

under this subpart as an initial surface use plan of operations.

**§ 228.107 Review of surface use plan of operations.**

(a) *Review.* The authorized Forest officer shall review a surface use plan of operations as promptly as practicable given the nature and scope of the proposed plan. As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR parts 1500-1508, and the Forest Service implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15 and shall ensure that:

(1) The surface use plan of operations is consistent with the lease, including the lease stipulations, and applicable Federal laws;

(2) To the extent consistent with the rights conveyed by the lease, the surface use plan of operations is consistent with, or is modified to be consistent with, the applicable current approved forest land and resource management plan;

(3) The surface use plan of operations meets or exceeds the surface use requirements of § 228.108 of this subpart; and

(4) The surface use plan of operations is acceptable, or is modified to be acceptable, to the authorized Forest officer based upon a review of the environmental consequences of the operations.

(b) *Decision.* The authorized Forest officer shall make a decision on the approval of a surface use plan of operations as follows:

(1) If the authorized Forest officer will not be able to make a decision on the proposed plan within 3 working days after the conclusion of the 30-day notice period provided for by 30 U.S.C. 226(f), the authorized Forest officer shall advise the appropriate Bureau of Land Management office and the operator as soon as such delay becomes apparent, either in writing or orally with subsequent written confirmation, that additional time will be needed to process the plan. The authorized Forest officer shall explain the reason why additional time is needed and project the

date by which a decision on the plan will likely be made.

(2) When the review of a surface use plan of operations has been completed, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, that:

(i) The plan is approved as submitted;

(ii) The plan is approved subject to specified conditions; or,

(iii) The plan is disapproved for the reasons stated.

(c) *Public notice.* The authorized Forest Service officer will give public notice of the decision regarding a surface use plan of operations and include in that notice whether the decision is appealable under the applicable Forest Service appeal procedures.

(d) *Transmittal of decision.* The authorized Forest officer shall immediately forward a decision on a surface use plan of operations to the appropriate Bureau of Land Management office and the operator. This transmittal shall include the estimated cost of reclamation and restoration (§ 228.109(a)) if the authorized Forest officer believes that additional bonding is required.

(e) *Supplemental plans.* A supplemental surface use plan of operations (§ 228.106(d)) shall be reviewed in the same manner as an initial surface use plan of operations.

[55 FR 10444, Mar. 21, 1990, as amended at 72 FR 10328, Mar. 7, 2007]

**§ 228.108 Surface use requirements.**

(a) *General.* The operator shall conduct operations on a leasehold on National Forest System lands in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface resource disturbance, and that is in compliance with the other requirements of this section.

(b) *Notice of operations.* The operator must notify the authorized Forest officer 48 hours prior to commencing operations or resuming operations following their temporary cessation (§ 228.111).

(c) *Access facilities.* The operator shall construct and maintain access facilities to assure adequate drainage and to minimize or prevent damage to surface resources.

(d) *Cultural and historical resources.* The operator shall report findings of cultural and historical resources to the authorized Forest officer immediately and, except as otherwise authorized in an approved surface use plan of operations, protect such resources.

(e) *Fire prevention and control.* To the extent practicable, the operator shall take measures to prevent uncontrolled fires on the area of operation and to suppress uncontrolled fires resulting from the operations.

(f) *Fisheries, wildlife and plant habitat.* The operator shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR chapter IV), and, except as otherwise provided in an approved surface use plan of operations, conduct operations in such a manner as to maintain and protect fisheries, wildlife, and plant habitat.

(g) *Reclamation.* (1) Unless otherwise provided in an approved surface use plan of operations, the operator shall conduct reclamation concurrently with other operations.

(2) Within 1 year of completion of operations on a portion of the area of operation, the operator must reclaim that portion, unless a different period of time is approved in writing by the authorized Forest officer.

(3) The operator must:

(i) Control soil erosion and landslides;

(ii) Control water runoff;

(iii) Remove, or control, solid wastes, toxic substances, and hazardous substances;

(iv) Reshape and revegetate disturbed areas;

(v) Remove structures, improvements, facilities and equipment, unless otherwise authorized; and

(vi) Take such other reclamation measures as specified in the approved surface use plan of operations.

(h) *Safety measures.* (1) The operator must maintain structures, facilities, improvements, and equipment located on the area of operation in a safe and neat manner and in accordance with an approved surface use plan of operations.

(2) The operator must take appropriate measures in accordance with ap-

plicable Federal and State laws and regulations to protect the public from hazardous sites or conditions resulting from the operations. Such measures may include, but are not limited to, posting signs, building fences, or otherwise identifying the hazardous site or condition.

(i) *Wastes.* The operator must either remove garbage, refuse, and sewage from National Forest System lands or treat and dispose of that material in such a manner as to minimize or prevent adverse impacts on surface resources. The operator shall treat or dispose of produced water, drilling fluid, and other waste generated by the operations in such a manner as to minimize or prevent adverse impacts on surface resources.

(j) *Watershed protection.* (1) Except as otherwise provided in the approved surface use plan of operations, the operator shall not conduct operations in areas subject to mass soil movement, riparian areas and wetlands.

(2) The operator shall take measures to minimize or prevent erosion and sediment production. Such measures include, but are not limited to, siting structures, facilities, and other improvements to avoid steep slopes and excessive clearing of land.

#### § 228.109 Bonds.

(a) *General.* As part of the review of a proposed surface use plan of operations, the authorized Forest officer shall consider the estimated cost to the Forest Service to reclaim those areas that would be disturbed by operations and to restore any lands or surface waters adversely affected by the lease operations after the abandonment or cessation of operations on the lease. If at any time prior to or during the conduct of operations, the authorized Forest officer determines the financial instrument held by the Bureau of Land Management is not adequate to ensure complete and timely reclamation and restoration, the authorized Forest officer shall give the operator the option of either increasing the financial instrument held by the Bureau of Land Management or filing a separate instrument with the Forest Service in the amount deemed adequate by the