



FS Proposed Rule Streamlines Development of Federal Oil and Gas Resources

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On September 1, 2020, the U.S. Forest Service (FS) published proposed revisions (the [Proposed Rule](#)) to its regulations governing Federal oil and gas resources on National Forest System lands aimed at more efficient management and streamlining current processes.

The proposed revisions are open for public comment until November 2, 2020.

The FS's Proposed Rule includes four key revisions that: (1) clarify and streamline the process for identifying lands open for leasing; (2) provide color on the applicability of existing procedures in Onshore Order No. 1; (3) unify FS and Bureau of Land Management (BLM) sundry notice and bonding requirements; and (4) refine management steps that FS may take when operators do not comply with FS regulations.

FS published and received public input on an advance notice of proposed rulemaking in the Federal Register on September 13, 2018 (83 FR 46458).

Key Revisions

(1) FS Leasing Analysis and Consent

In Section 228.103, FS streamlines its approach to identifying lands open to leasing and assessing leasing stipulations by establishing the point of the FS "decision"—completion of the leasing analysis. Notably, this revision removes the inconsistent approach to the sequence of timing of FS consent determinations that exists under the current regulation and aligns the FS process more closely with BLM's process.

Additionally, FS removes references to other laws and regulatory requirements—such as the National Environmental Policy Act and the Endangered Species Act—to prevent the implication that the FS regulations impose additional NEPA or ESA requirements. As FS acknowledged, in its Federal Register Notice (85 FR 54311), that nothing in the proposed rule exempts FS and lessees from continuing to comply with all applicable laws and regulations.

FS further revised the regulation to require that stipulations may only be "as restrictive as necessary" to protect resources.

(2) Integration with Onshore Order No. 1

Addressing Section 228.104 and Onshore Order No. 1, FS's Proposed Rule directs FS to provide notice to BLM when it decides to grant or deny a request for a waiver, exception, or modification. Notably, the existing regulation directs notification to both BLM and an operator.

(3) Unifying FS and BLM Sundry Notices and Bonding Requirements

Addressing Section 228.108, FS's Proposed Rule includes that an operator must follow the BLM procedures for submitting a sundry notice, and FS's approval of a sundry notice is required when the notice proposes surface-disturbing activities.

With respect to 228.109, FS clarifies how it will coordinate with BLM when an operator chooses to increase its BLM bond to cover additional bonding required by the FS for surface reclamation purposes.

(4) Operator Noncompliance

In Section 228.112, FS's Proposed Rule streamlines the procedures for notifying an operator about noncompliance issues by moving from a two-step to a one-step electronic notification process. In addition, the Proposed Rule clarifies operators' opportunity to correct non-compliance and appeal.

For more information or questions about the proposed rule, please contact [Bret Sumner](#) and [Jennifer Collins](#).