U.S. Forest Service Mining Regulations – 36 CFR 228, Subpart A

Summary of regulations at 228.4(a): The District Ranger's authority to regulate mining activities is triggered by the degree of surface disturbance associated with proposed or ongoing mineral activities.

Operator reasonably concludes impacts not likely to be significant	Operator is uncertain if impacts might be significant	District Ranger concludes that impacts will likely be, or are significant
A ↔ B	B ↔ C	C ↔ D
No Forest Service contact required	Submit Notice of Intent	Approved Plan of Operations required

A/B – activities <u>not likely to cause</u> a significant disturbance of surface resource. The following types of activities are excluded from the operator having to submit a Notice of Intent (228.4(a)(1)):

- **Operations that are limited to use of vehicles on existing National Forest System (NFS) roads;**
- **Prospecting and sampling activities such as taking small mineral samples, gold panning, metal detecting (for mineral deposits, not cultural artifacts), non-motorized hand sluicing, battery operated dry washers, and collecting mineral specimens using hand tools;**
- **Marking and monumenting mining claims;**
- **Underground operations which will not cause significant disturbance of surface resources;**
- **Operations, which in their totality, will not cause surface disturbance which is substantially different than that caused by other users of the NFS who are not required to obtain FS authorizations;**
- **Operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise might cause a significant disturbance of surface resources.**

Karuk Tribe of California v. U.S. Forest Service
No. 05-16801 archived on June 8, 2012

B/C – activities that <u>might cause</u> significant disturbance of surface resources (228.4(a)):

- **Except for use of mechanized earthmoving equipment or the cutting of trees, no specific or general types of activities are listed to help trigger Notice of Intent (NOI) submission;**
- **NOI submission to the District Ranger (DR) is triggered by the operator's reasonable <u>uncertainty</u> as to the significance of the potential disturbance on surface resources;****
- **When a NOI is submitted to the DR, the DR will acknowledge receipt and inform the proponent whether or not a Plan of Operations is required;**
- **NOI acknowledgement is not a regulatory instrument** so it is not a Federal action that triggers the National Environmental Policy Act (NEPA) and other requirements.**

C/D – activities that <u>will likely cause or are causing</u> significant disturbance of surface resources requires the submission of a proposed plan of operations (228.4(a)(3) and (4)):

- **The regulation does not list activities which would automatically fall into this category;**
- **Whether or not the operator submits a NOI, the DR has final authority to require a plan of operations if the DR concludes that activities will likely cause or are causing significant resource disturbances;****
- **If the DR determines that operations will likely cause or are causing significant disturbance of surface resources, the operator must submit a proposed plan of operations for approval and operations cannot be conducted until a plan of operations is approved by the DR.**
- **A proposed plan of operations triggers NEPA and other requirements.**

The phrase *"will likely cause significant disturbance of surface resources"* means that, based on past experience, direct evidence, or sound scientific projection, the District Ranger reasonably expects that the proposed operations would result in impacts which more probably than not need to be avoided or ameliorated by means such as reclamation, bonding, timing restrictions, and other measures to minimize adverse environmental impacts to NFS resources.**

**** Federal Register, Vol. 70, No. 107, June 6, 2005** **April 5, 2007**

Notice of Intent Instructions
36 CFR 228.4(a) - Locatable Minerals

If you have a question about the NOI process or mining regulations, contact the Forest Service office that administers the lands involved with your proposed mining operation.

The purpose of submitting a Notice of Intent (NOI) for a proposed mining operation is to provide the Forest Service District Ranger with sufficient information to determine if the level of proposed disturbance will require a Plan of Operations and a detailed environmental analysis. The District Ranger will, within 15 days of receipt of the NOI, evaluate the NOI and notify the operator whether or not a Plan of Operations is required.

A NOI is required from any person proposing to conduct operations which might cause a significant disturbance of surface resources. If you are uncertain whether your operation falls within this category, we recommend you file a NOI. It can be included as part of a letter to the District Ranger and should address the five items listed below.

Karuk Tribe of California v. U.S. Forest Service
No. 05-16801 archived on June 8, 2012

1. the name, address, and telephone number of the operator. The NOI should be signed and dated by the operator.

2. the area involved. The description should include the township, range, and ¼ section of where your proposal will occur and with enough detail to locate the area on the ground. We recommend you enclose a map of suitable scale (U.S. Geological Survey map scale 1: 24,000) with your NOI and indicate on the map where your operations would be located on the ground.

3. the nature of the proposed operations. Describe what you plan to do. Include when and how you will be operating, the proposed start-up date, and the expected duration of the activities. List other details such as the number of people involved in the operation, equipment you intend to use (sizes, capacity, frequency of use), depth of proposed suction dredging or excavation, how waste material will be handled, what vegetation will be removed, the size of area to be disturbed, quantity of material to be removed, housing or camping facilities to be used, and the method for sewage and waste disposal.

4. the route of access to the area of operations. Describe the route of access or display it on your enclosed map, and identify individual roads and trails you intend to use.

5. the method of transport. Describe the vehicles or other transport used to carry people, equipment, supplies, and living quarters to and from the work site. Describe if transport will be by foot, stock (horses, mules, etc.), trucks, helicopters, motorcycles, cars, etc.

36 CFR 228, Subsection 228.4(a)

As revised in Federal Register, Vol. 70, No. 107, June 6, 2005

Sec. 228.4 Notice of Intent--Plan of operations--requirements.

(a) Except as provided in paragraph (a)(1) of this section, a notice of intent to operate is required from any person proposing to conduct operations which might cause significant disturbance of surface resources. Such notice of intent to operate shall be submitted to the District Ranger having jurisdiction over the area in which the operations will be conducted. Each notice of intent to operate shall provide information sufficient to identify the area involved, the nature of the proposed operations, the route of access to the area of operations, and the method of transport.

(1) A notice of intent to operate is not required for:

(i) Operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest System purposes;

(ii) Prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of 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 of mineral specimens using hand tools;

(iii) Marking and monumenting a mining claim;

(iv) Underground operations which will not cause significant surface resource disturbance;

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

(vi) Operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise might cause a significant disturbance of surface resources; or

(vii) Operations for which a proposed plan of operations is submitted for approval;

(2) The District Ranger will, within 15 days of receipt of a notice of intent to operate, notify the operator if approval of a plan of operations is required before the operations may begin.

(3) An operator shall submit a proposed plan of operations to the District Ranger having jurisdiction over the area in which operations will be conducted in lieu of a notice of intent to operate if the proposed operations will likely cause a significant disturbance of surface resources. An operator also shall submit a proposed plan of operations, or a proposed supplemental plan of operations consistent with Sec. 228.4(d), to the District Ranger having jurisdiction over the area in which operations are being conducted if those operations are causing a significant disturbance of surface resources but are not covered by a current approved plan of operations. The requirement to submit a plan of operations shall not apply to the operations listed in paragraphs (a)(1)(i) through (v). The requirement to submit a plan of operations also shall not apply to operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise will likely cause a significant disturbance of surface resources.

(4) If the District Ranger determines that any operation is causing or will likely cause significant disturbance of surface resources, the District Ranger shall notify the operator that the operator must submit a proposed plan of operations for approval and that the operations can not be conducted until a plan of operations is approved.

Karuk Tribe of California v. U.S. Forest Service
No. 05-16801 archived on June 8, 2012