



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596-AD33

Oil and Gas Resources

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The United States Department of Agriculture (USDA), Forest Service is preparing to revise the contents of its Oil and Gas Resources regulations. This advance notice is intended to give the public the opportunity to comment on key issues regarding implementation of the existing regulations or to bring other issues of concern to the USDA Forest Service's attention. Comments will help the USDA Forest Service determine the next steps in addressing the oil and gas regulations. The Office of Management and Budget has determined that this advance notice is significant under EO 12866.

DATES: Comments must be received by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**.]

ADDRESSES: Please submit comments via one of the following methods:

1. *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov/>. In the Search box, enter FS-2018-0053 which is the docket number for this Advance Notice of Proposed Rulemaking. Then, in the Search panel on the left side of the screen, under

the Document Type heading, click on the Notice link to locate this document. You may submit a comment by clicking on “Comment Now!”

2. *Mail:* Written comments should be addressed to USDA-Forest Service. Attn: Director-MGM Staff, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Sherri Thompson at 303-275-5147 or by mail at 1617 Cole Boulevard, Building 17, Lakewood, CO 80401. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 10 a.m. and 7 p.m., Eastern Standard Time, Monday through Thursday.

SUPPLEMENTARY INFORMATION:

Background:

The USDA Forest Service manages and protects 154 national forests, 20 grasslands and 1 prairie in 43 states and Puerto Rico. The agency’s mission is to sustain the health, diversity, and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations. At the same time, Congress has long recognized the importance of the mineral resources located within the National Forest System and has repeatedly made special provision for the administration and development of these minerals. Congress passed the Mining and Mineral Policy Act of 1970 setting a national policy to foster private development of domestic mineral resources to help assure the satisfaction of industrial, security, and environmental needs.

It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

Approximately 44 national forests or grasslands have ongoing federal oil and gas interest or operations. Pursuant to the Mineral Leasing Act, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 ("Reform Act"), the Department of the Interior (through the Bureau of Land Management and regulations at 43 CFR part 3100) and the Department of Agriculture (through the USDA Forest Service and regulations at 36 CFR part 228, subpart E) exercise complementary regulatory authority over the development of federal oil and gas resources associated with National Forest System lands. While the Secretary of the Interior determines whether any oil and gas lease shall be issued and regulates all downhole operations through a post-leasing Application for Permit to Drill (APD), the Reform Act directs that on National Forest System lands reserved from the public domain: (1) no lease may be issued over the objection of the Secretary of Agriculture, and (2) no APD may be granted without the analysis and approval by the Secretary of Agriculture of a Surface Use Plan of Operations (SUPO) covering proposed surface-disturbing activities within the lease area. USDA Forest Service's issuance of a consent to lease is similarly required for acquired National Forest System lands pursuant to the Mineral Leasing Act for Acquired Lands of 1947. The regulations at 36 CFR 228, Subpart E establish uniform procedures addressing oil and gas leasing and operations across all National Forest System lands. Specific to oil and gas leasing, the Energy Policy Act of 2005

charged USDA Forest Service to ensure timely and coordinated action on leasing applications and expeditious compliance with environmental and cultural resource laws.

Need for Rulemaking:

The USDA Forest Service is seeking public comment regarding updating, clarifying, and streamlining the regulations at 36 CFR 228 Subpart E – Oil and Gas Resources. The current regulations were promulgated in 1990 with a minor modification in 2007 to reflect revisions to Onshore Order No. 1¹, 42 CFR 3164.1. Updating the regulations will afford an opportunity to modernize and streamline analytical and procedural requirements.

The USDA Forest Service examined the regulations as part of USDA’s response to Executive Order 13212, “Actions to Expedite Energy-Related Projects,” Executive Order 13783, “Promoting Energy Independence and Economic Growth,” and Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure.” Several areas of the current regulations were identified where potential revisions may expedite energy-related projects by streamlining internal processes related to environmental review and permitting. Potential revisions may simplify the decision making process for oil and gas leasing, which would lead to quicker leasing decisions. The potential changes to the existing regulation permitting sections include eliminating language that is redundant with the

¹ Onshore Order No. 1 was originally issued in 1983 to implement and supplement Bureau of Land Management’s oil and gas regulations, 43 CFR 3160. It established the application requirements for the approval of proposed oil and gas and service wells, certain subsequent well operations and abandonment for operations on Federal oil and gas leases. One of the purposes of the Order as amended May 7, 2007, is to reflect the assignment of authority to the Secretary of Agriculture to approve and regulate the surface disturbing activity associated with oil and gas wells on National Forest System lands (1987 Federal Oil and Gas Leasing Reform Act).

NEPA process, removing confusing options, and ensuring better alignment with the BLM regulations. The intent of these potential changes would be to decrease permitting times by removing regulatory burdens that unnecessarily encumber energy production. These potential changes would promote domestic oil and gas production by allowing industry to begin production more quickly. The areas of the current regulations identified for potential changes are listed in the bullets in the next section of this announcement, entitled “Comments Requested on Proposed Regulation Revision.”

Public input is requested as the USDA Forest Service seeks to identify opportunities to streamline the regulations to reduce burdens on the agency and applicants. A focus of the streamlining review is to simplify internal USDA Forest Service processing so that agency leasing reviews and Surface Use Plans of Operation portions of applications can be processed more efficiently. When the USDA Forest Service conducts a National Environmental Policy Act (NEPA) analysis before making an oil and gas leasing consent decision, the analysis frequently takes multiple years to be scheduled, funded, and completed. Five to ten years is not an uncommon length of time for parties interested in leasing National Forest System lands to wait. In July 2017, the Bureau of Land Management compiled a list of Surface Use Plans of Operation (the surface use portion of an Application for Permit to Drill) awaiting USDA Forest Service processing. That list included 177 Surface Use Plans of Operation with an average pending time of 3.6 years.

The Agency will continue to deliver scientifically-based, high-quality analysis to decision makers that honors its environmental stewardship responsibilities while maintaining robust public participation. In addition, the USDA Forest Service plans to

conduct staff training following the revision of the regulations to provide a more consistent approach to oil and gas management across the National Forest System.

Comments Requested on Proposed Regulation Revision

The current regulations can be found at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title36-vol2/pdf/CFR-2017-title36-vol2-part228-subpartE.pdf>. The USDA Forest Service requests comments regarding revision of the following areas of the oil and gas regulations at 36 CFR part 228, subpart E:

- Streamlining and reforming the process used by the USDA Forest Service to identify National Forest System lands that the Bureau of Land Management may offer for oil and gas leasing;
- Updating regulatory provisions concerning lease stipulation waivers, exceptions and modifications;
- Clarifying procedures for review and approval of surface use plans of operations;
- Updating the language addressing the operator's responsibility to protect natural resources and the environment;
- Clarifying language regarding inspections and compliance; and
- Addressing geophysical/seismic operations associated with minerals related matters in a manner that mirrors the Bureau of Land Management (BLM) regulations.

The changes listed here have the potential to decrease the burden on industry, thus promoting domestic energy production primarily by making the leasing decision

process simpler, and by aligning the Forest Service process with the BLM so that operators have one simplified permitting system.

National Environmental Policy Act

This Advance Notice also serves as the USDA Forest Service's notice of intent to prepare an environmental assessment or environmental impact statement pursuant to the National Environmental Policy Act, and initiate the scoping process. The USDA Forest Service requests comments regarding any potential environmental effects of changes to the 36 CFR part 228, subpart E, regulations.

Conclusion: The USDA Forest Service is considering how to best proceed with revisions to 36 CFR part 228, subpart E, addressing analysis and protection of the renewable surface resources of the National Forest System associated with development of oil and gas resources on National Forest System lands.

Comments and information supplied in response to this Notice will help the USDA Forest Service determine the next steps in revising and analyzing the oil and gas regulations. Comments should provide enough detail and contain sufficient supporting information (e.g., citations to published studies and or data related to your comments) in order for the USDA Forest Service to understand the issues raised and give comments the fullest consideration.

Regulatory Findings: This ANPR is not a regulatory action under Executive Order 13771.

Dated: August 31, 2018.

Victoria Christiansen,
Interim Chief,
USDA, Forest Service.

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