

§ 228.103

36 CFR Ch. II (7–1–10 Edition)

and objectives to be enforced under the standard lease terms);

(ii) Open to development but subject to constraints that will require the use of lease stipulations such as those prohibiting surface use on areas larger than 40 acres or such other standards as may be developed in the plan for stipulation use (with discussion as to why the constraints are necessary and justifiable); and

(iii) Closed to leasing, distinguishing between those areas that are being closed through exercise of management direction, and those closed by law, regulation, etc.

(2) Identify alternatives to the areas listed in paragraph (c)(1) of this section, including that of not allowing leasing.

(3) Project the type/amount of post-leasing activity that is reasonably foreseeable as a consequence of conducting a leasing program consistent with that described in the proposal and for each alternative.

(4) Analyze the reasonable foreseeable impacts of post-leasing activity projected under paragraph (c)(3) of this section.

(d) *Area or Forest-wide leasing decisions (lands administratively available for leasing).* Upon completion of the leasing analysis, the Regional Forest shall promptly notify the Bureau of Land Management as to the area or Forest-wide leasing decisions that have been made, that is, identify lands which have been found administratively available for leasing.

(e) *Leasing decisions for specific lands.* At such time as specific lands are being considered for leasing, the Regional Forester shall review the area or Forest-wide leasing decision and shall authorize the Bureau of Land Management to offer specific lands for lease subject to:

(1) Verifying that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document, and is consistent with the Forest land and resource management plan. If NEPA has not been adequately addressed, or if there is significant new information or circumstances as defined by 40 CFR 1502.9 requiring further environmental analysis, additional environment analysis shall be done before

a leasing decision for specific lands will be made. If there is inconsistency with the Forest land and resource management plan, no authorization for leasing shall be given unless the plan is amended or revised.

(2) Ensuring that conditions of surface occupancy identified in § 228.102(c)(1) are properly included as stipulations in resulting leases.

(3) Determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy.

[55 FR 10444, Mar. 21, 1990, as amended at 56 FR 56157, Nov. 1, 1991]

§ 228.103 Notice of appeals of decisions.

The authorized Forest officer shall promptly notify the Bureau of Land Management if appeals of either an area or Forest-wide leasing decision or a leasing decision for specific lands are filed during the periods provided for under 36 CFR part 217.

§ 228.104 Consideration of requests to modify, waive, or grant exceptions to lease stipulations.

(a) *General.* An operator submitting a surface use plan of operations may request the authorized Forest officer to authorize the Bureau of Land Management to modify (permanently change), waive (permanently remove), or grant an exception (case-by-case exemption) to a stipulation included in a lease at the direction of the Forest Service. The person making the request is encouraged to submit any information which might assist the authorized Forest officer in making a decision.

(b) *Review.* The authorized Forest officer shall review any information submitted in support of the request and any other pertinent information.

(1) As part of the review, consistent with 30 U.S.C. 226 (f)–(g), the authorized Forest officer shall ensure compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) and any other applicable laws, and shall ensure preparation of any appropriate environmental documents.

(2) The authorized Forest officer may authorize the Bureau of Land Management to modify, waive, or grant an exception to a stipulation if:

(i) The action would be consistent with applicable Federal laws;

(ii) The action would be consistent with the current forest land and resource management plan;

(iii) The management objectives which led the Forest Service to require the inclusion of the stipulation in the lease can be met without restricting operations in the manner provided for by the stipulation given the change in the present condition of the surface resources involved, or given the nature, location, timing, or design of the proposed operations; and

(iv) The action is acceptable to the authorized Forest officer based upon a review of the environmental consequences.

(c) *Other agency stipulations.* If a stipulation was included in a lease by the Forest Service at the request of another agency, the authorized Forest officer shall consult with that agency prior to authorizing modification, waiver, or exception.

(d) *Notice of decision.* (1) When the review of a stipulation modification, waiver, or exception request has been completed and the authorized Forest officer has reached a decision, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, of the decision to grant, or grant with additional conditions, or deny the request.

(2) Any decision to modify, waive, or grant an exception to a lease stipulation shall be subject to administrative appeal only in conjunction with an appeal of a decision on a surface use plan of operation or supplemental surface use plan of operation.

AUTHORIZATION OF OCCUPANCY WITHIN A LEASEHOLD

§ 228.105 Issuance of onshore orders and notices to lessees.

(a) *Onshore oil and gas orders.* The Chief of the Forest Service may issue, or cosign with the Director, Bureau of Land Management, Onshore Oil and Gas Orders necessary to implement and

supplement the regulations of this subpart.

(1) *Surface Use Plans of Operations and Master Development Plans.* Operators shall submit Surface Use Plans of Operations or Master Development Plans in accordance with Onshore Oil and Gas Order No. 1. Approval of a Master Development Plan constitutes a decision to approve Surface Use Plans of Operations submitted as a part of the Master Development Plan. Subsequently submitted Surface Use Plans of Operations shall be reviewed to verify that they are consistent with the approved Master Development Plan and whether additional NEPA documentation or consultation pursuant to the National Historic Preservation Act or the Endangered Species Act is required. If the review determines that additional documentation is required, the Forest Service will review the additional documentation or consult as appropriate and make an independent decision regarding the subsequently submitted Surface Use Plan of Operations, and notify the BLM and the operator whether the Surface Use Plan of Operations is approved.

(2) *Adoption of additional onshore oil and gas orders.* Additional onshore oil and gas orders shall be published in the FEDERAL REGISTER for public comment and codified in the CFR.

(3) *Applicability of onshore oil and gas orders.* Onshore Oil and Gas Orders issued pursuant to this section are binding on all operations conducted on National Forest System lands, unless otherwise provided therein.

(b) *Notices to lessees, transferees, and operators.* The authorized Forest officer may issue, or cosign with the authorized officer of the Bureau of Land Management, Notices to Lessees, Transferees, and Operators necessary to implement the regulations of this subpart. Notices to Lessees, Transferees, and Operators are binding on all operations conducted on the administrative unit of the National Forest System (36 CFR 200.2) supervised by the authorized Forest officer who issued or cosigned such notice.

[55 FR 10444, Mar. 21, 1990, as amended at 72 FR 10328, Mar. 7, 2007]