



American
Exploration & Mining
ASSOCIATION

FOREST SERVICE 228A REGS

US Forest Service 228A (36 CFR Part 228 Subpart A)

US Forest Service 228A (36 CFR Part 228 Subpart A) regulations are the core regulatory framework governing mineral exploration and development on US Forest Service Lands. The rules implement the General Mining Act of 1872, which grants statutory rights to explore and develop locatable minerals on federal lands, while authorizing the US Forest Service to regulate those activities to prevent environmental harm.

For decades, 228A has functioned as a stable, court-tested framework that allows mineral development on federal land, ensures environmental protection is in place, and provides reasonably predictable permitting standards.

However, an updated version of these rules was recently published for review and comment and some of the modifications threaten this delicate balance and could create significant uncertainty and delays in permitting.

The proposed rule fails in its main goals, which are to streamline regulation and “increase consistency with the BLM’s regulations [43 CFR Subpart 3809] and bring the two agencies into closer alignment...”

The Problem



Conflicts with National Policy Priorities

Congress and this administration have been clear: Permitting must be streamlined to reduce reliance on foreign sourced minerals. Yet, the rewrite of 228A adds uncertainty, expands discretion to deny projects, and increases litigation exposure. **Currently, the 228As run just 10 pages. The Proposed Regulation is 77 pages long**, with many new definitions and authorities that have no basis in law.

- **Directly conflicts with Executive Orders to streamline permitting, reduce regulatory burdens, and declare an energy emergency (E.O. 14154, 14241, 14192, 14213)**
- **Conflicts with repeated Congressional mandates: Mining & Minerals Policy Act of 1970, National Materials & Minerals Policy Research & Development Act of 1980, Energy Act of 2020, Infrastructure Investment & Jobs Act of 2021**

Interference with Mining

The policy of the United States, as defined first by the General Mining Act, unequivocally declared that mining was an important and critical use of federal lands. Subsequent policies regulate mining activity in order to protect surface resources but always with careful preservation of the right to explore for and develop minerals.



Read Our Comments



WHAT CONCERNS US

Unlawfully shifts the standard from “where feasible” to “the fullest extent practicable”

This shift in language seems simple, but it isn't. Impacts from mining must currently be mitigated “where feasible.” Changing to a requirement that impacts be mitigated “to the fullest extent practicable” creates a moving target that can be used to continually increase requirements – potentially making projects uneconomic (in violation of the Mining Law) and giving activists an easier path to stop or significantly delay a project.

Undermines the Mandate that Requirements Cannot Prohibit Mining

While the rule nominally retains language that regulations cannot prohibit mining, it introduces new qualifiers that suggest mining is a discretionary use. This contradicts established legal precedent and works to erase distinctions between mining and other land uses – opening the door to denial in violation of the Mining Law.

Encourages Regulatory Overreach

As written, the proposed changes expand 36 CFR Part 251 (special use authorizations) and Part 212 (road access and use) to cover mining operations.

- Creates duplicative and conflicting regulatory layers (requiring additional permits and agreements), and
- Unduly restricts road access covered by the rights granted by the Mining Law, and could deny the use of safer, more feasible new roads if a legacy road is in place.

Makes Permitting Uncertainty & Delays Even Worse and Challenges Vested Rights

The proposed changes allow the Forest Service to:

- Modify previously-approved Plans of Operations based on “reasonably foreseeable” concerns.
- Suspend operations or impose new conditions mid-project.
- Retroactively apply the new rules to existing operations within a short compliance window.

Adds a “No Effect” Standard

The proposal adds a requirement that all authorized actions under the notice provision be determined to have **“no effect”** on Tribal treaty or statutory rights. This is a higher standard than typically applied under federal law and is broader than necessary. Exploration activities typically avoid any significant impacts, but a **“no effect”** standard will functionally eliminate most use of the new notice provision across most of the West if not the full United States.

Expands Discretion over Ancillary Use of Forest Service Lands

The proposed rule expands federal discretion over use of Forest Service lands to support mineral exploration and development on non-Federal lands.

How to fix it



- **Start with the current 228A framework**
- **Adopt BLM definitions and terminology to the greatest extent possible – don't reinvent the wheel**
- **Mirror BLM's 5-acre notice provision – the National Academy of Sciences recommended this nearly 30 years ago**
- **Update the Draft EIS, which was written in 2018**
- **Industry has offered a red-line version of the current 228A regulations as a roadmap**

This approach will streamline Forest Service regulations, align the Forest Service and BLM regulations, and harmonize the proposal with White House and Congressional policy directives.