

DEPARTMENT OF THE INTERIOR  
Bureau of Land Management

UNIVERSITY OF UTAH  
RESEARCH INSTITUTE  
EARTH SCIENCE LAB.

[43 CFR 3800]

MINING CLAIMS UNDER THE  
GENERAL MINING LAWS

Exploration and Mining—Wilderness  
Review Program

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This proposed rulemaking provides for the management and protection of potential and identified wilderness study areas on public lands. The Federal Land Policy and Management Act of 1976 provides that certain public lands be reviewed to determine their suitability for inclusion in the Wilderness System. Mining may continue on wilderness study areas during the review in the same manner and degree as was being conducted on October 21, 1976, provided that no undue or unnecessary damage is being done to public lands and resources and that environmental protection is afforded. The intended effect is to protect potential and identified wilderness study areas from the loss of wilderness suitability that might result from mining operations.

**DATES:** Comment date: March 14, 1979

**ADDRESS:** Send comments to:

Director (210)  
Bureau of Land Management  
1800 C Street, N.W.  
Washington, D.C. 20240

Comments received will be available for public review in room 5555 at the above address from 8:00 a.m. to 4:00 p.m. on regular working days.

**FOR FURTHER INFORMATION, CONTACT:**

Robert M. Anderson at the above  
address or phone 202-343-7722

or

Robert C. Bruce  
202-343-7424

**SUPPLEMENTARY INFORMATION:** The principal author of this rulemaking is Billy R. Templeton of the Bureau of Land Management, Division of Legislation and Regulatory Management, assisted by Kenneth Lee of the Department of the Interior, Office of the Solicitor.

In providing for wilderness review on public lands, section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) provides that operations related to mining on roadless areas of 5,000 acres or more and roadless islands may continue in the same manner and degree in which the same was being conducted on the date of approval of the Act (October 21, 1976). Mining operations other than these must be regulated to ensure nonimpairment of wilderness suitability. The section also includes the provision that the Secretary of the Interior by regulation or otherwise shall take any action required to prevent unnecessary or undue degradation of the

lands and resources or to afford environmental protection. Provisions of section 603 shall be implemented as follows:

1. One of the stated objectives of the Act is to protect potential wilderness areas from activities that would impair their suitability for inclusion in the wilderness system until those roadless areas of 5,000 acres or more and roadless islands can be reviewed, a recommendation made by the Secretary, and action taken by the Congress on the recommendation.

2. This rulemaking shall apply to any activity related to mining under the general mining laws that may result in impairment of the wilderness suitability of public lands and resources in wilderness study areas.

3. The location of identified wilderness study areas will be made public through the FEDERAL REGISTER, local news media, public meetings, or distribution of maps as necessary to implement the regulations.

4. A plan of operations is required for existing operations that were initiated after October 21, 1976, for the expansion of existing operations, or for new operations. Operations will be monitored through the plan of operations. Provisions are included to make changes in the plan, to expand operations if appropriate, or to transfer a plan to a new owner.

5. The regulatory procedures are set up to provide for the least possible interruption of mining operations during the development and review of plans of operations consistent with the need to manage and protect the potential or identified wilderness study areas.

6. Discretionary bonding, reclamation procedures, environmental protection standards, and appeals procedures are included in the rulemaking.

The number of persons required to assume a Federally imposed paperwork burden has been reduced to the extent possible in keeping with the statutory mandate to avoid impairment of the wilderness suitability of wilderness study areas. A level of operations, based upon the kinds of mining related activities taking place on public lands and the potential impact of these activities, is established in the draft proposed rulemaking. Only those operations above that level are subject to regulation. The presence of ongoing mining operations served by roads and other ancillary facilities precludes many mineralized areas from consideration as wilderness study areas.

Therefore, the enclosed rulemaking would affect a relatively small segment of the mining industry and a relatively small acreage of public land. For these

reasons this proposed rulemaking, as an interim regulation, is not considered a significant regulatory proposal requiring a regulatory analysis under Executive Order 12044. Both a regulatory analysis and environmental statement are being prepared to assess the need for and the impact of regulations for hardrock mining operations on all public lands. Special provisions for the management and protection of wilderness study areas are being analyzed in the context of an overall regulatory proposal for the public lands. It is considered necessary and appropriate to promulgate interim regulations to carry out the intent of the Congress to guard against impairment of the suitability of wilderness study areas for inclusion in the Wilderness System. These regulations provide management capability to accomplish that objective during the time needed to complete the Regulatory Analysis and Environmental Impact Statement analyzing mining regulations for public lands in general.

Subsequent to the completion of the Regulatory Analysis and Environmental Impact Statement, the form and substance of regulatory provisions to replace these interim regulations will be determined and permanent regulations adopted.

Under the authority of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), it is proposed to amend Part 3800, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations as set forth below:

1. Part 3800 is amended by adding Subpart 3802 to read as follows:

PART 3800—MINING CLAIMS UNDER THE  
GENERAL MINING LAWS

Subpart 3802—Exploration and Mining—Wilderness Review Program

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Authority: 43 U.S.C. 1782

Subpart 3802—Exploration and Mining, Wilderness Review Program

**§ 3802.0-1 Purpose.**

The purpose of this subpart is to establish procedures to prevent impairment of the suitability of potential and identified wilderness study areas for inclusion in the wilderness system and to prevent unnecessary or undue degradation and provide for environmental protection of the public lands and resources.

**§ 3802.0-2 Objectives.**

The objectives of this subpart are to:

(a) allow mining claim location, prospecting, and mining operations in potential or identified wilderness study areas pursuant to the United States Mining Laws, but only in a manner that will not impair the suitability of an area for inclusion in the wilderness system, except that operations initiated prior to October 21, 1976 may continue in the same manner and degree as they were being conducted on that date even if impairment is being caused as a necessary part of the operation; and

(b) assure management programs that reflect consistency between the spirit and intent of the United States Mining Laws, and other appropriate statutes.

**§ 3802.0-3 Authority.**

These regulations are issued under the authority of sections 302, 303, and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).

**§ 3802.0-5 Definitions.**

As used in this subpart, the term:

(a) "Reclamation as contemporaneously as practicable" means the commencement, conduct, and completion of reclamation as soon after disturbance as feasible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the requirements for environmental protection set forth in this subpart.

(b) "Environment" means surface and subsurface resources both tangible and intangible, including air, water, scenic, cultural, paleontological, vegetative, soil, wildlife, fish, and wilderness values.

(c) "Identified Wilderness Study Area" means a roadless area which has been found through the Bureau of Land Management wilderness inventory process to have wilderness characteristics (thus having the potential of being included in the National Wilderness Preservation System), and which will be subjected to intensive analysis through the Bureau's planning system, and through public review to determine wilderness suitability, and is not yet the subject of a Congressional decision regarding its designation as wilderness.

(d) "Impairment of suitability for inclusion in the Wilderness System" means taking actions that cause permanent impacts, i.e. impacts that will not be practically and economically reclaimed within a time

period no longer than 5 years after Congressional designation of the area as a unit of the National Wilderness Preservation System. Reclaimed means that the effects of the activity shall be rehabilitated to the point of being substantially unnoticeable and damaged environmental systems returned to essentially the condition that existed on the effective date of these regulations or on October 21, 1976, for operations already in motion.

(e) "Mining claim" means any unpatented mining claim, millsite, or tunnel site authorized by the United States mining laws.

(f) "Mining operations" means all functions, work, facilities, and activities in connection with the exploration, development, extraction, and processing of mineral deposits and all uses reasonably incident thereto including the construction and maintenance of roads and other means of access to and across lands subject to these regulations.

(g) "Operator" means a person conducting or proposing to conduct prospecting, exploration, or mining operations.

(h) "Potential Wilderness Study Area" means any area of the public lands for which the wilderness inventory has not been completed pursuant to the Section 603 of the Federal Land Policy and Management Act.

(i) "Reclamation" means:

(1) reshaping of the land disturbed or affected by mining operations, to its approximate original contour or to an appropriate contour considering the surrounding topography that is consistent with preserving its suitability for inclusion within the wilderness system as determined by the authorized officer;

(2) restoring such reshaped lands to a stable soil condition consistent with its pre-mining productivity and capable of supporting all practicable uses that the land was capable of supporting at the time of initiation of mining operations as determined by the authorized officer; and

(3) revegetating the land, to provide a vegetative cover capable of self-regeneration and equal in permanence to its vegetative state at initiation of mining operations.

(j) "Wilderness inventory" means an evaluation conducted under BLM wilderness inventory procedures in the form of a written description and map showing those lands that meet the wilderness criteria established under section 603(a) of the Federal Land Policy and Management Act.

(k) "Manner and degree" means that existing operations will be defined geographically by the area of active development and the logical adjacent (not necessarily contiguous) continuation of the existing activity, and not necessarily by the boundary of a particular claim or lease. 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 may continue to be expanded in an area over time so long as the additional impacts caused by the expansion do not cause impairment of wilderness suitability beyond

that caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.

#### § 3802.0-6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22), 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 activities in potential or identified wilderness study areas to prevent impairment of the suitability of these areas for inclusion in the wilderness system. However, mining activities occurring in the same manner and degree that same 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 and to afford environmental protection for public lands and resources.

#### § 3802.0-7 Scope.

(a) These regulations apply to prospecting, exploration, and mining operations conducted under the United States mining laws, as they affect the resources and environment of potential or identified wilderness study areas of the public lands that are subject to location under those laws.

(b) These regulations apply to roads and other approved means of access across public land for the purpose of conducting operations under the United States mining laws.

#### § 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and rehabilitation 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 potential or identified wilderness study areas, prior to commencing:

(a) Any mining operations which involve construction of roads, 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;

(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; or

(f) on mining operations requiring the use of explosives.

**§ 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 6292 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 is required for operations that were being conducted on October 21, 1976, only if that mining operation is undergoing changes that exceed the manner and degree of operations on October 21, 1976. Any changes to be made by the operator shall be delayed until the plan is processed under provisions of section 3802.1-5.

**§ 3802.1-4 Contents of plan of operations.**

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

(b) 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 roads 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 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 subpart. After completing the review of the plan of operations, the authorized officer shall give the operator notice that: (1) the plan is approved subject to measures that will prevent the impairment of the suitability of the area for preservation as wilderness as determined by the authorized officer; or (2) the anticipated impacts of the mining operations are such that all or part of further operations will impair the suitability of the area for preservation as wilderness, the plan is disapproved and continuance of such operations is not allowed.

(c) Upon receipt of a plan of operations for mining activities commencing after the effective date of these regulations, the authorized officer may notify the operator that:

(1) In a potential wilderness study area where an inventory has not been completed, an operator may agree to operate under a plan of operations that includes terms and conditions that would be applicable in an identified wilderness study area. Without an agreement to this effect, no action may be taken on the plan until a wilderness inventory is completed; or

(2) The area has been inventoried and does not contain wilderness characteristics, and that the mining operations are no longer subject to these regulations; or

(3) The anticipated impacts are such that all or part of the proposed mining operations will impair the suitability of the area for preservation as wilderness, and therefore, the proposed mining operation cannot be allowed.

(d) In addition to (a) through (c) above, the following general plan approval procedures may also apply. The authorized officer may notify the operator that:

(1) The plan of operations is unacceptable and the reasons therefore; or

(2) Modification of the plan of operations is necessary to meet the requirements of these regulations; or

(3) The plan of operations is being reviewed, but that more time, not to exceed an additional 60 days, is necessary to complete such review, setting forth the reasons why additional time is needed, except in those instances where it is determined that an Environmental Statement or compliance with section 106 of the National Historic Preservation Act (NHPA) is needed. Periods during which the area of operations is inaccessible for inspection due to climatic conditions, fire hazards or other physical conditions or legal impediments, shall not be included when counting the 60 calendar day period.

(e) If the authorized officer does not act on the plan of operations within the 30-day period, or the 60-day extension, or notify the operator of the need for an Environmental Statement or compliance with section 106 of NHPA, operations as set forth in the plan may begin. However, if the authorized officer at a later date finds that operations under an automatically approved plan are impairing wilderness suitability,

the authorized officer shall notify the operator that the operations are not in compliance with these regulations and what changes are needed, and shall require the operator to submit a modified plan of operations, within a time specified in the notice. If the operator is notified of the need for an Environmental Statement, the plan of operations shall not be approved before 30 days after final statement is prepared and filed with the Environmental Protection Agency. If the operator is notified of the need for compliance with section 106 of the NHPA, the plan of operations shall not be approved until the compliance responsibilities of the Bureau of Land Management are satisfied.

(f) If cultural resource properties listed on or eligible for listing on the National Register of Historic Place, are within the area of operations, no operations which would affect those resources shall be approved until compliance with section 106 of the National Historic Preservation Act is accomplished. The operator is not required to do or to pay for an inventory. The responsibility and cost of the cultural resource mitigation included in an approved plan of operation shall be the operator's.

(g) Pending final approval of the plan of operations, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws. Such operations shall be conducted so as to prevent impairment of wilderness suitability and to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 3802.3 of this title.

#### **§ 3802.1-6 Modification of Plan.**

(a) If the development of a plan for an entire operation is not possible, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time. Thereafter, he shall file a supplemental plan or plans prior to undertaking any operations not covered by the initial plan.

(b) At any time during operations under an approved plan of operations, the authorized officer or the operator may initiate a modification of the plan detailing any necessary changes that were unforeseen at the time of filing of the plan of operations. If the operator does not furnish a proposed modification within a time considered reasonable by the authorized officer, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the supporting facts and reasons for his recommendations. In acting upon such recommendation, except in the case of a modification under section 3802.1-5(e) the State Director shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations; (2) whether the disturbance is or may become of such significance as to require modification of the plan of operations in order to meet the requirement for environmental protection specified in § 3802.3-2 of this title, and (3) whether the disturbance can be minimized using reasonable

means. Lacking such a determination by the State Director, an operator is not required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan of operations until a modified plan is approved, unless the State Director determines that the operations are causing impairment or unnecessary or undue degradation to surface resources. He shall advise the operator of those measures needed to avoid such damage and the operator shall immediately take all necessary steps to implement measures recommended by the State Director.

(c) A supplemental plan of operations or a modification of an approved plan of operations shall be approved by the authorized officer in the same manner as the initial plan of operations. Upon a showing of good cause, the authorized officer shall grant an extension of time to submit a plan of operations not to exceed an additional 180 days.

#### **§ 3802.1-7 Existing operations.**

(a) Persons conducting mining operations on the effective date of these regulations, who would be required to submit a plan of operations under §3802.1-1 of this title, may continue operations but shall, within 60 days after the effective date of these regulations, submit a plan of operations. Upon a showing of good cause, the authorized officer shall grant an extension of time to submit a plan of operations not to exceed an additional 180 days.

(b) Operations may continue according to the submitted plan of operations during its review unless the operator is notified otherwise by the authorized officer.

(c) Upon approval of a plan of operations, mining operations shall be conducted in accordance with the approved plan.

#### **† 3802.2 Bond requirements.**

(a) Any operator who conducts mining operations under an approved plan of operations shall, if required to do so by the authorized officer, furnish a bond in an amount determined by the authorized officer. The authorized officer may determine not to require a bond where mining operations would cause nominal environmental damage, or the operator has an excellent past record for reclamation. In determining the amount of the bond, the authorized officer shall consider the estimated cost of stabilizing, rehabilitating and reclaiming all areas disturbed by the operations consistent with section 3802.3-2(h) of this title.

(b) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a face and market value at the time of deposit of not less than the required dollar amount of the bond.

(c) In place of the individual bond on each separate operation, a blanket bond covering hardrock mining operations may be furnished, at the option of the operator, if the terms and conditions as determined by the authorized officer are sufficient to comply with these regulations.

(d) In the event that an approved plan of operations is modified in accordance with § 3802.1-5 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, shall require that the amount of bond be adjusted to conform to the plan of operations, as modified.

(e) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond and plan of operations which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond and plan of operations (covering approved means of access outside the boundaries of the mining claim) when the operator has either completed reclamation in accordance with subsection (f) of this section or those requirements are waived by the authorized officer.

(f)(1) When all or any portion of the reclamation has been completed in accordance with paragraphs (i) of § 3802.3-2 of this title, the operator shall notify the authorized officer who shall promptly make a joint inspection with the operator. The authorized officer shall then notify the operator whether the performance under the plan of operations is accepted. When the authorized officer has accepted as completed any portion of the reclamation, he shall reduce proportionally the amount of bond with respect to the remaining reclamation. The authorized officer may continue the bond as it relates to revegetation for only the amount necessary for revegetation of each planting area for a period not to exceed 5 years after the date of the first planting. The financial liability incurred by the operator as a result of the continuation of the bond shall not exceed an amount directly proportional to the probability of successful revegetation.

(2) When, during any extended period of the bond, the authorized officer determines that revegetation is likely to be successful before the end of such period, or that natural conditions shall preclude successful revegetation, he may release the operator from liability under the bond for revegetation of the planting area.

### § 3802.3 Environmental protection.

#### § 3802.3-1 Environmental assessment.

(a) When a plan of operations or significant modification is filed, the authorized officer shall make an environmental assessment to identify the impact of the proposed mining operations upon the environment and to determine whether the proposed activity will impair the suitability of the area for preservation as wilderness and whether an environmental impact statement is required.

(b) Following completion of the environmental assessment or the environmental statement, the authorized officer shall develop measures to be included in the plan of operations that will prevent impairment of wilderness suitability and undue or unnecessary degradation of land and resources.

(c) If as a result of the environment assessment, the authorized officer determines that there is substantial public interest in the proposed mining operations, he may notify the operator that an additional period of

time is required to consider public comments. The period shall not exceed the additional 60 days provided for approval of a plan in § 3802.1-4 of this title except as provided for cases requiring an environmental impact statement or a cultural resource inventory.

(d) If the surface resources of the lands involved are administered by an agency other than the Bureau of Land Management, that agency shall be responsible for the environmental assessment. In cases of mixed administration, the agencies shall make a joint environmental assessment.

#### § 3802.3-2 Requirements for environmental protection.

(a) **Air Quality.** The operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (42 U.S.C. 1857 et seq.).

(b) **Water Quality.** The operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.).

(c) **Solid Wastes.** The operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the environment and the surface resources. All tailings, waste rock, trash, deleterious materials or substances and other waste produced by operations shall be deployed, arranged, disposed or treated to minimize adverse impact upon the environment and surface resources.

(d) **Visual Resources.** The operator shall, to the extent practicable, harmonize operations with the visual resources, identified by the authorized officer, through such measures as the design, location of operating facilities and improvements to blend with the landscape.

(e) **Fisheries, Wildlife and Plant Habitat.** The operator shall take such action as may be needed to control or prevent adverse impact upon plants, fish, and wildlife, including threatened or endangered species, and their habitat which may be affected by the operations.

#### (f) Cultural and Paleontological Resources.

(1) The operator shall not disturb, alter, injure, destroy or take any scientifically important paleontological remains or any historical, archaeological, or cultural district, site, structure, building or object.

(2) The operator shall immediately bring to the attention of the authorized officer any such cultural and/or paleontological resources that might be altered or destroyed by his operation, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his attention, and determine within five working days what action shall be taken with respect to such discoveries.

(3) The responsibility and the cost of investigations and salvage of such values discovered during approved operations shall be the Federal Governments'.

(g) **Access Routes.** No new routes that would cause more than temporary impact and therefore would

impair wilderness suitability shall be constructed in a wilderness study area. Temporary access routes that are constructed by the operator shall be constructed and maintained to assure adequate drainage and to control or prevent damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations shall be closed to normal vehicular traffic; bridges and culverts shall be removed; cross drains, ditches, or water bars shall be constructed, and the road surface shall be shaped to as near a natural contour as practicable, be stabilized and revegetated as required in the plan of operations.

**(h) Reclamation.**

(1) Unless a longer time is allowed by the authorized officer, the operator shall perform reclamation of those lands disturbed or affected by the mining operations conducted by the operator under an approved plan of operations containing reclamation measures stipulated by the authorized officer as contemporaneously as feasible with operations. The disturbance or effect on mined land shall not include that caused by separate operations in areas abandoned before the effective date of these regulations.

(2) An operator may propose and submit with his plan of operations measures for reclamation of the affected area.

**(i) Protection of survey monuments.** The operator shall, to the extent practicable and consistent with the operation, protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against destruction, obliteration, or damage from the approved operations. If, in the course of operations, any monuments, corners or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe in writing the requirement for the restoration or reestablishment of monuments, corners, bearing trees, and line trees.

**§ 3802.4 General provisions.**

**§ 3802.4-1 Noncompliance.**

(a) An operator who conducts mining operations which are undertaken either without an approved plan of operations or without taking actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(b) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved plan of operations, or with the provisions of these regulations and that noncompliance is causing unnecessary and undue degradation of the resources of the lands involved, he shall serve a notice of noncompliance upon the operator by delivery in person to the operator or his authorized agent, or by certified mail addressed to his last known address.

(c) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the plan of operations or the provisions of applicable regulations, and shall specify

the actions which are in violation of the plan or regulations and the actions which shall be taken to correct the noncompliance and the time limits, usually 30 days, within which corrective action shall be taken.

**§ 3802.4-2 Access.**

(a) An operator is entitled to non-exclusive access to his mining operations consistent with provisions of the United States mining laws and Departmental regulations.

(b) In approving access as part of a plan of operations, the authorized officer shall specify the location of the access route, the design, construction, operation and maintenance standards, means of transportation, and other conditions necessary to prevent impairment of wilderness suitability, protect the environment, the public health or safety, Federal property and economic interests, and the interests of other lawful users of adjacent lands or lands traversed by the access road. The authorized officer may also require the operator to utilize existing roads in order to minimize the number of separate rights-of-way, and, if practicable, to construct access roads within a designated transportation and utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

(c) On all mining claims located after July 23, 1955, and on all other claims which are subject to section 4 of the Surface Resources Act of July 23, 1955 (43 U.S.C. 612), the operator shall permit free and unrestricted access for all lawful and proper purposes, except when such access would endanger or materially interfere with authorized prospecting, exploration or mining operations or would constitute a hazard to health or safety, as determined by the authorized officer. Restriction of public access by the operator is not allowed without prior approval by the authorized officer, except where necessary for timely compliance with State laws.

**§ 3802.4-3 Multiple-use conflicts.**

In the event that uses under any lease, license, permit, or other authorization pursuant to the provisions of any other law, shall conflict, interfere with, or endanger operations in approved plans or otherwise authorized by these regulations, the conflicts will be reconciled, as much as practicable, by the authorized officer.

**§ 3802.4-4 Fire prevention and control.**

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires on the area of mining operations.

**§ 3802.4-5 Maintenance and public safety.**

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to protect the public in accordance with applicable Federal and State laws and regulations.

**§ 3802.4-6 Inspection.**

The authorized officer shall periodically inspect operations to determine if the operator is complying with these regulations and the approved plan of operations, and the operator shall permit access of the authorized officer for this purpose.

**§ 3802.4-7 Notice of suspension of operations.**

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of operations within 30 days of such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities, and

(2) The expected reopening date.

(b) The operator shall maintain the operating site, structure, and other facilities in a safe and environmentally acceptable condition during non-operating periods.

(c) The name and address of the operator shall be clearly posted and maintained in a prominent place at the entrance to the area of mining operations during periods of nonoperation.

**§ 3802.4-8 Cessation of operations.**

The operator shall, within one year following cessation of operations, remove all structures, equipment, and other facilities and clean up the site of operations, unless variances are agreed to in writing by the authorized officer. Additional time may be granted by the authorized officer upon a show of good cause by the operator.

**§ 3802.5 Appeals.**

(a) An operator adversely affected by a decision of the authorized officer or the State Director made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title.

(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau of Land Management, the office rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or brief must be served.

**§3802.6 Public availability of information.**

(a) Except as provided herein, all information and data, including plans of operation, submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act (F.O.I.A.).

(b) Information and data submitted and specifically identified by the operator and so determined by the authorized officer as containing trade secrets or confidential or privileged commercial or financial information will not be available for public examination.

(c) The determination concerning specific information which may be withheld from public examination will be made in accordance with the rules in 43 CFR Part 2.

Secretary of the Interior