

the impacts from the continuation and change of activity are not of a significantly different kind than the existing impacts. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity, even if impairing, may continue to be expanded in an area or progress to the next stage of development so long as the additional impacts are not significantly different from those caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.

(k) *Valid existing right* means a valid discovery had been made on a mining claim on October 21, 1976, and continues to be valid at the time of exercise.

(l) *Undue and unnecessary degradation* means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology.

(m) *Substantially unnoticeable* means something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change.

§ 3802.0-6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22 *et seq.*), a person has a statutory right consistent with other laws and Departmental regulations, to go upon the open (unappropriated and unreserved) public lands for the purpose of mineral prospecting, exploration, development, and extraction. The Federal Land Policy and management Act requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for inclusion in the wilderness system. However, mining operations occurring in the same manner and degree that were being conducted on October 21, 1976,

may continue, even if they are determined to be impairing. Mining activities not exceeding manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands.

§ 3802.0-7 Scope.

(a) These regulations apply to mining operations conducted under the United States mining laws, as they affect the resources and environment or wilderness suitability of lands under wilderness review.

(b) These regulations apply to means of access across public land for the purpose of conducting operations under the U.S. mining laws.

§ 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and reclamation measures selected by the authorized officer that shall be carried out by the operator. An operator may prepare and submit with a plan measures for the reclamation of the affected area.

§ 3802.1-1 When required.

An approved plan of operations is required for operations within lands under wilderness review prior to commencing:

(a) Any mining operations which involve construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;

(b) Any mining operations which destroy trees 2 or more inches in diameter at the base;

(c) Mining operations using tracked vehicles or mechanized earth moving equipment, such as bulldozers or backhoes;

(d) Any operations using motorized vehicles over other than *open use areas and trails* as defined in subpart 6292 of this title, *off-road vehicles*, unless the use of a motorized vehicle can be covered by a temporary use permit issued under subpart 8372 of this title;

(e) The construction or placing of any mobile, portable or fixed structure on public land for more than 30 days;

§ 3802.1-2

(f) On mining operations requiring the use of explosives; or

(g) Any operation which may cause changes in a water course.

EFFECTIVE DATE NOTE: At 67 FR 61745, Oct. 1, 2002, §3802.1-1(d) was amended by removing the phrase "subpart 8372 of this title" and adding in its place the phrase "part 2930 of this chapter", effective Oct. 31, 2002.

§ 3802.1-2 When not required.

A plan of operations under this subpart is not required for—

(a) Searching for and occasionally removing mineral samples or specimens;

(b) Operating motorized vehicles over *open use areas and trails* as defined in 43 CFR part 8340 so long as the vehicles conform to the operating regulations and vehicle standards contained in that subpart;

(c) Maintaining or making minor improvements of existing access routes, bridges, landing areas for aircraft, or other facilities for access where such improvements or maintenance shall not alter the alignment, width, gradient, size or character of such facilities; or

(d) Making geological, radiometric, geochemical, geophysical or other tests and measurements using instruments, devices, or drilling equipment which are transported without using mechanized earth moving equipment or tracked vehicles.

§ 3802.1-3 Operations existing on October 21, 1976.

A plan of operations shall not be required for operations that were being conducted on October 21, 1976, unless the operation is undergoing changes that exceed the manner and degree of operations on October 21, 1976. However, if the authorized officer determines that operations in the same manner and degree are causing undue or unnecessary degradation of lands and resources or adverse environmental effects, an approved plan containing protective measures may be required. Any changes planned in an existing operation that would result in operations exceeding the present manner and degree shall be delayed until the plan is processed under provisions of § 3802.1-5 of this title.

43 CFR Ch. II (10-1-02 Edition)

§ 3802.1-4 Contents of plan of operations.

(a) A plan of operations shall be filed in the District Office of the Bureau of Land Management in which the claim is located.

(b) No special form is required to file a plan of operations.

(c) The plan of operations shall include—

(1) The name and mailing address of both the person for whom the operation will be conducted, and the person who will be in charge of the operation and should be contacted concerning the reclamation or other aspects of the operation (any change in the mailing address shall be reported promptly to the authorized officer);

(2) A map, preferably a topographic map, or sketch showing present road, bridge or aircraft landing area locations, proposed road, bridge or aircraft landing area locations, and size of areas where surface resources will be disturbed;

(3) Information sufficient to describe either the entire operation proposed or reasonably foreseeable operations and how they would be conducted, including the nature and location of proposed structures and facilities;

(4) The type and condition of existing and proposed means of access or aircraft landing areas, the means of transportation used or to be used, and the estimated period during which the proposed activity will take place;

(5) If and when applicable, the serial number assigned to the mining claim, mill or tunnel site filed pursuant to subpart 3833 of this title.

§ 3802.1-5 Plan approval.

(a) The authorized officer shall promptly acknowledge the receipt of a plan of operations and within 30 days of receipt of the plan act on the plan of operations to determine its acceptability.

(b) The authorized officer shall review the plan of operations to determine if the operations are impairing the suitability of the area for preservation as wilderness. Pending approval of the plan of operations, mining operations may continue in a manner that minimizes environmental impacts as prescribed in § 3802.3 of this title. After