



October 15, 2018

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

Submitted via [www.regulations.gov](http://www.regulations.gov)

Dear MGM Staff Director:

The Utah Mining Association (UMA) appreciates the opportunity to submit comments on the U.S. Forest Service (USFS) Advance Notice of Proposed Rulemaking (ANPR) requesting comment on the need for revisions to the locatable minerals regulations under 30 CFR Part 228A. 83 Fed. Reg. 46451 (Sept. 13, 2018). UMA supports the stated goals of expediting review of proposed mineral operations and increasing consistency with the Bureau of Land Management (BLM) surface management regulations.

### **Who We Are**

UMA is a 103 year old, non-profit, non-partisan trade association representing the interests of the mining industry in Utah. UMA members are actively involved in exploration and mining operations on public and private lands throughout the state. Our diverse membership includes every facet of the mining industry, including geology, exploration, mining, engineering, power generation, equipment manufacturing, legal and technical services, and sales of equipment and supplies. UMA members conduct exploration and mining activities on USFS-administered land in Utah pursuant to 30 CFR Part 228A (228A regulations) and therefore are directly and immediately affected by any changes to these regulations.

UMA also fully endorses comments submitted by the National Mining Association and the American Exploration & Mining Association, particularly with regard to overall reform of the mine permitting process. For the purposes of these comments, we would like to emphasize the need to harmonize the USFS regulations with the BLM's locatable minerals surface management regulations in order to bring consistency to the regulations regardless of which agency is managing the land.

### **The Need for Consistent Regulations**

The ANPR requests comment on potential regulatory amendments to establish three classes of locatable mineral operations, similar to the BLM, and specify the requirements an operator must satisfy before commencing operations in each such class. UMA supports such a change. The

BLM classifications of casual use, notice-level operations and plan-level operations and accompanying regulations are clear and well-understood. The USFS's current classification system, on the other hand, is more confusing and leaves too much discretion to the District Ranger.

Therefore, we believe the most important revision to the 228A regulations is the adoption a process identical or similar to the BLM's Notice Level Operations at 43 CFR 3809.21 and 3809.301, et seq. In fact, the National Academy of Sciences (NAS) in a 1999 report "Hardrock Mining on Federal Lands" specifically recommended that "Forest Service regulations should allow exploration disturbing less than 5 acres to be approved or denied expeditiously, similar to notice-level exploration activities on BLM lands." (NRC Report at 97).

Adoption of the BLM notice level category of operations as well as the BLM definition of "exploration" will provide an equitable playing field for those conducting small exploration projects on federal lands. Currently, companies seeking to conduct such operations on Forest System lands experience significant delays in obtaining permission compared to those exploring on BLM lands. BLM utilizes a 15-day timeframe for determining a notice is complete and the operator may conduct notice-level operations once it has submitted the required financial guarantee. The USFS process to allow similar mining activities can last months to years.

This particular issue is of such significance that UMA believes the USFS should sever this provision from the remainder of the ANPR and send it to OMB immediately for a determination of "non-significance," which will allow this standalone provision to be finalized more quickly. A "non-significance" determination is supportable since the USFS would be adopting a regulation similar to one that has been in use by BLM for nearly 20 years.

In addition, taking this action is consistent with the National Environmental Policy Act (NEPA) reform and streamlining efforts of the White House. See, Executive Orders (E.O.) 13817, A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals; E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects; and E.O. 13783, Promoting Energy Independence and Economic Growth.

Regarding the ANPR's request for comment on financial guarantee requirements, the U.S. Environmental Protection Agency's recent decision not to impose additional financial assurance requirements on the mining industry pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act demonstrates that the USFS bonding requirements are effective and being enforced. That being said, UMA supports changes contemplated by the ANPR to provide additional clarity regarding the types of acceptable financial assurance mechanisms and the ability to review the amount of assurance periodically. The USFS should accept any instruments currently accepted by the BLM including irrevocable letters of credit, certificates of deposit, collateral trusts and insurance.

Furthermore, the USFS financial guarantee requirements should be amended to clarify that when an operation will be constructed in phases, the operator may estimate the costs, and provide a financial assurance, only for those phases that will be constructed at the time of bond approval.

Subsequent cost estimate and surety approvals would be required before subsequent project phases are constructed. This proposed change would align the USFS regulations with the BLM regulations to clearly allow for phased financial assurance.

### **Conclusion**

The Utah Mining Association supports the goal of the Advance Notice of Proposed Rulemaking to expedite review of proposed mineral operations. The viability of the U.S. mining industry and its ability to produce domestic sources of strategic commodities and reduce our dangerous reliance of foreign sources of minerals and metals is dependent on an efficient regulatory structure. We urge the USFS to move forward with the proposed changes, and with respect to adoption of the BLM notice level category begin a process to finalize that provision more quickly.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Compton", with a stylized flourish at the end.

Mark D. Compton  
President