U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone enforced intermittently. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice*.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165.931 as follows:

PART 165: REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.931 by revising paragraph (a) to read as follows:

§ 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL.

(a) *Location.* The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53′23.74″ N, 087°35′35.70″ W; then south to 41°53′3.95″ N, 087°35′35.11″ W; then west to 41°53′3.48″ N, 087°36′8.52″ W; then north to 41°53′23.30″ N, 087°36′9.08″ W; then east back to the point of origin (NAD 83).

* * * * *

Dated: August 16, 2018.

Thomas J. Stuhlreyer,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2018–19934 Filed 9–12–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596–AD32

Locatable Minerals

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The Forest Service is requesting comments from the public regarding the need 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. These rules and procedures govern prospecting, exploration, development, mining, and processing operations conducted on National Forest System lands authorized by the Mining Law of 1872, as amended, subsequent reclamation of the land, and any necessary long-term post-closure resource management. The goals of the regulatory revision are to 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 United States Department of the Interior, 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 .

DATES: Comments must be received by October 15, 2018.

ADDRESSES: Please submit comments via one of the following methods:

- *Electronically:* Go to the *Federal eRulemaking Portal: http://www.regulations.gov*. In the Search box, enter FS–2018–0052, which is the docket number for this Advanced Notice of Proposed Rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Notice link to locate this document. You may submit a comment by clicking on "Comment Now!"
- *By hard copy:* Submit by U.S. mail to: USDA-Forest Service. Attn: Director—MGM Staff, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Cheryl Nabahe, Minerals and Geology Management, 202–205–0800. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This advance notice is intended to give the

public an opportunity to help us develop ways to address challenges that the Forest Service has encountered in regulating such operations on National Forest System lands. These comments will help the Forest Service draft proposed amendments to the agency's regulations in a way that protects National Forest System surface resources, consistent with applicable statutes authorizing such operations on National Forest System lands. The Office of Management and Budget has determined that this advance notice is significant under E.O. 12866.

Background

The Mining Law authorizes the prospecting, exploration, location, development, mining, and processing of valuable "locatable" mineral deposits on National Forest System lands reserved from the public domain by virtue of the Organic Administration Act, 16 U.S.C. 478, 482. "Locatable" minerals are base and precious metal ores, ferrous metal ores, and certain classes of industrial minerals that include, but are not limited to, gold, silver, platinum, copper, lead, zinc, magnesium, nickel, tungsten, bentonite, barite, fluorspar, uranium, and uncommon varieties of sand, gravel, and dimension stone.

In 1974, under authority granted to the Forest Service by the Organic Administration Act of 1897, 16 U.S.C. 478, 482, and 551, the Forest Service adopted regulations at 36 Code of Federal Regulation (CFR) part 252 (39 FR 31317, Aug. 28, 1974), which were later redesigated as 36 CFR part 228, subpart A (46 FR 36142, July 14, 1981), to regulate operations conducted on certain National Forest System lands under the Mining Law of 1872, as amended, 30 U.S.C. 22–54 (The Mining Law). The regulations at 36 CFR part 228, subpart A, require that all such locatable mineral prospecting, exploration, development, mining and processing operations, and associated means of access, whether occurring within or outside the boundaries of a mining claim located under the Mining Law, shall be conducted in a manner that minimizes adverse environmental effects on National Forest System surface resources.

The regulations at 36 CFR part 228 subpart A reflect the fact that the Mining Law, as amended, confers the authority, by virtue of the Organic Administration Act, to enter upon certain National Forest System lands to search for, locate, and develop valuable minerals subject to the Mining Law. Thus, the Forest Service may not prohibit locatable mineral operations on lands subject to the Mining Law that otherwise comply with applicable law, nor regulate those operations in a manner which amounts to a prohibition.

In 2005, 36 CFR part 228, subpart A, was amended to clarify when a plan of operations is required (36 CFR 228.4(a), 70 FR 32731, June 6, 2005). However, these regulations have not been significantly revised since they took effect in 1974.

Overall, the regulations at 36 CFR part 228, subpart A, have enabled the Forest Service to minimize adverse environmental effects on surface resources that could result from locatable mineral operations on National Forest System lands, via such methods as timing restrictions, reasonable mitigation measures, reclamation, and bonding. But since these regulations were promulgated in 1974, several inefficiencies and problems associated with them have become apparent to operators, members of the public, and the agency. Examples of such inefficiencies and problems include the need to clarify the process by which the Forest Service reviews certain locatable mineral operation proposals, the need to address topics such as reasonably incident use and occupancy of National Forest System lands as defined by the Surface Resources Act of 1955, 30 U.S.C. 612, a lack of administrative tools to address modifications of plans of operations and noncompliance issues, and challenges involving plans of operations including ensuring that proposed plans include their component reclamation plans and associated reclamation cost estimation. Specific recommendations to revise and update 36 CFR part 228, subpart A, have also been made in two reports: the 1999 National Research Council (NRC) publication "Hard Rock Mining on Federal Lands" (National Research Council. 1999. *Hardrock Mining on Federal Lands.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/9682.*); and the 2016 United States Government Accountability Office (GAO) report "Hardrock Mining: BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More" (United States Government Accountability Office. 2016. Report to the Chairman, Committee on Natural Resources, House of Representatives. Hardrock Mining: BLM and Forest Service Have Taken Some Action To Expedite the Mine Plan Review Process but Could Do More. GAO–16–165. Washington, DC: U.S. Government Accountability Office. *https://www.gao.gov/assets/680/674752.pdf*).

Many of the concerns identified by the NRC in 1999 are the same concerns the Forest Service has about 36 CFR part 228, subpart A. One example is the adequacy of the process set out in 36 CFR part 228, subpart A, for requiring operators to modify plans of operations in light of new circumstances or information, especially when needed to correct problems that have resulted in harm or threatened harm to surface resources. As examples of such new circumstances or information, the NRC's report lists "unexpected acid drainage, problems with water balance, adequacy of approved containment structures, or discovery of impacts on wells and springs." The NRC was critical of the fact that 36 CFR part 228, subpart A, only allows the Forest Service to require a modification to a Plan of Operations if "unforseen significant disturbance of surface resources" is occurring or probable. The NRC noted that this criterion entails a retroactive inquiry instead of a proactive one allowing the Forest Service to correct whatever problems have resulted in harm or threathen harm.

The Forest Service also intends to consider the NRC's recommendation that the agency should adopt an expeditious process for reviewing proposed exploration operations affecting 5 acres or less of National Forest System lands similar to the one employed by the BLM with respect to the public lands it manages.

The Forest Service also agrees with the 2016 GAO report's conclusion that expeditious review of proposed plans of operations is often hindered by the low quality of information operators include in those plans. The Forest Service intends to consider adoption of two measures the GAO's 2016 report concludes might improve the quality of proposed plans of operations submitted for the agency's review and approval. One is to establish a uniform process in which the Forest Service encourages persons seeking to conduct locatable mineral operations that require approval of a plan of operations to meet with the appropriate local Forest Service official prior to submitting the proposed plan. This will ensure that the operator is familiar with the requirements that a proposed plan of operations must meet to be found complete. The second is for the Forest Service to ensure that all proposed plans of operations are complete before required environmental analysis of those plans begin.

In addition, the Forest Service is considering whether to amend portions of 36 CFR part 228, subpart A, to more closely correspond to 43 CFR part 3710, subpart 3715 (65 FR 37125, July 16,

1996) and 43 CFR part 3800, subpart 3809 (65 FR 70112, Nov. 21, 2000), which govern locatable mineral operations conducted on the public lands managed by the BLM, as permitted given the Forest Service's different statutory authorities. Specifically, the Forest Service contemplates increased consistency with the BLM's regulations regarding reasonably incident uses and occupancy, classification of operations (*i.e.,* casual use, notice-level, and plan of operations-level), requirements for operating on segregated or withdrawn lands, special procedures applicable when a mineral or material may be subject to sale under the Materials Act of 1947, 30 U.S.C. 601–04, rather than to appropriation under the mining laws, and noncompliance and enforcement. Increasing the consistency of the agencies' procedures and rules would benefit persons who conduct locatable mineral operations on the public lands managed by the BLM as well as on National Forest System lands managed by the Forest Service.

Pursuant to Executive Order 13817, A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals, issued December 20, 2017, the Secretary of the Interior published a list of 35 mineral commodities vital to the economic and national security of the United States for which the United States is heavily reliant on imports (83 FR 23295, May, 18, 2018). Predominantly, the critical commodities would be subject 36 CFR part 228, subpart A, if they are found on National Forest System lands which are subject to entry under the mining laws. Portions of the Executive Order direct the federal government to increase exploration for, and mining of, critical minerals (Sec. 3(b)) and to revise permitting processes to expedite exploration for, and production of, critical minerals (Sec. 3(d)) and the revision of 36 CFR part 228, subpart A, in the manner being contemplated and described in this advance notice would help achieve those ends. For example, the Forest Service is seeking to provide a more efficient process for approving exploration activities for locatable minerals, including those that also are critical commodities for purposes of Executive Order 13817. This change should enhance operators' interest in, and willingness to, conduct exploratory operations on National Forest System lands and ultimately increase the production of critical minerals, consistent with both of these sections of the Executive Order. Further, achieving the Forest Service's objectives of clarifying the requirements for submitting a proposed plan of operations or modifying such a plan and clarifying the process the Forest Service uses in receiving, reviewing, and approving a plan of operations should expedite the approval of plans of operations and derivatively actual extraction of critical minerals on National Forest System lands.

The revision of 36 CFR part 228, subpart A, also would facilitate, support, and ensure the policy objectives of Executive Order 13783, Promoting Energy Independence and Economic Growth, issued March 28, 2017, as outlined in its Section 2a. Providing a more efficient process for approving exploration activities for the energy-producing locatable minerals uranium and thorium would reduce regulatory burdens that unnecessarily encumber energy production consistent with Sec. 1(b) of the Order as well as ultimately expand the means of domestic energy production consistent with Sec. 1(c) of the Order. Increasing the clarity of requirements for submitting a proposed plan of operations or modifying such a plan along with the clarity of the process the Forest Service uses in receiving, reviewing, and approving a plan of operations would benefit and support the safe, efficient development of uranium, an important potential and current domestic energy resource, and thorium, a potential domestic energy resource, consistent with Sec. 1(b) or the Order.

Revision of the regulations at 36 CFR part 228, subpart A, will facilitate, support, and ensure the policy objectives of Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, issued on August 15, 2017. For example, the USDA Forest Service is seeking to provide a more efficient process for approving exploration activities for the energy-producing locatable minerals uranium and thorium where that exploration will cause 5 acres or less of surface disturbance on National Forest System lands for which reclamation has not been completed. This would achieve the result of the Forest Service being a good steward of public funds by avoiding wasteful processes consistent with Section 2e of the Executive Order. Improving the quality of proposed plans of operations for uranium or thorium operations will allow more timely processing of those plans thereby giving public and private investors the confidence necessary to make funding decisions consistent with Section 2f of Executive Order 13807. While other regulatory changes under consideration as detailed in the "Comments Requested" portion of this advance notice applicable to uranium and thorium operations would foster the policy objectives set out in Section 2 of the Executive Order, particularly those objectives in paragraphs d, e, f, and h.

Comments Requested

The Forest Service particularly invites comment regarding challenges the public has experienced with respect to the aspects of the agency's current regulations at 36 CFR part 228, subpart A, and issues the public foresees with respect to potential amendments to these regulations, that are are relevant to the following topics.

(1) Classification of locatable mineral operations.

a. Currently, the regulations at 36 CFR part 228, subpart A, establish three classes of locatable mineral operations: Those which do not require an operator to provide the Forest Service with notice before operating, those requiring the operator to submit a notice of intent to conduct operations to the Forest Service before operating, and those requiring an operator to submit and obtain Forest Service approval of a proposed plan of operations. The operations which do not require an operator to provide notice before operating are idenitifed by 36 CFR 228.4(a)(1). Those operations include, but are not limited to, using certain existing roads, performing prospecting and sampling which will not cause significant surface resource disturbance, conducting operations which will not cause surface resource disturbance substantially different from that caused by other users of the National Forest System who are not required to obtain another type of written authorization, and conducting operations which do not involve the use of mechanized earthmoving equipment or the cutting of trees unless these operations might otherwise cause a significant disturbance of surface resources. The operations for which an operator must submit a notice of intent to the Forest Service before operating are identifed by 36 CFR 228.4(a) as those which might, but are not likely to, cause significant disturbance of surface resources. The operations for which an operator must submit and obtain Forest Service approval of a proposed plan of operations before operating are idenitifed by 36 CFR 228.4(a)(3)–(a)(4) as those which will likely cause, or are actually causing, a significant disturbance of surface resources.

b. The BLM's surface management regulations at 43 CFR 3809.10 similarly establish three classes of locatable minerals operations: Casual use, notice-level operations, and plan-level operations. The operations which constitute casual use are identified by 43 CFR 3809.5 as those which ordinarily result in no or negligible disturbance of the public lands or resources managed by the BLM. Per 43 CFR 3809.10(a) an operator is not required to notify the BLM before beginning operations classified as casual use. Notice-level operations are identified by 43 CFR 3809.21 as exploration causing surface disturbance of 5 acres or less of public lands on which reclamation has not been completed. Generally 43 CFR 3809.10(b) requires an operator proposing to conduct notice-level operations to submit a notice to the BLM. In accordance with 43 CFR 3809.311 and 3809.312(d) an operator may not begin notice-level operations until the BLM determines that the operator's notice is complete and the operator has submitted the required finacial guarantee. Typically, 43 CFR 3809.10(a) requires an operator to submit a proposed plan of operations for all other locatable mineral operations and 43 CFR 3809.412 prohibts the operator from begining those operations until the BLM approves the plan of operations and the operator has submitted the required financial guarantee.

c. The Forest Service is contemplating amending its regulations at 36 CFR part 228, subpart A, to increase consistency with the BLM's regulations which establish three classes of locatable mineral operations and specify the requirements an operator must satisfy before commencing operations in each such class, to the extent that the Forest Service's unique statutory authorities allow this. Do you agree with this approach?

d. If you do not agree that 36 CFR part 228, subpart A, should be amended to increase consistency with the BLM's regulations which establish three classes of locatable mineral operations andspecify the requirements which an operator must satisfy before commencing operations in each such class, please identify the classes of locatable mineral operations that you think the Forest Service should adopt. Also please identify all requirements that you think an operator should have to satisfy before commencing the locatable mineral operations that would fall in each such class.

e. If you previously concluded that 36 CFR part 228, subpart A, did not require you to give the Forest Service prior notice before you began conducting locatable mineral operations on National Forest System lands, what issues or challenges did you encounter once you began operating?

f. If you previously concluded that 36 CFR part 228, subpart A, only required you to submit a notice of intent before you began conducting locatable mineral operations on National Forest System lands, what issues or challenges did you encounter after submitting your notice of intent or after you began operating?

g. Should certain environmental concerns, such as threatened or endangered species, certain mineral operations, such as suction dredging, or certain land statuses, such as national recreation areas, be determinative of the classification of proposed locatable mineral operations? If so, please identify all circumstances which you think should require an opertor to submit a notice before operating, and all circumstances which you think should require an operator to submit and obtain Forest Service approval of a proposed plan of operations?

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

a. Today, 36 CFR 228.4(a)(3) and (4) requires an operator to submit, and obtain approval of, a proposed plan of operations before conducting locatable mineral operations which will likely cause, or are actually causing, a significant disturbance of National Forest System surface resources. Unfortunately, as the GAO's 2016 report entitled "Hardrock Mining: BLM and Forest Service Have Taken Some Action To Expedite the Mine Plan Review Process but Could Do More" concludes, the quality of the information operators include in such plans is frequently low, resulting in substantially delayed approval of these insufficient proposed plans. The Forest Service thinks that increasing the clarity of the plan of operations content requirements in 36 CFR part 228, subpart A, would result in better proposed plans of operations. The Forest Service also thinks that clarifying 36 CFR part 228, subpart A, to emphasize that proposed plans of operation must specify in detail the measures that operators intend to take to satisfy the requirements for environmental protection set out in 36 CFR 228.8 would result in better proposed plans of operation.

b. Nonetheless, the Forest Service has observed that the best proposed plans of operations often are submitted by operators who met with agency officials to discuss the formulation of their proposed plans. Thus, the Forest Service contemplates amending 36 CFR part 228, subpart A, to make operators aware that the Forest Service encourages them to meet with the appropriate local Forest Service official when the operator begins formulating a proposed plan to ensure that the operator knows and understands precisely what information a proposed plan of operations must contain for the agency to find it complete. The Forest Service thinks that routinely having such meetings would improve the quality of proposed plans of operation and consequently speed the approval of such plans.

c. The Forest Service also is considering amending 36 CFR part 228, subpart A, to require that the appropriate agency official ensures that an operator's proposed plan of operations is complete before the agency begins the National Environmental Policy Act (NEPA)-related process of analyzing that plan and ensuring that the measures an operator intends to take to satisfy the requirements for environmental protection set out in 36 CFR 228.8 are appropriate. As the GAO's 2016 report finds, when analysis of a proposed plan of operations begins before the Forest Service has determined that the plan is complete, the consequence is likely to be that this analysis must be repeated or augmented due to subsequently identified gaps in the proposed plan. The GAO's 2016 report observes, and the Forest Service agrees, that the ultimate consequence of begining to analyze an incomplete proposed plan of operations is delay in the plan's approval. Premature analysis of a proposed plan of operations also usually results in unnecessary expenditures on the part of the Forest Service, and sometimes the operator. Therefore, the Forest Service is considering amending 36 CFR part 228, subpart A, to require an appropriate Forest Service official to initially review all proposed plans of operation for completeness. If that official finds a proposed plan incomplete, the agency would notify the operator, identify the additional information the opertor must submit, and advise the operator that the Forest Service will not begin analyzing that plan until it is complete.

d. Do you think that amending 36 CFR part 228, supart A, to provide an opportunity for an operator to meet with the Forest Service before submitting a proposed plan of opertions, or to require the Forest Service to determine that a proposed plan is complete before initiating its NEPA-related analysis of the plan will expedite approval of proposed plans of operations? Are there additional or alternate measures that you would recommend to expedite approval of proposed plans of operation

submitted to the Forest Service under 36 CFR part 228, subpart A?

e. 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?

f. What issues or challenges have you encountered with respect to preparing a proposed plan of operations or submitting that plan to the Forest Service pursuant to 36 CFR 228.4(c) and (d) or 36 CFR 228.4(a)(3) and (4), respectively?

g. What issues or challenges have you encountered with respect to the Forest Service's receipt, review, analysis, or approval of a proposed plan of operations that you submitted under 36 CFR part 228 subpart A?

(3) Modifying Approved Plans of Operations.

a. After a plan of operations has been approved by the Forest Service under 36 CFR part 228 subpart A, either the operator or the Forest Service may see reason why that plan should be modified. However, 36 CFR part 228, subpart A, does not explicitly recognize that an operator may request modification of an approved plan or provide procedures for such a modification. Insofar as the Forest Service is concerned, 36 CFR part 228, subpart A, permits a Forest Service official to ask an operator to submit a proposed modification of the approved plan for the purpose of minimizing unforseen significant disturbance of surface resources. However, 36 CFR part 228, subpart A, provides that the Forest Service official cannot require the operator to submit such a proposed modification unless the official's immediate supervisor makes three findings. One of the necessary findings is that the Forest Service took all reasonable measures to predict the environmental impacts of the proposed operations prior to approving the plan of operations.

b. The NRC's 1999 report entitled "Hard Rock Mining on Federal Lands" is strongly critical of these current 36 CFR part 228, subpart A, limitations upon the Forest Service's ability to require an operator to obtain approval of a modified plan of operations. The NRC's 1999 report finds that ". . . arguments over what should have been 'foreseen' or whether a . . . Forest Service officer took 'all reasonable measures' in approving the original plan makes the modification process dependent on looking backward. Instead, the process should focus on what may be needed in the future to correct problems that have resulted in harm or threatened harm . . . . Modification procedures should look forward, rather than backward, and reflect advances in predictive capacity, technical capacity, and mining technology."

c. Do you agree that 36 CFR part 228, subpart A, should be amended to explicitly permit an operator to request Forest Service approval for a modification of an existing plan 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 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.

e. Do you think that the regulations at 36 CFR part 228, subpart A, should be amended to set out the procedures which govern submission, receipt, review, analysis, and approval of a proposed modification of an existing plan of operations? If so, please describe the procedures that you think should be added to 36 CFR part 228, subpart A, to govern modification of existing plans of operations, including any differing requirements that should be adopted if the modification is being sought by the operator rather than the Forest Service.

(4) Noncompliance and Enforcement.

a. Currently the noncompliance provisions in 36 CFR part 228, subpart A, simply require the Forest Service to serve a notice of noncompliance upon an operator when the operator is not in compliance with 36 CFR part 228, subpart A, or an approved plan of operations and this noncompliance is unnecessarily or unreasonably causing injury, loss or damage to surface resources. The notice of noncompliance must describe the noncompliance, specify the actions that the operator must take to come into compliance, and specify the date by which such compliance is required. The regulations at 36 CFR part 228, subpart A, do not specify what further administrative actions the Forest Service may take if the operator does not meet the requirements set out in the notice of noncompliance.

b. There also are judicial remedies that the federal government may pursue when an operator fails to comply with 36 CFR part 228, subpart A, or an approved plan of operations. A United States Attorney may bring a civil action in federal court (1) seeking an injunction requiring an operator to cease acting in a manner which violates 36 CFR part 228, subpart A, or the approved plan, or (2) seeking an order requiring the operator to take action required by 36 CFR part 228, subpart A, or the approved plan of operations and to compensate the United States for any damages that resulted from the operator's unlawful act. Federal criminal prosecution of an operator also is possible for violations of the Forest Service's regulations at 36 CFR part 261, subpart A, which bar users of the National Forest System, including locatable mineral operators, from acting in a manner prohibited by that Subpart. An operator charged with violating 36 CFR part 261, subpart A, which is a misdemeanor, may be prosecuted in federal court. If the operator is found guilty of violating such a prohibition, the court can order the operator to pay a fine of not more than $5,000, to be imprisoned for not more than 6 months, or both. Some operators have challenged these criminal prosecutions when the Forest Service has not first served them a notice of noncompliance. Although these challenges have failed, their pursuit nonetheless indicates that increasing the clarity of the Forest Service's regulations pertaining to the enforcement of 36 CFR part 228, subpart A, and approved plans of operations is desirable.

c. The BLM has more administrative enforcement tools it can employ when an operator does not comply with the agency's surface management regulations at 43 CFR part 3800, subpart 3809, a notice, or an approved plan of operations. However, the action that the BLM takes is dependent upon whether a violation is significant. Under the BLM's regulations, a significant violation is one that causes or may result in environmental or other harm or danger, or one that substantially deviates from a notice or an approved plan of operations. When the BLM determines that an operator's noncompliance is significant, the agency may issue the operator an immediate temporary suspension order. If the operator takes the required corrective action in accordance with an

immediate temporary suspension order, the BLM will lift the suspension. But if the operator fails to take the required corrective action, then once the BLM completes a specified process the agency may nullify the operator's notice or revoke the operator's approved plan of operations.

d. When the BLM determines that an operator's noncompliance is not significant, the agency may issue the operator a noncompliance order which describes the noncompliance, specifies the actions the operator must take to come into compliance, and specifies the date by which such compliance is required. If the operator takes the required corrective action, the BLM will lift the noncompliance order. However, if the operator fails to take the required corrective action, the BLM again assesses the violation's significance. If the BLM determines that the noncompliance is still not significant, the agency may require the operator to obtain approval of a plan of operations for current or future notice-level activity. But, if the BLM determines that the operator's noncompliance has become significant, then once the agency completes a specified process the BLM may issue the operator a suspension order. When the BLM issues a suspension order, the agency follows the same process applicable to an immediate temporary suspension order. Thus, the operator's failure to take comply with a suspension order may result in the agency nullifying the operator's notice or revoking the operator's approved plan of operations.

e. There are judicial remedies that the federal government may pursue if an operator fails to comply with any of the BLM's enforcement orders. The civil remedies that a United States Attorney can seek are the same as the ones available when the noncompliance involves lands managed by the Forest Service. But if an operator knowingly and willfully violates the BLM's regulations at 43 CFR subpart 3809, the consequences of the operator's criminal prosecution may be far more severe than those operative when an operator violates 36 CFR part 261, subpart A. An individual operator convicted of violating the BLM's regulations is subject to a fine of not more than $100,000, imprisonment for not more than 12 months, or both, for each offense. An organization or corporation convicted of violating the BLM's regulations is subject to a fine of not more than $200,000.

f. As the NRC's 1999 report entitled "Hard Rock Mining on Federal Lands" finds, the Forest Service's inability to issue a notice of noncompliance unless the operator fails to comply with 36 CFR part 228, subpart A, and that noncompliance is unnecessarily or unreasonably causing injury, loss or damage to National Forest System surface resources "has led to concern about the efficacy of the notice of noncompliance in preventing harm to [those] resources. . . ." The fact that 36 CFR part 228, subpart A, does not expressly permit the Forest Service to suspend or revoke noncompliant plans of operations also poses an unnecessary risk that the agency would be challenged if it took these actions in order to prevent harm to National Forest System surface resources.

g. The Forest Service is contemplating amending 36 CFR part 228, subpart A, to increase consistency with the BLM's regulations governing the enforcement of locatable mineral operations conducted upon public lands that the BLM manages, to the extent that the Forest Service's unique statutory authorities allow this. Do you agree with this approach?

h. If you do not agree that 36 CFR part 228, subpart A, should be amended to increase consistency with the BLM's regulations governing the enforcement of locatable mineral operations conducted upon public lands that the BLM manages, please describe the enforcement procedures that you think the Forest Service should adopt to prevent noncompliance with the agency's requirements governing locatable mineral operations from harming National Forest System surface resources.

i. Please describe the processes that the Forest Service should be mandated to follow if 36 CFR part 228, subpart A, is amended to permit the Forest Service to take the following enforcement actions: Ordering the suspension of noncompliant operations, in whole or in part, requiring noncompliant operators to obtain approval of a plan of operations for current or future notice-level operations, and nullifying a noncompliant operator's notice or revoking a noncompliant operator's approved plan of operations.

(5) Reasonably Incident Use and Occupancy.

a. The Surface Resources Act of 1955, 30 U.S.C. 612(a), aplies to National Forest System lands and prohibits the use of mining claims for any purpose other than prospecting, mining, or processing operations and uses reasonably incident thereto. But federal courts had held that the mining laws only entitle persons conducting locatable mineral operations to use surface resources for prospecting, exploration, development, mining, and processing purposes, and for reasonably incident uses long before 1955. Usually, two categories of uses that may be reasonably incident to prospecting, exploration, development, mining, and processing operations uses are recognized. One is called "occupancy," or sometimes "residency," and means full or part-time residence on federal lands subject to the mining laws along with activites or things that promote such residence such as the construction or maintenance of structures for residential purposes and of barriers to access. The term "use" generally refers to all other activities or things that promote prospecting, exploration, development, mining, and processing, such as the maintenance of equipment and the construction or maintenance of access facilities.

b. Unfortunately, the mining laws have long been widely abused by individuals and entities in an attempt to justify unlawful use and occupancy of federal lands. As the 1990 United States General Accounting Office report "Federal Land Management: Unathorized Activities Occuring on Hardrock Mining Claims:" (United States General Accounting Office. 1990. Report to the Chairman, Subcommittee on Mining and Natural Resources, Committee on Interior and Insular Affairs, House of Representatives. Federal Land Management: Unathorized Activities Occuring on Hardrock Mining Claims. GAO/RCED 90–111. Washington, DC: U.S. General Accounting Office. *https://www.gao.gov/assets/220/212954.pdf*) finds, some holders of mining claims were using them for unauthorized residences, non-mining commercial operations, illegal activities, or speculative activities not related to legitimate mining. The GAO's 1990 report also determines that these unauthorized activities result in a variety of problems, including blocked access to public land by fences and gates; safety hazards including threats of violence; environmental contamination caused by the unsafe storage of hazardous wastes; investment scams that defraud the public; and increased costs to reclaim damaged land or otherwise acquire land from claim holders intent on profiting from holding out for monetary compensation from parties wishing to use the land for other purposes. Accordingly, the GAO's 1990 report urges the Forest Service and the BLM to revise their regulations to limit use or occupancy under the mining laws to that which is reasonably incident.

c. Issues regarding the propriety of use and occupancy under the Surface Resources Act's reasonably incident

standard have generated, and continue to generate, frequent and protracted diputes between persons who are conducting locatable mineral operations and Forest Service personnel responsible for preventing unalwful use and occupancy of National Forest System lands. Moreover, a signifcant percentage of the judicial enforcement actions the federal government commences with regard to locatable mineral operations on National Forest System lands involve use and occuapancy of the lands that is questionable or improper under 30 U.S.C. 612(a). Presently, 36 CFR part 228, subpart A, lacks express standards or procedures for determining whether proposed or existing use and occuapancy is reasonably incident, regulating use and occuapancy per se, and terminating use and occupancy which is not reasonably incident.

d. The BLM's regulations at 43 CFR part 3710, subpart 3715, are designed to prevent or eliminate uses and occupancies of public lands which are not reasonably incident to locatable mineral prospecting, exploration, development, mining, or processing. These regulations establish a framework for distinguishing between bona fide uses and occupancies and those that represent abuse of the mining laws for non-mining pursuits. Specifically, the BLM's regulations establish procedures for beginning occupancy, inspection and enforcement, and managing existing uses and occupancies as well as standards for evaluating whether use or occupancy is reasonably incident.

e. The Forest Service is contemplating amending 36 CFR part 228 subpart A, which governs all operations conducted on National Forest System lands under the mining laws, to increase consistency with the BLM's regulations governing use and occupancy under the mining laws. Do you agree with this approach?

f. If you do not agree that 36 CFR part 228, subpart A, should be amended to increase consistency with the BLM's regulations governing use and occupancy under the mining laws, please describe the requirements, standards, and procedures that you think the Forest Service should adopt to prevent unalwful use and occupancy of National Forest System surface resources that is not reasonably incident to prospecting, exploration, development, mining, or processing operations under the mining laws.

(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 finanical 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 specfically 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 should an operator be allowed to furnish to assure these long-term post-closure obligations.

b. What circumstances should permit the authorized officer to review the cost estimate and financial guarantee's adequacy and require the operator to furnish an upadated financial guarantee for reclamation or post-closure management?

c. How frequently should the authorized officer be allowed to initiate this reivew and update of the finacial guarantees for reclamation or post-closure management?

(7) Operations on Withdrawn or Segregated Lands.

a. Segregations and withdrawals close lands to the operation of the mining laws, subject to valid existing rights. Generally the purpose of segregation and withdrawal is environmental resource protection, but sometimes they are used in advance of a realty action to prevent the location of mining claims which might pose an obstacle to the contemplated realty action. The Forest Service's regulations at 36 CFR part 228, subpart A, do not contain provisions governing proposed or existing notices of intent to conduct operations and proposed or approved plans of operations for lands subject to mining claims that embrace segregated or withdrawn lands. As a matter of policy, the Forest Service employs the same procedures appplicable to operations on segregated or withdrawn lands that are set forth in the BLM's regulations at 43 CFR 3809.100. However, the absence of explicit Forest Service regulations governing locatable mineral operations on segregated or withdrawn National Forest System lands has given rise to legal challenges concerning the propriety of this Forest Service policy.

b. Under 43 CFR 3809.100, the BLM will not approve a plan of operations or allow notice-level operations to proceed on lands withdrawn from appropriation under the mining laws until the agency has prepared a mineral examination report to determine whether each of the mining claims on which the operations would be conducted was valid before the withdrawal and remains valid. Where lands have been segregated from appropriation under the mining laws, the BLM may, but is not required to, prepare such a mineral examination report before the agency approves a plan of operations or allows notice-level operations to proceed.

c. If a BLM mineral examination report concludes that one or more of the mining claims in question are invalid, 43 CFR 3809.100 prohibits the agency from approving a plan of operations or allowing notice-level operations to occur on all such mining claims. Instead, the regulation requires the BLM to promptly initiate contest proceedings with respect to those mining claims. There is one exception to this process: Prior to the completion of a required mineral examination report and any contest proceedings, 43 CFR 3809.100 permits the BLM to approve a plan of operations solely for the purposes of sampling to corroborate discovery points or complying with assessment work requirements. If the U.S. Department of the Interior's final decision with respect to a mineral contest declares any of the mining claims to be null and void, the operator must complete required reclamation but must cease all other operations on the lands formerly subject to all such mining claims.

d. The Forest Service is contemplating amending 36 CFR part 228, subpart A, to increase consistency with the BLM's regulations governing operations on segregated or withdrawn lands. However, since the authority to determine the validity of mining claims lies with the Department of the Interior, the amendments would need to direct the Forest Service to ask the BLM to initiate contest proceedings with respect to mining claims whose validity is questioned by the Forest Service—a process consistent with an existing agreement between the Department of the Interior and the Department of

Agriculture. Do you agree with this approach? Also, please specify whether you think that such amendments to 36 CFR part 228, subpart A, should treat locatable mineral operations conducted on segregated and withdrawn lands identically or differently, and the reasons for your belief.

e. If you do not agree that 36 CFR part 228, subpart A, should be amended to increase consistency with the BLM's regulations governing operations on segregated and withdrawn lands, please describe the requirements and procedures that you think the Forest Service should adopt to govern locatable mineral operations on National Forest System lands segregated or withdrawn from appropriation under the mining laws?

(8) Procedures for Minerals or Materials that May Be Salable Mineral Materials, Not Locatable Minerals.

a. Effective July 24, 1955 in accordance with 30 U.S.C. 601, 611, mineral materials, including but not limited to common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay found on National Forest System lands reserved from the public domain ceased being locatable under the mining laws. Instead, the Forest Service normally is required to sell these substances, which are collectively referred to as mineral materials, to the highest qualified bidder after formal advertising pursuant to 30 U.S.C. 602 and Forest Service regulations at 36 CFR part 228, subpart C (49 FR 29784, July 24, 1984, as amended at 55 FR 51706, Dec. 17, 1990). However, uncommon varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay found on National Forest System lands reserved from the public domain continue to be locatable under the mining laws, 30 U.S.C. 611.

b. When there is a question as to whether one of these minerals or materials is a common variety of that substance which is salable under the Materials Act of 1947, 30 U.S.C. 601–04, or an uncommon variety of that substance which is subject to appropriation under the mining laws, 30 U.S.C. 611, Forest Service policy calls for preparation of a mineral examination report to evaluate this issue. Pending resolution of the question as to whether the mineral or material is subject to appropriation under the mining laws, the Forest Service encourages an operator seeking to remove it in accordance with 36 CFR part 228, subpart A, to establish an escrow account and deposit the appraised value of the substance in that account. But if the operator refuses to establish and make payments to an escrow account, 36 CFR part 228, subpart A, does not expressly permit the Forest Service to delay the substance's removal while the Forest Service considers whether the substance is a mineral material rather than a locatable mineral.

c. The BLM's regulations at 43 CFR 3809.101 establish special procedures applicable to substances that may be salable mineral materials rather than locatable minerals. That section generally prohibits anyone from initiating operations for the substance until the BLM has prepared a mineral examination report evaluating this question. Prior to completion of the report and any resulting contest proceedings, the BLM will allow notice-level operations or approve a plan of operations when (1) the operations' purpose is either sampling to confirm or corroborate existing mineral exposures physically disclosed on the mining claim or complying with assessment work requirements, or (2) the operator establishes an acceptable escrow account and deposits the appraised value of the substance in that account under a payment schedule approved by the agency. If the mineral examination report concludes that the substance is salable rather than locatable, the BLM will initiate contest proceedings with respect to all mining claims on which loctable mineral operations are proposed unless the mining claimant elects to relinquish those mining claims. Upon the relinquishment of all such mining claims or the U.S. Department of the Interior's issuance of a final decision declaring those mining claims to be null and void, the operator must complete required reclamation but must cease all other operations on the lands formerly subject to those mining claims.

d. The Forest Service is contemplating amending 36 CFR part 228, subpart A, to increase consistency with the BLM's regulations governing substances that may be salable mineral materials rather than locatable minerals. However, since the authority to determine the validity of mining claims lies with the Department of the Interior, the amendments would need to direct the Forest Service to ask the BLM to initiate contest proceedings with respect to mining claims which the Forest Service thinks are based upon an improper attempt to appropriate salable mineral materials under the mining laws—a process consistent with an existing agreement between the Department of the Interior and the Department of Agriculture. Do you agree with this approach?

e. If you do not agree that 36 CFR part 228, subpart A, should be amended to increase consistency with the BLM's regulations governing substances that may be salable mineral materials rather than locatable minerals, please describe the requirements and procedures that you think the Forest Service should adopt to help ensure that the public interest and the Federal treasury are protected by preventing mineral materials from being given away for free contrary to 30 U.S.C. 602 which requires payment of their fair market value.

f. If you submitted a proposed plan of operations under 36 CFR part 228, subpart A, for what you thought was an uncommon variety of sand, stone, gravel, pumice, pumicite, cinders, and clay, what issues or challenges did you encounter in obtaining, or attempting to obtain, Forest Service approval of that plan?

National Environmental Policy Act

This advance notice also serves as the USDA Forest Service's notice of intent to prepare an environmental assessment or environmental impact statement pursuant to the National Environmental Policy Act and initiates the scoping process for that document. The USDA Forest Service requests comments about the potential environmental effects of the propsective amendments to its current regulations at 36 CFR part 228, subpart A, described in this advance notice.

Regulatory Findings: This advance notice is not a regulatory action under Executive Order 13771.

Dated: August 31, 2018.

Victoria Christiansen,

Interim Chief, USDA, Forest Service.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596–AD33

Oil and Gas Resources

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The United States Department of Agriculture (USDA), Forest Service is preparing to revise the contents of its Oil and Gas Resources regulations. This advance notice is intended to give the public the opportunity to comment on key issues regarding implementation of the existing regulations or to bring other issues of concern to the USDA Forest Service's attention. Comments will help