



October 15, 2018

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

**Re: FS-2018-0053**  
**Comments on Advance Notice of Proposed Rulemaking**  
**USFS Regulations Oil and Gas Resources, 36 CFR Subpart E**  
**(83 CFR 46458, September 13, 2018)**

Dear USFS reviewers:

The American Petroleum Institute (“API”) and the Independent Petroleum Association of America (“IPAA”) – hereafter, “the Associations” - are pleased to provide these comments in response to the United States Forest Service’s (“USFS”) Advance Notice of Proposed Rulemaking (“ANPRM”) to revise the contents of its Oil and Gas Resources regulations, published in the Federal Register September 13, 2018.

API is a national trade association representing over 625 companies involved in all aspects of the oil and natural gas industry. API’s members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies are leaders of a technology-driven industry that supplies most of America’s energy, supports more than 10.3 million jobs and nearly 8 percent of the U.S. economy, and since 2000, has invested more than \$3 trillion in U.S. capital projects.

IPAA is a national trade association representing the thousands of independent crude oil and natural gas explorers and producers in the United States. It also operates in close cooperation with 44 unaffiliated independent national, state, and regional associations, which together represent thousands of royalty owners and the companies that provide services and supplies to the domestic industry. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy.

With this letter we offer our initial comments and recommendations to USFS as the agency considers updating its oil and gas regulations, which were last significantly revised in 1990. We offer these comments from the perspective of strong support for the reforms implemented last year by Executive Orders 13807 “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure”, Executive Order 13783, “Promoting Energy Independence and Economic Growth”, and Executive Order 13212, “Actions to Expedite Energy-Related Projects”. We recommend that USFS incorporate the principles of these Executive Orders into its revisions of its regulations in 36 CFR Subpart E. The following policies set forth in the Executive Order 13807 state that it is the policy of the Federal Government to:

- conduct environmental reviews and authorization processes in a coordinated, consistent, predictable, and timely manner in order to give public and private investors the confidence necessary to make funding decisions for new infrastructure projects;
- speak with a coordinated voice when conducting environmental reviews and making authorization decisions;
- and make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years.

Our members engage in a wide variety of Federally regulated activities on National Forest system lands, including exploration and production of oil and gas resources and construction of interstate natural gas pipelines and oil and natural gas pipelines that cross such lands. In representation of our members, the Associations have been consistent in our support for access to American natural gas and oil resources under Federal administration in a manner that allows environmentally responsible development of those resources and appropriate management and protection of habitat, wildlife and other resource values for which agencies of the Federal government are responsible. We believe that this balance is achievable those areas within National Forest system lands where crude oil and natural gas resources of national and strategic significance are believed to occur, and we believe that the long record of our industry’s exploration and production operations on National Forest system lands and lands with similar characteristics supports this assertion.

Accordingly, we make the following recommendations to USFS:

We recommend that USFS consult with the BLM regarding the BLM’s Instructional Memorandum 2018-034 (January 31, 2018) and, similar to the BLM, adopt an approach for periodic review of the USFS Land Management Plans (“LMP”) that the USFS relies upon in its decisions with respect to fluid minerals leasing by the BLM on National Forest system lands. Consistent with this recommendation, we urge the USFS to collaborate with BLM to update the 2006 Memorandum of Understanding between the BLM and USFS “Concerning Oil and Gas Leasing and Operations” (Forest Service Agreement No. 06-SU-11132428-052) to reflect BLM’s updated processes for administering the federal mineral estate managed by the BLM. With respect to its own administrative and planning practices, the USFS Director should direct state and field offices to carry out periodic LMP evaluations, and to include with this effort an examination of resource management decisions and decisions on Surface Use Plans of Operation (“SUPOs”) to determine whether the LMPs adequately protect important resource values in light of changing circumstances, updated policies, and new information. The results of such reviews

and evaluations may require a state/field office to update resource information through land use plan maintenance, amendment, or revision. The USFS State Director should consult with the Washington Office (WO) before deciding to recommend deferment leasing of any parcels proposed for leasing by the BLM.

When necessary, state/field offices will coordinate with their BLM counterparts to maintain or amend LMPs to accommodate changes in lease stipulations in accordance with guidance found in the BLM's H-1610-1, Land Use Planning, sections VI.H and VII.B, and the USFS implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15. We further recommend that each state/field office be given the discretion to participate in BLM Interdisciplinary Consistency Review Teams (IDCR Team) for lands under its jurisdiction. The primary purposes of the BLM IDCR Teams are to prepare lease stipulations that are written in a BLM approved format and are consistent within each state for the protection of surface, water, and other resources or resource settings, and with the goal to edge-match across administrative boundaries including consideration of the management directives of surface management agencies (SMAs), including the USFS.

USFS state and field offices should participate as appropriate in lease parcel reviews carried out by the BLM, the purpose of which will be to determine the conditions under which leasing is allowed to proceed, and to ensure conformance with the approved BLM RMP and USFS LMP. Lease parcel reviews will be conducted and documented simultaneously with the NEPA compliance process for lease sales. USFS field offices shall have the discretion to participate in a BLM Interdisciplinary Parcel Review (IDPR) Team of resource specialists to review lease sale parcels as part of compliance with NEPA and other legal and policy requirements for adequate review of parcels.

Lessees and operators often conduct multi-phase projects involving a sequence of similar activities in close geographical proximity. For example, onshore oil and gas drilling may consist of multiple wells on a single lease or field. Pursuant to section 228.106(a)<sup>1</sup> no permit to drill may be granted without “the analysis and approval of a surface use plan of operations” and such review is subject to NEPA requirements under 228.107<sup>2</sup>. Each requisite federal approval triggers NEPA anew, although the relevant activity’s local impacts have recently been assessed. USFS’ NEPA process should horizontally tier from recent reviews of similar, nearby projects where circumstances have not materially changed. USFS should revise its regulations to utilize a Determination of NEPA Adequacy (“DNA”) where appropriate, and not undertake unnecessary NEPA review. One option is to edit section 228.107(a) by revising the second sentence to read: “As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR parts 1500-1508, **and NEPA implementation as set forth in a NEPA Onshore Oil and Gas Order**, the Forest Service policies and procedures set forth in Forest Service Manual Chapter 1950 and the Forest Service Handbook 1909.15 and ensure that: . . .”. This would incorporate by reference an Order dictating NEPA review standards, if not directly incorporated into the revised rule, that could provide the clarity that the regulated community requires. Examples include clearly providing authorization for use of Categorical Exclusions (“CXs”), use of DNAs, and limiting the scope of

---

<sup>1</sup> 36 CFR 228.106(a)

<sup>2</sup> 36 CFR 228.107

NEPA review for a surface use plan of operation for individual APDs included in the same project or within a certain geographical proximity of each other.

USFS should specifically establish that surface use plans of operations for the following categories of projects that meet the requirements for CXs under Section 390 of the Energy Policy Act of 2005 shall be applied in reviewing SUPOs or applications for pipeline rights-of-way on lands of the National Forest system.

USFS should revise its regulations to require use of existing data to the greatest extent possible, including the incorporation by reference of any applicable programmatic analyses. USFS should have discretion to evaluate the validity of existing data on a case-by-case basis.

Consistent with E.O. 13807, in cases where multiple federal agencies including USFS are responsible for permitting decisions on the same project or project-related activities, USFS must collaborate with those agencies to prepare a single NEPA analysis. USFS should revise its regulations to state that it will rely on existing EISs and EAs prepared by any federal agencies in the course of its NEPA review of projects within its jurisdiction. Further with respect to NEPA reviews that may be conducted for oil and natural gas projects on National Forest system lands, the Associations encourage USFS to review and to consider the letter dated August 20, 2018 to the Council on Environmental Quality re “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28,591 (June 20, 2018)” which is attached hereto and made a part hereof by reference.

The Secretary of Agriculture, and the Director of USFS must collaborate with the BLM and commit to approvals within required timeframes. This will necessarily involve prioritization of agency action as may be required on project proposals on National Forest system lands that are under review by the BLM. USFS should prioritize timely completion of oil and gas leasing and permitting decisions as principal responsibilities of the agency, and redirect staff and other resources accordingly, consistent with the availability of appropriations, incorporating this priority into performance standards for agency staff at all levels. Where a shortage of funding or staff exists, USFS regulations should authorize acceptance of third-party funding for oil and gas-related studies and associated staff, to the extent legally permissible. Such third-party funding is commonly accepted. See 40 C.F.R. § 1506.5.

Consistent with a commitment to collaborate with the BLM and commitment to approvals within required timeframes, USFS should agree to support the BLM in issuing approval of an Application for Permit to Drill (“APD”) approval within 30 days of submission of a complete permit application to the BLM when concurrently noticed to USFS per Energy Policy Act of 2005 (“EPAAct”) Section 366<sup>3</sup>.

Section 228.108(g)<sup>4</sup> identifies reclamation actions but none of them have an explicit standard that reclamation is to achieve. Therefore, we recommend including a definition of Reclamation

---

<sup>3</sup> 42 U.S.C. [need citation]

<sup>4</sup> 36 CFR 228.108(g).

such as found in Colorado<sup>5</sup>:

*Reclamation shall mean the process of returning or restoring the surface of disturbed land as nearly as practicable to its condition prior to the commencement of oil and gas operations or as specified in the approved surface use plan of operations.*

USFS must revise § 228.112(c)(7)<sup>6</sup> of its regulations (“Compliance and Inspection) to require that operators comply with applicable Rules, Onshore Oil and Gas Orders and Notices to Lessees and Operators (NTL's) issued by the United States Department of the Interior, Bureau of Land Management pursuant to 43 CFR chapter II, part 3160, subpart 3164.

USFS must similarly prioritize and redirect staff resources to facilitate timely decisions on oil and gas pipelines and other supporting infrastructure necessary for oil and gas production.

Should you have any questions, please contact Richard Ranger at 202.682.8057, via e-mail at [rangerr@api.org](mailto:rangerr@api.org), or Dan Naatz at 202.857-4722, via email at [dnaatz@ipaa.org](mailto:dnaatz@ipaa.org). Thank you for considering this letter.

Very truly yours,



Richard Ranger  
Senior Policy Advisor  
American Petroleum Institute



Dan Naatz  
Senior Vice President of Government  
Relations and Political Affairs  
Independent Petroleum Association of America

Att: Letter dated August 20, 2018 to Council on Environmental Quality from API, AXPC, AOPL, and Western Energy Alliance re “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28,591 (June 20, 2018)”

---

<sup>5</sup> COGCC Final Amended Rules (December 17, 2008), 2 CCR 404-1, 100-Series Definitions

<sup>6</sup> 36 CFR 228.112(c)(7)