



**USDA Final Report Pursuant to Executive Order 13783 on Promoting Energy Independence and Economic Growth**



## EXECUTIVE SUMMARY

Section 2(a) of Executive Order 13783 of March 28, 2017, “Promoting Energy Independence and Economic Growth,” requires agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, “agency actions”) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Section 2(a) of the Executive Order also provides that this review shall not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth in section 1 of the Executive Order.

In response to Executive Order 13783 of March 28, 2017, “Promoting Energy Independence and Economic Growth,” the Forest Service reviewed more than 70 agency actions, including regulations, policies, guidance, orders, and agreements with partner agencies, and programmatic analyses at the Washington and field office levels of the agency to assess if they unduly burden clean and safe domestic energy development. Agency actions subject to review under the Executive Order which the Forest Service has concluded may unduly burden domestic energy development are listed in **Appendix A, Table A.1**. **Table A.2** lists agency actions the Forest Service believes the Executive Order exempts from review.

Section 1(c) of the Executive Order requires the Forest Service to appropriately suspend, revise, or rescind those agency actions that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law. At the same time, Section 1(a)(b)(d) and (e) also contain language emphasizing the need for environmental protection. Based on its review, the Forest Service recommends parts of 15 agency actions either be revised or rescinded to alleviate or eliminate burdens on the prudent development or use of domestic energy sources. The recommendations include revising parts of 3 regulations, 5 policies, 4 agreements with other agencies, one programmatic analysis, one order, and rescinding part of one policy. All of these recommendations are displayed in **Appendix B** of this report. The Forest Service's recommendations to reduce undue burden on prudent domestic energy development principally would alter internal procedures governing the agency itself or interactions between the agency and its partners in order to facilitate efficient processing of energy-related proposals. The recommendations primarily would affect coal, oil, and natural gas resources.

Most of the Forest Service's recommendations are associated with improving efficiencies, streamlining actions, or clarifying policies that would translate to overall time savings, and hence cost savings, for the agency directly and in many instances for the domestic energy industry indirectly while maintaining environmental protections. However, Recommendations 3 and 4 could result in direct cost savings for the energy industry by reducing fees or other payments as well as for the agency by reducing associated administrative work. The report provides qualitative descriptions of costs, cost savings, and other benefits in **Table 1**.

## **I. Introduction**

Section 2 of Executive Order 13783 (EO) mandates an “Immediate Review of All Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources.” The EO requires heads of agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, “agency actions”) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. The EO explains that the review shall not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth in Section 1 of the EO. Section 1(c) of the Executive Order requires the Forest Service to appropriately suspend, revise, or rescind those agency actions that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

The USDA, Forest Service (Forest Service) contributed to USDA’s plan to implement the President’s various regulatory reform executive orders. The USDA submitted a plan for review pursuant to the EO to OMB on May 25, 2017, in compliance with EO Section 2(c). Then the USDA submitted a Draft Final Report to OMB pursuant to EO Section 2(d) and OMB’s Memorandum M-17-24 of May 8, 2017 (OMB’s Memorandum) at Section III.B. In identifying the recommended agency actions set out in this Final Report, the Forest Service also considered the White House’s recommendations on USDA’s draft regulatory review plan and draft report. This Final Report is submitted according to the EO at Section 2(e).

## **II. Energy-Related Activities on Lands Administered by the Forest Service**

Lands administered by the Forest Service (National Forest System or NFS lands) contain nonrenewable energy mineral resources, such as coal, oil, natural gas, geothermal resources, nuclear energy resources, and renewable energy sources, such as hydropower, biomass, solar, and wind. NFS lands also support associated energy transmission and delivery infrastructures. Prudent development of nonrenewable and renewable energy resources on NFS lands is conducted in a manner that sustains ecosystems and maintains healthy watersheds.

Nonrenewable energy mineral production from NFS lands typically exceeds \$3.6 billion per year and supports 24,000 jobs. In fiscal year (FY) 2016, the Forest Service Wood Innovations (biomass) Grant program awarded over \$8 million and leveraged over \$18 million in partner investments to stimulate widespread use of wood residues for renewable energy, contributing to over 13,000 jobs in the U.S. associated with operation of wood-based power plants. The Forest Service’s biomass program was funded at \$27,000 in recent years. The Forest Service administers approximately 6,300 authorizations for energy related activities.

### **a. Coal**

Eight national forests or grasslands manage activity related to coal resources. The majority of coal resources underlying NFS lands are federally owned, although there is some minor activity related to privately owned coal resources.

The Forest Service plays a role in the leasing of federal coal resources found on NFS lands in partnership with the U.S. Department of the Interior (DOI), Bureau of Land Management (BLM). The Forest Service also plays a role in the development of federal coal resources on NFS lands in partnership with the DOI, Office of Surface Mining, Reclamation, and Enforcement (OSMRE), or a state regulatory agency to which OSMRE has delegated responsibility for coal mine permitting. On NFS lands, the Forest Service has sole responsibility for authorizing and regulating access to federal coal leaseholds.

Leases for federally owned coal are currently in effect for about 169,000 acres of NFS lands nationwide.



Presently, eight authorized mines are producing federally owned coal on these NFS lands. Coal activity on NFS lands is shown on the map entitled, “Coal Resources on National Forest System Lands of the United States,” attached to this report.

Over 47 million tons of federally owned coal were produced from NFS lands in fiscal year 2016. This production generated over \$394,000,000 of revenue from rents, royalties, and bonus bids for the United States Treasury.

#### b. Oil and Natural Gas

The Forest Service plays a role in the leasing and development of federally owned oil and natural gas found on NFS lands in partnership with BLM. On NFS lands, the Forest Service has sole responsibility for authorizing and regulating access to oil and natural gas leaseholds.

Leases for federally owned oil and natural gas are in effect for about 4.8 million acres of NFS lands nationwide. Production of oil and natural gas occurs on approximately one-third of the 155 national forests and grasslands. Approximately 5,000 of the 15,000 oil or natural gas wells on NFS lands produce federally owned oil or natural gas; the remainder produce oil or natural gas from privately owned mineral estates. Oil and natural gas activity on NFS lands is shown on the map entitled, “Oil and Gas Resources on National Forest System Lands of the United States,” attached to this report.

In FY 2016, 14.1 million barrels of oil and 141 million cubic feet of natural gas were produced from federal leases on NFS lands. This production generated over \$185 million of revenue for the United States Treasury.



Oil well drilling  
Dakota Prairie National Grassland, North Dakota

### c. Geothermal Resources

The Forest Service plays a role in the leasing of geothermal resources found on NFS lands in partnership with BLM. On NFS lands, the Forest Service has sole responsibility for authorizing and regulating access to geothermal resources leaseholds.



Geothermal Power Plant  
Inyo National Forest, California

Leases for geothermal resources are in effect for approximately 118,000 acres of NFS lands nationwide. Ten national forests manage activity related to geothermal resources.

In FY 2016, geothermal resource production from NFS lands contributed over 360,000 megawatts of electricity, valued at over \$22 million. This production generated over \$650,000 of revenue for the United States Treasury.

d. Nuclear Energy

Nuclear energy is produced from minerals containing uranium or thorium. Mining claims for these minerals have been located on NFS lands under the 1872 Mining Law.

The Forest Service regulates surface disturbance resulting from operations, including access, conducted on NFS lands pursuant to the 1872 Mining Law. No production of minerals from which nuclear energy is derived is presently occurring, although some exploration and development work is underway. Minerals produced pursuant to the 1872 Mining Law do not generate revenue for the United States Treasury.

e. Hydropower

About one-third of the U.S. Department of Energy (DOE), Federal Energy Regulatory Commission (FERC)-licensed hydropower projects occupy NFS lands. There are over 200 hydropower projects situated on more than 130,000 acres of NFS lands. These projects have installed capacities totaling more than 16,000 megawatts of electricity. The Forest Service has participated in FERC licensing proceedings for more than 125 of these projects since the implementation of its National Hydropower Licensing Initiative in 1999.



Hydropower Project

f. Wind Energy

The Forest Service has issued one special use authorization for construction and operation of a wind energy facility.



Wind Farm

g. Solar Energy

The Forest Service has issued one special use authorization for a solar field, which is currently in development.



Solar Farm

h. Biomass Energy

About 1.1 million bone dry tons (BDT) of woody biomass are produced annually from NFS lands for biomass energy. This amount of resource generates around 117 megawatts of power. There is currently low demand for biomass energy due to availability of lower-cost energy resources (such as natural gas) and limited markets for biomass in most areas.



Woody Biomass

i. Electric Transmission Facilities

The Forest Service administers about 2,700 special use authorizations for electric transmission and distribution lines on NFS lands having a combined length of approximately 18,000 linear miles.



#### j. Energy Delivery or Transportation Facilities

The Forest Service administers about 1,600 special use authorizations for oil and natural gas pipelines on NFS lands having a combined length of about 6,600 linear miles. Additional pipelines authorized and regulated by BLM or FERC cross NFS lands.

The Forest Service also administers 77 special use authorizations for railroad rights-of-way on NFS lands having a combined length of about 160 linear miles. These rights-of-way are primarily for the transportation of coal.

### **III. Identification and Classification of Agency Actions**

In accordance with the EO and OMB's Memorandum, the Forest Service examined over 70 actions taken by its Washington, D.C., headquarters officials that are applicable to NFS lands nationwide or by its regional office officials that are applicable to NFS lands in the states contained in one of the Forest Service regions. These agency actions included regulations, policies, direction, internal correspondence, agreements with partner agencies, programmatic analyses, and applications for mineral withdrawals. The subjects of these actions consisted not just of the various energy sources and energy transmission, delivery, and transportation infrastructures discussed above but also compliance with the National Environmental Policy Act (NEPA); land management planning; and land, watershed, wildlife, engineering and infrastructure, wilderness, and wild and scenic river management.

The Forest Service divided the more than 70 agency actions it considered into two categories. Forest Service actions in the first category, which are listed in **Appendix A, Table A.1**, are subject to review pursuant to EO 13783 to assess whether they potentially unduly burden the development or use of domestically produced energy resources. Forest Service actions in the second category, which are listed in **Appendix A, Table A.2** are exempt from this review in accordance with Section 2(a) of the EO because they are mandated by law.

### **IV. Recommended Actions that Could Alleviate or Eliminate Aspects of Forest Service Actions that Potentially Unduly Burden Domestic Energy Production or Delivery**

In order to alleviate or eliminate potentially undue burdens on domestic energy production or use, the Forest Service recommends revising 15 agency actions, including revising parts of 3 regulations, 5 policies, 4 agreements with other agencies, one programmatic analysis, and one order and rescinding part of one policy, as described in more detail on the **Appendix B** spreadsheet. One of the policy items would rescind part of one agency action that would affect four associated regional-level policies.

The Forest Service finds that its agency actions which potentially have direct effects are those which are the subject of Forest Service Recommendations 3 and 4. In turn, these are the only Forest Service Recommendations whose adoption potentially might have direct effects. The Forest Service interpreted direct potential effects to be as those that would result in immediate monetary savings to energy project proponents by eliminating a fee; and indirect potential effects to be as those that would result in future savings for the agency or energy proponents through changes in internal agency processes or procedures.

Section III.B. of OMB's Memorandum requires agencies to identify expected timeframes for implementation of their adopted recommendations and how they will track their progress. **Appendix B**



provides this information. The Forest Service estimates that implementation of some of its adopted recommendations might occur as early as FY 2018. Implementation of other adopted Forest Service recommendations may take 2 to 5 years given existing statutory and other procedural requirements.

The Forest Service prioritized its recommendations based on how well each recommendation, if adopted, would produce efficiencies in processing energy proposals, i.e., based on whether it would foster more effective interagency coordination or result in more costs to the agency. **Appendix B** prioritizes the recommendations alphabetically from highest to lowest, with “A” being the highest. The spreadsheet includes a second tab that displays the recommendations from highest to lowest priority.

## **V. Estimation of Costs, Cost Savings, Increased Production, and Other Benefits**

In accordance with Section III.B. of OMB's Memorandum, a brief overview of the costs, cost savings, increased production, and other benefits that may result from adoption and implementation of the Forest Service recommendations follows. Then **Table 1** provides additional details of how implementing the agency's adopted recommendations may affect costs, produce cost savings, or provide other benefits.

OMB's Memorandum allows agencies to use qualitative descriptions of costs and cost savings. The Forest Service has used this approach generally, however this Final Report includes quantitative information regarding costs and cost savings where that information is available.

### a. Costs

The Forest Service does not routinely collect information about industry costs or cost savings in administering NFS lands. Thus, it is not feasible to estimate what specific cost savings these recommendations may create for domestic energy-related industries.

### b. Cost Savings

Adoption of the Forest Service's recommendations would principally modify internal agency procedures to reduce duplicative requirements or facilitate efficient processing of energy-related proposals, resulting in time savings that could generally equate to cost savings for the agency or the energy industry. Cost savings would be expected to continue for as long as the revisions suggested by the recommendations remained in effect.

Recommendations 1, 9, 12, and 15 relate to the Forest Service's compliance with NEPA. The Forest Service estimates that the agency's annual costs of complying with NEPA for federal energy minerals leasing and development on NFS lands range from \$1.5 million to over \$2.0 million per year, with most of these costs being attributable to oil and natural gas activities. Approximately 30 percent of these costs are linked to reviewing proposals, legal compliance, and decision support tasks. Adoption of the agency's recommendations would be expected to reduce these costs.

Adoption of Recommendations 3 and 4 could result in cost savings for the energy industry from reduced fees or other payments and the agency from reduced administrative work.

### c. Increased Production

Adoption of the Forest Service's recommendations could benefit the energy industry by facilitating leasing of federal energy minerals on NFS lands and by improving the efficiency and timeliness of the

agency's internal processes relating to industry proposals to develop these minerals. The agency responds to specific development proposals energy-related industries submit and these industries typically act in relation to commodity market forces, which are beyond the Forest Service's control. Consequently, estimations regarding increased production cannot be made.

d. Other Benefits

Other benefits of adopting the Forest Service's recommendations could range from improving efficiencies for the agency, streamlining agency actions, clarifying policy or eliminating duplicative requirements, or facilitating leasing and subsequent development of energy minerals.

<b>Table 1</b>		
<b>Recommendations</b>	<b>Description of Potential Costs or Cost Savings</b>	<b>Other Potential Benefits</b>
1, 2	Adoption of these recommendations would revise existing agency regulations and policies to clarify internal agency processes for its role in the leasing and development of energy minerals. The savings could be reflected in reduced time needed for the agency to process energy proposals, which could translate into cost savings for energy proponents in terms of faster energy development.	Adoption of these recommendations could increase efficiency for the Forest Service and reduce the agency's cost of NEPA compliance.
3, 4	Adoption of these recommendations would revise existing policy that requires fees for conducting geophysical surveys on NFS lands and could result in cost savings, for both energy proponents and the agency. These fees are minimal and the agency likely expends more funds in handling paperwork and collecting the fee than the amount of the fee itself.	Adoption of these recommendations could eliminate and simplify administrative steps, thereby reducing costs for industry and the agency.
5, 6, 7, 8	Adoption of these recommendations would revise existing Memoranda of Understanding (MOUs) with agency partners. The revised MOUs could result in cost savings from improved efficiencies between agencies and reduced duplicity across agencies, resulting in overall lower costs for energy proponents and the agencies involved.	Adoption of these recommendations could improve interagency coordination thereby fostering efficiency and cost savings in the processing of energy proposals.
9, 12, 15	Adoption of these recommendations would revise existing agency regulations or policies regarding compliance with NEPA and right size the assessment of environmental impacts from a proposed action in proportion to the risks. By establishing categorical exclusions (CEs) for routine, low-risk actions, the agency could eliminate the cost of unnecessary and possibly time consuming environmental assessments (EAs). Utilization of CEs in place of EAs could result in cost savings of as much as \$50,000 per decision. Increasing the efficiency of agency NEPA processes and analyses could reduce energy proponents' costs by at least 3 percent each year these processes and analyses are expedited.  With respect to Recommendation 18, adoption of this recommendation would clarify the analysis required and the decision making process for operations proposed for privately owned minerals.	Adoption of these recommendations could increase the agency's use of CEs and improve other agency NEPA procedures. These recommendations also could increase the transparency and predictability of the NEPA process. By aligning the depth of NEPA analysis with risk, the Forest Service could better allocate resources to potentially riskier proposed actions. These revisions also could enable Forest Service staff analysts to complete more environmental analyses, alleviating backlogs.  With respect to item 18, the objective would be to provide more efficiency overall, however some

		parts of the NFS could see an increased NEPA workload while other parts would see a decreased workload. Clarification would unify the processing across the county resulting more predictable scheduling and procedures a given development site.
10, 11	Adoption of these recommendations would integrate analyses for oil and natural gas and geothermal leasing with the agency's land management planning process. This proposal could reduce costs by 30 percent, as oil and natural gas and geothermal leasing analyses could leverage the assessment and public engagement processes that are part of the land management planning process. However, this integration would add complexity to land management planning, potentially causing an increase in overall land management planning costs.	Adoption of these recommendations could eliminate a step in the process to identify lands open to oil and natural gas or geothermal leasing. These recommendations could address mandates of 30 U.S.C. 1003(d)(1) for geothermal resources. Forest Service administrative cost savings could result from coordinated decision-making (e.g., by relying on the public engagement for land management plan revisions in making energy mineral leasing decisions).
13	Adoption of this recommendation in coordination with the U.S. Department of the Interior would revise Public Land Order 7787, which withdrew BLM and NFS lands in the Grand Canyon watershed in the State of Arizona. Adoption and implementation of this recommendation could cause the agencies to incur costs to re-examine existing mineral data, evaluate potential withdrawal boundary changes, revise legal descriptions, and satisfy environmental analysis and public notice requirements. There also could be costs associated with processing any future proposed plans of operation for mineral exploration or development if the lands are re-opened to mineral entry pursuant to the United States mining laws.	Adoption of this recommendation could re-open lands to mineral entry pursuant to the United States mining laws facilitating exploration for, and possibly development of, uranium resources.
14	Adoption of this recommendation would revise existing requirements for greater sage-grouse (GRSG) habitat management for energy mineral-specific purposes. Adoption and implementation of this recommendation would cause the agency to incur costs to satisfy environmental analysis and public notice requirements.	Adoption of this recommendation could clarify how lands may be used for energy mineral purposes, reducing uncertainty and development costs for conducting energy-related development within GRSG habitat.

**VI. Public Outreach**

The Forest Service determined that public input would not be sought on the draft final report required by E.O. Sec. 2(d). In accordance with OMB's Memorandum, the Forest Service will provide notice of this Final Report in the *Federal Register* and will post the report on the agency's external website.

## VII. Other Considerations

In the course of reviewing its actions to assess whether they might unduly burden clean and safe domestic energy development, the Forest Service identified the following internal policies and procedures that are not considered burdensome, but nonetheless could be revised, or that could be adopted in the first instance, to improve agency efficiency in processing energy-related proposals.

### a. General Recommendations

The Forest Service's Directive System could be updated to be consistent with current legal requirements or agency policy relating to energy minerals and special uses management. In addition, the agency could streamline procedures for processing special use applications and address workforce needs to handle energy-related work. These items have not included as formal recommendations in this Final Report, but will be undertaken as part of the agency's ongoing efforts to improve customer service and efficiency.

### b. Partner Agency Categorical Exclusions under NEPA

With respect to Recommendation 9 in Appendix B, the Forest Service proposes that BLM and the Forest Service establish joint CEs to facilitate efficient approval of energy mineral leasing and development.

Creation of categorical exclusions could also be pursued legislatively.

### c. Related BLM Agency Actions

In 2013, the BLM Washington office issued Instructional Memorandum (IM) 2013-177, which linked Forest Service response to oil and gas lease re-instatements to a NEPA-based decision-making process. This has created undue burden because of the time needed for the Forest Service to respond to the BLM, and in turn for the BLM to timely reinstate affected leases. Although the IM expired in 2015, some BLM offices continue to follow it. The Forest Service recommends that the BLM reissue the guidance with revised language.

## VIII. Summary

In response to the EO, the Forest Service reviewed more than 70 agency actions, including regulations, policies, orders, agreements with partner agencies, and programmatic analyses, taken by officials in its Washington, D.C., headquarters and regional offices to assess whether they might unduly burden clean and safe domestic energy development. These agency actions are identified in Appendix A and further classified as either being subject to, or exempt from, review under the EO, as shown in **Tables A.1** and **A.2**, respectively.

As shown in **Appendix B**, the Forest Service recommends either revising or rescinding parts of 15 of the agency actions it reviewed. The adoption of these recommendations could alleviate or eliminate undue burdens on clean and safe domestic energy development. The recommendations include revising parts of 3 regulations, 5 policies, 4 agreements with other agencies, one programmatic analysis, and one order. The Forest Service also recommends rescinding part of one policy. The recommendations would primarily facilitate authorization of coal, oil, and natural gas leasing and development on NFS lands.

The Forest Service followed guidance in OMB's Memorandum allowing use of a qualitative approach to describe costs, cost savings, and other benefits and that information is set out in **Table 1** above. In administering NFS lands the Forest Service does not routinely collect information about external costs or cost savings relating to various industries' energy production efforts on NFS lands. The Forest Service consequently cannot calculate specific costs or cost savings that these industries would experience upon the agency's adoption of its recommendations. However, the Forest Service included estimates of cost savings, such as environmental analysis cost savings, in its responses where information needed to make such estimations was available.

The Forest Service's recommendations principally would alter internal agency procedures in order to facilitate efficient handling of energy-related proposals, potentially resulting in time savings that would generally equate to cost savings. Recommendations 3 and 4 could result in cost savings to energy production industries and the Forest Service by reducing administrative work associated with approving energy development. Other benefits of the Forest Service's recommendations would range from improving efficiencies for the agency, streamlining actions, clarifying policy, eliminating duplicative requirements, or facilitating leasing and development of energy minerals.

The Forest Service is unable to provide estimates of increased domestic energy production that could result from acceptance of its recommendations as the agency's role is to respond to specific energy development proposals energy-related industries submit. Further, these industries typically act in response to commodity market forces, which the Forest Service cannot influence.

The Forest Service projects that the adoption and implementation of some of its recommendations could commence during FY 2018. The Deputy Chief for the National Forest System will track the agency's progress in adopting and implementation these recommendations to alleviate or eliminate undue burdens on clean and safe domestic energy development.