



State of Utah

GARY R. HERBERT  
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Office of the Governor  
PUBLIC LANDS POLICY COORDINATING OFFICE

KATHLEEN CLARKE  
*Director*

October 10, 2018

*Submitted electronically: <http://www.regulations.gov>*

Victoria Christiansen  
Interim Chief  
USDA, Forest Service  
1617 Cole Boulevard, Building 17  
Lakewood, CO 80401

RE: **Proposed Rulemaking: Locatable Minerals**  
FS-2018-0052  
RIN 0596-AD32

Dear Ms. Christiansen:

The State of Utah has reviewed the Forest Service's proposed rule to clarify or to otherwise enhance its regulations that minimize adverse environmental impacts on National Forest System surface resources in connection with operations authorized by the United States mining laws. The State supports the proposed rulemaking that would expedite Forest Service review of certain proposed mineral operations authorized by the United States mining laws, and, where applicable, Forest Service approval of some of these proposals by clarifying the regulations, to increase consistency with the Bureau of Land Management (BLM) surface management regulations governing operations authorized by the United States mining laws, to assist those who conduct these operations on lands managed by each agency, and to increase the Forest Service's nationwide consistency in regulating mineral operations authorized by the United States mining laws by clarifying its regulations. The State, in coordination with the Utah Division of Oil, Gas and Mining, submits the following comments for your consideration.

### **Proposed Changes to 36 CFR Part 228, Subpart A**

#### **(3) Modifying Approval Plans of Operations**

*d. Do you agree with the 1999 NRC report's conclusion that the plan of operations modification provisions in 36 CFR part 228, subpart A, should be amended to permit*

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*the Forest Service to require modification of an approved plan in order (1) to correct problems that have resulted in harm or threatened harm to National Forest System surface resources and (2) to reflect advances in predictive capacity, technical capacity, and mining technology? If you do not agree with the 1999 NRC report's conclusion that 36 CFR part 228, subpart A, should be amended to allow the Forest Service to require an operator to modify an approved plan of operations to achieve these two ends, please identify any circumstances in addition to those in the current regulations which you think should permit the Forest Service to require modification of an approved plan of operations.*

Modifications to correct problems resulting in harm or threatened harm should not be limited to surface resources but should also include subsurface resources, especially ground water. The State is concerned "threatened harm" might be taken too far. The Forest Service might look for every conceivable threat which could make the process onerous.

### **(6) Financial Guarantees**

*a. Current regulations at 36 CFR part 228, subpart A, include a section entitled "bonds" but there are many alternate kinds of financial assurance which the regulations recognize as being acceptable substitutes. Therefore, the Forest Service contemplates changing the title of this section to the broader terminology "Financial Guarantees." The current regulations provide for the Forest Service authorized officer to review the adequacy of the estimated cost of reclamation and of the financial guarantee's terms in connection with the approval of an initial plan of operations. But the regulations do not specifically provide that the authorized officer will subsequently review the cost estimate and the financial guarantee to ensure that they remain sufficient for final reclamation. The Forest Service is considering amending 36 CFR part 228, subpart A, to provide for such a subsequent review. An issue that the agency will consider is whether 36 CFR part 228, subpart A, should specifically provide that the review will occur at a fixed interval. The Forest Service also is considering whether to amend 36 CFR part 228, subpart A, to specifically provide for the establishment of a funding mechanism which will provide for post-closure obligations such as long-term water treatment and maintaining long-term infrastructure such as tailings impoundments. Another concern is what forms of financial guarantee an operator should be allowed to furnish to assure these long-term post-closure obligations.*

Current Forest Service regulations do not provide for adjusting financial guarantees. Financial guarantees should be escalated to a date in the future, such as three or five years, and the amounts should be reviewed based on the escalation date.

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Thank you for the opportunity to comment and your efforts in regard to these important revisions. Please direct any other written questions regarding this correspondence to the Public Lands Policy Coordinating Office at the address below, or call the phone number listed.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Clarke', with a long horizontal flourish extending to the right.

Kathleen Clarke  
Director