

Scale at the site and associated wind speeds.

(4) A discussion of tornado loads determination and design procedure.

(5) A comparison of impact between wind loads and tornado loads for the site.

(F) *Rain, ice, snow, and related precipitation information.* Provide a discussion of rain, ice, snow, and related precipitation design criteria and hazards that includes:

(1) The rain, ice, and snow design basis and criteria that are, at a minimum, in accordance with all applicable Federal requirements, and applicable codes, standards, and specifications used as basis of design.

(2) The identification of stormwater flows, outfalls, and stormwater management systems for all surfaces, including spill containment system with sump pumps or other water removal systems.

(3) The comparison of rain, ice, and snow design loads with rainfall rates, snow loads, and ice loads corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(4) A discussion of historic ice and blizzard events and frequencies and other ice and snow events at the site and associated loads.

(G) *Landslides, wildfires, volcanic activity, and geomagnetism information.* Provide a discussion of landslides, wildfires, volcanic activity, and geomagnetism design criteria and hazards that includes:

(1) The landslides, wildfires, volcanic activity, and geomagnetism design basis and criteria that are, at a minimum, in accordance with all applicable Federal requirements, and applicable codes, standards, and specifications used as basis of design.

(2) A discussion of historic landslide, wildfire, volcano activity, and geomagnetic disturbance risks and intensities at the site.

(3) A description of capable volcanoes, volcanic characteristics of the region, and a discussion of potentially hazardous volcanic phenomena considerations.

■ 6. Amend appendix A to part 380 in the section entitled “Resource Report 6—Geological Resources” by:

- a. Removing paragraph 4;
- b. Redesignating paragraph 5 as paragraph 4; and
- c. Revising newly redesignated paragraph 4.

The revision reads as follows:

#### Appendix A to Part 380—Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act

\* \* \* \* \*

#### Resource Report 6—Geological Resources

\* \* \* \* \*

4. For underground storage facilities, how drilling activity by others within or adjacent to the facilities would be monitored, and how old wells would be located and monitored within the facility boundaries.

(§ 380.12(h)(5))

\* \* \* \* \*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

#### Appendix A—Commissioner Danly’s Statement

##### United States of America Federal Energy Regulatory Commission

*Updating Regulations for Engineering and Design Materials for Liquefied Natural Gas Facilities Related to Potential Impacts Caused by Natural Hazards*

Docket No. RM22–8–000

(Issued October 23, 2023)

DANLY, Commissioner, *concurring*:

1. I agree that several changes to the Commission’s regulations will be helpful to ensure that the Commission has adequate information to examine the design, engineering and safety of liquefied natural gas (LNG) facilities when authorizing the siting of such facilities under the Commission’s jurisdiction. I write separately to express two misgivings about the final rule.<sup>90</sup>

2. *First*, in their joint comments on the proposed rule, the Center for LNG and the American Petroleum Institute (API) identified potential sources of confusion throughout the proposed rule regarding the requirements that project sponsors identify and comply with all “applicable codes and standards.”<sup>91</sup> The final rule does not sufficiently address these well-articulated concerns.

3. *Second*, language in the final rule suggests that the Commission has perpetual jurisdiction over LNG facilities<sup>92</sup> under

<sup>90</sup> See *Updating Regs. for Eng’g & Design Materials for Liquefied Nat. Gas Facilities Related to Potential Impacts Caused by Nat. Hazards*, 185 FERC ¶ 61,050 (2023) (Final Rule).

<sup>91</sup> See Center for LNG & API January 27, 2023 Comments at 2.

<sup>92</sup> See Final Rule, 185 FERC ¶ 61,050 at P 39 (“Because the Commission’s authority is to ensure public safety and reliability of proposed LNG facilities not only during siting of the facilities but also during construction and operations of those facilities, the final rule revises existing § 380.12(o)(12) so that Resource Report 13 would now include identification of codes and standards for the design, construction, testing, monitoring, operation, and maintenance of the LNG facility in addition to identification of codes and standards for siting.”) (footnote omitted); see also *id.* P 15 (“The current rulemaking clarifies and updates the informational requirements in the Commission’s regulations by codifying the current practice for processing NGA section 3 and [section] 7

Natural Gas Act sections 3 and 7.<sup>93</sup> I continue to harbor misgivings that the Commission may not, in fact, have ongoing jurisdiction to oversee the safety of LNG facilities once permitted.<sup>94</sup>

For these reasons, I respectfully concur.

James P. Danly,

Commissioner.

[FR Doc. 2023–23791 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 228

RIN 0596–AD58

#### Long-Term Financial Assurance for Mining

**AGENCY:** Forest Service, Agriculture.

**ACTION:** Interim final rule; request for public comment.

**SUMMARY:** The Forest Service is amending its locatable minerals rules to provide mine operators with a broader array of options for securing financial assurance for funding reclamation work. Locatable mineral operations on National Forest System lands must be conducted to minimize adverse environmental impacts on National Forest surface resources, which often includes reclamation at the conclusion of operations. Current regulations provide that the Forest Service may require the operator to furnish a “bond” to fund reclamation work. However, the financial assurance mechanisms are limited to surety bonds, cash, and negotiable securities. This rule will expand those options. It does not change requirements for surface resource and environmental protection. Rather, it provides additional options for obtaining the financial assurance

applications. . . . The environmental document includes Commission staff’s recommendations related to the construction and operation of the project, including measures to mitigate adverse effects. If the Commission approves the application, the Commission’s oversight of the project continues through final design, construction, commissioning, and operation of the project to ensure that the project has complied with the terms and conditions of the Commission’s authorization order.”) (citing 15 U.S.C. 717b(a), 717b(e)(3)(A), 717f(e) (authorizing the Commission to include terms and conditions to our authorization orders)) (internal citations omitted) (footnotes omitted).

<sup>93</sup> 15 U.S.C. 717b, 717f.

<sup>94</sup> See *EcoEléctrica, L.P.*, 184 FERC ¶ 61,114 (2023) (Danly, Comm’r, concurring at P 3); *EcoEléctrica, L.P.*, 180 FERC ¶ 61,054 (2022) (Danly, Comm’r, concurring at P 3); *EcoEléctrica, L.P.*, 179 FERC ¶ 61,038 (2022) (Danly, Comm’r, concurring); *EcoEléctrica, L.P.*, 177 FERC ¶ 61,164 (2021) (Danly, Comm’r, concurring); *EcoEléctrica, L.P.*, 176 FERC ¶ 61,192 (2021) (Danly, Comm’r, concurring).

necessary to be sure that those requirements will be met.

**DATES:** This rule is effective November 29, 2023. Comments concerning this rule must be received by December 29, 2023.

**ADDRESSES:** Comments, identified by RIN 0596-AD58, should be sent via one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments;
2. *Mail:* Director, Lands, Minerals and Geology Management, 201 14th Street SW, Washington, DC 20250-1124; or
3. *Hand Delivery/Courier:* Director, Lands, Minerals and Geology Management, 1st Floor South East, 201 14th Street SW, Washington, DC 20250-1124.

Please confine written comments to issues pertinent to the interim rule; explain the reasons for any recommended changes; and, where possible, reference the specific wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule at the Office of the Director, Lands, Minerals and Geology Management, 201 14th Street SW, 1st Floor Southeast, Sidney R. Yates Federal Building, Washington, DC, on business days between 8:30 a.m. and 4 p.m. Visitors are encouraged to call ahead at 202-205-1680 to facilitate entry into the building. Comments may also be viewed on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 0596-AD58" and click the "Search" button.

**FOR FURTHER INFORMATION CONTACT:** Sarah Shoemaker, Geologist at 907-586-7886 or [sarah.shoemaker@usda.gov](mailto:sarah.shoemaker@usda.gov). Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339 between 8 a.m. and 8 p.m., Eastern Daylight Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Background and Need for Rule**

Locatable mineral operations on National Forest System (NFS) lands have been regulated under the rules currently codified at 36 CFR part 228, subpart A, since 1974, including provisions for requiring financial assurance for completion of reclamation. Under 36 CFR 228.5 and 228.7, an operator is required to conduct operations in accordance with an approved plan of operations when one

is required under 36 CFR 228.4, and with the regulations at 36 CFR 228 Subpart A. Under 36 CFR 228.8, all operations must be conducted to minimize adverse environmental impacts on National Forest surface resources as specified in the regulation, including the requirements to complete reclamation at the conclusion of operations. 36 CFR 228.8(g). Under 228.8(g), reclamation may include continuation of actions required to mitigate or stabilize elements that might otherwise adversely impact surface resources long after exhaustion of the mineral deposit and cessation of mining operations for as long as necessary to accomplish the specified requirements of the regulations to minimize the adverse environmental impacts on National Forest surface resources to the extent feasible.

Current regulations at § 228.13 provide that the authorized officer of the Forest Service may require the operator to furnish a "bond," conditioned upon compliance with the reclamation requirements in current 228.8(g), prior to approval of a plan of operations. The regulations further provide that, if a bond is required by the authorized officer, the operator may elect to furnish cash or negotiable securities of the United States in the amount of the bond in lieu of the bond required by the authorized officer. All operations conducted by the operator can have implications for the ability to successfully complete reclamation. Therefore, the bond, cash, or securities provided by the operator under 36 CFR 228.13 provide financial assurance by securing compliance with and completion of all obligations for environmental protection created by the plan of operations and the regulations. However, the financial assurance mechanisms expressly contemplated by the regulations are limited to surety bonds, cash, and negotiable securities. While the current regulation does not preclude the use of other mechanisms for financial assurance, it does not allow the authorized officer to unilaterally require any form of financial assurance other than a surety bond or provide the operator with the entitlement to use a form of financial assurance other than cash or negotiable securities in lieu of the bond. Where other forms of financial assurance may be more cost effective, or provide greater assurance for long-term obligations, the authorized officer and the operator may negotiate an alternative, but there currently are no regulatory standards for when such alternatives may be required by the authorized officer, must be accepted by

the authorized officer in lieu of a bond, or for the acceptable terms of such instruments. In particular, the forms of financial assurance contemplated by the current regulation do not provide for sufficient income generation, which, given the time value of money, can be critically important for long-term financial assurance (LTFA) of the obligations of mine operators to meet the requirements of their plan of operations and the regulations many years into the future. The upfront cost of financial assurance for long-term obligations can be cost-prohibitive when there is no mechanism allowing for income generation on financial assurance funds.

Current Policy at Forest Service Manual (FSM) 6561.5 requires the use of trusts to provide LTFA in lieu of the instruments expressly contemplated in 36 CFR 228.13, when agreed to by the authorized officer and the operator. However, FSM 6561.5 limits the investment of trust funds to U.S. Treasury and other negotiable securities of the U.S. Government and certain bank deposits. These investment options offer such low potential rates of return as to be of little benefit in reducing the upfront cost of funding requirements for LTFA or long-term viability of trust funding. While FSM 6560.5 acknowledges that trust assets must adequately protect the Government from loss, and that allowable trust investments must therefore have limited risk of loss, the current limitations limit the investments in a way that makes it more difficult to adequately fund reclamation obligations.

The ability of the Forest Service to require other forms of financial assurance, or the right of operators to offer other forms of financial assurance in lieu of bonding for long-term obligations that will continue once an operation ceases production will allow for greater financial assurance for the protection of surface resources and reduction of costs to operators. Allowing for a reasonable rate of investment return on LTFA funds will provide greater assurance of the availability of funds in the long-term and reduce the cost of upfront funding.

The interim final rule at 36 CFR 228.13 will allow the authorized officer to require the operator to provide alternative LTFA when necessary to prevent or control damage after operations have ceased. This provision of the regulations will codify the options allowed by FSM 6561.5. Further, the regulation will allow for a broader range of investment options to realize the advantages and benefits of

the use of income-earning accounts. This interim rule does not change requirements for surface resource and environmental protection in the current rule. Rather, it provides additional options for obtaining the financial assurance necessary to be sure that those requirements will be met. The generation of reasonable income streams on financial assurance accounts will provide greater assurance that long-term obligations will be met and will be more cost-effective for operators.

The interim final rule allows trust funds to be comprised of a mix of government bonds and public stocks, consistent with Bureau of Land Management (BLM) regulations at 43 CFR 3809.555 and practices. Future Forest Service Manual direction (manual or handbook) will supply guidance for allowable investment portfolio composition, similar to BLM Handbook Direction at H-3809-1 (2012). Forest Service direction will be adopted after implementation of the proposed rule.

The Forest Service believes this change is needed immediately to clarify options and alternatives for LTFA for mining operations, both to protect the public interest in assuring that long-term obligations for environmental and surface resource protection are met, and to reduce unnecessary, and sometimes cost-prohibitive, financial burdens on operators. The regulation clarifies when alternative forms of financial assurance for long-term operations may be required by the authorized officer or must be accepted by the authorized officer if offered by the operator. Further, the interim final rule sets standards for when such alternative LTFA is acceptable, including the range of allowable investments for income generation.

The current number of operations requiring LTFA and operations approved after adoption of the proposed rule is expected to be small. In 2018, the Forest Service reported 140 mining operations on National Forest system land that are approved for “production phase” development, which are the type of operations most likely to require financial assurance for long-term operations and final closure. Of the 140 approved operations, approximately nine, or 6%, are large-scale operations with plans of operation that have a potential to result in the need for post-closure maintenance and may require LTFA to ensure funding for post-closure reclamation. Of the nine approved plans of operations, four have currently identified the need for long-term post-closure water treatment or other maintenance operations (3% of total

approved operations; 44% of approved large-scale operations). These four operations carry approximately 49% of the total financial assurance held by the Forest Service (approximately \$196M of \$400M, as of June 2023). Traditional third-party surety bond financial assurances are in place for the four operations, but lack a sustainable income-generating component, and therefore may not be adequate for assuring long-term post-reclamation needs. The interim final rule, by clarifying requirements and expanding investment options, will increase the array of available options for financial assurance that can provide greater LTFA to protect the interests of the United States and the public, and reduce unnecessary financial burdens on operators.

While the Forest Service views these changes as critically important for the administration of mining operations on the national forests, their impact will be limited primarily to the small number of large locatable mineral operations on National Forest System lands where the needs for funding long-term post-reclamation activities is the greatest. Allowing for an expanded range of investment options with potentially higher rates of return is expected to reduce the risk of public funds being needed to complete reclamation or other long-term obligations in the event of operator default and reduce the upfront cost to operators to provide financial assurance. While the investment options allowed may have greater risk of short-term volatility, appropriate management of trust funds through diversification of investment over the long-term is projected to generate higher rates of return.

The interim final rule also clarifies language in 36 CFR 228.13 regarding the types of financial assurances the agency may require, may accept, and under what circumstances. Currently, 36 CFR 228.13 refers only to bonds and limited instruments that must be accepted by the authorized officer in lieu of bonds which can be interpreted as implying that bonds are required, or at least the preferred, instrument for financial assurances. The interim final rule instead refers to financial assurances, and lists every acceptable mechanism, including instruments that the agency currently accepts in policy (FSM 6561.4) but are not listed in the current regulation, such as irrevocable letters of credit. The agency believes this change to be administrative and clarifying in nature, which will not result in any changes in practice or policy.

## Regulatory Certifications

### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will determine whether a regulatory action is significant and will review significant regulatory actions. The Office of Information and Regulatory Affairs has determined that this interim final rule is not significant. Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation’s regulatory system to promote predictability; to reduce uncertainty; and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Agency has developed this rule consistent with Executive Order 13563.

### *Congressional Review Act*

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this interim final rule as not a major rule as defined by 5 U.S.C. 804(2).

### *National Environmental Policy Act*

This interim final rule will amend the Agency’s locatable minerals regulations to allow mine operators to secure financial assurance for funding reclamation work through the use a broader range of investment options. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions.” The Agency’s preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

### *Regulatory Flexibility Act*

The Agency considered the impacts of the interim final rule on small entities consistent with requirements of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Flexibility Enforcement Fairness Act of 1996 (SBREFA), and Executive Orders 13272 (Proper Consideration of Small Entities in Agency Rulemaking). The provisions of the rule are not expected to have

economic effects on small entities, and no separate threshold regulatory flexibility analysis was prepared for this rule.

Small entities potentially affected by the interim rule include small businesses (firms) involved in precious and heavy metal mining (e.g., North American Industry Classification System (NAICS) 2122, iron, gold, silver, copper, nickel, lead, zinc, uranium, and other metals), limestone and clay mining and quarrying (NAICS 2123, crushed/broken limestone, kaolin and ball clay, ceramic and refractory minerals, other chemical/fertilizer minerals, and other nonmetallic minerals); and geophysical surveying and mapping (NAICS 541360). A majority (75% to 80%) of existing locatable operations on National Forest System lands fall within the precious and heavy metal sectors, and within the gold ore sector specifically. The interim final rule would apply to the fraction of businesses that engage in locatable mineral development or operations on National Forest System lands that are projected to involve levels of closure and post-closure activities that require operators to provide financial assurances to cover closure or post-closure obligations (costs).

The interim final rule clarifies the types of financial assurance instruments that can be used by operators, and explicitly lists instruments (e.g., irrevocable letters of credit, trust funds) that are omitted in current regulation, though allowed in current policy. The interim final rule allows stocks to be used in the mix of investments forming a trust fund, whereas current regulations limit those investments to United States securities. Allowances for stocks is consistent with current Department of Interior regulations and policy for the Bureau of Land Management (43 CFR 3809.555 and handbook direction at H-3809-1) and Office of Surface Mining Reclamation and Enforcement (30 CFR 942.800). Interest bearing accounts are necessary for providing financial assurances for long-term (e.g., into perpetuity) post-reclamation obligations, and trust funds are likely to be the only viable instrument that the Agency finds acceptable for those situations under the current regulations as well as the interim final rule. However, allowances for stocks can provide operators with access to an expanded range of rates of return for trust fund investments, offering opportunities to establish trust funds with lower initial investment than would be possible under current regulations.

These interim final rule provisions are likely to clarify and expand opportunities for small business operators to establish financial assurances for mine closure and post-closure actions and not expected to result in direct or adverse economic effects to small businesses. The small business operators with substantial closure or post-closure obligations will be a subset of small businesses operating on National Forest System lands. Additional policy for monitoring the performance of trust funds, composition of investment mixes (e.g., types of stocks, investment composition over time), as well as requiring contributions or allowing withdrawals from trust funds in response to trust fund performance, will be addressed through Agency policy direction.

The Agency certifies that the interim final rule will not have a significant impact on a substantial number of small entities.

#### *Federalism*

The Agency has considered this interim final rule under the requirements of Executive Order 13132, *Federalism*. The Agency has determined that the rule conforms with the federalism principles set out in this executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has concluded that the rule does not have federalism implications.

#### *Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications. This includes regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This interim final rule will amend the Agency's locatable minerals regulations to allow mine operators to secure financial assurance for funding reclamation work through the use a broader range of investment options. The Agency has reviewed this rule in accordance with the requirements of

Executive Order 13175 and has determined that this proposed rule would not have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments is not required for this rule.

#### *No Takings Implications*

The Agency has analyzed this interim final rule in accordance with the principles and criteria in Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*. The Agency has determined that the proposed rule would not pose the risk of a taking of private property.

#### *Energy Effects*

The Agency has reviewed this interim final rule under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Agency has determined that the proposed rule would not constitute a significant energy action as defined in Executive Order 13211. The rule is administrative in nature and does not impact Agency decisions about leasing and subsequent development of energy resources on NFS lands.

#### *Civil Justice Reform*

The Forest Service has analyzed this interim final rule in accordance with the principles and criteria in Executive Order 12988, *Civil Justice Reform*. After adoption of the rule, (1) all State and local laws and regulations that conflict with the proposed rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to the proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

#### *Unfunded Mandates*

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), the Agency has assessed the effects of this interim final rule on State, local, and Tribal Governments and the private sector. The rule will not compel the expenditure of \$100 million or more by any State, local, or Tribal Government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

### *Controlling Paperwork Burdens on the Public*

This interim final rule does not contain recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

### **Administrative Procedure Act**

Section 553(b)(3)(B) of the Administrative Procedures Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. The Forest Service is promulgating this rule on an interim final basis because the agency has found that notice and public comment procedures are unnecessary and contrary to the public interest.

The agency finds that requiring public notice and comment before this IFR is implemented would be contrary to the public interest because the IFR is expected to help streamline Forest Service review and approval of future critical mineral project proposals. The Infrastructure Investment and Jobs Act (Pub. L. 117–58), E.O. 14017 “America’s Supply Chains,” and E.O. 13593 “Addressing the Threat to the Domestic Supply Chain From Reliance on Critical Minerals From Foreign Adversaries and Supporting the Domestic Mining and Processing Industries,” all direct the agency to process critical minerals approvals timely and efficiently. The changes proposed in this IFR will improve the Forest Service’s ability to develop adequate funding for long-term post-closure reclamation activities.

In some cases, the Forest Service has found that arriving at an acceptable funding vehicle has slowed the processing of mineral operations approvals because of the limited number of investment options available under current authorities. This results in slower approval times and increased risk for the agency. The agency has at times experienced challenges in obtaining adequate LTFA because the current investment limitations are a practical barrier to operators: the fixed-income investments do not generate sufficient growth at reasonable initial

fund rates, while traditional third-party surety bond financial assurances lack a sustainable income-generating component, and therefore may not be adequate for assuring long-term post-reclamation needs.

The agency has also experienced challenges in getting LTFA because the lack of clarity in the current regulations regarding trust funds creates confusion, which creates a procedural barrier to operators: delays while basic questions and concepts are repeatedly tested. Over time the agency has experienced that many of these mines have increased awareness of long-term operational needs, such as in the case of ongoing operations approved prior to consideration of LTFA as common agency practice. In addition to existing operations that are not able to capitalize a trust fund at fixed income U.S. securities rates, the current rule has significantly slowed approval and processing of new proposals, including for critical minerals such as the nation’s only domestic source of cobalt. This revision to 36 CFR 228.13 will help ensure that those projects can achieve adequate LTFA, resulting in more effective and efficient processing of not just critical minerals proposals, but of all mineral operations.

The IFR’s additional flexibility will also allow the agency to better assure available funds for continued environmental mitigation and protection, thus removing this potential burden from the taxpayers.

Presenting this revision as a proposed rule and collecting public comment prior to implementation is contrary to public interest because time is of the essence to critical minerals and other mineral proposals struggling to complete the process to obtain adequate LTFA, which delays the production of critical minerals. The interim final rule, by clarifying requirements and expanding investment options, will increase the array of available options for financial assurance that can provide greater long-term financial assurance to protect the interest of the United States and the public, and reduce unnecessary financial burdens on operators.

The agency also believes it is unnecessary to request public comment prior to implementation of this revision to 36 CFR 228.13 because the changes are ministerial in nature and not likely to be controversial. The revised § 228.13 clarifies that trusts can be accepted and removes unnecessary restrictions to investment options. While this revision will greatly increase the agency’s ability to better administer the Long-Term Financial Assurance program internally, it does not fundamentally change

agency operations. This revision to investment options also brings the Forest Service in line with BLM regulation and policy, successfully in operation since 2001. Because these changes are bringing the Forest Service in line with longstanding BLM practice in this area, and the IFR is simply broadening the array of arrangements that can satisfy the requirements of LTFA, public comment before publication of the rule is unnecessary under the APA.

As noted above, the Forest Service is concurrently accepting comments on this IFR. The Forest Service will consider all comment received in response to this IFR in publishing the final rule.

### **List of Subjects in 36 CFR Part 228**

Bonding, National forests, Public lands-mineral resources.

Therefore, for the reasons set forth in the preamble, the Forest Service amends 36 CFR part 228 as follows:

### **PART 228—MINERALS**

■ 1. The authority citation for part 228 continues to read:

**Authority:** 16 U.S.C. 478, 551; 30 U.S.C. 226, 352, 601, 611; 94 Stat. 2400.

■ 2. Amend § 228.13 by:

- a. revising the section heading;
- b. revising paragraphs (a), (b), (c) and (d); and
- c. adding new paragraph (e).

The addition and revisions read as follows:

#### **§ 228.13 Financial Assurance.**

(a) Any operator required to file a plan of operations shall, when required by the authorized officer, furnish financial assurance for completion of the obligations set forth in these regulations and the approved plan of operations in the amount determined by the authorized officer to be required to provide reasonable financial assurance of such obligations prior to approval of such plan of operations, or by providing blanket assurance for multiple defined operations conducted by the operator such as within a particular State or nation-wide. The operator may elect to provide such financial assurance in the form of any of the following instruments that are acceptable to the authorized officer, singly or in combination:

(1) cash in an amount equal to the required dollar amount of the reclamation cost estimate and the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations deposited into a Federal depository, as directed by the Forest Service, and maintained therein;

(2) negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond;

(3) a surety bond provided by a third party that is certified by the Department of the Treasury and listed in Treasury Circular 570 as financial assurance for the obligations for specific operations, or providing blanket assurance for multiple defined operations conducted by the operator such as within a particular State or nation-wide, and/or;

(4) an irrevocable letter of credit provided by an institution acceptable to the authorized officer.

(b) In determining the amount of the required financial assurance, the authorized officer shall give consideration to the reclamation cost estimate which shall be submitted by the operator prior to the approval of the final plan of operations, and the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in accordance with § 228.4 (d) and (e), the authorized officer will review the financial assurance for adequacy and, if necessary, will adjust the financial assurance amount to conform to the operations plan as modified.

(d) When reclamation has been completed in accordance with § 228.8(g), the authorized officer will notify the operator that obligations covered by the financial assurance have been met: *Provided, however*, that when the Forest Service has accepted any portion of the reclamation as completed, the authorized officer shall notify the operator of such acceptance and proportionally reduce the required financial assurance amount thereafter to be required for the remaining obligations of the operator.

(e) When an operator is required to continue to operate or maintain certain aspects of the operation after the mine has closed, the authorized officer may require the operator to establish a trust fund to ensure that adequate funds are available for long-term post-closure reclamation activities required by the regulations or the approved plan of operations following mine closure. The authorized officer shall determine which activities may be secured through a trust fund, and which activities may be secured through another form of financial assurance. Establishing a trust fund does not relieve the operator of the responsibility to provide long-term management, maintenance, and reclamation of the site. A trust fund for long-term post closure obligations shall be comprised of financial instruments

limited to negotiable securities of the United States Government; State and Municipal securities or bonds; money market funds; certificates of deposits; investment-grade securities; and stock equity shares listed on a national exchange.

**Andrea Delgado Fink,**  
*Chief of Staff, Natural Resources and Environment.*

[FR Doc. 2023–23526 Filed 10–27–23; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 32

[Docket No. FWS–HQ–NWRS–2023–0038; FXRS12610900000–234–FF09R20000]

RIN 1018–BG71

#### National Wildlife Refuge System; 2023–2024 Station-Specific Hunting and Sport Fishing Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), expand hunting opportunities on three National Wildlife Refuges (NWRs). We also make changes to existing station-specific regulations in order to reduce the regulatory burden on the public, increase access for hunters and anglers on Service lands and waters, and comply with a Presidential mandate for plain language standards. Finally, the best available science, analyzed as part of this rulemaking, indicates that lead ammunition and tackle have negative impacts on both wildlife and human health. In this rule, Blackwater, Chincoteague, Eastern Neck, Erie, Great Thicket, Patuxent Research Refuge, Rachel Carson, and Wallops Island NWRs each adopt a non-lead requirement, which will take effect on September 1, 2026. While the Service continues to evaluate the future of lead use in hunting and fishing on Service lands and waters, this rulemaking does not include any opportunities increasing or authorizing the new use of lead beyond fall 2026.

**DATES:** This rule is effective October 27, 2023, except for the amendments to 50 CFR 32.38 (amendatory instruction 5), 32.39 (amendatory instruction 6), 32.57 (amendatory instruction 11), and 32.65 (amendatory instruction 15), which are effective September 1, 2026.

**FOR FURTHER INFORMATION CONTACT:** Kate Harrigan, (703) 358–2440. Individuals in

the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended (Administration Act), closes NWRs in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that the use is compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review hunting and sport fishing programs to determine whether to include additional stations or whether individual station regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to station-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of station purposes or the Service's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations at part 32 (50 CFR part 32), and on hatcheries at part 71 (50 CFR part 71). We regulate hunting and sport fishing to:

- Ensure compatibility with refuge and hatchery purpose(s);
- Properly manage fish and wildlife resource(s);
- Protect other values;
- Ensure visitor safety; and
- Provide opportunities for fish- and wildlife-dependent recreation.