



October 10, 2018

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

Submitted via www.regulations.gov

RE: Advanced Notice of Proposed Rulemaking, 36 CFR Part 228
FS—2018—0052
83 Federal Register 46451

Director MGM,

Hecla Mining Company is pleased to provide these comments in response to the request for comments with respect to the above captioned matter. Hecla is a 127-year old, US based mining company and the largest primary silver producer in the US. We have projects in Alaska, Idaho, Nevada, Montana and Colorado and are actively involved in exploration and mining operations on United States Forest Service (USFS) administered lands. We are also very familiar with the BLM 3809 regulations and believe there is opportunity for improved consistency between the two federal regulatory programs.

We believe the 228A regulations have proven to be flexible, reasonable, and effective in accomplishing their stated purpose, which is to minimize adverse impacts to National Forest resources to the extent practical and feasible and to require reclamation during and upon termination of locatable mineral activities. Revisions to these regulations are very important to Hecla and our ability to continue be both a responsible mine operator and an economic engine within the typically rural communities in which we operate.

Expediting exploration disturbing 5 acres or less

As mentioned by other commenters, like the American Exploration and Mining Association (AEMA) Hecla also would support a revision to the 228A regulations to adopt a process similar to the Bureau of Land Management's (BLM) Notice Level Operations at 43 CFR 3809.21 and 3809.301, *et seq.* We would support the proposal to add a Bonded Notice provision in so far as it relates only to exploration on National Forest System lands that disturb 5 acres or less. This revision would be consistent with the recommendations of the National Research Council 1999 Report, Hardrock Mining on Federal Lands (NRC Report) Recommendation 3. The ability to

conduct exploration in a timely manner is vital to exploration efforts on National Forest System lands.

Also, the Forest Service should provide for an unlimited number of 2-year extensions, similar to the BLM 43 CFR 3809 rule (*see* 43 CFR § 3809.333) on notice-level exploration activities.

Comments on the ANPR

We believe there is a need for the USFS to provide a more timely and efficient process for approving exploration and mining on National Forest lands in order to achieve the policy objectives of the Executive Orders 13783, 13807 and 13817 as referenced in the ANPR. The USFS can begin to accomplish this objective by implementing section 228.8(h), which has been in the 228A regulations since 1974:

Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to locatable mining operations the authorized officer determines are similar or parallel to requirements of this subpart will be accepted as compliance with the applicable requirements of this subpart.

The intent of this provision seems clear, which is to reduce redundant regulation and permitting of mining operations by state and federal agencies. The proposed rule should include a statement that whenever a District Ranger receives a Plan of Operations for mining operations, the Ranger's first obligation is to evaluate whether his or her review of the proposed operation would be a duplication of State or other Federal agency efforts to regulate the activity in a similar or parallel way to the 36 CFR 228A regulations.

In addition, the USFS should immediately reform its NEPA process similar to what the Department of the Interior (DOI) has done. The USFS should set page and time limitations for preparing Environmental Impact Statements (EIS) and Environmental Assessments (EA). We agree with the AEMA that making revisions that would improve consistency with BLM's 43 CFR 3809 regulations makes sense. For example:

1. Classification of Locatable Mineral Operations

The USFS classification of casual use, notice and plan of operations is confusing and leaves too much discretion to the district ranger. Hecla agrees with AEMA and recommends the USFS adopt BLM's classification of casual use, notice level operations and plan of operations. USFS should adopt the similar criteria as BLM for each class of operations.

2. Submitting, Receiving, Reviewing, Analyzing and Approving Plans of Operations

The ANPR asked how should 36 CFR part 228, subpart A, be amended so that the requirements for submitting a proposed plan of operations and the process the Forest Service uses in receiving, reviewing, analyzing, and approving that plan are clear.

We support the requirement that the project proponent meet with the USFS to discuss the project and what is required before submitting a plan of operations. However, we are concerned that the requirements for a completeness review may be used to delay the project and delay the start of the NEPA clock. Thus any revision should make clear what constitutes a complete application so project proponents and the agency are working from the same page.

Most importantly for improving the process, the USFS should amend its regulations to provide that the project proponent is allowed to prepare all NEPA documents for independent USFS review. This revision would only return to a process that had worked in the past. In addition, in the event a third-party contractor is hired to prepare the NEPA documents, the USFS regulations should be amended to specifically allow communication between the project proponent and the third-party contractor. This will improve the efficiency of the process and ensure the draft NEPA documents contain only alternatives that are technically and economically feasible.

3. **Modifying Approved Plans of Operations**

We support the recommendation that the Forest Service follow the National Research Council (NRC) recommendation and adopt the BLM's process for modifying approved plans of operations.

4. **Noncompliance and Enforcement**

We supports aligning the USFS regulations with BLM's 3809 regulations with respect to noncompliance and enforcement.

5. **Reasonably Incident Use and Occupancy**

The USFS should adopt BLM's 43 CFR 3715 regulations for use and occupancy of mining claims.

6. **Financial Guarantees**

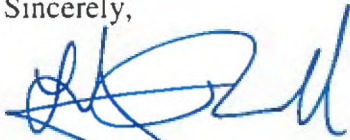
We also support changing the title of section 228.13 to Financial Guarantees by providing the authorized officer with the authority to review the amount of financial assurance whenever there is a change or modification to the plan of operation, and in any event, at least once every three years. The USFS also should amend this section to specifically provide for funding mechanisms, such as a long-term trust, for post-closure obligations such as long-term water treatment.

The USFS should include specific provisions allowing phased bonding. The regulations should provide that when an operation will be constructed in phases, the operator may estimate the costs and provide financial assurance only for those phases that will be constructed at the time of bond approval. Subsequent cost estimates and bond approvals would be required before subsequent project phases are constructed. The BLM's 3809

regulations clearly allow for phased bonding and the Forest Service should do the same.
See 43 CFR 3809.553.

Hecla appreciates the opportunity to help the Forest Service streamline their regulatory processes. We believe that process improvement resulting in a more efficient and timely mine permitting process is beneficial to the environment, project proponents, and the Forest Service. Many mining project proposals include mitigation measures that result in a net benefit to the environment. Efficient permitting processes allows the Forest Service to better utilize scarce resources while providing greater certainty to project proponents as to project viability.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Luke Russell', is written over the printed name.

Luke Russell
VP External Affairs