatable mineral surface management process.

10.41 - Authorized Officer

It is the responsibility of authorized officers (as defined at 36 CFR 228.3(e)) to:

1. Administer the Forest Service mining regulations in a fair, reasonable, and consistent manner and not as a means of inhibiting or interfering with legitimate, well-planned mineral operations.
2. Ensure that adverse environmental impacts of surface resources are minimized or prevented, mitigated, and repaired as a result of lawful prospecting, exploration, development, and production, as well as activities reasonably incident to such uses (FSM 2871.02).
3. Request the assistance and advice of Forest Service mineral specialists or mineral examiners when questions arise as to whether proposed or existing uses are logically sequenced, reasonably incident, or consistent with existing laws and regulations (FSM 2817.03).
4. Request that a formal surface use determination be conducted if:
 - a. Negotiations fail regarding proposals,
 - b. Existing uses do not appear to be logically sequenced or reasonably incident or,
 - c. Existing uses do not appear to be consistent with existing laws and regulations (FSM 2817.03).

10.5 - Definitions

Authorized Officer. The Forest Service officer to whom authority to review and approve operating plans has been delegated (36 CFR 228.3(e)).

Bad faith. Bad faith reflects an intent of the proponent or operator and occurs when:

- a. Activities are proposed or occur on National Forests for purposes other than mineral development and
- b. Disturbances and uses asserted under the 1872 Mining Law are not related to mining.

Certified locatable minerals administrator. A certified locatable minerals administrator is a Forest Service employee who has met the minimum standards for level I or level II certification of mineral administrators as set forth in FSM 2891.1. Certified locatable minerals administrators perform functions associated with the processing and administration of locatable minerals operations.

Certified mineral examiner. A certified mineral examiner is a mineral specialist who has met the minimum standards for certification of mineral examiners set forth in FSM 2892.21.

A certified mineral examiner performs all mineral examination functions, including formal surface use determinations.

Certified review mineral examiner. A certified review mineral examiner is a mineral examiner who has met the minimum standards for certification of review mineral examiners set forth in FSM 2892.2. In addition to performing mineral examination functions, a certified review mineral examiner provides technical review of mineral reports, including surface use determination reports.

Logically sequenced. This refers to any use of National Forest System lands for purposes that reflect sound, industry accepted practices necessary or required for the various stages of mining activities, including prospecting, exploration, production (mining and processing), and reclamation. This might involve such uses as access, equipment storage, structure use or construction, excavations, mine dumps, tailings disposal, other surface disturbance, and so forth. See section 11.1 of this handbook for a detailed description of elements of logically sequenced operations. Also, refer to Forest Service General Technical Report INT-35, *Anatomy of a Mine, from Prospect to Production* (sec. 10.7).

Minerals specialist. A minerals specialist has, as a minimum, a Bachelor of Science or Bachelor of Arts degree in the field of geology, geological engineering, mining engineering, or petroleum engineering. By virtue of education, training, and professional experience, they are considered qualified to evaluate Federal land or interests in land to determine its mineral potential and to assist certified mineral examiners in performance of mineral examination functions including formal surface use determinations.

Reasonably incident. This is a shortened version of the statutory standard “prospecting, mining, or processing operations and uses reasonably incident thereto” (30 U.S.C. 612). It means reasonable and necessary uses of National Forest System lands for purposes that reflect sound practices that avoid or minimize adverse environmental impacts and are required for the various stages of operations. For a use to be reasonably incident, the type and level of use must be appropriate to the stage of operations and extent of information on the mineral resource. Also, refer to Forest Service General Technical Report INT-35, *Anatomy of a Mine from Prospect to Production* (sec. 10.7) for a description of the reasonable stages of a mining operation.

Surface use determination. A surface use determination consists of an examination and report that provides 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. See section 13 of this handbook for detained information about surface use determinations.

10.6 - Surface Use Determination Reports

The purpose of a surface use determination report is to provide information, recommendations, and conclusions about reasonableness and justification for proposed or existing operations to the authorized approving officer. A surface use determination report is not a substitute for, and should not be confused with, the National Environmental Policy Act (NEPA) disclosure process.

The authorized officer should consider it in the evaluation of a situation and in forming a decision whether to approve a proposed plan of operations or recommend to the authorized officer's supervisor whether to modify or terminate an existing plan of operations. This decision should better withstand appeals and litigation when based on a thorough surface use determination report that provides the administrative record with key information.

10.7 - References

1. American Geological Institute, 1997. Dictionary of Mining, Mineral, and Related Terms, second edition, Alexandria, VA. 646 p.
2. Maley, Terry. Mining Law. 1993. Fifth Edition. Boise, Idaho. Mineral Land Publications. 452 p.
3. U.S. Department of Agriculture, Forest Service. Training Guide for Reclamation Bond Estimation and Administration, 2004, Washington, D.C: U.S. Department of Agriculture, Forest Service, National Headquarters. 213 p.
4. U.S. Department of Agriculture, Forest Service. 1995. Anatomy of a Mine From Prospect to Production. General Technical Report INT-GTR- 35 Revised. Ogden, UT: U.S. Department of Agriculture, Forest Service, Intermountain Research Station. 69 p.
5. Wenner N. Lambert. 1992. 1992. Mineral, People and Dollars: Social, Economic and Technological Aspects of Mineral Resource Development. U.S. Department of Agriculture, Forest Service, Northern Region. 153 p.

11 - Procedures

Authorized officers should use the following procedures when they have serious questions about reasonableness, logic, or justification of proposed or existing activities.

There are two basic parts to resolving these issues: preliminary activities and investigations (para. 1) and a formal surface use determination (para. 2).

1. Preliminary activities and investigations. This consists of the authorized officer's identification of potentially inappropriate proposals or existing activities, preliminary discussions with the operator/claimant, consultation with a certified mineral examiner, preliminary or informal advice of the certified mineral examiner, and further negotiations with the operator/claimant.
2. Formal surface use determination. It is the objective of this procedure that the first step be successful at resolving the identified issues. When it is successful, a formal surface use determination may not be necessary.

11.1 - Preliminary Activities and Investigations

The authorized officer, with the assistance of the certified minerals administrator and, if available, a minerals specialist, should direct preliminary questions on whether proposed operations in a Plan of Operations (POO) are justified and/or reasonably necessary to a certified mineral examiner. The certified mineral examiner may consult with other appropriate certified mineral examiners and the regional office locatable minerals group leader. The certified mineral examiner may document the initial response at this preliminary investigation stage in writing via a memo.

If, based on the preliminary investigation, the certified minerals administrator, minerals specialist, and the certified mineral examiner concur that the proposed operations may not be justified and/or reasonably necessary, the authorized officer should begin negotiation with the operator/claimant. Face-to-face communication and site visits, documented in writing, can help resolve differences through reasoning, persuasion, and agreements. The authorized officer, at the advice of the certified mineral examiner, should be prepared to recommend alternatives or changes and additions to the proposal or existing activities that would facilitate approval of the operation.

For example, consider a case where a miner proposes to divert a creek and use a dragline to mine the creek bottom. Ask the operator what activities the operator has done that were appropriate, prior to production, to delineate a placer deposit, such as sampling and other exploration activities. If the operator has not done any, suggest it would not be reasonable for the operator to begin production mining until the operator has delineated a deposit. Also, suggest that the operator should consider following reasonable and accepted industry practice by proposing a sampling and exploration program first and designing a mine plan based on that information.

11.2 - Formal Surface Use Determination

A formal surface use determination may be needed when negotiations do not resolve differences. That is, a formal report may be necessary when the operator refuses to modify his/her proposed plan and insists on conducting operations as proposed or ongoing that the authorized officer believes may not be reasonable, and they are unable to reach agreement. The authorized officer may initiate the action by taking the following two steps:

1. Requesting a Forest Service certified mineral examiner to conduct a formal surface use determination.
2. Notifying the operator/claimant of the action.

The surface use determination must be conducted by a certified mineral examiner (FSM 2892). The district resource assistant, minerals technician, or minerals specialist may assist the mineral examiner in conducting the surface use determination. The surface use determination report should be completed as soon as possible to help meet regulatory timeframes. The mineral examiner sends the surface use determination report to the appropriate office for technical review

by a certified review mineral examiner. This report must be given a high priority, because all actions must be initiated in a timely manner. Once the technical review has been completed and any corrections made, the report is signed by the review mineral examiner and forwarded to the authorized line officer. The authorized line officer uses the conclusions and recommendations of the report to support the decision on the proposed or ongoing operations.

12 - Elements of Logically Sequenced Mining Operations

This section describes actions and expenditures of labor and resources by a person of ordinary prudence using industry-accepted techniques to prospect, explore, develop, produce, abandon or reclaim a valuable mineral deposit using methods, structures and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.

Refer to Forest Service General Technical Report INT-GTR-35, *Anatomy of a Mine from Prospect to Production*, for a description of the reasonable stages of a mining operation (sec. 10.7).

12.1 - Prospecting

Prospecting is the preliminary searching for outcrops or surface exposures of mineral deposits. At this earliest stage of mining activity, it is characterized by activities that result in low impact to surface resources, such as driving on existing roads, hiking or riding on trails or cross country, field and geologic reconnaissance mapping, taking small samples by hand or with small highly portable tools, stream sediment sampling, panning of placer samples or small-scale sluicing, soil sampling, claim staking, and using portable geophysical equipment.

The nature of potential mineralization at this stage is usually defined through evidence found in float, outcrop, soils, stream sediments, aerial reconnaissance, and geophysical data. Extent, grade, and continuity of the potential mineralization are unknown or poorly understood. Some evidence at this stage may show sample assays at ore grade, but this is typically from grab samples that are not representative of the mineralization, from material not in place, or from exposed mineralized material that is thin and/or less than a minable width. Whether the prospect area will result in a valuable ore deposit is unknown at this point. Industry statistics cited on page 42 in the Forest Service publication *Minerals, People and Dollars* (sec. 10.7), show that only 78 prospects out of 1,000 ever warrant detailed drilling in the next (exploration) stage, and only one prospect in 1,000 ever turns out to be extremely profitable.

The prospect area may be more thoroughly evaluated using more intensive investigation techniques at the exploration stage of mining activity. Prospecting in some parts of the world is seasonal in duration, since the ground must be free of snow to allow inspection of the surface. No permanent structures are necessary. Any housing or storage needs are limited and satisfied by tents, "boonie barns", trailers, motels, and so forth.

This and the next stage of mining activity, exploration, often overlap somewhat, making it sometimes difficult to precisely define the point at which one stage ends and another begins.

12.2 - Exploration

Exploration is the second stage in the logical progression of mining activities. It usually occurs once a geologically favorable target area, with moderate to high mineral potential, is identified through prospecting, but subsurface information is still needed to determine the presence and extent of any mineral resources and whether any of this constitutes economic reserves. Its purpose is to narrow the search for a mineral resource, better define a target, and ultimately to discover a valuable mineral deposit that can be mined, removed, and marketed at a profit. This stage is typified by the use of motorized portable ground disturbing equipment, such as truck or track mounted drill rigs and backhoes. Temporary roads may need to be constructed for access for drill rigs. These roads can usually be recontoured and reclaimed at the end of drilling. Detailed surface mapping and sampling typically occur. Some drilling may be conducted through the use of helicopter-supported operations. Some shallow trenching (20-feet deep or less) by backhoe may be necessary. Rarely, sinking of shafts or driving of drifts for exploration purposes may be necessary late in the exploration stage, but this is usually where drilling cannot provide the results needed because of some special characteristics of the mineralization. For example, large samples through shafts or trenches are sometimes taken to reduce the "nugget effect" in evaluating some lodes and placer deposits because of the erratic nature of the mineralization.

Any equipment used is typically removed at the end of each season's operation. Drill core and samples are hauled off site for assay, analyses, and storage. Temporary storage and living facilities may be needed to house workers and drill crews for the usual seasonal duration of this activity. Any structures are usually temporary and portable in nature, such as "boonie barns," tents, trailers, and so forth. These are removed at the end of each season's operations. Frequently, where travel times are favorable, crews may use nearby available motels in lieu of on-site housing. In the unusual circumstance where an exploratory adit is being driven, a temporary structure to serve as a miner's change house (a "dry") may be necessary, but it is removed at the end of the activity, unless the mineralization justifies progressing to the next stage of mining activity, development.

Again, this stage of activity may "blend into" the next stage, with some activities (drilling and so forth) continuing into development.

12.3 - Development

Development is the stage of mining activity that occurs once exploration drilling and other activities have identified a valuable mineral deposit (that is, ore grade and a significant reserve is established), but the dimensions of the ore deposit are not yet fully delineated (it may be "open" on several sides), and all the parameters necessary for mine design and production are not yet known or understood. The purpose of development is to delineate the ore body, establish grade and reserves with a high degree of probability so economics of the deposit can be fully evaluated, and provide the claimant/operator with information necessary to make a decision as to when and whether to invest the often sizable capital expenditure necessary to progress to the next stage of mining activity: production. This stage is typified by continued and intensified geologic mapping, surveying, drilling by helicopter-transported or truck- and track-mounted drill rigs.

A late phase of development may be exemplified by driving of drifts or shafts, close-spaced drilling or trenching, taking bulk samples from shafts or drifts for metallurgical testing and design of the mill facility, and construction of some permanent structures to provide storage for such things as drill core, equipment repair, and office space or change rooms (drys) for workers. Roads constructed may be more permanent in nature and to a higher design standard. Usually the operator will begin collecting baseline data to support a future detailed mine operating plan. Submit the plan to the regulatory agencies, who will then prepare a suitable environmental document, possibly an environmental impact statement, depending on impacts of the operation. Activity usually continues year round.

Final development of a typical underground mine occurs after the operating plan for full development of mine workings and mill improvements has been fully analyzed in accordance with the National Environmental Policy Act (NEPA), other Federal laws (for example, Endangered Species Act and Clean Water Act) have been complied with, and the plan has been approved in a decision document. Final development activities may include driving mine haulage ways and development drifts; engineering, design, and construction of a mill facility, waste embankments, heap leach pads, and/or tailings disposal facilities; and installation of monitoring equipment and water treatment facilities.

Permanent structures may be necessary when specifically called for as part of each use. For example, such reasonable uses associated with a continuously operated underground mine might include construction of structures for office space, storage facilities, mill buildings, and mine worker changehouse ("dry"). Full-time residential use is rarely needed for most operations, as workers commute to the mine and mill facility. However, a watchman may remain on site between shifts or on weekends, for security purposes.

In contrast to lode (hardrock) operations, placer development may involve removing vegetation and topsoil, constructing roads and settling ponds, diverting streams, bulk sampling of materials, and processing through portable or fixed wash plants. Permanent structures are not usually as necessary for placer operations as for hardrock mines. For example, small to moderately sized seasonal placer operations, where some or all equipment is portable, may not require storage facilities or permanent structures for housing at all. In this situation, operators commonly live in campers or other temporary facilities, or commute from nearby towns for the duration of the activity. At the end of each season's operation, portable processing equipment and temporary housing facilities are removed from the mine area. Large and not easily removed equipment, such as draglines or large trommels or placer wash plants, may be stored on site until the next season's work commences.

12.4 - Production

The most prevalent activities at this stage are mining, removing, and processing of previously discovered and developed ore deposit and marketing a product (for example, concentrates, dore, bullion, and so forth). This is the stage, which typically results in the most surface disturbance. The quantity and quality of the ore at this stage is known with a high level of certainty, and the operator has made a firm commitment through capital expenditures and engineering design and construction. Activities are usually substantially continuous and proceed year round, except

placer production operations may be seasonal because of water availability and/or freezing conditions restricting processing.

Additional development by driving workings (ventilation adits, haulage ways, stopes, and so forth) and construction of surface facilities will continue during this stage, as the mine expands to full production. Hauling equipment, such as trucks, large front-end loaders, and load-haul-dump machines ("LHD's"), drilling equipment for both surface and underground, excavation equipment such as excavators, mucking machines, draglines, or backhoes may be used, depending on the type of mine and nature of the ore deposit. Additional permanent structures may be constructed where operations are continuous. As in the development stage, small seasonal production operations where equipment is portable and removed, such as some placer operations, may not require storage facilities or permanent structures for housing.

12.5 - Abandonment and Reclamation

Reclamation should occur at all stages of mining activity where surface disturbance results. However, abandonment and final reclamation occur after production has ceased because the orebody mined out. Long-term mine closure may result from changing economics, such as declining metals prices or operating cost increases. Regardless of the cause, when production activities have ceased or significantly declined and are expected to remain so for the long term, equipment, structures, and other facilities, as they are no longer needed, should be removed. This may be for salvage or as part of site cleanup and reclamation. Steep highwalls in the mine area should be stabilized; underground mine openings closed, plugged, or backfilled; roads not needed for other resource use closed and reclaimed; waste facilities recontoured and revegetated; and permanent erosion control and water quality protection measures implemented.

If it appears the cessation of activities is short term, the operator may need to temporarily close the mine and associated facility, remove equipment that can be used elsewhere, or put it into storage where it can be protected from weather and vandalism. A watchman may be necessary to help protect the site during short-term closure. Interim erosion control measures sufficient to stabilize the site for the closure period should occur at this stage.

Long-term cessation of operations with no reasonable expectation of restarting production, may require some or all of the same reclamation measures as those called for under abandonment, depending on site conditions, to permanently stabilize the disturbed area and return it, if possible, to a useful condition for other purposes. Use of structures during this phase would be only for purposes related to active site reclamation.

13 - Surface Use Determination Content

Formal surface use determinations are investigations conducted by certified mineral examiners (FSM 2892.03, para.1b), and formally documented in a report that includes the information listed in sections 13.1 - 13.9. The report can be as short or long as necessary to address the issues. The level of detail for any particular section should only be as much as is relevant to supporting any conclusions and recommendations in the report, as determined by the facts of each case.

13.1 - Summary, Conclusions, and Recommendations

Summarize findings of the report. After considering the facts, including the stage of mineral activity proposed or ongoing and extent of mineralization, conclude whether the proposed or continuing use is required and reasonable incident to mining. Indicate the kinds of activities that might be expected as the next logical steps in the operation. Recommend to the authorized officer any changes in, or additions to, proposed or ongoing operations necessary to meet the purpose of regulations and law.

13.2 - Introduction

State the purpose of the report. Give a brief history of the situation and indicate that conclusions of the report are limited to action prompting the report. Give the dates of field work and the personnel involved.

13.3 - Lands Involved and Status Record Data

Using maps, describe the location, remoteness, and landownership patterns of the area and routes and means of access. Describe the geography, general use of the land, and other ongoing activities that may be relevant to issues being considered. (If the issues under consideration do not relate to these items, this section can be very brief.) Verify mining claim ownership and structure ownership by describing the chain of title data and append all pertinent documents such as location notices and maps, quitclaim deeds, and tax records. Consult master title plats, historical indices, and other land status resources and provide information on mineral estate ownership for the determination. Provide information on any alleged existing rights.

13.4 - Regional and Local Geology

To the degree relevant to the issues being considered, describe the regional geologic setting for the area, including typical mineral deposit occurrences and regional mineralization trends. Describe to the degree relevant the local geology, including the nature and extent of mineralization exposed (if any). Give a brief description of current mineral-related activities in the region around the claim area.

13.5 - Past Mineral Activities

When such activities occurred and to the degree relevant, describe past mineral activities, including prospecting, exploration, development, production, or abandonment and reclamation activities. Indicate why those operations ceased, if known. Discuss whether and how the past activities relate to the current proposal.

13.6 - Current or Proposed Activities

Describe the nature of current proposed or ongoing activities. Include a description of all proposed or existing improvements, workings, mining equipment, and structures, as well as their proposed or current use and condition.

13.7 - Field Methods and Observations

Describe methods, observations, and results of any field investigations. Mapping and sampling may be necessary in some cases. Tie the discussion to the local geology, including nature and extent of mineralization exposed (if any). Describe evidence of any mineral resources that may be present.

13.8 - Evaluation of Surface Use

Describe and evaluate the operation proposed or ongoing by considering the points listed in paragraphs 1-4. In view of this evaluation, give an assessment of the stage and types of activity in the claim area that appears reasonable and consistent with evidence found for any mineral resources present.

1. Is the operation justified and appropriate, based on what is known about the nature and extent of the mineral resource that is claimed? How much information has the operator gathered about the quality and quantity of a mineral resource, and how close is the operator to delineating minable reserves? Are the public lands being used or occupied in “good faith” for mining purposes?

2. Is the operation minimizing impacts to surface resources? Is it unnecessarily and unreasonably destructive to surface resources and damaging to the environment? If an evaluation of impacts of a proposed or approved operation has already been the subject of a National Environmental Policy Act (NEPA) analysis, its findings may serve as reference and support information for the surface use determination report to help further analyze whether these effects are unnecessary or unreasonable.

3. Are there reasonable alternatives that should be considered? If so, provide information about how and why a different alternative may be better suited than that being proposed or that presently being used. In some cases it may be helpful to provide cost estimates of different alternatives.

4. If no NEPA document has been prepared, preliminary analyses from other resource specialists on key resource issues and suggested reasonable mitigation may be relied upon to assist in the initial appraisal of the reasonableness of the proposal. However, a surface use determination is not necessarily part of the disclosure process required by NEPA. Rather, a surface use determination is based in, and is a part of, the Forest Service's regulatory ("approval") process under the authorities cited previously. It is to serve as part of the record for the authorized officer's decision, to assist in assessing the reasonableness of a mining proposal. It should not be confused with or considered a substitute for the NEPA process.

13.9 - Summary

When assessing whether an operation is unnecessarily and unreasonably damaging national forest resources, some things to consider include:

1. Site-specific circumstances of the operation being considered and resources affected.

2. Some possible reasonable alternatives to the proposal, and their potential effects compared to the proposal.
3. Standard industry practices; that is, typical approved activities for operations that have similar geographic settings and levels of mineral resource evidence.
4. Any established best management practices for proposed use or similar uses.
5. New research and technology that may present some viable options for minimizing effects on national forest resources.

14 - Changes and Additions to Proposed Plans

If the District Ranger decides, based on a surface use determination report and/or other information, that changes and additions are necessary in a proposed plan of operations in order to meet requirements of 36 CFR part 228, subpart A, the District Ranger notifies the operator/claimant of these necessary changes, explains the reasons for them, and indicates that the plan cannot be approved until these changes or additions are made (36 CFR 228.5(a)(3)). As part of this communication, provide the operator a statement of any appeal rights.

15 - Modification of Existing Plans

Existing plans of operation may be modified in the following two circumstances (36 CFR part 228). Unforeseen disturbances (sec. 15.1) and activities not reasonably incident.

15.1 - Unforeseen Disturbances

If based on expert advice, such as a surface use determination report and/or other information, the District Ranger determines that a modification of an existing approved plan of operations is reasonable and necessary in order to minimize disturbance of surface resources unforeseen in the existing plan and to meet requirements of 36 CFR part 228, subpart A, the District Ranger notifies the operator of these needed modifications and requests a response.

Generally, the operator should be given an opportunity of not less than 30 days to respond; *except that* the District Ranger may specify a response time of less than 30 days if the District Ranger finds that operations are unnecessarily or unreasonably causing, or in imminent danger of causing, irreparable injury, loss, or damage to National Forest resources. Conversely, if the District Ranger determines that the operator/claimant has a legitimate need for more time to respond, the District Ranger may allow it, not to exceed an additional 60 days.

If the operator does not respond with the requested changes within the time specified by the District Ranger, the District Ranger should provide recommendations to the Forest Supervisor on the nature of necessary modifications and the reasons for them (36 CFR 228.4(e)). After considering the criteria listed at 36 CFR 228.4(e), the Forest Supervisor issues a decision on whether the operator is required to submit the modification. Except as provided in section 7, Emergency Situations, before any civil or criminal enforcement action is taken, the operator must be provided any appeal rights.

15.2 - Activities Not Reasonably Incident

A situation may arise where a previous plan of operations has been approved authorizing activities, such as occupancy, under General Mining laws, and whose resource disturbances were foreseen, but a District Ranger later has serious questions whether a portion of approved activities are reasonably incident to mining operations, based on a surface use determination, changed conditions, and/or other information. When this situation arises, the District Ranger notifies the operator/claimant of these concerns and the reasons for them. Further, the District Ranger provides the operator/claimant an opportunity of not less than 30 days to respond and show cause as to why the plan should not be modified. If the District Ranger determines the operator/claimant has a legitimate need for more time to respond, the District Ranger may allow it, not to exceed an additional 60 days.

After the operator/claimant responds, the District Ranger considers any response, as well as other information in the administrative record. The District Ranger then documents this consideration and analysis of the operator/claimant's response, and forwards it to the Forest Supervisor, along with the record and a recommendation on the modification of the plan.

The Forest Supervisor considers this analysis and recommendation, and all other information in the administrative record, and issues a decision on whether or not to modify the plan. The decision must also provide the operator/claimant with a statement of any appeal rights. Except as provided in section 7, Emergency Situations, the appeal process must be finished prior to taking any civil or criminal enforcement action.

16 - Termination Date

All approved plans of operations will include a reasonable termination date agreed upon by the authorized officer and the operator/claimant.

17 - Emergency Situations

In an emergency situation where irreparable and uncompensable damage to resources is occurring or imminent, or if the actions are contrary to the terms and conditions of an existing approved plan of operations, more immediate enforcement action can be taken (FSM 2817.3).