



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Doug Burgum
Governor

Wayne Stenejem
Attorney General

Doug Goehring
Agriculture Commissioner

November 2, 2020

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

<http://www.regulations.gov>

Proposed Rule link

RIN 0596-AD33

Dear Sirs:

Re: Revisions to 36 CFR, Parts 214, 228, 261

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the Proposed Rule Changes as follows:

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces more than 525 million barrels of oil and 1 trillion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations under North Dakota Century Code Title 38 and N.D. Administrative Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; and all other operations for the production of oil or gas.

The NDIC supports the intent of these proposed changes to streamline and reduce redundancies, to improve agency efficiency, and better align Forest Service regulations with those used by the Bureau of Land Management (BLM). We agree that better alignment is most practically achieved by the Forest Service aligning its single subpart regulation with the BLM's more extensive oil and gas regulations in 43 CFR, subchapter C, parts 3000 through 3190. We are concerned that Section 228.103 includes a leasing analysis and consent decision process. The rule does not explain how the new Forest Service process will fit with the BLM process. If the intent of the revised rule is to improve efficiencies, the rule should include one process performed in concert that will satisfy both the Forest Service and the BLM statutory authorities. For example, the agencies should have one Reasonably Foreseeable Development Scenario that incorporates decision making by both agencies. NDIC is also concerned that Section 228.103 (c)

would authorize the Forest Service to make a leasing decision after their leasing consent analysis is complete. We are concerned that this takes away the BLM's authority to lease federal minerals, if the Forest Service adds their own decision analysis to what BLM already requires.

The NDIC also supports the recognition that this rulemaking only affects Federal oil and gas resources on National Forest System land and does not affect nonfederal (i.e. reserved and outstanding private) oil and gas resources. Some lands that the Forest Service acquired are subject to previously reserved or outstanding rights (See Forest Service Manual Chapters 5470, 2830 and 2710). Reserved rights are legal rights in property that the seller retains at the time the property is conveyed to the United States. Reserved rights may be made subject in the deed of conveyance to the Secretary of Agriculture's rules and regulations. When reserved rights are made subject to the Secretary's rules and regulations, the exercise of reserved rights generally requires a special use authorization, a plan of operation, or some other appropriate legal authorization. Outstanding rights, sometimes called valid existing rights (VERs), are legal rights in property owned by third parties other than the United States' grantor. Outstanding rights are those rights which have been severed and purchased by third parties before the United States' acquisition. The United States has limited control over outstanding rights except to prevent undue degradation or nuisance to adjacent surrounding National Forest System land. However, decisions by the Forest Service on leasing minerals should consider potential impact of matters like surface stipulations that will move impacts to non-Forest Service managed surface even though the lowest impact would have been development on the federal surface.

The NDIC respectfully requests that the proposed amendments to Section 228.104 be expanded to provide for waivers, exceptions, or modifications of lease stipulations to recognize North Dakota section line rights of way (NDCC 24-07-03) on lands acquired by the United States obtained by deed through purchase or gift, or through condemnation proceedings after North Dakota statehood in 1889.

The NDIC supports the proposed amendment's adherence to the statutory language in the Mineral Leasing Act of 1920 (30 U.S.C. 181, et seq.), the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100-203, the Reform Act), the Mineral Leasing Act for Acquired Lands of 1947, the Weeks Act of 1911, the Bankhead Jones Farm Tenant Act of 1937 (30 U.S.C. 351-359), the Energy Policy Act of 2005 (Pub. L. 109-58), Subtitle F, sections 361, 362, and 390, and the 2007 Forest Service and Bureau of Land Management jointly established coordination procedures for review and analysis of permits to drill (including the SUPO portion, in Onshore Order 1).

The proposed amendments modified as recommended could have significant beneficial impacts on North Dakota's ability to administer its oil and gas regulatory programs.

Sincerely,

North Dakota Industrial Commission



Doug Burgum, Chairman
Governor



Wayne Stenehjem
Attorney General



Doug Goehring
Agriculture Commissioner