



November 2, 2020

Submitted via www.regulations.gov

USDA-Forest Service
Attn: Director-MGM Staff
1617 Cole Boulevard, Building 17
Lakewood, CO 80401

Re: Oil and Gas Resources

Dear Sir/Madam:

Western Energy Alliance submits these comments on the proposed rule revising the U.S. Forest Service's (USFS) regulations governing federal oil and gas resources on National Forest System lands. We support USFS's intent in the proposed revisions, but we believe there are several clarifications and additions that should be made in the final rule, as discussed below.

Western Energy Alliance represents 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

Delays caused by the National Environmental Policy Act (NEPA) process discourage Alliance members from operating on USFS lands, thereby reducing revenues that would be generated for the federal government and limiting domestic energy production. Delays and drawn out timelines often lead proponents to go through the planning and NEPA process for years before pulling their proposed action due to significant costs, project delays, and competing interests elsewhere. The result is significant time and resource investment from the proponent and the USFS, with the end result of the proposed action being pulled or put on the shelf.

We greatly appreciate that U.S. Department of Agriculture Secretary Sonny Perdue understands the need to reduce these delays and recently issued a [Secretarial Memorandum](#) directing USFS to expedite NEPA reviews to ensure "the sustainable use of natural resources."

We also appreciate that USFS is separately [working to revise its NEPA procedures](#). Taken together, the NEPA rule and this proposed rule should lead to a more streamlined approach to environmental reviews for oil and natural gas projects on National Forest System lands, and we are fully supportive of these goals.

Companies operating on USFS lands are not merely subject to one agency's rules, of course. USFS coordinates its management of oil and natural gas development on federal lands with the Bureau of Land Management (BLM), which controls the leasing process. USFS and project proponents must also comply with numerous federal statutes administered by other agencies, including the Endangered Species Act and the National Historic Preservation Act, among others.

To that end, we greatly appreciate USFS's goal of streamlining coordination and consultation with BLM and other federal agencies. However, we believe the final rule could be strengthened by clarifying or amending the following provisions in the proposed rule.

The proposed rule seeks to clarify the process through which USFS analyzes lands potentially available for leasing and gives consent to BLM to offer parcels for lease. In Paragraph (a) of the proposed rule's §228.103, USFS would "emphasize coordination between National Forests and Grasslands and the Bureau of Land Management for scheduling, inform the public that the agencies would consider public interest in leasing, and would require an annual update to the schedule."

The Mineral Leasing Act (MLA) requires BLM to conduct quarterly lease sales in each state where parcels are available for leasing.¹ As a result, we believe it would be more sensible for the agencies to conduct their update to the leasing schedule on a quarterly basis, rather than annually, to align with BLM's requirement under the MLA.

Furthermore, we believe there should be a more defined process for this consultation, rather than the proposed rule's mere "emphasis" on coordination. Specifically, we suggest USFS work with BLM to update the [2006 Memorandum of Understanding \(MOU\)](#) between the agencies "Concerning Oil and Gas Leasing and Operations." Revising this MOU to formalize and update the coordination process and require quarterly consultation will help streamline the leasing process.

We also request the agencies explore a programmatic agreement (PA) under which USFS can defer some or all of its statutory requirements to BLM. The proposed rule "would remove references to other laws and regulatory requirements, particularly with respect to complying with NEPA and the Endangered Species Act and their implementing regulations, in favor of letting those laws and regulations speak for themselves..." A PA deferring these statutory obligations to BLM could clarify that both agencies are not required to conduct separate, duplicative reviews that unnecessarily lengthen the leasing process.

USFS is also updating Paragraphs (b) and (c) of §228.103 to provide "additional direction on cooperation with the Bureau of Land Management, development of alternatives, and use

¹ 30 USC 226 (b)(1)(A)

of stipulations.” While we support the removal of a duplicative level of analysis in this process, we believe this section could be clearer regarding the impacts of certain changes.

First, we support USFS removing the second layer of review that parcels currently undergo before BLM can offer them for lease. As noted in the proposed rule:

The leasing consent analysis process proposed in the rule would direct that the Forest Service will make a single decision identifying lands on which the Agency would consent to the Bureau of Land Management's offering oil and gas leases for the affected National Forest System lands. The existing regulation directs an administrative review by the Forest Service at the time that specific lands, which have already been subject to an area or forest-wide leasing analysis, are being scheduled for leasing by the Bureau of Land Management. This is not a second, more detailed analysis, but a validation review verifying that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document and is consistent with the applicable land management plan. The proposed rule would remove this largely duplicative administrative procedure.

We strongly support this change and the details provided on why it is necessary. However, the proposed rule also “includes a provision that would allow the Forest Service to withdraw its consent at any time prior to a Bureau of Land Management lease sale” in Paragraph (e) of §228.103.

While USFS spends more than a dozen paragraphs outlining the analysis and consent process discussed above, it spends only one sentence regarding when, how, or why USFS would be justified in withdrawing its consent prior to BLM leasing: “The authorized Forest Service officer may withdraw consent to lease prior to a Bureau of Land Management lease sale.”

As noted elsewhere in the proposed rule, “The Agency anticipates that new interpretive guidance for implementing the leasing consent decision will be developed and set out in the Agency's manual or handbook directive system in 2021.” We believe more detail is necessary in this rulemaking, rather than in a manual or handbook update that may or may not occur in the future, regarding the process for USFS withdrawing its consent to lease parcels that are otherwise approved. Specifically, we request more detail on what level of analysis must be provided, what review process may be requested by the public, and what timeline will be followed in this withdrawal process.

With these changes and clarifications, we believe the final rule would streamline the leasing and consultation process between USFS, BLM, and other federal agencies.

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Western Energy Alliance appreciates the opportunity to submit these comments on the proposed revisions to the U.S. Forest Service's regulations governing oil and gas resources. Please do not hesitate to contact me with any questions.

Sincerely,



Tripp Parks
Vice President of Government Affairs



WESTERN ENERGY ALLIANCE