

The Supporting Statement for OMB 0596-NEW
PROPOSED REVISION OF 36 CFR 228, SUBPART A - LOCATABLE MINERALS
(FORMERLY 36 CFR 252)
MARCH 2008

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Pertinent Laws and Regulations

- Organic Act of 1897
- 1872 Mining Law
- 36 CFR 228, Subpart A

The United States General Mining Laws, as amended, govern prospecting for and appropriation of metallic and most nonmetallic minerals on approximately 122 million acres of National Forest set up by proclamation from the public domain. These laws give individuals the right to search for and extract valuable mineral deposits, and secure title to the lands involved. A prospector may locate a mining claim upon the discovery of a valuable mineral deposit. Recording that claim in the local county courthouse and with the appropriate BLM State Office affords protection to the mining claimant from subsequent locators. A mining claimant is entitled to reasonable access to the claim for further prospecting, mining, or necessary related activities, subject to other applicable laws and regulations. Locatable mineral regulations are specific rules and procedures for use of the surface of National Forest System lands, in connection with mineral operations authorized by the United States mining laws, to minimize adverse environmental impacts to surface resources.

The Forest Service is proposing a revision to 36 CFR 228, Subpart A - Regulations. The Agency requests that upon approval the new information collection associated with this proposed rule change be incorporated into the 0596-0022 package.

This proposed revision to the rule adds a new information collection. The collection, entitled Bonded Notice, is in the revised regulation at 36 CFR 228.5. The information collected is identical to that collected for the currently approved Plan of Operation collection, with the exception that the Bonded Notice requirement will only apply to operations with a duration of two years (or less), affecting only five acres or less. Activities previously administered under a less complicated Plan of Operation will now be under the Bonded Notice requirement.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**
 - a. What information will be collected - reported or recorded? (If there are pieces of information that are especially burdensome in the**

collection, a specific explanation should be provided.)

There is no particular format required for the new information collection associated with the proposed revision of the locatable mineral regulations.

A proposed bonded notice must include:

- The name and legal mailing address of all operators (and all claimants if they are not the operators) and their lessees, assigns, or designees.
- A map or sketch showing information sufficient to locate the proposed area of operations on the ground, the location, and, if applicable, the route, of all existing and proposed roads, trails, bridges, landing areas for aircraft, and other access facilities to be used in connection with the operations, and the approximate location and size of areas where National Forest System surface resources will be disturbed.
- Information sufficient to describe or identify the type of operations proposed and how they would be conducted, the proposed mode of transportation to be used, the type and standard of all existing and proposed roads, trails, bridges, landing areas for aircraft, and other access facilities, the proposed period during which the proposed operations will occur, and proposed measures to be taken to meet the environmental protection requirements set forth in §228.9.
- A preliminary estimate of the cost of reclaiming National Forest System lands calculated in accordance with §228.13(c) but based only upon the reclamation requirements set forth in §228.9(i) and (k), along with an explanation sufficient to show how the estimate was calculated.

b. From whom will the information be collected? If there are different respondent categories (e.g., loan applicant versus a bank versus an appraiser), each should be described along with the type of collection activity that applies.

Forest Service employees collect the required information in 36 CFR Part 228, Subpart A, from either the mineral operator or the mining claimant who have operations with a duration of two years (or less), affecting only five acres or less.

c. What will this information be used for - provide ALL uses?

The authorized FS official will use the collected information to ensure that the exploration, development, and production of mineral resources are conducted in an environmentally sensitive manner; that these mineral operations are integrated with the planning and management of other resources using the principles of ecosystem management; and that lands disturbed by mineral operations are reclaimed using the best scientific knowledge and returned to other productive uses. Without this information, the Forest Service would not comply with Federal Regulations and locatable mineral operations could result in undue damage to surface resources.

d. How will the information be collected (e.g., forms, non-forms, electronically, face-to-face, over the phone, over the Internet)?

Does the respondent have multiple options for providing the information? If so, what are they?

For mineral operations requiring a Bonded Notice, the most common format used is form FS-2800-5 developed by the Forest Service. However, the use of this form is optional and the information is collected from the operator in whatever format or type of medium that the operator chooses.

e. How frequently will the information be collected?

The Bonded Notice is collected initially for each operation and renewed every two years.

f. Will the information be shared with any other organizations inside or outside USDA or the government?

Information shared with several western states.

g. If this is an ongoing collection, how have the collection requirements changed over time?

This is a new collection associated with an amendment to 36 CFR 228, Subpart A – Locatable Minerals.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The operator/claimant already has the option to choose what method/form is the most convenient for them to use when submitting the required information. Most choose to submit a paper copy of FS-2800-5 provided by the Forest Service. However, sometimes, the operator and the Forest Service use the Fax machine to send copies back and forth when it is not convenient to use the regular mail system or when unable to schedule a meeting that is convenient for both parties to attend.

Versions of form FS-2800-5 posted on the World Wide Web and available in hard copy are identical.

Follow these instructions to get a copy of FS-2800-5:

- a. Access the Internet.
- b. Type http://www.fs.fed.us/geology/mgm_locatable.html into the address box and left click once. This will take you to the USDA, Forest Service Minerals and Geology, Locatable Minerals and Mining Claims section of the website.
- c. In the **Forest Service Information** box, select **Plan of Operations Form** and left click once on the GO button. This will bring up the current Plan of Operations form.

The Minerals and Geology Management Staff is currently working with a contractor to get the form posted on our staff web site and converted so that an operator can fill the form out on the web and electronically mail it to the appropriate Forest Service office. As part of this submission, the Forest Service requests approval to move forward and initiate this option.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The Forest Service has signed Memorandums of Understanding with Idaho, Washington, Wyoming, Montana, Utah, Colorado, South Dakota, Nevada, Oregon, and California. The intent of these memos is to reduce the amount of administrative duplication between the states and the Forest Service and achieve a more efficient use of personnel and appropriations, and eliminate duplicate bonding requirements to the operator/claimant.

To avoid duplication of effort, The Forest Service works closely with county and state officials to ensure, as practicable, that conditions required of operators in minimizing adverse environmental impacts conform to applicable local, state, and federal regulations. The Forest Service may accept as functional equivalents to its requirements of documents relating to operating plans, reclamation plans, and environmental studies when such plans and studies meet or exceed the minimum standards set by USDA regulations.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The proposed revision of 36 CFR Part 228, Subpart A, will continue to provide the Forest Service and the mining community with the means of meeting mutual environmental responsibilities to protect the surface resources of National Forest System lands. Nothing in the mineral regulations suggests that small business entities should be able to conduct mineral operations under different environmental standards than large corporations. Whether the operator is a large corporation or a small business, evaluation of the Bonded Notice will be based on the merits of the notice. Any required mitigation measures will be based on the projected disturbance to surface resources.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Without prior notification, and without an established procedure for joint Forest Service and operator planning, serious, long-lasting, and avoidable adverse impacts on surface resources could become a common occurrence. Access roads improperly located and constructed would most likely result in aesthetic damage, soil loss, and water pollution. Soil loss, water pollution, and adverse impacts to plants and animals and their habitat will also probably occur with the unplanned disposal of waste rock and mill tailings, inadequate water drainage controls in disturbed areas, ill conceived or careless bulldozer prospecting, and the failure to reclaim disturbed areas after operations are completed. Public safety to national forest users would also be a major concern if operators were allowed to leave shafts, cuts, and adits uncovered, unfenced, or unmarked.

If the information were collected less frequently, the Forest Service would be unable to ensure that:

- The mineral operations are conducted in an environmentally sensitive manner;
- Mineral operations are integrated with the planning and management of other resources;

- Lands disturbed by mineral operations are reclaimed using the best scientific knowledge and principles;
- Lands disturbed by mineral operations are reclaimed and returned to other productive uses;
- The mineral operations are in accordance with our legal and regulatory authority; and
- Mineral operations conducted in congressionally designated, or other withdrawn areas, are supported by valid existing rights.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

If an operator is required to submit proprietary data, such as trade secrets, because of the potential surface disturbance, then that information would be locked up for security reasons, and it would be immediately returned to the operator when no longer needed. All requests by third parties for this information are processed under the Freedom of Information Act rules and guidelines.

There are no other special circumstances. The collection of information will be conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

8. If applicable, provide a copy and identify the date and page number of

publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A 60-day notice requesting comments is embedded in the proposed rule.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The following individuals were contacted and asked to provide comments on the availability of data, frequency of collection, clarity of instructions, record keeping, disclosure, reporting format, and data elements to be recorded, disclosed, or reported. Since the process of preparing a plan of operation is similar to that required for preparing a bonded notice, the comments are pertinent to this information collection.

Jan Alexander, Eastern Oregon Mining Assoc., P.O. Box 153, Unity, OR, (541) 446-3413

Comments: Took her 4-5 hours to fill out for new plan of operation. She said the FS should add some language that lets miners know that they should contact the FS if operations cease. She thought it was a wonderful form that outlines the needed information and is very helpful. The BLM should follow suit.

Mark Robinson, Project Mgr., Zarembo Minerals Exploration, P.O. Box 1348, Wrangell, AK, 99929

Comments: It took him two man weeks to prepare their plan of operation. He had no problem with the instructions for the plan of operations and thought the data elements to be reported were reasonable.

9. Explain any decision to provide any payment or gift to respondents, other than re-enumeration of contractors or grantees.

The Forest Service does not provide any kind of payment or gift to the respondents or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Evaluation of impacts on surface resources from activities associated with Bonded Notices may require, in some cases, obtaining data considered

proprietary by operators, and as such, may affect their competitive interests if it is released. Such data are usually not requested. However, when requested, it is released only with the operator's consent. When the data is kept, it is Forest Service practice to keep such data secured in locked storage. When the requested data is not retained, the information is usually examined and immediately returned to the operator.

All information and data submitted by an operator pursuant to the revised regulations at 36 CFR Part 228, Subpart A, shall be available for examination by the public at the office of the district ranger in accordance with the provisions of the Freedom of Information Act and the Privacy Act. We have included the specific wording found in Section 228.7 of the locatable mineral regulations that pertains to the confidentiality of the information provided by respondents. It is as follows:

“Except as provided herein, all information and data submitted by an operator pursuant to the regulations in this part shall be available for examination by the public at the Office of the District Ranger in accordance with the provisions of 7 CFR 1.1-1.24 and sections 200.6-200.8 of this chapter. Specifically identified information and data submitted by the operator as confidential concerning trade secrets or privileged commercial or financial information will not be available for public examination, except upon a determination made pursuant to the procedures at 7 CFR 1.12, that such information is not exempt by law from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552. Information and data generally found to be exempt from disclosure that accordingly may be withheld from public examination includes but is not limited to:

(a) Known or estimated outline of the mineral deposits and their location, attitude, extent, outcrops, and content;

(b) Known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws;

(c) Other commercial information which relates to competitive rights of the operator.”

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

This kind of information is not requested from the mining claimant/operator.

- 12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of**

response, annual hour burden, and an explanation of how the burden was estimated.

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form.**
 - a) **Description of the collection activity**
 - b) **Corresponding form number (if applicable)**
 - c) **Number of respondents**
 - d) **Number of responses annually per respondent,**
 - e) **Total annual responses (columns c x d)**
 - f) **Estimated hours per response**
 - g) **Total annual burden hours (columns e x f)**

Table 1: Calculation of Total Burden Hours

DESCRIPTION OF COLLECTION ACTIVITY	FORM NUMBER	NUMBER	RESPONSE FREQUENCY	HOUR BURDEN PER RESPONSE	TOTAL BURDEN HOURS
Bonded Notice	FS-2800-5	100	1	6	600

- **Record keeping burden should be addressed separately and should include columns for:**
 - a) **Description of record keeping activity:** None
 - b) **Number of record keepers:** None
 - c) **Annual hours per record keeper:** None
 - d) **Total annual record keeping hours (columns b x c):** Zero
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

Table 2: Calculation of Estimated Cost Respondents

(A) DESCRIPTION OF THE COLLECTION ACTIVITY	(B) ESTIMATED TOTAL ANNUAL BURDEN ON RESPONDENTS (HOURS)	(C) ESTIMATED AVERAGE INCOME PER HOUR	(D) ESTIMATED COST TO RESPONDENT S
Preparation of Bonded Notice	600	\$24.48	\$14,688

The United States Geological Survey (USGS) published earnings information pertaining to locatable mineral operations. That information can be found in the [Mineral Commodity Summaries 2007](#). The USGS disclosed that the estimated “Average weekly earnings of production workers” for metal mining in 2006 was \$979. Based on 40 hours a week and on an 8-hour workday, the average hourly salary in the locatable mineral arena is about \$24.48.

- 13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.**

There are no capital operation and maintenance costs.

- 14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.**

The response to this question covers the actual costs the agency will incur as a result of implementing the information collection. The estimate should cover the entire life cycle of the collection and include costs, if applicable, for:

Employee labor and materials for developing, printing, storing forms

Employee labor and materials for developing computer systems, screens, or reports to support the collection

Employee travel costs

Cost of contractor services or other reimbursements to individuals or organizations assisting in the collection of information

Employee labor and materials for collecting the information

Employee labor and materials for analyzing, evaluating, summarizing, and/or reporting on the collected information

Operations to be administered under the Bonded Notice are currently covered under a Plan of Operation. However, formal environmental assessments will not be prepared for Bonded Notices reducing the time and costs for processing and administering a Bonded Notice.

A recent cost estimate for processing and administering an “average” plan of operations totaled over \$17,000 per plan. It is anticipated that the cost for a bonded notice will be less than a third of the cost per Plan of Operation or \$4360 per bonded notice.

The following assumptions were used to create tables 3 and 4:

- Each individual was a Step 5 pay grade; and
- The 2008 General Pay Schedule for the Federal Government was used
- Cost to the Government was calculated by multiplying the salary by 1.3

Table 3: Estimated Cost-to-Government for Processing and Administration of a Bonded Notice

ACTION ITEM	PERSONNEL	GS LEVEL	HOURLY RATE*	HOURS	SALARY	COST TO GOVT*
Bonded notice reviewed for completeness, questions and deficiencies noted, call(s) to operator, new changes drafted, on-the-ground meeting w/operator scheduled.	Technician	9	\$21.61	2	43.22	56.186
Cultural resource survey conducted	Archeologist	11	\$26.15	8	209.20	271.96
Meet w/operator in the field	Technician	9	\$21.61	4	86.44	112.372
Meet w/District Ranger to discuss operation	Technician	9	\$21.61	1	21.61	28.093
	District Ranger	13	\$37.27	1	37.27	48.451
Send synopsis of Bonded Notice to specialists	Technician	9	\$21.61	2	43.22	56.186
Specialist meeting in office and field	Technician	9	\$21.61	6	129.66	168.558
	District Ranger	13	\$37.27	2	74.54	96.902
	Hydrologist	11	\$26.15	4	104.60	135.98

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ACTION ITEM	PERSONNEL	GS LEVEL	HOURLY RATE*	HOURS	SALARY	COST TO GOVT*
	Geologist	11	\$26.15	6	156.90	203.97
	Engineer	11	\$26.15	6	156.90	203.97
	Biologist	11	\$26.15	4	104.60	135.98
	Soil Scientist	11	\$26.15	4	104.60	135.98
	Botanist	11	\$26.15	10	261.50	339.95
	Forester	11	\$26.15	4	104.60	135.98
	Fisheries Bio	11	\$26.15	10	261.50	339.95
	District Ranger	13	\$37.27	1	37.27	48.451
Fisheries/wildlife/botany surveys conducted and report prepared	Biologist	11	\$26.15	6	156.90	203.97
Make changes based on issues/concerns from field visit, discuss with operator	Technician	9	\$21.61	4	86.44	112.372
	Geologist	11	\$26.15	4	104.60	135.98
Compile specialist comments, develop changes, review proposed reclamation bond for completeness.	Technician	9	\$21.61	4	86.44	112.372
	Engineer	11	\$26.15	1	26.15	33.995
Office/on-site specialists meeting with operator, discuss changes, explain bonding, discuss surface disturbance.	Technician	9	\$21.61	5	108.05	140.465
	Geologist	11	\$26.15	4	104.60	135.98
	Engineer	11	\$26.15	4	104.60	135.98
	Hydrologist	11	\$26.15	2	52.30	67.99
	Biologist	11	\$26.15	2	52.30	67.99
	Forester	11	\$26.15	2	52.30	67.99
	Soil Scientist	11	\$26.15	2	52.30	67.99
	Botanist	11	\$26.15	2	52.30	67.99
Prepare cultural resource survey report	Archeologist	11	\$26.15	2	52.30	67.99
Final consultation with specialists	Technician	9	\$21.61	8	172.88	224.744
	Clerical	4	\$12.37	2	25.40	32.162
	Geologist	11	\$26.15	1	26.15	33.995
Specialists review final Bonded Notice, minor changes made, District Ranger signs authorization; operator notified when to begin work.	Technician	9	\$21.61	4	86.44	112.372
	Hydrologist	11	\$26.15	1	26.15	33.995
	Geologist	11	\$26.15	1	26.15	33.995
	Engineer	11	\$26.15	1	26.15	33.995
	Biologist	11	\$26.15	1	26.15	33.995
	Forester	11	\$26.15	1	26.15	33.995
	District Ranger	13	\$37.27	1	37.27	48.451
Cost Estimate to Process Bonded Notice						4559.67
Project administration	Technician	9	\$21.61	30	648.30	842.79
	Hydrologist	11	\$26.15	2	52.30	67.99
	Geologist	11	\$26.15	4	104.60	135.98
	Engineer	11	\$26.15	4	104.60	135.98

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ACTION ITEM	PERSONNEL	GS LEVEL	HOURLY RATE*	HOURS	SALARY	COST TO GOVT*
	Biologist	11	\$26.15	1	26.15	33.395
	Forester	11	\$26.15	1	26.15	33.395
<i>Cost Estimate to Conduct Project Administration</i>						1249.53
<i>Total Cost to Process/Administer a Bonded Notice</i>						5809.20

Table 4: Total Estimated Cost for Information Collection under 36 CFR Part 228, Subpart A

INFORMATION COLLECTION	NUMBER OF RESPONDENTS	COST PER ACTION ITEM	TOTAL COST
Bonded Notice	100	\$5,809.20	\$580,920.00

* Taken from: http://www.opm.gov/oca/08tables/pdf/g_s_h.pdf

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of OMB form 83-I.

This is a new collection. Once approved, this information collection will be added to OMB 0596-0022.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

The Agency has no plans to publish the collected information.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Forest Service currently has approval under information collection 0596-0022 to refrain from displaying the expiration date on form FS-2800-5. The Agency requests that such approval be extended to include the uses proposed herein for FS-2800-5

Displaying the expiration date has caused some confusion with many operators and our own personnel when the expiration date has elapsed and the request for the next information collection cycle has not yet been approved. Operators are reluctant to fill out a form that will expire in the near future and it will take several months to get their plan of operations approved. Many of our own personnel are confused about that period of time when the expiration date has lapsed and the new information is not approved but at OMB waiting review and approval.

18. Explain each exception to the certification statement identified in

item 19, "Certification Requirement for Paperwork Reduction Act."

We have not identified any exceptions in Item 19.

B. Collections of Information Employing Statistical Methods

We do not employ statistical methods regarding the information collected.