

**Billing Code 4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 28 and 29**

**[Docket No. FWS-HQ-NWRS-2012-0086; FXRS12610900000-156-FF09R24000]**

**RIN 1018-AX36**

**Management of Non-Federal Oil and Gas Rights**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are proposing to revise regulations governing the exercise of non-Federal oil and gas rights in order to improve our ability to protect refuge resources, visitors, and the general public's health and safety from potential impacts associated with non-Federal oil and gas operations located within U.S. Fish and Wildlife Service refuge units. Non-Federal oil and gas development refers to oil and gas activities associated with any private, State, or tribally owned mineral interest where the surface

estate is administered by the Service as part of the Refuge System. The existing non-Federal oil and gas regulations have remained unchanged for more than 50 years and provide vague guidance to staff and operators. This proposed rule would make the regulations consistent with existing laws, policies and industry practices. It is designed to provide regulatory clarity and guidance to oil and gas operators and refuge staff, provide a simple process for compliance, incorporate technological improvements in exploration and drilling technology, and ensure that non-Federal oil and gas operations are conducted in a manner that avoids or minimizes impacts to refuge resources.

**DATES:** Comments on this proposed rule must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the information collection aspects of this rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the draft environmental impact statement, which is being published for public comment simultaneously with this proposed rule, must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE NOTICE OF AVAILABILITY IN THE FEDERAL REGISTER].

**ADDRESSES:** *Document Availability:* An economic analysis and a draft environmental impact statement (DEIS) have been prepared in conjunction with preparation of this proposed rule, and both documents are available at <http://www.fws.gov/refuges/oil-and-gas/rulemaking.html> and also at [www.regulations.gov](http://www.regulations.gov) at Docket No. FWS–HQ–NWRS–2012–0086.

*Comments on the Proposed Rule and DEIS:* You may submit comments on this proposed rule or the DEIS by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the Search box, type FWS–HQ–NWRS–2012–0086, which is the docket number for this proposed rule. Then click on the Search button. When you have located the correct document, you may submit a comment by clicking on “Comment Now!”
- *U.S. mail or hand-delivery:* Submit comments on the proposed rule or DEIS to: Public Comments Processing Attn: FWS–HQ–NWRS–2012–0086; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

Please indicate to which document, the proposed rule or the DEIS, your comments apply. 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 additional instructions on submitting comments and additional information on the rulemaking process, see the **Public Participation** heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Comments on the Information Collection Aspects of the Proposed Rule:* You may review the Information Collection Request online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB. Send comments (identified by 1018–AX36) specific to the information collection aspects of this proposed rule to both the:

- Desk Officer for the Department of the Interior at OMB–OIRA at (202) 295–5806 (fax) or [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) (email); and

- Service Information Collection Clearance Officer; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803 (mail); or hope\_grey@fws.gov (email).

**FOR FURTHER INFORMATION CONTACT:** Scott Covington, U.S. Fish and Wildlife Service, Division of Natural Resources and Planning, MS: NWRS, 5275 Leesburg Pike, Falls Church, Virginia 22043; telephone 703–358–2427.

## **SUPPLEMENTARY INFORMATION:**

### **Executive Summary**

We are proposing to update the existing regulations at subpart C of part 29 of title 50 of the Code of Federal Regulations (CFR) and propose new regulations as subpart D of 50 CFR part 29, which would govern the exercise of non-Federal oil and gas rights within refuge units, to improve the effectiveness of the regulations in protecting refuge resources and values, and to improve the clarity of the regulations for both operators and the Service.

Key components of the proposed rule include:

- A permitting process for new operations;
- A permitting process for well-plugging and reclamation for all operations;
- Information requirements for particular types of operations;

- Operating standards so that both the Service and the operator can readily identify what standards apply to particular operations;
- Fees for new access beyond that held as part of the operator’s oil and gas right;
- Financial assurance (bonding);
- Penalty provisions;
- Clarification that the process for authorizing access to non-Federal oil and gas properties in Alaska will continue to be controlled by 43 CFR part 36, which implements provisions of the Alaska National Interest Lands Conservation Act; and
- Codification of some existing agency policies and practices.

A detailed discussion of all proposed changes to the regulations is contained in the section-by-section analysis.

## **Background**

In 2003, the Government Accountability Office (GAO) issued a report (GAO–03–517) to Congress highlighting the opportunities to improve management and oversight of oil and gas operations on National Wildlife Refuge System (NWRS) lands and waters. An update by GAO in 2007 (GAO–07–829R) reasserted the recommendation that the Service take the necessary steps to apply a consistent and reasonable set of regulatory and management controls over all oil and gas activities occurring on refuges to protect the public’s surface interests. Other land management agencies have regulations that address oil and gas development for non-Federal subsurface interests, including the Department of the Interior’s National Park Service (NPS) and

the U.S. Department of Agriculture's Forest Service. This proposed rule would address concerns highlighted in the GAO reports and bring the Service more in line with other Federal land management agencies.

Based on Service data from 2011, there are over 5,000 oil and gas wells on 107 refuges in a total of 599 refuge units. Of the wells present on refuges, 1,665 actively produce oil and gas. Based on the existence of split estates (where the Service owns the surface estate and another party owns the mineral estate), exploration and production already occurring on adjacent or nearby lands, and future increases in energy prices, non-Federal oil and gas operations within refuges potentially could affect many additional refuges. Because of the impacts of oil and gas operations, a rulemaking is necessary to create a consistent and reasonable set of regulatory management controls for non-Federal oil and gas operations on refuges.

In 1960, the Service promulgated the current regulations at 50 CFR 29.32 to govern the exercise of non-Federal mineral rights on NWRS lands and waters. These regulations have not been updated. These regulations outline a general policy to minimize impacts to refuge resources to the extent practicable from all activities associated with non-Federal mineral exploration and development where access is on, across, or through federally owned or controlled lands or waters of the NWRS. However, they have been ineffective at protecting refuge resources or providing operators explicit requirements for operating on refuge lands. The current regulations lack both a process and specific guidance for operators and refuge employees to plan efficient operations on refuges that minimize impacts to refuge resources. Similarly, existing Service policies related to exploring and developing non-Federal oil and gas rights under refuges, such as 612 FW 3, lack regulatory provisions needed to successfully protect refuge resources and provide sufficient guidance.

## **Authority to Promulgate Regulations**

One of the principal recommendations of the 2003 GAO report was for the Service to clarify its regulatory authority over non-Federal oil and gas operations on NWRS lands. This rulemaking provides notice to the public that the authorities given to the Service by Congress include the authority to regulate the exercise of non-Federal oil and gas rights located within refuge units. Because the Service's current regulations from 1960 pre-date the National Wildlife Refuge System Administration Act (NWRSA), as amended by the National Wildlife Refuge System Improvement Act (NRSIA) (16 U.S.C. 668dd et seq.) and do not clearly assert or implement the full extent of the Service's authority to regulate non-Federal oil and gas rights or provide for consistent management of the exercise of those rights, we are proposing to revise the current regulations.

The authority of Congress to provide for the regulation of non-Federal oil and gas operations on NWRS lands is derived from the Property Clause of the United States Constitution (U.S. Const. art. IV, sec. 3). Specifically, the Service has been provided the statutory authority to manage Federal lands and resources under NWRSA, as amended by the NRSIA. In 1997, Congress enacted the NRSIA, amending and building upon the NWRSA in a manner that provided an organic act for the NWRS similar to those which exist for other public lands. Generally, in enacting the NRSIA, Congress recognized that the Service needed additional guidance and authority to manage the NWRS.

The NRSIA (16 U.S.C. 668dd(a)(4)) mandates the Secretary of the Interior, in administering the System, to:

- Provide for the conservation of fish, wildlife, and plants, and their habitats within the NWRS;
- Ensure that the biological integrity, diversity, and environmental health of the NWRS are maintained for the benefit of present and future generations of Americans;
- Ensure that the mission of the NWRS described at 16 U.S.C. 668dd(a)(2) and the purposes of each refuge are carried out;
- Ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the units of the NWRS are located;
- Assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the NWRS and the purposes of each refuge;
- Recognize compatible wildlife-dependent recreational uses as the priority general public uses of the NWRS through which the American public can develop an appreciation for fish and wildlife;
- Ensure that opportunities are provided within the NWRS for compatible wildlife-dependent recreational uses; and
- Monitor the status and trends of fish, wildlife, and plants in each refuge.

The NWRSA also gave the Service new authority to promulgate regulations to carry out the NWRSA.

Several recent Circuit Court decisions have held that this regulatory authority extends to non-Federal property interests within refuges. Although these cases did not directly address non-Federal mineral rights, nothing in these decisions would limit the Service's regulatory authority with respect to this form of property interest. In *Burlison v. United States* (533 F.3d 419 (6th

Cir. 2008)), the appeals court held that the Service may reasonably regulate a reserved easement within a refuge:

.... We do conclude, however, that the Fish and Wildlife Service may legitimately exercise the sovereign police power of the federal government in regulating the easement. Section 668dd(d)(1)(B) delegates the power to the Secretary of the Interior (and the Fish and Wildlife Service) “under such regulations as he may prescribe,” to “permit the use of . . . any areas within the System for purposes such as . . . roads.” The question before us is whether the permissive power respecting roads authorized by the Refuge Act also includes the power to regulate a private easement over a road. We answer this question in the affirmative.

*Burlison* also relied on the *Duncan Energy Co. v. United States Forest Service*, 50 F.3d 584 (8th Cir. 1995), which upheld Federal regulation of non-Federal oil and gas rights on Forest Service lands. In *School Board of Avoyelles Parish v. United States Department of the Interior* (647 F.3d 570 (5th Cir. 2011)), the Fifth Circuit held that FWS had authority to regulate access and use of refuge lands under the NWRAA/NWRSIA even for holders of valid easements. The Court’s opinion notes that the relevant regulation required a permit for “any person entering a national wildlife refuge,” unless otherwise excepted by the regulations, and found that, even though the owner had a non-Federal property interest in the land, they were required to obtain a permit from the Service. The court, citing *Burlison* and other cases, found that the restrictions on the exercise of the non-Federal property right were well within Federal authority under the Property Clause. The Service fully recognizes, as the *Burlison* court explained, that the right to reasonably regulate these private property interests does not mean that the Service may “eviscerate” those property rights. These decisions support the Service’s belief that it does have the necessary statutory authority to promulgate these proposed rules in order to achieve its legislative mandates, including the conservation of fish, wildlife, and plants in their habitat, and ensuring the biological integrity of the Refuge System.

The Service is aware of the 1986 memorandum by the Associate Solicitor, Conservation and Wildlife (“1986 Opinion”) that interpreted that the Service, at that time, lacked the authority from Congress to adopt regulations requiring permits for access by holders of mineral interests that were reserved by the holder when the land was sold to the United States for refuge purposes, unless that authority was provided for in the deed. That opinion relied in part on *Caire v. Fulton*, 1986 U.S. Dist. LEXIS 31049 (W.D. La. 1986), an unpublished district court decision, where the United States had explicitly agreed during eminent domain proceedings to delete from the proposed deed a provision authorizing Service regulation of the oil and gas interests not being acquired. Additionally, the 1986 Opinion made a distinction in the Service’s authority to regulate between reserved and outstanding rights, which Interior recognized in its response to the 2003 GAO report.

The 1986 Opinion was also premised on a provision of the Migratory Bird Conservation Act (MBCA), 16 U.S.C. 715e, which was amended in 1935 to provide:

The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under this subchapter, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General or his designee, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of this subchapter, but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under this subchapter or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of the Interior for the occupation, use, operation, protection, and administration of such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time.

The facts underlying the *Caire* case have long suggested that it is of limited precedential value. To the extent it could be construed to stand for the proposition that the Service may only regulate the property interest reserved in the deed when the deed expressly provided for such regulation, the decision appears to be overtaken by that of the *Avoyelles Parish* Circuit Court. Moreover, *Burlison* and *Avoyelles Parish* support the exercise of such rulemaking authority without regard to this provision of the MBCA. So, after consultation with the Office of the Solicitor of the Department of the Interior, we now believe that the 1986 Opinion has been superseded by the amendments to the Administration Act and subsequent court decisions interpreting the amended act, and that our current regulations from 1960 do not reflect the full extent of the authorities enacted by Congress after that date which direct the Service to protect refuge resources and uses.

Therefore, the Service believes it does have the authority to issue regulations to reasonably regulate both reserved and outstanding non-Federal oil and gas interests within the NWRS even when the right to regulate is not stated in the relevant deed. In our review of various deeds used by the Service to acquire the lands and interests in lands that make up the NWRS, we find many variations and that it is not possible to review or summarize all such provisions, or ensure that we are familiar with the circumstances surrounding each acquisition of NWRS lands, which did not include the mineral rights. As part of the pre-application meeting with the Service (see proposed § 29.91), and/or the submission of an application (see proposed § 29.94), the applicant should provide the Service with copies of any deeds or other relevant information which the applicant believes would control or otherwise limit the applicability of the regulations under this subpart to the applicant's operations. This process is intended to ensure that the Service both fully considers relevant deed provisions and any other information concerning the particular acquisitions before imposing requirements on the applicant's operations. The Service

will respect any applicable deed conditions; however, these new regulatory requirements still apply to the extent that they do not conflict with such deed conditions, which we believe is the situation in most cases.

The Service will consider any comments on its authority to promulgate these regulations and address them in making its determinations for a final rule.

### **Non-Federal Oil and Gas Rights within Refuges**

Non-Federal oil and gas rights exist within the NWRS in situations where the oil and gas interest has been severed from the estate acquired by the United States, either because:

- The United States acquired property from a grantor that did not own the oil and gas interest; or
- The United States acquired the property from a grantor that reserved the oil and gas interest from the conveyance.

Non-Federal oil and gas interests can be held by individuals, partnerships, for-profit corporations, nonprofit organizations, or States and their political subdivisions. Interests in non-Federal oil and gas are property rights that may only be taken for public use with payment of just compensation in accordance with the Fifth Amendment of the U.S. Constitution. This proposed rule is not intended to result in the taking of a property interest, but rather to impose reasonable regulations on activities that involve or affect federally owned lands and resources of the NWRS to avoid or minimize impacts from such activities to the maximum extent practicable.

These regulations do not apply to the development of the Federal mineral estate, including Federal oil and gas, which are administered by the Bureau of Land Management (BLM), under the Mineral Leasing Act and the Federal Land Policy and Management Act. In

areas where oil and gas rights are owned by the United States, and leasing is authorized, the applicable regulations can be found at 43 CFR part 3100. There is a general prohibition to leasing Federal oil and gas on refuge lands (43 CFR 3101.5-1).

## **Summary of Potential Impacts from Oil and Gas Operations on Refuge Resources and Uses**

Examples of non-Federal oil and gas operations conducted on refuges include: Geophysical (seismic) exploration; exploratory well drilling; field development well drilling; oil and gas well production operations, including installation and operation of well flowlines and gathering lines; enhanced recovery operations; well plugging and abandonment; and site reclamation.

Oil and gas activities have the potential to adversely impact refuge resources in some or all of the following manners:

- Surface water quality degradation from spills, storm water runoff, erosion, and sedimentation;
- Soil and groundwater contamination from existing drilling mud pits, poorly constructed wells, improperly conducted enhanced recovery techniques, spills, and leaks;
- Air quality degradation from dust, natural gas flaring, hydrogen sulfide gas, and emissions from production operations and vehicles;
- Increased noise from seismic operations, blasting, construction, oil and gas drilling and production operations;
- Reduction of roadless areas on refuges;

- Noise and human presence effects on wildlife behavior, breeding, and habitat use;
- Disruption of wildlife migration routes;
- Adverse effects on sensitive and endangered species;
- Viewshed (an area of land, water, or other environmental element that is visible to the human eye from a fixed vantage point) intrusion by roads, traffic, drilling equipment, production equipment, pipelines, etc.;
- Night sky intrusion from artificial lighting and gas flares;
- Disturbance to archaeological and cultural resources associated with seismic exploration and road/site preparation, associated with maintenance activities, or by spills;
- Visitor safety hazards from equipment, pressurized vessels and lines, presence of hydrogen sulfide gas, and leaking oil and gas that can create explosion and fire hazards;
- Wildlife mortality from oil spills or entrapment in open-topped tanks or pits, poaching, and vehicle collisions;
- Fish kills from oil and oilfield brine spills; and
- Vegetation mortality from oilfield brine spills.

### **Summary of Advance Notice of Proposed Rulemaking Comments**

On February 24, 2014, we issued an advance notice of proposed rulemaking (ANPR) (79 FR 10080) to assist us in developing this proposed rule. The ANPR had a 60-day comment period, ending April 25, 2014. On June 9, 2014, we reopened the comment period for another 30 days, ending July 9, 2014 (79 FR 32903). The ANPR requested the public to focus their comments on seven topics identified as major areas of concern:

- (1) Plans of Operations and Special Use Permits;
- (2) Operating Standards;
- (3) Financial Assurances;
- (4) Access Fees;
- (5) Noncompliance;
- (6) Existing Operations; and
- (7) Impacts from the Proposed Rulemaking.

We received comments from unaffiliated private citizens (36), conservation organizations (14), State agencies (8), counties (2), Alaska Native Corporations (2), a tribal agency, oil and gas owners and operators (6), business associations (5), and a Federal agency, along with almost 80,000 form letter comments from members of two environmental organizations.

The majority of commenters were in favor of strengthening and expanding the regulations to better protect refuge resources and values. Some commenters requested that we not revise the existing regulations, while others questioned the legality of regulating non-Federal oil and gas operations on refuges.

More information on the ANPR and these comments is available at <http://www.fws.gov/refuges/oil-and-gas/rulemaking.html> and also at [www.regulations.gov](http://www.regulations.gov) at Docket No. FWS–HQ–NWRS–2012–0086.

## **Draft Environmental Impact Statement**

We have prepared a draft environmental impact statement (DEIS), which is being published for public comment simultaneously with this proposed rule and is available at [www.regulations.gov](http://www.regulations.gov) and at <http://www.fws.gov/refuges/oil-and-gas/rulemaking.html>, by clicking on the link titled “Oil and Gas DEIS.” The DEIS describes three alternatives: Alternative A—No action; Alternative B—proposed rule (preferred alternative); and Alternative C. Alternative C would include all the proposed changes in Alternative B, would expand the coverage of the regulations to operations on non-Federal surface locations that drill beneath the surface of a refuge to access their non-Federal oil and gas right, and would require all existing operations to obtain operations permits and maintain financial assurance.

### **Overview of Proposed Regulations**

This proposed rule was developed in coordination with the NPS and as a result is consistent with its recently published proposed rule governing non-Federal oil and gas rights within the NPS (NPS 9B Regulations). An operator working on both NWRS and NPS lands would experience little difference in regulatory resource and use protections, regulatory structure based on performance standards, operations permit processes and requirements, monitoring and compliance, and other terms and conditions. However, there are some variations between the two proposed rules necessitated by differing authorities and missions and the scope of the two agencies’ non-Federal oil and gas programs.

The proposed rule would generally require that operators receive permits, either special use permits or rights-of-way (ROW) permits, for new non-Federal oil and gas operations on NWRS lands; provide a regulatory framework to achieve the necessary protections for refuge

resources; and improve regulatory consistency to the benefit of both refuge resources and oil and gas operators. The proposed rule contains performance-based standards that provide flexibility to resource managers and operators to use various and evolving technologies within different environments to achieve the standards. It establishes standards for surface use and site management, specific resource protections, spill prevention and response, waste management, and reclamation. Additionally, the proposed rule contains procedures for permit applications and Service review and approval. Finally, there are provisions for financial assurance (bonding), access fees, mitigation, change of operator, permit modification, and prohibitions and penalties. We incorporated public input received during the ANPR process to shape the proposed rule.

#### *Proposed Permitting Approach*

The proposed permitting process would allow the Service to ensure that refuge resources, as well as public health and safety, are protected to the greatest extent practicable. Under the proposed rule, the Service would require the following:

- *New operations are by permit only.* Operators conducting new operations or modifying their existing operation in a manner that will have additional impacts on refuge resources beyond the scope, intensity, and/or duration of existing impacts must obtain an operations permit (special use or ROW permit) before commencing new or modified operations within a refuge. This requirement addresses exploration, drilling, production, enhanced recovery operations, transportation, plugging, and reclamation operations. We encourage operators to contact the Service early in the process so that the Service can provide

suggestions to improve the application. Additionally, an operator will not be authorized to begin operations until the operator has received all other required State and Federal permits.

- *Operations under an existing Service permit may continue under the terms of that permit* as long as they comply with existing Federal, State, and local laws and regulations, and the general terms and conditions outlined in their permit and this rule. Operators would be required to obtain a new permit or amend their existing permit if they propose to conduct new operations or modify their existing operations (i.e., propose activities outside the scope of their existing approval that would have impacts on refuge resources as determined by the Service). At the time of reclamation, the Service would review existing permits and modify them as necessary to ensure compliance with all Service reclamation standards.
- *Operations not under a Service permit* and being conducted prior to the effective date of the final rule promulgating this subpart, or prior to a boundary change or establishment of a new refuge unit, would be considered “pre-existing operations” and may continue to operate as they have been as long as they comply with existing Federal, State, and local laws and regulations and the general terms and conditions outlined in this proposed rule. However, these operations would be required to obtain a permit if they propose to conduct new operations or modify their operations in a manner that will have additional impacts on refuge resources.
- *All operators must have a permit* for plugging and reclamation and comply with all Service reclamation standards.

- *Wells drilled from outside refuges or on non-Federal inholdings to access non-Federal minerals* would be exempt from these regulations. However, except where 43 CFR 36.10 controls any access on, across, or through federally owned or managed lands in Alaska, operators must comply with the applicable provisions of this subpart, which may require obtaining an operations permit for new access or amending an existing authorization for access.

The Service believes that this proposed permitting process is the best way to manage oil and gas operations and protect refuge resources on NWRS lands. The most effective way for the Service to avoid or minimize impacts is by using time, place, and manner stipulations. The “place” factor in the “time, place, and manner” equation is often most important in terms of ability to protect an environmental resource. The risks created by a poorly selected location cannot easily be overcome with even the best operational methods. Conversely, proper site selection can do much to mitigate the effects of accidents or environmentally unsound practices. The “time” factor restricts the timing of operations to remove or minimize impacts on resources that are only seasonally present. The “manner” factor is the method in which oil and gas activities are conducted, using best management practices. Therefore, requiring a permit that contains such stipulations is the most effective way to avoid or minimize impacts of new operations.

Since new operations create the greatest additional impacts, proper site planning, timing restrictions, and best management practices can accomplish great improvements in resource protection. Existing operations with a special use or ROW permit would be allowed to continue their operations under the terms of that permit, because such stipulations have already been

implemented in those permits. A permit requirement on an existing operation not currently under a permit could result in significant administrative and operational costs, similar to those of new operations, on both the Service and the operator. These costs could be disproportional to the environmental benefits gained where the operator's well has already been drilled and the area of operations (access route, well site, production facilities, and routes for gathering lines) has already been established. Many of the unnecessary impacts occurring from existing operations without permits can best be cost effectively addressed through ensuring adherence to existing Federal and State rules. Additionally, in this proposed rule, the Service would assimilate non-conflicting State oil and gas rules so that our Law Enforcement officers can ensure compliance with those requirements. This approach to permitting allows the Service to focus its limited time and resources on those new operations that create the highest level of incremental impacts. Also, by requiring all operations to have a permit for plugging and reclamation, it ensures rehabilitation of habitat damaged by all operations.

When a well is drilled outside a refuge or on a non-Federal inholding, impacts to refuge resources are avoided or minimized to a great extent. Therefore, the Service's approach of exempting downhole aspects of these operations that occur within a refuge from the proposed regulations is intended to provide an incentive for operators to use directional drilling from a surface location not administered by the Service in order to reach their oil and gas rights under the refuge-administered surface estate. However, anytime an operator needs to physically cross Service land for access, including access to a non-Federal surface location, such as an inholding, to conduct operations then the operator must comply with the applicable provisions of this subpart (in Alaska, 43 CFR 36.10), including obtaining an operations permit for new access or modification of existing access.

## *Operating Standards*

Refuges have sustained significant damages from leaks and spills, unplugged or inadequately plugged wells, abandoned equipment, and insufficient or no reclamation of refuge lands and resources. Avoidance of spills and similar problems is the best means of ensuring that taxpayers are not left with the costs of restoring refuge resources. By incorporating new operating standards into the regulations, this should ensure that any future damages to refuge land and resources are minimized to the greatest extent possible.

Regulations based on performance-based standards do not grow stale over time and provide flexibility to resource managers and operators to achieve standards across various environments using new and evolving technology. In contrast, prescriptive regulations define specific requirements of time, place, and manner without considering how these measures achieve a desired level of resource protection or how they may apply in different environments. The Service examined other Federal and State oil and gas regulations and determined that the performance-based standards approach provided the most efficient means of successfully avoiding or minimizing the effects of oil and gas operations on refuge resources and visitor uses. A one-size-fits-all (i.e., prescriptive) approach does not work due to the widely differing environments and national extent of refuges with oil and gas. The proposed, performance-based standards model has been successfully used by NPS for more than 35 years.

In developing and analyzing the proposed rule and alternatives, the Service found that the preponderance of impacts and risks of impacts to refuge resources associated with exploration

and development of oil and gas emanate from surface activities. This holds true for operations that include the use of hydraulic fracturing. The Service found that well drilling and production operations that include the use of hydraulic fracturing have the same types of surface activities (e.g., road and pad construction, tractor-trailer truck traffic, use of water, use of chemicals, use of large diesel-powered engines, generation of waste) as operations that do not include hydraulic fracturing. Hydraulic fracturing operations can, in some cases, increase the scope, intensity, and duration of activities commonly associated with oil and gas well drilling and completion. In context of this proposed rule, the term “hydraulic fracturing” means those operations conducted in an individual wellbore designed to increase the flow of hydrocarbons from the rock formation to the wellbore through modifying the permeability of reservoir rock by applying fluids under pressure to fracture it. It does not include the comprehensive list of all oil and gas activities associated with development that happens to include hydraulic fracturing. While the proposed rule’s operating standards are not specific to hydraulic fracturing operations, they were developed with the expectation that hydraulic fracturing would occur on refuge lands and give the Service the ability to effectively manage the additional impacts that hydraulic fracturing may have on refuge resources and uses.

The Service notes that the Bureau of Land Management (BLM) has recently promulgated regulations addressing hydraulic fracturing on Federal and Indian lands at 43 CFR part 3160 (80 FR 16128, March 26, 2015). We carefully considered the recently promulgated BLM oil and gas regulations on hydraulic fracturing. The agencies take different approaches to operating standards, because of their differing statutory bases for regulating the exercise of oil and gas rights. Specifically, the BLM has regulatory authority over the development of the Federal mineral estate, including Federal oil and gas resources under Federal and Indian lands. Whereas,

the Service regulations address private property rights within refuge units and are based on the directive of the NWRSA for the NWRS “to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” Therefore, the Service’s regulations are largely focused on avoiding or minimizing impacts to federally owned lands and resources of the NWRS to the maximum extent practicable by using the most technologically feasible, least damaging oil and gas development methods to protect refuge resources and uses.

As a result, BLM can and has appropriately set more prescriptive standards in its regulation, while the Service is proposing to set required non-prescriptive operating standards, similar to the NPS 9B regulations, which allow operators flexibility to design operations while still protecting refuge resources, uses, and visitor health and safety. For example, BLM’s regulation at 43 CFR 3162.5–2 (Control of wells) sets a performance standard with regard to protection of usable quality water, and BLM also prescribes regulatory measures necessary to achieve and verify the performance standard (43 CFR 3162.3–3(e)). The Service’s approach is to review an operator’s submissions to determine if they are avoiding or minimizing impacts to the maximum extent practicable, and if not, to add terms and conditions in the permits to ensure that they do so.

### *State Regulations*

The Service’s goal, reflected in this proposed rule, is to complement State regulatory programs to the benefit of the surface estate and the resources for which we are entrusted, while not compromising the ability of operators to develop their resource. The Service and State oil

and gas agencies have fundamentally different missions. The Service's legal mandate is to conserve fish, wildlife, and plant resources and their habitats for the benefit of present and future generations. In contrast, State oil and gas regulations typically focus on the protection of mineral rights and "conservation" of the oil and gas resources (i.e., minimizing waste of oil and gas resources). From a regulatory perspective, the Service must manage oil and gas operations in order to protect its surface resources to meet its mission and congressional mandate.

Most States provide for protection of surface and groundwater via well design requirements and oil pollution control measures. However, State programs vary widely with regard to protection of surface resources and surface use conflicts. In general, State oil and gas regulations do not address protections necessary for wildlife and its habitat. The Service conducted a review of State oil and gas regulations in 2013. Of the 43 States that have oil and gas regulations, all have requirements for plugging wells, but few have adequate requirements for removal of equipment and full reclamation of the site comparable to Service standards. Some State laws or regulations address impacts or damage to surface land owners; some do not. Some afford stronger protection to sensitive areas such as wildlife management areas; others do not. Some States address the use and closure of open pits; others do not. Bond requirements, oil spill cleanup and reporting, and fines differ considerably, as does the frequency of inspections of oil and gas exploration and production sites. Therefore, one of the issues that operators face is differing procedures and requirements from State to State. The proposed regulations are intended to provide a consistent set of procedures and operational standards for operations on refuges.

The intention of the Service's proposed regulations is to avoid or minimize potential procedural and operational duplication of State programs, while working cooperatively to achieve common objectives between the Service, States, and operators. For example, the

proposed regulation includes a downhole operating standard for isolation and protection of subsurface (and surface) resources throughout the life of a well. The standard would inform the public and operators of the Service's responsibility for all its resources, including groundwater. However, the Service generally proposes not to otherwise regulate downhole activities. We welcome comments on whether, and to what extent, compliance with State regulations (as a general matter or with respect to particular States) is expected to provide adequate protection of groundwater and other subsurface resources. Meeting operating standards specific to downhole activities, by compliance with State regulation, industry operating guidelines, or Service-identified requirements, also serves to protect surface resources by reducing the risks associated with well control and well construction and maintenance.

In the context of enforcing State oil and gas regulations, the Service would focus on noncompliance issues that have the potential to adversely affect refuge resources and visitor uses by assimilating non-conflicting State oil and gas law into our prohibited acts and penalties. Assimilation allows us to enforce on refuges State oil and gas requirements as a matter of Federal law. States may not have enough inspectors to ensure companies are meeting State standards. Louisiana, the State with the most non-Federal oil and gas production on refuge lands, recently reported that it lacks an adequate number of inspectors and its inspection rate is too low. Under this proposed rule, the Service would work cooperatively with States to ensure that operators on refuges are meeting both Service and State regulations that pertain to oil and gas operations.

## **Section-by-Section Analysis**

### ***§ 28.11 Purpose of regulations***

Proposed § 28.11 would be amended for a technical correction.

***§ 29.32 Non-Federal mineral rights***

Proposed § 29.32 would be amended to clarify the scope and general policy of subpart D.

Proposed § 29.32(a) clarifies that this section is applicable to all NWRS non-Federal mineral rights owners within the National Wildlife Refuge System, excluding coordination areas, as defined in 50 CFR 25.12, and that it is the expectation of the Service that: all exploration, development, and production operations are conducted in a manner that avoids or minimizes impacts to refuge resources to the maximum extent practicable; operators comply with all applicable Federal and State laws; and all structures and equipment are removed when no longer necessary and the area restored to pre-operation conditions to the extent possible. Proposed § 29.32(b) states that nothing in the section will be applied to contravene or nullify rights vested in holders of mineral interests on refuge lands.

***§§ 29.40–29.44 Purpose and scope***

The existing regulations are inadequate to protect the resources the refuges were created to maintain. The proposed rule would clarify that the revised regulations will apply to all non-Federal oil and gas operations conducted on NWRS lands, excluding coordination areas, in order to protect federally owned or refuge-administered lands, waters, or wildlife resources; visitor uses or experiences; and visitor and employee health and safety, as Congress prescribed as the mission of the NWRS at 16 U.S.C. 668dd(a)(4).

The purpose of proposed § 29.40(a) is to ensure operators use technologically feasible, least-damaging methods to remove non-Federal oil and gas resources from the subsurface of NWRs lands in order to protect and conserve refuge resources. Examples of technologically feasible, least-damaging methods include, but are not limited to, use of directionally drilling (slant drilling) to avoid surface impacts to important habitat, consolidating infrastructure (drilling multiple wells off a single pad) to reduce fragmentation, use of survey methods that do not require line of sight, or mat drilling in sensitive habitats.

Proposed § 29.40(b) provides that subpart D applies to operators who conduct or propose to conduct non-Federal oil and gas operations on the Service-administered surface estate of lands held in fee or less-than fee (excluding coordination areas) as well as to operations on any waters within the boundaries of the refuge. Because operations on and in the waters within refuge boundaries have the potential to broadly impact resources throughout the refuge, we are proposing that these regulations apply on and within waters subject to the jurisdiction of the United States located within that unit, including navigable waters and areas within their ordinary reach (up to the mean high-water line in places subject to the ebb and flow of the tide, or up to the ordinary high-water mark in other places that are navigable), irrespective of ownership of submerged lands, tidelands or lowlands, and jurisdictional status. Further, we note that Congress specifically defined the term refuges in the NWRsIA as including “waters, or an interest in land and waters” at 16 U.S.C. 668ee(11).

Operations are defined in proposed § 29.50 as “all existing and proposed functions, work, and activities in connection with the exercise of oil or gas rights not owned by the United States and located or occurring within a refuge. Operations include, but are not limited to: access by any means to or from an area of operations; construction; geological and geophysical

exploration; drilling, well servicing, workover, or recompletion; production; enhanced recovery operations; gathering (including installation and maintenance of flowlines and gathering lines); storage, transport, or processing of petroleum products; earth moving; excavation; hauling; disposal; surveillance, inspection, monitoring, or maintenance of wells, facilities, and equipment; reclamation; road and pad building or improvement; shot hole and well plugging and abandonment, and reclamation; and all other activities incident to any of the foregoing.

Operations do not include reconnaissance surveys as defined in this subpart or oil and gas pipelines that are located within a refuge under authority of a deeded or other right-of-way.”

These regulations are not intended to apply to operations on neighboring private lands or non-Federal surface estates within refuge boundaries. As discussed previously, if an operator must physically cross Service lands, the operator must obtain an operations permit and comply with other applicable provisions for that access. Use of aircraft, including, but not limited to, airplanes, helicopters, and unmanned aircraft vehicles that do not land on, or are not launched from, refuge-administered surface estate land or waters, is not subject to these regulations.

Proposed § 29.40(c) of this subpart would acknowledge that the intent of the proposed rule is to reasonably regulate such activities, but not to result in a taking of private property. Although we would place refuge-protecting mitigation measures on proposed operations, the Service does not intend that implementation of these regulations would result in a denial of access to prospective operators to exercise their non-Federal oil and gas rights. We would work with operators to ensure they have reasonable access to their operations and that refuge resources and values are protected without resulting in a taking in violation of the Fifth Amendment of the U.S. Constitution.

Proposed § 29.41 clarifies this subpart applies to operators if they conduct or propose to conduct a non-Federal oil or gas operation within a refuge.

Proposed § 29.42 clarifies what authorization is necessary to conduct operations on NWRS lands. The regulations at § 29.42(a) would require that all operators must demonstrate “up front” that they hold a valid existing right to conduct operations within a refuge. Until the operator demonstrates a valid existing right to conduct operations, the operator may not operate within a refuge and we will not undertake a formal review of the operator’s permit application.

Proposed § 29.42(b) would require operators with a new oil and gas operation to obtain a temporary access permit to conduct reconnaissance surveys and/or an operations permit to conduct drilling or production within a refuge. This permit requirement would ensure that new operations on NWRS lands use best management practices and are conducted in a time, place, and manner that avoid or minimize potential impacts to refuge resources to the maximum extent practicable.

Proposed § 29.42(c) would clarify that for refuge units in Alaska, access to oil and gas rights within any refuge would continue to be governed by title XI of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 410hh–410hh-5, 16 U.S.C. 3101 et seq., 43 U.S.C. 1601 et seq.), and the Department’s implementing regulations and standards found at 43 CFR part 36 and 50 CFR 29 subpart B. This includes authorization to charge access fees, as well as penalties for any violations of permits issued under these regulations. However, where the proposed rule does not conflict with these provisions, regulations, and standards, the proposed rule will apply to operations in Alaska. For example, the operating standards at proposed §§ 29.110–29.118 and the provisions regarding well plugging at proposed §§ 29.180–

29.181 would be incorporated into an operator's ROW permit. Additionally, the prohibited acts and penalties at proposed § 29.190 would apply where they do not conflict.

Proposed § 29.43 would authorize an operator who currently holds an approved permit to continue operations, subject to the applicable provisions of that permit, until they propose to conduct new operations or modify existing operations.

If an operator does not hold an existing special use permit but is conducting an operation prior to the effective date of the final rule, proposed § 29.44 would authorize the operator to continue with this operation in accordance with local, State, and Federal laws and regulations. However, these operations would need to comply with proposed §§ 29.60 through 29.63, which outline additional information requirements, prohibitions, and reclamation requirements, as well as the requirements that, before conducting a new operation or modifying a pre-existing operation, an operator must obtain an operations permit in accordance with §§ 29.90 through 29.97.

### ***§ 29.50 Definitions***

The proposed rule would establish and organize definitions for terms commonly used throughout the regulations.

### ***§§ 29.60–29.64 Pre-existing operations***

Proposed § 29.60 defines pre-existing operations as those being conducted under local, State, and Federal laws and regulations and without an approved permit from the Service as of

the effective date of a final rule, or prior to a boundary change or establishment of a new refuge unit. These operations may continue without an operations permit subject to the terms and conditions of this section. Proposed operations that become located within a refuge unit as the result of a boundary adjustment would be subject to the same process.

Proposed § 29.61(a)–(d) describes the information for pre-existing operations that would be required to be submitted to the Service to be in compliance with the rule. For a new oil and gas operation within a refuge, we would require an operator to submit the information necessary for us to approve the least-damaging locations for its access route, drilling site, production facilities, and gathering lines routes. However, for pre-existing operations, the operator’s well has already been drilled and the area of operations (access route, well site, production facilities, and routes for gathering lines) has already been established. Therefore, under proposed § 29.61, within 90 days of the effective date of a final rule promulgating this subpart, operators would have to provide the Service with the information described in this section, including ownership documentation, contact information, a scaled map clearly delineating the existing area of operations, and copies of all relevant plans and permits. This information is needed for future monitoring of the pre-existing operations to ensure compliance with existing standards (local, State, Federal).

The proposed regulations at § 29.62(a) would require the operator to obtain an operations permit if the operator enters a new phase of operations, such as when an operator ends production operations and proceeds to well plugging and final reclamation. Proposed § 29.62(b) would require the operator to obtain an operations permit if the Service determines that the operator is modifying a pre-existing operation. Modifying is defined at proposed § 29.50 as “conducting new activities that are outside the scope of your existing operations in a manner that

has additional impacts on refuge resources, visitor uses, refuge administration, or human health and safety beyond the scope, intensity, and/or duration of existing impacts. If an operator is considering altering their operation in a manner that may result in additional impacts to refuge resources, they should consult with the Service to determine whether proposed changes would constitute a modification. Examples of a modification include drilling additional wells from the same pad, creating additional surface disturbance (e.g., expanding the footprint of a well pad, realigning a road), or converting a natural gas well into a wastewater disposal well, as these modifications will have impacts beyond the scope, intensity, and/or duration of existing impacts. This provision is not intended to apply to minor actions, such as repositioning of surface facilities within the current footprint of pre-existing operations, minor changes in color schemes, or minor, non-routine maintenance actions.

Proposed § 29.63 ensures that pre-existing operations will be reclaimed to Service standards at proposed § 29.117(d). Operators must comply with the proposed reclamation requirements, including obtaining an operations permit for all reclamation activities.

Under proposed § 29.64, pre-existing operations would have to comply with the general terms and conditions at proposed §§ 29.120 and 29.121, as well as proposed §§ 29.170(a) (change of operator), 29.180–29.181 (well plugging), 29.190 (prohibited acts and penalties), and 29.200 (appeals). Suspensions would not be necessary if operators are meeting Service standards.

### ***§§ 29.70–29.73 Temporary access permits***

Proposed §§ 29.70–29.73 outline the process to obtain a temporary access permit. The temporary access permit is a special use permit that authorizes an operator to conduct reconnaissance surveys. Proposed § 29.71 identifies the information necessary for the Service to evaluate the operator’s proposal to conduct reconnaissance surveys. This includes a brief description of intended operations so we can determine the operator’s reconnaissance survey needs. Proposed § 29.72 describes the process for us to review the operator’s temporary access permit application for completeness. Under proposed § 29.73, a temporary access permit would be issued for reconnaissance surveys for a period not to exceed 60 calendar days, but may be extended for a reasonable additional period when justified by an operator.

***§ 29.80 Accessing oil and gas rights from a non-Federal surface location (including inholdings)***

As discussed above, operators are exempt from the regulations if they directionally drill from a non-Federal surface location, including on non-Federal inholdings, and do not require physical access across Service lands to reach a bottom hole located within refuge boundaries. Proposed § 29.80 identifies the information an operator would be encouraged to submit to the Service to ensure that the Service has the necessary information to contact operators in case of an emergency or if unanticipated damages to refuge resources occur. If the operator needs to physically cross Service land for access to non-Federal lands, the operator would be required to comply with applicable provisions of this subpart only for that access, including obtaining an operations permit for any new access or a modification of existing access.

***§§ 29.90–29.97 Operations permit: application***

The proposed regulations require early collaboration in the planning process to provide operators guidance on information requirements, alternative areas of operations locations, and potential mitigation and avoidance measures.

The proposed rule at §§ 29.90–29.97 organizes information requirements for each type of operation. Further discussion of the specific information proposed to be collected can be found under the section below, *Paperwork Reduction Act of 1995 (PRA)*.

Proposed § 29.90 would require operators to submit an operations permit application, unless the operator is exempt from those requirements because they are operating under an existing special use or ROW permit, they are operating a pre-existing operation, they are only conducting a reconnaissance survey, or they are drilling from a private (non-Federal) surface location that is either outside the refuge boundary or is a surface inholding within the boundary, provided that no operations associated with the oil and gas right take place on federally owned or Service-administered surface estate within the refuge.

Proposed § 29.91 urges operators to have a pre-application meeting with the Service to allow for an early exchange of information, including discussion of Service and operator concerns, as well as avoid delays in the application process. At this meeting, operators are encouraged to provide information on oil and gas ownership (including deeds or other relevant information which the applicant believes would control the applicability of the regulations under this subpart to the applicant's operations), operation schedules, contact information for company officials and their contractors, map of the proposed area of operations, description of access and transportation plans, and a description of the survey methodology for refuge resources, such as wildlife or cultural resources.

Proposed § 29.92 clarifies that operators do not need to include previously submitted information in their operations permit application, provided such information is on file with the Service, still current, and accurate. Operators may also submit copies of documents submitted to other agencies to meet the information requirements of their operations permit application.

Proposed § 29.93 clarifies that the operator only needs to submit the information for the operation for which they are seeking approval.

Proposed § 29.94 lists information requirements common to all operations, including information about existing conditions of the area of operations, proposed new surface uses, use of water, management of waste including flowback fluids from hydraulic fracturing operations, mitigation actions, alternatives considered, a spill control and emergency preparedness plan, and proposed reclamation.

Proposed § 29.95 identifies the additional information a geophysical operator would need to submit to the Service.

Proposed § 29.96 identifies the additional information a drilling operator would need to submit to the Service.

Proposed § 29.97 identifies the additional information a production operator would need to submit to the Service.

### ***§§ 29.100–29.104 Operations permit: application review***

The proposed regulations at §§ 29.100–29.104 establish a two-stage permit application review process (an initial review and a formal review), provide realistic timeframes to provide

notice back to an operator, and consolidate the final decisions the Service can make on an operator's permit application.

Proposed § 29.100 provides general information about how the Service will review an operator's application, which is an initial review to ensure that information is complete followed by formal review. Proposed § 29.101 describes the Service's initial review of an operator's permit application. During initial review, the Service would determine whether the applicant has supplied all information necessary for the Service to evaluate the operation's potential effects to federally owned or administered lands, waters, or resources of Service units; visitor uses or experiences; or visitor or employee health and safety. The Service would respond to an applicant within 30 days and state whether the information contained in the permit application is complete, identify the additional information required for the application to be complete, or notify the applicant that the Service needs more time to complete review. Once a permit application is complete, the Service conducts a formal review. For operators accessing oil and gas rights within Alaska refuges, proposed § 29.101(c) ensures that the regulations under title XI of ANILCA apply.

During the formal review process, under proposed §§ 29.102–29.103, the Service would evaluate the potential impacts of the proposed operations on refuge resources in compliance with applicable Federal laws, such as the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.); the Endangered Species Act of 1973, as amended (ESA, 16 U.S.C. 1531 et seq.); the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703–712); and the National Historic Preservation Act of 1966 (NHPA, 16 U.S.C. 470 et seq.). Under proposed § 29.102(b), the Service would identify any additional operating conditions that would apply to the operator's approved application.

Operators conducting non-Federal oil and gas operations in refuge units must also comply with all applicable non-conflicting State and local laws (proposed 50 CFR 29.120). As discussed above, it is the policy of the Service to be consistent with and complementary to State law to the maximum extent possible. Operators would still be required to obtain State-issued permits where applicable.

Additionally, proposed § 29.103(a) requires that, before approving an operations permit, the Service determine that the operator will use technologically feasible, least-damaging methods that provide for protection of the refuge's resources and public health and safety.

Proposed § 29.103(b) includes two prerequisites to approval: (1) submittal of adequate financial assurance, and (2) proof of adequate liability insurance.

Proposed § 29.104 describes the actions the Service will take on the operations permit application. Proposed § 29.104(a) establishes a general 180-day timeframe to complete its formal review. These decisions require time to adequately analyze an operator's proposal, work with the operator on a design that incorporates acceptable avoidance and mitigation measures, and compliance with the associated Federal statutory responsibilities such as NEPA, ESA, and NHPA. The proposed regulations would allow for a longer period of time, if the parties agree to it, or if the Service determines that it needs more time to comply with applicable laws, executive orders, and regulations. The Service seeks comment on whether 180 days is reasonable and any incremental impacts on operators.

For operations that need to access inholdings in Alaska, proposed § 29.104(b) provides the timelines for ANILCA title XI/Access (43 CFR part 36).

Proposed § 29.104(c) would establish two final actions: (1) Approved, with or without conditions; or (2) Denied, and the justification for the denial. The Service would notify the

operator in writing of the final action. If approved, this written notification constitutes the Service's authorization to conduct activities.

### ***§§ 29.110–29.119 Operating standards***

Proposed §§ 29.110–29.119 would clarify the purpose and function of operating standards. As discussed above, the Service would set performance-based operating standards to allow operators the flexibility to design their proposed operation using the latest technological innovations with an overall objective of using technologically feasible, least-damaging methods that will best protect refuge resources, values, and visitor health and safety.

The proposed rule would organize operating standards into the following categories: §§ 29.111 through 29.116 are operating standards that apply to all operations; § 29.117 contains operating standards that apply to reclamation; § 29.118 contains operating standards that apply to geophysical operations; and § 29.119 contains operating standards that apply to drilling and production operations, including enhanced recovery operations. Organizing the standards in this manner would allow the Service and the operator to readily understand which operating standards are applicable to the particular type of proposed operation.

Proposed § 29.111 addresses general facility design and management standards. These include the extent of surface disturbance, spill control, waste management, air emissions, and control of noxious and invasive species.

Proposed § 29.111(a) would ensure that either existing or newly created surface disturbance is kept to the minimum necessary for the safe conduct of operations.

Proposed § 29.111(b) would require installation and maintenance of secondary containment for all equipment and facilities using or containing contaminating substances such as oil, brine, formation water, or well stimulation chemicals. This could include constructing dikes around tank batteries to contain spills, fencing off the area to exclude livestock and large wildlife to prevent them from rubbing against valves or pipes and causing spills, stormproofing buildings used for storing hazardous chemicals, or using containment tubs or trays underneath chemical containers to catch drips or spills.

Proposed § 29.111(c) would require maintaining waste in as small an area as feasible. This could include a focus on practices that minimize the generation of waste, but could also include a waste containment system, waste disposal schedule, and identification of responsible parties if waste is not properly confined.

Proposed § 29.111(d) would require adherence to all State and Federal air quality standards.

Proposed § 29.111(e) would require operators to construct, maintain, and use roads to minimize fugitive dust emissions. Many methods are available to minimize fugitive dust emissions, such as vehicle speed limits (< 25 mph), applying water or other refuge-approved dust control treatment, and constructing roads to a minimum refuge-approved design standard.

Proposed § 29.111(f) would require operators to minimize emissions of air pollutants and releases or flaring of gas. Some States require additional air quality devices be installed (e.g., Colorado's secondary burn units) or installing additional scrubbers in areas not meeting attainment goals.

Proposed § 29.111(g) would require operators to minimize leakage of air pollutants and hydrocarbons to the atmosphere.

Proposed § 29.111(h) would require operators to control the introduction of noxious and invasive species on their area of operations. This could include inspecting all vehicles prior to their arrival on the refuge, removing noxious weeds from equipment and vehicles, using only approved native species in reclamation seed mixes, and immediately implementing interim reclamation in order to minimize the potential for the spread of invasive species in disturbed soils.

Proposed § 29.111(i) would require operators to maintain a safe distance (i.e., 500 feet) from any refuge structure or facility used by refuges for interpretation, public recreation, or administration in order to protect federally owned or administered structures or facilities, visitor uses or experiences, or visitor or employee health and safety. This distance may increase or decrease depending on the situation.

The Service is proposing specific standards at § 29.112 that would address fish and wildlife protection.

Proposed § 29.112(a) would require that operators and contractors abide by all refuge regulations to protect fish, wildlife, and plants. Our regulations in title 50, chapter I, subchapter C of the Code of Federal Regulations provide general and specific refuge regulations, such as hunting and fishing, safety, and recreation, among others.

Proposed § 29.112(b) would require that operators, as well as their employees and contractors, be educated and informed by refuge staff of applicable wildlife protection practices. This would include information such as obeying all posted speed limits, avoiding closed refuge areas, and training staff on what constitutes wildlife violations.

Proposed § 29.112(c) would require operators to provide a safe environment for fish and wildlife free from physical and chemical hazards. This could include maintaining equipment in

good condition, immediately reporting and cleaning all spills, and proactive management to prevent spills.

Proposed § 29.112(d) would require that operators comply with all seasonal and other restrictive wildlife buffers. This could include following timing buffers (e.g., avoid areas between the hours of 6 p.m. through 6 a.m.), seasonal buffers (e.g., avoid areas between November 15 and April 15), or distance buffers (e.g., avoid human presence within ¼ mile of certain nest sites).

The Service is proposing specific standards at § 29.113 that would address hydrologic resources.

Proposed § 29.113(a) would require operators to maintain a safe distance (i.e., 500 feet) from all waters to reduce the risk of contaminating those waters with oil and gas-related fluids. This distance may increase or decrease depending on the situation. Often distance and slope are the only buffers that prevent contaminants from reaching waterways.

Proposed § 29.113(b) would require operators to construct facilities in a manner to maintain hydrologic movement and function. This could include installing structures to divert runoff away from well sites, not siting facilities in floodplains, or installing culverts in access roads to maintain natural drainage patterns.

Proposed § 29.113(c) would require operators to maintain the existing water quality of the site. This could include applying spill prevention, containment, and countermeasures (SPCC) practices to prevent chemical, oil, or brine leaks and spills from contaminating surface water, and implementing erosion control measures to prevent or minimize siltation of surface waters.

Proposed § 29.113(d) would require operators to maintain natural levels of erosion and sedimentation. This could include recontouring and reseeded disturbed areas, implementing

larger buffers away from waterways, building roads and pads according to refuge specifications, and installing water bars and right-sized culverts.

The Service is proposing specific standards at § 29.114 that would address safety.

Proposed § 29.114(a) would require operators to maintain their area of operations in a manner that avoids or minimizes the cause or spread of fire. This could include maintaining fire breaks around facilities and equipment, and not driving across grassy areas during hot, dry conditions.

Proposed § 29.114(b) would require operators to maintain all facilities and operations to prevent physical and chemical hazards to refuge resources, visitors, and employees. This could include storing chemicals onsite, locking storage buildings and sheds, and substituting hazardous chemicals with non-hazardous ones.

Proposed § 29.114(c) would require operators to provide site security to prevent hazardous conditions from affecting visitors or employees. This could include fencing around the facility, pump jack, well pad, or well head; locking buildings; or posting guards.

The Service is proposing specific standards at § 29.115 that would address lighting and visual impacts.

Proposed § 29.115(a) would require operators to reduce effects to night skies by minimizing light emissions from their operations. This could include using the minimum lighting necessary for site safety, and directing lights downward to minimize the effect on night skies.

Proposed § 29.115(b) would require operators to minimize the contrast between their facilities and the surrounding environment by blending their operations with the background to minimize their appearance. This could include painting facilities, equipment, and buildings to blend with the background; siting facilities in low areas beyond hills or rises; using topography

to help screen facilities; and using road and well pad materials similar in composition and color to minimize their appearance (e.g., using native materials for roads and well pads).

The Service is proposing specific standards at § 29.116 that would address noise reduction. This could include sound abatement techniques, such as hospital-grade mufflers, constructing sound buffers (e.g., hay bales around a drilling rig), and reducing speed limits to reduce the effects of noise on wildlife and visitors.

The Service is proposing specific standards at proposed § 29.117 for reclamation and protection measures required of all operators.

Proposed § 29.117(a) would require the operator to promptly clean up and remove contaminating substances from their area of operations in accordance with all applicable Federal, State, and local laws.

Proposed § 29.117(b) would require partial reclamation of areas no longer necessary for their operations. It would also require an operator to initiate reclamation within 6 months of completion of authorized operations.

Proposed § 29.117(c) would require an operator to protect all survey markers.

Proposed § 29.117(d) provides steps that must be accomplished to re-establish the ecological function of the site.

The Service is proposing specific standards at proposed § 29.118 for operators proposing geophysical operations.

Proposed § 29.118(a) directs operators to use surveying methods that minimize the need for vegetative trimming and removal. This could include avoiding use of line-of-sight surveying methods.

Proposed § 29.118(b) protects pipelines, telephone lines, railroad tracks, roads, power lines, water wells, oil and gas wells, oil- and gas-production facilities, and buildings. This could include using industry-accepted minimum safe-offset distances.

Proposed § 29.118(c) directs operators to match equipment to the environment to minimize impacts. This could include using boat-mounted drilling rigs in marshy habitats, putting helicopter equipment into areas where impacts would be difficult to mitigate with tracked vehicles, or conducting operations when ground is frozen or sensitive species are not present.

Proposed § 29.118(d) describes how operators are to reclaim sites when using shot holes as the energy source. This could include using biodegradable charges, plugging shot holes, and leaving sites clean without impeding surface reclamation or posing a hazard.

Proposed § 29.118(e) clarifies that, for geological and geophysical exploration for oil and gas within the coastal plain of the Arctic National Wildlife Refuge, the regulations at 50 CFR part 37 apply.

The Service is proposing specific standards at proposed § 29.119 for operators proposing drilling and production operations.

Proposed § 29.119(a) establishes drilling standards, including waste management, such as using containerized mud systems, avoiding earthen pits, and using sound well control equipment and practices. Well design and operation must provide for isolation and protection of usable water zones. Drill cuttings must be disposed of at an approved site off-refuge.

Proposed § 29.119(b) establishes standards for production operations including monitoring and maintenance of equipment, proper site security, and removal of unnecessary equipment.

***§§ 29.120–29.122 General terms and conditions***

The Service proposes a “General Terms and Conditions” section to summarize those terms and conditions that apply to all operations.

Proposed § 29.120(a) outlines the operating standards that all operators must comply with and states that those standards for new operations would be incorporated in the terms and conditions of their operations permit. This section also notifies an operator that violation of these terms and conditions can lead to fines and/or prosecution.

The proposed § 29.120(b) holds operator’s contractors or subcontractors accountable for compliance with all requirements of this subpart.

Under proposed § 29.120(c), the Service would retain a right to charge fees for processing and administering permit applications if they prove to be a significant workload. The Service may still require reimbursement for costs incurred in processing applications, whether or not the application is withdrawn or a permit is issued.

Proposed § 29.120(d) restricts the use of surface water or groundwater on NWRS lands. If not covered by a State-held water right, any use of water within a refuge must be approved by the Service upon the Service's determination that it will not impair any refuge resource or use.

Proposed § 29.120(e) would require operators to provide a statement under penalty of perjury, signed by an official authorized to legally bind the company, that the operations will comply with applicable Federal, State, and local laws and regulations and that the information provided to the Service is true and correct.

Proposed § 29.120(f) would require an operator to indemnify and hold harmless the United States and its employees from all liability resulting from activities conducted under an operations permit.

Proposed § 29.120(g) would require an operator to take all reasonable precautions to avoid, minimize, rectify, or reduce overall impacts of the proposed operations. The operator may be required to mitigate for any impacts to refuge resources and lost uses by creating or restoring habitat, or providing other forms of compensation under applicable State laws.

Proposed § 29.120(h) holds operators responsible for unauthorized or unanticipated damages because of their operations, and actions of their employees or contractors, and reclamation of damages caused by operations as a result of weather, fire, earthquakes, or similar uncontrolled actions. For example, an operator would remain responsible for removing a tank from a marsh after a hurricane blows it off site.

Because monitoring and reporting requirements apply, in varying degrees, to all operations, the Service is proposing to include monitoring and reporting requirements under general terms and conditions at proposed § 29.121.

Proposed § 29.121(a) would require an operator to provide the Service access to its area of operations for monitoring compliance with the rule. This monitoring may include sample collection and analysis of soil, surface water, or ground water. Access to the site is open to the Service regardless of time, season, and date, and could include third-party monitors or refuge staff.

Proposed § 29.121(b) would allow the Service to require that operators hire third-party contractors (third-party monitor) when necessary to ensure compliance and protect refuge resources and values. The use of third-party monitors helps ensure that the Service receives

unbiased, reliable, and timely monitoring information demonstrating an operator's compliance with its permit. This proposed section also describes the criteria that the Service would consider when making the decision to require an operator to pay for a third-party monitor. The criteria could include an operator's proposal for self-monitoring. The third-party monitor would report directly to the Service to ensure oversight and accountability and prevent the appearance of a conflict of interest. Use of third-party monitors is a common industry practice.

Proposed § 29.121(c) would require operators to report any injuries to or mortality of fish, wildlife, or endangered or threatened plants resulting from their operations to the Service within 24 hours of any incident. Such occurrences, regardless of the context, should be reported as soon as possible, but no later than 24 hours after the incident. This could include a gas release resulting in wildlife mortality, collisions with company vehicles, or entrapment in a facility or on a well pad. This requirement is in addition to any report required by other applicable Federal or State laws.

Proposed § 29.121(d) would require operators to report any accidents involving serious personal injury or death, and of any fires or spills on the site immediately after the accident occurs. Operators must also provide a full written report to the Service within 90 days of the incident explaining what happened, why it happened, who was involved, the results, and how the company intends to prevent similar incidents in the future. This requirement is in addition to any report required by other applicable Federal or State laws.

Proposed § 29.121(e) would require that the operator submit any information requested by the Service that is necessary to verify compliance with either a provision of the operations permit or this subpart. To ease any burden, the proposed rule would allow an operator to submit

reports that the operator has already submitted to a State or other Federal agency to meet this reporting requirement.

Proposed § 29.121(f) would require that the operator provide public disclosure of chemicals used in hydraulic fracturing operations using the FracFocus Chemical Disclosure Registry or another approved database system.

Proposed § 29.122 provides that an operations permit is valid for the period of the operation. However, a permit may be modified by an operator or the Service, as outlined in proposed § 29.160.

#### *§§ 29.140–29.142 Access fees*

Operators may need to cross Federal lands where they have no pre-existing property or other legal right to do so. Under proposed § 29.140, operators would have to obtain permission from the Service for such access across NWRS lands. Proposed § 29.140(b) clarifies that access in Alaska is governed by regulations and standards at 43 CFR part 36. This would include access fees and violations of permits issued under those regulations. Proposed § 29.141 provides that the Service may charge the operator a fee for such additional access. The NPS, Forest Service, and Bureau of Land Management (BLM), as well as private landowners, already charge similar fees for such access. Such fees are based on the fair market value of the use of Federal property outside the scope of their property right.

Proposed § 29.141(a) would require operators to pay a fee for new access (e.g., roads or gatherings lines) across Federal lands not within the scope of their oil and gas right. The Service would set the fee amount using generally accepted practices. For example, the Service could set

fees consistent with current Service regulations regarding fees for access, calculate fees using the BLM's Linear Rights-of-way Fee Schedule, or use an appraisal.

Under proposed § 29.141(b), the Service would retain the right to charge a fee for access on an existing road consistent with a posted fee schedule. This fee would be used to reflect any increased maintenance costs on these roads when compared to the normal use by the general public or refuge staff, such as purchasing fuel for a road grader, gravel for a road, or maintaining refuge equipment used in road maintenance.

Proposed § 29.141(c) would give the Service the ability to allow the operator to undertake in-kind services to offset fees to the extent permitted by law.

Proposed § 29.142 would clarify that, while the Service will not charge an operator a fee for emergency access to their operation, the operator would remain liable for any damages caused to refuge resources as a result of such emergency access.

#### ***§§ 29.150–29.154 Financial assurance***

The current regulations at 50 CFR 29.32 do not require financial assurance for well plugging and reclamation. In the event of a company default, the Service must find the funds to plug wells and restore the site (i.e., remove well pad, roads and surface equipment, and restore habitat). Proposed § 29.150 would require an operator to file an acceptable method of financial assurance as a condition of the operations permit in order to ensure that adequate funds will be available to carry out the plugging and reclamation requirements of the operations permit if an operator becomes insolvent or defaults on his/her obligations. One example of an acceptable method of financial assurance is a performance bond. The assurance is intended to ensure that

funding is available for restoration of the site, removal of equipment and contaminated soil, and revegetation of the area, in the event an operator defaults on their obligations under the permit. This financial assurance is in addition to any financial assurance required by any other Federal or State regulatory authority.

Proposed § 29.151(a) would make the financial assurance amount equal to the cost of plugging and abandonment and reclamation, as conducted by a third-party contractor. It also provides that, if the plugging and abandonment and reclamation costs exceed the operator's bond amount, they are obligated to pay that difference.

Proposed § 29.151(b) provides a method to reduce the operator's bond amount if the operator provides in-kind reclamation.

Proposed § 29.152 allows the Service to adjust the amount of financial assurance due to changed conditions or circumstances that increase or decrease the estimated costs of reclamation. For instance, if an operator elects to conduct interim reclamation, the bond amount for full reclamation could be reduced based on the amount of the site reclaimed. On the other hand, if the operator modifies their operations in a manner that would make the cost of plugging or reclamation more expensive, the bond amount could be increased.

Proposed § 29.153 describes the conditions under which the Service would release the financial assurance. The Service will release an operator's bond if they have met all applicable reclamation operating standards, as well as any additional conditions outlined in their operations permit.

Proposed § 29.154 describes those circumstances that would result in forfeiture. Failure to comply with any provision of the operations permit could result in forfeiture of the operator's financial assurance to the extent it would cost the Service to remedy the noncompliance. Also,

under this provision, if the operator forfeits their financial assurance, the Service may prohibit the operator from removing all structures, equipment, or other material from the operator's area of operations; require the operator to secure the operations site and take any other necessary steps to protect refuge lands or resources, visitor uses, and visitor or employee health and safety; and/or suspend review of any pending permit applications until the Service determines that all violations have been resolved.

***§ 29.160 Modification to an operation***

The objectives of proposed § 29.160 are to provide the Service or operator a method to modify an operations permit to address new or unanticipated changes in operational or environmental conditions. Any modification to an approved permit must meet the same criteria that apply to an operations permit as outlined in the application review process (proposed §§ 29.100 through 29.104). Examples of a modification could include drilling additional wells from the same pad, creating additional surface disturbance (expanding the footprint of a well pad, realigning a road), or converting a natural gas well into a wastewater disposal well so that the resulting modification has notable impacts to the refuge resource.

Minor actions that are not specifically addressed in the operations permit but are within the scope of the impacts analyzed would not be considered modifications for the purpose of this section. Examples of such minor actions would include repositioning of surface facilities within the permitted area of operations, minor changes in color schemes, or non-routine maintenance actions.

### ***§§ 29.170–29.171 Change of operator***

A change of operator occurs anytime an entity exercising non-Federal oil and gas rights transfers those rights to another party. However, a transfer of stock or change in the membership of the Board of Directors is not by itself a transfer subject to Service approval to which this provision applies. We encourage the transferring party, as well as new operators, to consult with the refuge manager prior to transfer of operations to facilitate the transition.

Proposed § 29.170 outlines the steps the operator must take if they are the transferring party.

Under proposed § 29.170(a), if an operator's operations are not under a Service-issued permit, the operator must provide the Service within 30 calendar days of the transfer the contact information of the party to whom the operator transferred their operation, the effective date of the transfer, and a description of the rights transferred. The operator must also provide written acknowledgement from the new operator that the contents of the notification are true and correct.

Under proposed § 29.170(b), if operations are being conducted under a Service-issued permit, in addition to the notification requirements above, the operator remains responsible for compliance with their operations permit until the new operator agrees in writing to adopt the permit with all its terms and conditions. In addition, if financial assurance is a component of the permit, the Service will retain the financial assurance until the new operator replaces it.

Proposed § 29.171 describes the responsibilities of the new operator.

Proposed § 29.171(a) states that, when pre-existing operations are transferred to a new operator, the new operator may continue operating under the same conditions as the previous

operator, but within 30 calendar days from the date of the transfer, would have to provide to the Service its right-to-operate documentation and company contact information.

Proposed § 29.171(b) states that, if operations being conducted under a Service-issued permit are transferred to a new operator, the new operator would need to agree in writing to conduct operations in accordance with all terms and conditions of the previous operator's permit and file any financial assurance required under the permit with the Service.

Under proposed § 29.171(c), new operators have the ability to propose modifications to operations transferred to them as outlined in § 29.160.

### ***§§ 29.180–29.181 Well plugging***

The proposed procedures are consistent with the way many States approach the issue of inactive wells, and recognize that certain economic or logistical reasons exist to justify maintenance of wells in shut-in status for extended periods of time. Rather than a “produce or plug” policy, the proposed regulations provide assurance that shut-in wells are maintained in an environmentally sound and safe manner.

Proposed § 29.180 would require operators to plug a well within 60 days after cessation of drilling operations (when no further action has been taken); or within a year of continuous inactivity after completion of production operations; or after expiration of the period approved in the operations permit to maintain the well in shut-in status.

Under proposed § 29.181, operators would be able to seek an extension to the plugging requirement by applying for an operations permit or modification to existing operations permit to maintain a well in shut-in status for up to 5 years. The operator must: describe why drilling or

production operations have ceased; provide a reasonable future use of the well; demonstrate mechanical integrity of the well; and follow maintenance requirements.

### ***§§ 29.190–29.192 Prohibited acts and penalties***

Proposed § 29.190 provides notices to operators of the prohibited acts that would constitute a violation of these regulations. This list is in addition to general prohibited acts for members of the public while on NWRS lands outlined at 50 CFR part 27. Prohibited acts listed in proposed § 29.190 include operating in violation of terms or conditions of an operations permit under § 29.43; damaging Federal property; conducting operations without Service authorization; failure to comply with suspension or revocation orders; and failure to comply with local, State, and Federal statutes or regulations.

Proposed §§ 29.191–29.192 would give the Service the discretion to take various enforcement actions if the operator engages in a prohibited act, including fines, imprisonment, and/or suspension or revocation of the right to operate an operation. In order to protect refuge resources, the Service may refrain from processing an applicant’s permit if the applicant has not taken action elsewhere to remedy severe and substantial violations within the NWRS. These new provisions do not affect other regulatory provisions that authorize termination of a permit for noncompliance under 50 CFR 25.43, or the general penalty provisions under 50 CFR 28.31.

### ***§ 29.200 Appeals***

This section would provide that the operator has the right to appeal a decision through the process outlined in current regulations at 50 CFR 25.45. For ROWs, appeals would still be governed by 50 CFR 29.22; in Alaska, appeals would still be governed by 43 CFR 36.8. Under the provisions of 50 CFR 25.45, the operator has 20 days after notification of any adverse decision to respond. The operator shall be notified within 20 days after receipt of their response of the final decision. If the Service intends to proceed with the proposed action, the operator shall have 30 days from the final decision to file an appeal to the project leader (e.g., refuge complex manager or refuge regional supervisor). The operator shall be notified in writing within 30 days from the date of the appeal of that decision. The operator has 30 days from receipt of the decision to further appeal in writing to the Regional Director. The Regional Director's decision shall be final and issued in writing to the operator within 30 days from the date of the appeal. The operator shall be provided an opportunity for oral presentation within the respective 30-day appeal periods. The operator must also use this administrative appeals process before challenging the Service's decision in court. The time to file appeals and to complete the process of appeals may be extended at the discretion of the Regional Director.

#### ***§ 29.210 Public information***

This section would offer information on how the public can learn about oil and gas activities on refuge lands. The proposed rule provides the ability for an operator to protect proprietary or confidential information from disclosure to the public. Operators need to clearly mark those documents that they wish to protect from public disclosure as “proprietary or confidential information” such that these documents are readily identifiable by the Service

decision maker. The Service has also included proposed provisions that allow an operator engaged in hydraulic fracturing operations or other operations involving the use of chemicals to withhold chemical formulations that are deemed to be a trade secret.

### ***§ 29.220 Information collection***

This section would provide information on Office of Management and Budget (OMB) approval of the collection of information set forth in these regulations.

### **Compliance with Other Laws, Executive Orders, and Department Policies**

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

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is significant, because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

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 executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order

13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. As noted above, we have carefully considered both the NPS's proposed amendments to the 9B regulations and the recent BLM regulations related to hydraulic fracturing, to ensure consistency to the greatest extent possible. The Service is aware of the current litigation concerning BLM's final hydraulic fracturing rule, *State of Wyoming v. U.S. Department of the Interior*, Case No: 2:15-CV-043-SWS (D. Wyo.) (consolidated with No. 2:15-CV-041-SWS), and *Southern Ute Indian Tribe v. U.S. Department of the Interior*, Case No: 15-CV-01303-MSK (D. Colo.), and will consider public comment as well as any rulings that may occur in the litigation in reaching final decisions on its final rule.

#### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

We certify that, if promulgated as proposed, this rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analysis found in the report entitled **Non-Federal Oil and Gas Rulemaking Economic Analysis**, which can be viewed at [www.regulations.gov](http://www.regulations.gov) or at <http://www.fws.gov/refuges/oil-and-gas/rulemaking.html>, by clicking on the link entitled **Non-Federal Oil and Gas Rulemaking Economic Analysis**.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under 5 U.S.C. 804(2). This rule:

- (a) Would not have an annual effect on the economy of \$100 million or more;
- (b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

These conclusions are based on the cost-benefit and regulatory flexibility analysis found in the report entitled **Non-Federal Oil and Gas Rulemaking Economic Analysis**, which can be viewed at [www.regulations.gov](http://www.regulations.gov) and also at <http://www.fws.gov/refuges/oil-and-gas/rulemaking.html>, by clicking on the link entitled **Non-Federal Oil and Gas Rulemaking Economic Analysis**.

*Unfunded Mandates Reform Act (UMRA)*

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. It addresses use of refuge lands, and would impose no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (Executive Order 12630)*

This proposed rule is not intended to result in the taking of private property or otherwise have takings implications under Executive Order 12630. The provisions of this proposed rule would afford access to operators exercising non-Federal mineral rights under reasonable regulation. No other private property is affected. A takings implication assessment is not required.

*Federalism (Executive Order 13132)*

Under the criteria in section 1 of Executive Order 13132, the proposed rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement. It addresses use of refuge lands, and would impose no requirements on other agencies or governments. A federalism summary impact statement is not required.

*Civil Justice Reform (Executive Order 12988)*

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Consultation with Indian Tribes (Executive Order 13175 and Department policy)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes, but we opened consultation under the Department's tribal consultation policy with all interested tribes.

*Paperwork Reduction Act of 1995 (PRA)*

This proposed rule contains a collection of information that we have submitted to OMB for approval under the PRA (44 U.S.C. 3501 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

We are proposing to collect the following information associated with non-Federal oil and gas operations on National Wildlife Refuge System lands. Operators do not need to resubmit information that is already on file with the Service, provided the information is still

current and accurate. Documents and materials submitted to other Federal and State agencies may be submitted, if they meet the specific requirements of the Service.

**Pre-existing Operations (§ 29.61).** Within 90 days after the effective date of these regulations, or after a boundary change or establishment of a new refuge unit, pre-existing operators without a Service-issued permit must submit:

- Documentation of the right to operate within the refuge.
- Contact information (names, phone numbers, and addresses) of the primary company representative; the representative responsible for field supervision; and the representative responsible for emergency response.
- Scaled map clearly delineating the existing area of operations.
- Copies of all plans and permits required by local, State, and Federal agencies.

**Temporary Access Permit Application (§ 29.71).** We propose to use Parts 1 and 2 of FWS Form 3–2469 (Oil and Gas Operations Special Use Permit Application) as the application for a Temporary Access Permit. The operator must provide the information requested in Parts 1 and 2 of the form, including, but not limited to:

- Contact information (name, legal address, and telephone number) for the person(s) responsible for the overall management of the proposed operations.
- Documentation demonstrating the right to operate within the refuge.
- Name, legal address, telephone number, and qualifications of all specialists responsible for conducting the reconnaissance surveys. (Only required if the

assistants/subcontractors/subpermittees will be operating on the refuge without the permittee being present.)

- Brief description of the intended operation so that we can determine reconnaissance survey needs.
- Description of the survey methods that will be used to identify the natural and cultural resources.
- Location map (to-scale and determined by us to be acceptable) delineating the proposed reconnaissance survey area in relation to the refuge boundary and the proposed area of operations.
- Description of proposed means of access and routes for conducting the reconnaissance surveys.

**Accessing Oil And Gas Rights From a Non-Federal Surface Location (§ 29.80).** We encourage operators to provide us, at least 60 calendar days prior to beginning operations, the names, telephone numbers, and addresses of the primary company representative, the representative responsible for field supervision, and the representative responsible for emergency response.

**Pre-application Meeting for Operations Permit (§ 29.91).** Before submitting an application for an Operations Permit, operators should participate in a pre-application meeting with the Service and provide:

- Documentation demonstrating the right to operate within the refuge.
- An overview of the proposed operation and timing.

**Operations Permit Application (§§ 29.94, 29.95, 29.96, and 29.97).** We propose to use FWS Form 3–2469 (Oil and Gas Operations Special Use Permit Application) as the application for an Operations Permit. All applicants must provide the information requested in Parts 1, 3, 4, 8, 9, and 10, FWS Form 3–2469, including, but not limited to:

***Part 1 (§ 29.94(a)–(b))***

- Contact information (name, legal address, and telephone number) for the person(s) responsible for the overall management of the proposed operations.
- Documentation demonstrating the right to operate within the refuge.

***Part 3 (§ 29.94(c)–(f))***

- Description of the natural features of the proposed area of operations, such as: streams, lakes, ponds, wetlands (including estimated depths to the top and bottom of zones of usable water); topographic relief; and areas that the Service has indicated are sensitive.
- Locations of existing roads, trails, railroad tracks, pipeline rights-of-way, pads, and other disturbed areas.
- Locations of existing structures that the operations could affect, including buildings; pipelines; oil and gas wells including both producing and plugged and abandoned wells; injection wells; freshwater wells; underground and overhead electrical lines; and other utility lines.
- Descriptions of the natural resource and cultural resource survey reports for the proposed area of operations.

***Part 4 (§ 29.94(g)–(n))***

- Location maps (to-scale and determined by us to be acceptable) that clearly identify:

(1) Proposed area of operations, existing conditions, and proposed new surface uses, including the boundaries of each of the oil and gas tracts in relation to the proposed operations and the relevant refuge boundary.

(2) Proposed access routes of new surface disturbances as determined by a location survey.

(3) Location of all support facilities, including those for transportation (e.g., vehicle parking areas, helicopter pads, etc.), sanitation, occupation, staging areas, fuel storage areas, refueling areas, loading docks, water supplies, and disposal facilities).

- Method and diagrams (including cross sections) of any proposed pad construction, road construction, cut-and-fill areas, and surface maintenance, including erosion control.
- Number and types of equipment and vehicles, including an estimate of vehicular round trips associated with the operation.
- Estimated timetable for the proposed operations, including any operational timing constraints.
- Type and extent of security measures proposed at the area of operation.
- Power sources and their transmission systems for the proposed operations.
- Types and quantities of all solid and liquid waste generated and the proposed methods of storage, handling, and disposal.
- Source, quantity, access route, and transportation/conveyance method for all water to be used in operations, including hydraulic fracturing, and estimates of any anticipated waste water volumes generated, including flowback fluids from hydraulic fracturing operations, and the proposed methods of storage, handling, and recycling or disposal.

***Part 8 (§ 29.94(o))***

- Description of proposed steps to mitigate anticipated adverse environmental impacts on refuge resources and uses, including, but not limited to: refuge's land features, land uses, fish and wildlife, vegetation, soils, surface and subsurface water resources, air quality, noise, lightscapes, viewsheds, cultural resources, and economic environment.
- Description of any anticipated impacts that cannot be mitigated.
- Description of all alternatives considered that meet the criteria of technologically feasible, least-damaging methods of operations, as well as the costs and environmental effects of such alternatives.

***Part 9 (§ 29.94(p))***

- Contact information (name, address, and telephone number) for persons that we can contact in the event of a spill, fire, or accident, including the order in which the persons should be contacted.
- Notification procedures and steps taken to minimize damage in the event of spill, fire, or accident.
- Identification of contaminating or toxic substances used within the area of operations or expected to be encountered during operations.
- Trajectory analysis for potential spills that are not contained on location.
- Identification of abnormal pressure, temperature, toxic gases or substances, or other hazardous conditions at the area of operations or expected to be encountered during operations.
- Measures (e.g., procedures, facility design, equipment, etc.) to minimize risks to human health and safety, and the environment.

- Steps to prevent accumulations of oil or other materials deemed to be fire hazards from occurring in the vicinity of well locations and lease tanks.
- Equipment and methods for containment and cleanup of contaminating substances, including a description of the equipment available at the area of operations and equipment available from local contractors.
- Storm water drainage plan and actions intended to mitigate storm water runoff.
- Material safety data sheets (where required by law) for each material that will be used or encountered during operations, including expected quantities maintained at the area of operations.
- Description of the emergency actions that will be taken in the event of injury or death to fish and wildlife or vegetation.
- Description of the emergency actions that will be taken in the event of accidents causing human injury.
- Contingency plans for conditions and emergencies other than spills, such as if the area of operations is located in areas prone to hurricanes, flooding, tornados, fires, or earthquakes.

***Part 10 (§ 29.94(q)–(r))***

- Description of the specific equipment, materials, methods, and schedule that will be used to meet the operating standards for reclamation at § 29.117.
- Itemized list of the estimated costs that a third party would charge to complete reclamation.

**Geophysical Exploration (§ 29.95).** Applicants proposing geophysical exploration must also provide the information requested in Part 5 of FWS Form 3–2469, including, but not limited to:

- Map showing the positions of each survey line including all source and receiver locations as determined by a locational survey, and shot point offset distances from wells, buildings, other infrastructure, cultural resources, and environmentally sensitive areas.
- Number of crews and numbers of workers in each crew.
- Description of the acquisition methods (including the procedures and specific equipment that will be used), and energy sources (e.g., explosives, vibroseis trucks, etc.).
- Description of methods of access along each survey line for personnel, materials, and equipment.
- List of all explosives, blasting equipment, chemicals, and fuels that will be used in the proposed operations, including a description of proposed disposal methods, transportation methods, safety measures, and storage facilities.

**Proposed Drilling Operations (§ 29.96).** Applicants proposing drilling operations must also provide the information requested in Part 6 of FWS Form 3–2469, including, but not limited to:

- Description of well pad construction, including dimensions and cross sections of: cut-and-fill areas and excavations for ditches, sumps, and spill control equipment or structures, including lined areas.
- Description of the drill rig and equipment layout, including rig components, fuel tanks, testing equipment, support facilities, storage areas, and all other well-site equipment and facilities.
- Description of type and characteristics of the proposed drilling mud systems.

- Description of the equipment, materials, and methods of surface operations associated with drilling, well casing and cementing, well control, well evaluation and testing, well completion, hydraulic fracturing or other well stimulation, and well plugging.

**Production Operations (§ 29.97).** Applicants proposing production operations must also provide the information requested in Part 7 of FWS Form 3–2469, including, but not limited to:

- Dimensions and a to-scale layout of: the well pad, clearly identifying well locations and noting partial reclamation areas; gathering, separation, metering, and storage equipment; electrical lines; fences; spill control equipment or structures including lined areas, artificial lift equipment, tank batteries, treating and separating vessels, secondary or enhanced recovery facilities, water disposal facilities, gas compression and/or injection facilities; metering points; sales point (if on lease); tanker pickup points; gas compressor, including size and type (if applicable); and any other well site equipment.
- General description of anticipated stimulations, servicing, and workovers.
- Description of the procedures and equipment used to maintain well control.
- Description of method and means used to transport produced oil and gas, including vehicular transport; flowline and gathering line construction and operation, pipe size, and operating pressure; cathodic protection methods; surface equipment use; surface equipment location; maintenance procedures; maintenance schedules; pressure detection methods; and shutdown procedures.
- Road and well pad maintenance plan, including equipment and materials to maintain the road surface and control erosion.

- Vegetation management plan on well sites, roads, pipeline corridors, and other disturbed surface areas, including control of noxious and invasive species.
- Stormwater management plan on the well site.
- Produced water storage and disposal plan.
- Description of the equipment, materials, and procedures proposed for well plugging.

**Financial Assurance (§§ 29.103(b) and 29.150).** Before operations begin, operators must submit:

- Financial assurance in the amount specified by the Service and in accordance with the requirements of §§ 29.150 through 29.154.
- Proof of liability insurance with limits sufficient to cover injuries to persons or property caused by the operations.

**Identification of Wells and Related Facilities (§ 29.119(b)(3)).** Operators must identify wells and related facilities with a sign that must remain in place until the well is plugged and abandoned and related facilities are closed. Each sign must show the name of the well, name of the operator, and the emergency contact phone number.

**Reporting (§ 29.121(b)–(f))**

- Third-party monitors will report directly to the Service regarding compliance with the operations permit and efforts to protect federally owned or administered lands, waters, or the resources of refuges, visitor uses and experiences, and visitor or employee health and safety.

- Operators must notify the Service within 24 hours of any injuries to or mortality of fish, wildlife, or endangered or threatened plants.
- Operators must notify the Service of any accidents involving serious personal injury or death and of any fires or spills on the site immediately after the accident occurs. A full written report on the accident must be submitted to the Service within 90 days after the accident occurs.
- Operators must submit reports or other information necessary to verify compliance with the permit or with any provision of subpart D of the regulations.
- If operations include hydraulic fracturing, the operator must provide the Service with a report including the true vertical depth of the well, total water volume used, and a description of the base fluid and each additive in the hydraulic fracturing fluid, including the trade name, supplier, purpose, ingredients, Chemical Abstract Service Number (CAS), maximum ingredient concentration in additive (percent by mass), and maximum ingredient concentration in hydraulic fracturing fluid (percent by mass). The report must be submitted through FracFocus or another Service-designated database.

**Permit Modifications (§ 29.160(a)).** To request a modification to operations under an approved permit, permittees must provide, in writing, to the Service, the operator's assigned permit number, a description of the proposed modification, and an explanation of why the modification is needed.

**Change of Operator (§§ 29.170, 29.171)**

***Transfer of Right to Operate (§ 29.170)***

Operators conducting operations under §§ 29.43 or 29.44 must notify the Service in writing within 30 calendar days from the date the new operator acquires the rights to conduct operations.

Written notification must include:

- Names and addresses of the person or entity conveying the right and of the person or entity acquiring the right.
- Effective date of transfer.
- Description of the rights, assets, and liabilities being transferred and which ones, if any, are being reserved by the previous operator.

New operators must provide:

- Written acknowledgement that the contents of the notification are true and correct.
- Financial assurance.

***Change of operator (§ 29.171)***

**§ 29.171(a).** When operations conducted under § 29.44 are transferred, the transferee must provide to the Service within 30 calendar days from the date of the transfer:

- Documentation demonstrating that the operator holds the right to operate within the refuge.
- Names, phone numbers, and addresses of the primary company representative, the representative responsible for field supervision, and the representative responsible for emergency response.

**§ 29.171(b).** If operations conducted under § 29.43 or an operations permit are transferred, the transferee must provide the following within 30 days of commencing operations:

- Information required under § 29.171(a).

- Written agreement to conduct operations in accordance with all terms and conditions of the previous operator's permit.
- Financial assurance that is acceptable to the Service and made payable to the Service.

**Extension to Well Plugging Requirement (§ 29.181(a)).** To maintain a well in a shut-in status for up to 5 years, operators may apply for either an operations permit or a modification to operations under an approved permit. The application or modification must include the information requested in FWS Form 3–2469, including, but not limited to:

- Explanation of why the well is shut-in or temporarily abandoned and future plans for utilization.
- Demonstration of the mechanical integrity of the well.
- Description of the manner in which the operator's well, equipment, and area of operations will be maintained in accordance with the standards in subpart D of the regulations.

### **Public Information**

**§ 29.210(d).** An operator, or the operator and the owner of the information required under this subpart may support a claim to be exempt from public disclosure of information otherwise required. If required information is withheld, the regulation requires submission of an affidavit that:

- Identifies the owner of the withheld information and provides the name, address, and contact information for an authorized representative of the owner of the information;

- Identifies the Federal statute or regulation that would prohibit the Service from publicly disclosing the information if it were in the Service’s possession;
- Affirms that the operator has been provided the withheld information from the owner of the information and is maintaining records of the withheld information, or that the operator has access and will maintain access to the information held by the owner of the information;
- Affirms that the information is not publicly available;
- Affirms that the information is not required to be publicly disclosed under any applicable local, State, or Federal law;
- Affirms that the owner of the information is in actual competition and identifies competitors or others that could use the withheld information to cause the owner substantial competitive harm;
- Affirms that the release of the information would likely cause substantial competitive harm to the owner and provides the factual basis for that affirmation; and
- Affirms that the information is not readily apparent through reverse engineering with publicly available information.

§ 29.210(e). If the operator relies upon information from third parties, such as the owner of the withheld information, to make the previous affirmations, the operator must provide a written affidavit from the third party that sets forth the relied-upon information.

§ 29.210(f). The Service may require any operator to submit to the Service any withheld information, and any information relevant to a claim that withheld information is exempt from

public disclosure.

§ 29.210(h). The operator is required to maintain records of any withheld information until the later of the Service's release of the operator's financial assurance or 7 years after completion of operations on refuge lands. Any subsequent operator will be responsible for maintaining access to records of any withheld information during its operation of the well. The operator will be deemed to be maintaining the records if it can promptly provide the complete and accurate information to the Service, even if the information is in the custody of its owner.

§ 29.210(i). If any of the chemical identity information required in this subpart is withheld, the operator must provide the generic chemical name in the submission required. The generic chemical name must be only as nonspecific as is necessary to protect the confidential chemical identity, and should be the same as or no less descriptive than the generic chemical name provided to the Environmental Protection Agency.

*OMB Control No:* 1018-XXXX.

*Title:* Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands, 50 CFR 29, subpart D.

*Service Form Number(s):* 3-2469.

*Description of Respondents:* Businesses that conduct oil and gas exploration on national wildlife refuges.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Annual Nonhour Cost Burden: None.*

ACTIVITY/REQUIREMENT	ESTIMATED NUMBER OF ANNUAL RESPONSES	COMPLETION TIME PER RESPONSE (HOURS)	ESTIMATED TOTAL ANNUAL BURDEN HOURS
Preexisting Operations – provide documentation (§29.61)	40	50	2,000
Temporary Access Permit Application (§29.71)	35	17	595
Accessing Oil and Gas Rights from Non-Federal Location – provide contact information (§29.80)	5	1	5
Pre-application Meeting for Operations Permit – provide documentation (§29.91)	45	2	90
Operations Permit Application (§§29.94–29.97)	45	140	6,300
Financial Assurance (§29.103, 29.150)	45	1	45
Identification of Wells - signage requirements (§29.119(b))	45	2	90
Reporting (§29.121(b))			
Third-Party Monitor Report	300	17	5,100
Notification - Injuries/Mortality to Fish and Wildlife and Threatened /Endangered Plants	20	1	20
Notification - Accidents involving Serious Injuries/Death and Fires/Spills	20	1	20
Written Report - Accidents Involving Serious Injuries/Deaths and Fires/Spills	20	16	320
Report - Verify Compliance with Permits	240	4	960
Notification – Chemical Disclosure of Hydraulic Fracturing Fluids uploaded to FracFocus (§29.121(f))	5	1	5
Permit Modifications (§29.160(a))	10	16	160
Change of Operator (§§29.170, 29.171)	40	8	320
Extension to Well Plugging (§29.181(a))			
Application for Permit	10	140	1,400
Modification	5	16	80
Public Information (§29.210)			
Affidavit in Support of Claim of Confidentiality (§§29.210(c) and (d))	1	1	1
Confidential Information (§29.210(e) and (f))	1	1	1
Maintenance of Confidential Information (§29.210(h))	1	1	1
Generic Chemical Name Disclosure (§29.210(i))	1	1	1
<b>Total</b>	934		17,514

As part of our continuing efforts to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden associated with this proposed information collection. We specifically invite comments concerning:

- Whether or not the collection of information is necessary for the proper performance of our management functions involving management of non-Federal oil and gas rights, including whether or not the information will have practical utility;

- The accuracy of our estimate of the burden for the collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

If you wish to comment on the information collection requirements of this proposed rule, send your comments directly to OMB (see detailed instructions under the heading *Comments on the Information Collection Aspects of the Proposed Rule* in the **ADDRESSES** section). Please identify your comments with 1018–AX36. Please provide a copy of your comments to the Service Information Collection Clearance Officer (see detailed instructions under the heading *Comments on the Information Collection Aspects of the Proposed Rule* in the **ADDRESSES** section).

#### *National Environmental Policy Act (NEPA)*

This rule constitutes a major Federal action with the potential to significantly affect the quality of the human environment. We have prepared the draft environmental impact statement (DEIS) under the requirements of the NEPA of 1969 (42 U.S.C. 4321 et seq.). The DEIS is available online at [www.regulations.gov](http://www.regulations.gov) and also at <http://www.fws.gov/refuges/oil-and-gas/rulemaking.html>, by clicking on the link entitled “Non-Federal Oil and Gas DEIS.”

In addition, EPA is publishing a notice announcing the draft EIS, as required under section 309 of the Clean Air Act (42 U.S.C. 7401 et seq.) The publication date of EPA’s notice of availability is the official start of the public comment period for the draft EIS. Under the Clean Air Act, EPA also must subsequently announce the final EIS via the **Federal Register**. The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies’ environmental

impact statements (EISs) and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The Environmental Impact Statement (EIS) Database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**.

The notice of availability is the start of the 60-day public comment period for draft EISs, and the start of the 30-day "wait period" for final EISs, during which agencies are generally required to wait 30 days before making a decision on a proposed action. For more information, see <http://www.epa.gov/compliance/nepa/eisdata.html>. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

#### *Effects on the Energy Supply (Executive Order 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

#### *Clarity of This Rule*

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;

- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

### **Drafting Information**

This proposed rule reflects the collective efforts of Service staff in the NWRS, Division of Natural Resource and Conservation Planning, Branch of Wildlife Resources, refuges, and field offices, with assistance from the Department of the Interior, Office of the Solicitor.

### **Public Participation**

It is the policy of the Department of the Interior, whenever feasible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the

**ADDRESSES** section. All comments must be received by 11:59 p.m. Eastern Time on the last day of the comment period (see **DATES**).

We are particularly interested in comments concerning:

1. Substantive differences between the Service's proposed regulations of oil and gas activity and those of other Federal agencies, including differences in the associated costs and benefits.
2. The costs and benefits of applying this rule to inholdings and operators accessing oil and gas rights from a surface location outside the refuge boundary.
3. Whether the performance and operating standards are clear and certain in their purpose, including §§ 29.40(c), 29.103(a), 29.110(b), and 29.119.

### **Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **List of Subjects**

### **50 CFR Part 28**

Law enforcement, Penalties, Wildlife refuges.

## **50 CFR Part 29**

Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Wildlife refuges.

### **Proposed Regulation Promulgation**

In consideration of the foregoing, the Service proposes to amend 50 CFR parts 28 and 29 as follows:

## **PART 28—ENFORCEMENT, PENALTY, AND PROCEDURAL REQUIREMENTS FOR VIOLATIONS OF SUBCHAPTER C**

1. The authority citation for part 28 continues to read as follows:

**Authority:** Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); sec. 5, 43 Stat. 651 (16 U.S.C. 725); sec. 5, 45 Stat. 449 (16 U.S.C. 690d); sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); sec. 4, 76 Stat. 654 (16 U.S.C. 460k); sec. 4, 80 Stat. 927 (16 U.S.C. 668dd) (5 U.S.C. 301).

2. Revise the heading of part 28 to read as set forth above.

3. Revise § 28.11 to read as follows:

### **§ 28.11 Purpose of regulations.**

The regulations in this part govern enforcement, penalty, and procedural requirements for violations of subchapter C.

## **PART 29—LAND USE MANAGEMENT**

4. The authority citation for part 29 is revised to read as follows:

**Authority:** Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); sec. 5, 43 Stat. 651 (16 U.S.C. 725); sec. 5, 45 Stat. 449 (16 U.S.C. 690d); sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); sec. 4, 76 Stat. 654 (16 U.S.C. 460k); sec. 4, 80 Stat. 927 (16 U.S.C. 668dd) (5 U.S.C. 301); Pub. L. 106-113, 113 Stat. 1501A-139-140; sec. 1, 96 Stat. 1051 (31 U.S.C. 9701); sec. 1, 96 Stat. 971 (31 U.S.C. 3711); sec. 1110, 94 Stat. 2457 (16 U.S.C. 3161); sec. 28, 41 Stat. 449 (30 U.S.C. 185); sec. 1, 76 Stat. 1129 (40 U.S.C. 319).

5. Revise § 29.32, including the section heading, to read as follows:

### **§ 29.32 Non-Federal mineral rights.**

(a) Non-Federal mineral rights owners within the National Wildlife Refuge System, not including coordination areas, must, to the greatest extent practicable, conduct all exploration, development, and production operations in such a manner as to prevent damage, erosion, pollution, or contamination to the lands, waters, facilities, and vegetation of the area. So far as is practicable, such operations must also be conducted without interference to the operation of the refuge or disturbance to the wildlife thereon.

(1) Physical occupancy of the area must be kept to the minimum space necessary to conduct efficient mineral operations.

(2) Persons conducting mineral operations on refuge areas must comply with all applicable Federal and State laws and regulations for the protection of wildlife and the administration of the area.

(3) All waste and contaminating substances must be kept in the smallest practicable area, confined so as to prevent escape as a result of rains and high water or otherwise, and removed from the area as quickly as practicable in such a manner as to prevent contamination, pollution, damage, or injury to the lands, waters, facilities, or vegetation of the refuge or to wildlife.

(4) Structures and equipment must be removed from the area when the need for them has ended, and, upon the cessation of operations, the area must be restored as nearly as possible to its condition prior to the commencement of operations.

(b) Nothing in this section will be applied so as to contravene or nullify rights vested in holders of mineral interests on refuge lands.

6. Add subpart D to read as set forth below:

#### **Subpart D—Non-Federal Oil and Gas Operations**

##### **PURPOSE AND SCOPE**

§ 29.40 What are the purpose and scope of the regulations in this subpart?

§ 29.41 When does this subpart apply to me?

§ 29.42 What authorization do I need to conduct operations?

§ 29.43 If I am already operating under Service authorization, what do I need to do?

§29.44 If I am operating without prior Service authorization, what do I need to do?

## **DEFINITIONS**

§ 29.50 What do the terms used in this subpart mean?

## **PRE-EXISTING OPERATIONS**

§ 29.60 Do I need an operations permit for my pre-existing operation?

§ 29.61 What information must I provide to the Service?

§29.62 What if I intend to conduct new operations or modify my pre-existing operations?

§ 29.63 What reclamation requirements apply to my pre-existing operations?

§ 29.64 What other provisions apply to my operations?

## **TEMPORARY ACCESS PERMITS**

§ 29.70 When do I need a temporary access permit?

§ 29.71 How do I apply for a temporary access permit?

§ 29.72 When will the Service grant a temporary access permit?

§ 29.73 How much time will I have to conduct my reconnaissance surveys?

**ACCESSING OIL AND GAS RIGHTS FROM A NON-FEDERAL SURFACE LOCATION (INCLUDING  
INHOLDINGS)**

§ 29.80 Do I need a permit for accessing oil and gas rights from a non-Federal location?

**OPERATIONS PERMIT: APPLICATION**

§ 29.90 Who must apply for an operations permit?

§ 29.91 What should I do before filing an application?

§ 29.92 May I use previously submitted information?

§ 29.93 Do I need to submit information for all possible future operations?

§ 29.94 What information must be included in all applications?

§ 29.95 What additional information must be included if I am proposing geophysical exploration?

§ 29.96 What additional information must be included if I am proposing drilling operations?

§ 29.97 What additional information must be included if I am proposing production operations?

**OPERATIONS PERMIT: APPLICATION REVIEW**

§ 29.100 How will the Service process my application?

§ 29.101 How will the Service conduct an initial review?

§ 29.102 How will the Service conduct a formal review?

§ 29.103 What standards must be met to approve my application?

§ 29.104 What actions may the Service take on my operations permit application?

### **OPERATING STANDARDS**

§ 29.110 What are the purposes of the Service's operating standards?

§ 29.111 What general facility design and management standards must I meet?

§ 29.112 What fish and wildlife protection standards must I meet?

§ 29.113 What hydrologic standards must I meet?

§ 29.114 What safety standards must I meet?

§ 29.115 What lighting and visual standards must I meet?

§ 29.116 What noise reduction standards must I meet?

§ 29.117 What reclamation and protection standards must I meet?

§ 29.118 What additional operating standards apply to geophysical operations?

§ 29.119 What additional operating standards apply to drilling and production operations?

### **GENERAL TERMS AND CONDITIONS**

§ 29.120 What terms and conditions apply to all operators?

§ 29.121 What monitoring and reporting is required for all operators?

§ 29.122 For how long is my operations permit valid?

### **ACCESS FEES**

§ 29.140 May I cross Federal property to reach the boundary of my oil and gas right?

§ 29.141 Will the Service charge me a fee for access?

§ 29.142 Will I be charged a fee for emergency access to my operations?

### **FINANCIAL ASSURANCE**

§ 29.150 When do I have to provide financial assurance to the Service?

§ 29.151 How does the Service establish the amount of financial assurance?

§ 29.152 Will the Service adjust the amount required for my financial assurance?

§ 29.153 When will the Service release my financial assurance?

§ 29.154 Under what circumstances will I forfeit my financial assurance?

### **MODIFICATION TO AN OPERATION**

§ 29.160 Can I modify operations under an approved permit?

### **CHANGE OF OPERATOR**

§ 29.170 What are my responsibilities if I transfer my right to operate?

§ 29.171 What must I do if operations are transferred to me?

### **WELL PLUGGING**

§ 29.180 When must I plug my well?

§ 29.181 Can I get an extension to the well plugging requirement?

### **PROHIBITED ACTS AND PENALTIES**

§ 29.190 What acts are prohibited under this subpart?

§ 29.191 What enforcement actions can the Service take?

§ 29.192 How do violations affect my ability to obtain a permit?

### **APPEALS**

§ 29.200 Can I, as operator, appeal Service decisions?

### **PUBLIC INFORMATION**

§ 29.210 How can the public learn about oil and gas activities on refuge lands?

### **INFORMATION COLLECTION**

§ 29.220 Has the Office of Management and Budget approved the collection of information?

### **PURPOSE AND SCOPE**

**§ 29.40 What are the purpose and scope of the regulations in this subpart?**

(a) This subpart ensures that operators exercising non-Federal oil and gas rights within the National Wildlife Refuge System (NWRS), excluding coordination areas, use technologically feasible, least-damaging methods to:

- (1) Protect federally owned or administered lands, waters, or resources of refuges;
- (2) Protect refuge wildlife-dependent recreational uses or experiences and visitor or employee health and safety; and
- (3) Conserve refuges for the benefit of present and future generations of Americans.

(b) This subpart applies to all operators conducting non-Federal oil and gas operations on Service-administered surface estate held in fee or less-than fee (excluding coordination areas) or waters within the boundaries of the refuge to the extent necessary to protect those property interests. These regulations apply to operations in waters subject to the jurisdiction of the United States located within the boundaries of the Refuge System, including navigable waters and areas within their ordinary reach (up to the mean high-water line in places subject to the ebb and flow of the tide and up to the ordinary high-water mark in other places) and without regard to the ownership of submerged lands, tidelands, or lowlands. For areas where the United States does not hold a property interest but that lie within the boundaries of a refuge (i.e., inholdings), these regulations do not apply if refuge lands are not accessed.

(c) This subpart is not intended to result in a taking of any property interest. The purpose of this subpart is to reasonably regulate operations to protect federally owned or administered lands, waters, or resources of refuges, visitor uses and experiences, and visitor or employee health and safety.

#### **§ 29.41 When does this subpart apply to me?**

This subpart applies to you if you are an operator who conducts or proposes to conduct non-Federal oil or gas operations on the surface of land or waters within the boundaries of a refuge.

#### **§ 29.42 What authorization do I need to conduct operations?**

(a) You must demonstrate that you have the right to operate in order to conduct activities within a refuge.

(b) Except as provided in §§ 29.43 or 29.44, before starting operations, you must obtain a temporary access permit under §§ 29.70 through 29.73 for reconnaissance surveys and/or an operations permit under §§ 29.90 through 29.97.

(c) In refuge units in Alaska, regulations at 43 CFR part 36 govern the permitting process for authorizing the use of refuge land in order to provide access to an operator's oil and gas right.

#### **§ 29.43 If I am already operating under Service authorization, what do I need to do?**

If you already have a Service-approved special use permit or ROW permit, you may continue to operate according to the terms and conditions of that approval, subject to the provisions of this subpart. If you propose to conduct new operations or modify your existing operations, you must either amend your current authorization or obtain an operations permit in accordance with §§ 29.90 through 29.97.

#### **§ 29.44 If I am operating without prior Service authorization, what do I need to do?**

Any operation being conducted on [INSERT EFFECTIVE DATE OF FINAL RULE] in accordance with local, State, and Federal laws and regulations may continue without an operations permit. However, your operation is subject to applicable requirements of this subpart, including §§ 29.60 through 29.64, PRE-EXISTING OPERATIONS, and the requirements that when you either propose to conduct new operations or modify your pre-existing operations, you must obtain an operations permit in accordance with §§ 29.90 through 29.97.

## DEFINITIONS

### **§ 29.50 What do the terms used in this subpart mean?**

In addition to the definitions in §§ 25.12, 29.21, and 36.2 of this subchapter, the following definitions apply to this subpart:

*Access* means any method of entering or traversing on or across federally owned or controlled lands or waters, including but not limited to: vehicle, watercraft, fixed-wing aircraft, helicopter, unmanned aerial vehicle, off-road vehicle, mobile heavy equipment, snowmobile, pack animal, and foot.

*Area of operations* means lands or waters within a refuge unit on which operations are approved to be carried out, including roads or other areas that you are authorized to use related to the exercise of your oil and gas rights.

*Contaminating substance* means any toxic or hazardous substance that is used in or results from the conduct of operations and is listed under the Clean Air Act (42 U.S.C. 7401 et seq.), Clean Water Act regulations at 40 CFR part 116, the Resource Conservation and Recovery Act regulations at 40 CFR part 261, or the Hazardous Materials Transportation Act regulations at 49 CFR part 172. This includes, but is not limited to, explosives, radioactive materials, brine waters, formation waters, petroleum products, petroleum byproducts, and chemical compounds used for drilling, production, processing, well testing, well completion, and well servicing.

*Gas* means any fluid, either combustible or noncombustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

*Oil* means any viscous combustible liquid hydrocarbon or solid hydrocarbon substance that occurs naturally in the earth and is easily liquefiable on warming.

*Modifying* means conducting new activities that will have additional impacts on refuge resources, visitor uses, refuge administration, or human health and safety beyond the scope, intensity, and/or duration of existing impacts. In order to determine if new activities would have additional impacts, you must consult with the Service.

*Operations* means all existing and proposed functions, work, and activities in connection with the exercise of oil or gas rights not owned by the United States and located or occurring within a refuge.

(1) Operations include, but are not limited to: access by any means to or from an area of operations; construction; geological and geophysical exploration; drilling, well servicing, workover, or recompletion; production; hydraulic fracturing, well simulation, and injection wells; gathering (including installation and maintenance of flowlines and gathering lines); storage, transport, or processing of petroleum products; earth moving; excavation; hauling; disposal; surveillance, inspection, monitoring, or maintenance of wells, facilities, and equipment; reclamation; road and pad building or improvement; shot hole and well plugging and abandonment, and reclamation; and all other activities incident to any of the foregoing.

(2) Operations do not include reconnaissance surveys as defined in this subpart or oil and gas pipelines that are located within a refuge under authority of a deeded or other right-of-way.

*Operator* means any person or entity, agent, assignee, designee, lessee, or representative thereof exercising or proposing to exercise non-Federal oil and gas rights within the boundaries of a refuge.

*Operations permit* means a refuge permit (i.e., special use permit or ROW permit) authorizing an operator to conduct operations within the boundaries of a refuge.

*Reconnaissance survey* means an inspection or survey conducted by qualified specialists for the purpose of preparing a permit application. A reconnaissance survey:

(1) Includes identification of the area of operations and collection of natural and cultural resource information within and adjacent to the proposed area of operations.

(2) Does not include surface disturbance activities except for minimal disturbance necessary to perform cultural resource surveys, natural resource surveys, and location surveys required under this subpart.

*Right to operate* means a deed, lease, memorandum of lease, designation of operator, assignment of right, or other documentation demonstrating that you hold a legal right to conduct the operations you are proposing within a refuge.

*ROW* means a right-of-way issued under 50 CFR part 29 or, for Alaska, under 43 CFR part 36.

*Service, we, us* and *our* means the U.S. Fish and Wildlife Service.

*Technologically feasible, least-damaging methods* are those that we determine, on a case-by-case basis, to be most protective of refuge resources and uses while ensuring human health and safety, taking into consideration all relevant factors, including environmental, economic, and technological factors and the requirements of applicable law.

*Temporary access permit* means a Service special use permit authorizing an operator to access that operator's proposed area of operations to conduct reconnaissance surveys to collect basic information necessary to prepare an operations permit application.

*Third-party monitor* means a qualified specialist, who is not an employee, agent, or representative of the operator, and who has demonstrated to the Service the relevant expertise to monitor operations for compliance with applicable laws, regulations, and permit requirements.

*Usable water* means an aquifer or its portion that (1) supplies any public water system; or (2) contains a sufficient quantity of ground water to supply a public water system; and currently supplies drinking water for human consumption; or contains fewer than 10,000 mg/l total dissolved solids; and (3) is not an exempted aquifer.

*Waste* means any material that is discarded. It includes, but is not limited to: drilling fluids and cuttings; produced fluids not under regulation as a toxic or hazardous substance; human waste; garbage; fuel drums; pipes; oil; refined oil and other hydrocarbons; contaminated soil; synthetic materials; manmade structures or equipment; or native and nonnative materials.

*You* means the operator, unless otherwise specified or indicated by the context.

## **PRE-EXISTING OPERATIONS**

### **§ 29.60 Do I need an operations permit for my pre-existing operation?**

No. Pre-existing operations are those conducted as of [INSERT EFFECTIVE DATE OF FINAL RULE] without an approved permit from the Service or prior to a boundary change or establishment of a new refuge unit. Pre-existing operations may be continued without an operations permit, but are required to operate in accordance with applicable local, State, and

Federal laws, including regulations, and are subject to applicable provisions of this subpart, including requirements for a permit when the operator proposes to conduct new operations or to modify pre-existing operations.

**§ 29.61 What information must I provide to the Service?**

You must submit the following information to the refuge where your pre-existing operation is occurring by [INSERT DATE 90 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE] or 90 days after a boundary change or establishment of a new refuge:

- (a) Documentation demonstrating that you hold the right to operate within a refuge.
- (b) The names, phone numbers, and addresses of your:
  - (1) Primary company representative;
  - (2) Representative responsible for field supervision; and
  - (3) Representative responsible for emergency response.
- (c) A scaled map clearly delineating your existing area of operations.
- (d) Copies of all plans and permits required by local, State, and Federal agencies.

**§ 29.62 What if I intend to conduct new operations or modify my pre-existing operations?**

(a) You must obtain an operations permit before conducting operations that are begun after [INSERT EFFECTIVE DATE OF FINAL RULE] in accordance with §§ 29.90 through 29.97, OPERATIONS PERMIT: APPLICATION.

(b) You must obtain an operations permit prior to modifying your pre-existing operations.

### **§ 29.63 What reclamation requirements apply to my pre-existing operations?**

Upon completion of your production operation, you will be subject to the reclamation standards in § 29.117(d). You must obtain an operations permit prior to conducting well plugging and reclamation in accordance with applicable sections of this subpart.

### **§ 29.64 What other provisions apply to my operations?**

Your pre-existing operations are also subject to the following regulations in this part 29:

- (a) §§ 29.120 and 29.121, GENERAL TERMS AND CONDITIONS;
- (b) § 29.170(a), CHANGE OF OPERATOR;
- (c) §§ 29.180 and 29.181, WELL PLUGGING;
- (d) § 29.190, PROHIBITED ACTS AND PENALTIES; and
- (e) § 29.200, APPEALS.

## **TEMPORARY ACCESS PERMITS**

### **§ 29.70 When do I need a temporary access permit?**

You must apply to the Service for a temporary access permit to access your proposed area of operations in order to conduct reconnaissance surveys. This permit will describe the means, routes, timing, and other terms and conditions of your access as determined by the Service to result in only the minimum disturbance necessary to perform surveys. For Alaska, the temporary access provisions at 43 CFR 36.10 still apply.

### **§ 29.71 How do I apply for a temporary access permit?**

You must submit the information requested in FWS Form 3–2469 (Oil and Gas Operations Special Use Permit Application) to the refuge in which you propose to conduct operations. Information includes, but is not limited to:

(a) The name, legal address, and telephone number of the operator, employee, agent, or contractor responsible for overall management of the proposed operations;

(b) Documentation demonstrating that you hold the right to operate within the refuge;

(c) The name, legal address, telephone number, and qualifications of all specialists responsible for conducting the reconnaissance surveys (Only required if the assistants/subcontractors/subpermittees will be operating on the refuge without the permittee being present.);

(d) A brief description of the intended operation so that we can determine reconnaissance survey needs;

(e) A description of the survey methods you intend to use to identify the natural and cultural resources;

(f) A map (to-scale and determined by us to be acceptable) delineating the proposed reconnaissance survey area in relation to the refuge boundary and the proposed area of operations; and

(g) A description of proposed means of access and routes for conducting the reconnaissance surveys.

#### **§ 29.72 When will the Service grant a temporary access permit?**

Within 30 calendar days of receipt of the application for a reconnaissance survey, we will advise you whether the application fulfills the requirements of §§ 29.70 through 29.71 and issue

you a temporary access permit or provide you with a statement of additional information that is needed for us to conduct review of your application.

**§ 29.73 How much time will I have to conduct my reconnaissance surveys?**

Your temporary access permit will be in effect for a maximum of 60 calendar days from the date of issuance, unless a longer term is specified in the permit approval. We may extend the term of the permit for a reasonable period of time, based upon your written request that explains why an extension is necessary.

**ACCESSING OIL AND GAS RIGHTS FROM A NON-FEDERAL SURFACE LOCATION (INCLUDING  
INHOLDINGS)**

**§ 29.80 Do I need a permit for accessing oil and gas rights from a non-Federal location?**

No. Using directional drilling from a non-Federal surface location to reach your oil and gas rights within a refuge is exempt from these regulations. However, you are encouraged to provide the Service the names, phone numbers, and addresses of your primary company representative, representative responsible for field supervision, and representative responsible for emergency response at least 60 calendar days prior to conducting your operation. If you require access across Federal surface estate, that access is subject to applicable provisions of this subpart, including obtaining an operations permit for any new access or modification of existing access.

**OPERATIONS PERMIT: APPLICATION**

### **§ 29.90 Who must apply for an operations permit?**

Except as otherwise provided in §§ 29.43, 29.44, 29.70 and 29.80, if you are proposing to conduct operations within a refuge, you must submit an application (FWS Form 3–2469, or if in Alaska SF–299) for an operations permit to the Service.

### **§ 29.91 What should I do before filing an application?**

You should participate in a pre-application meeting with the Service to allow for an early exchange of information between you and the Service with the intent of avoiding delays in your application process.

(a) For the meeting, you should provide:

- (1) Documentation demonstrating that you hold the legal right to operate; and
- (2) An overview of your proposed operation and timing.

(b) The Service will provide guidance on the permitting process and information on available resource data, and identify additional data needs.

### **§ 29.92 May I use previously submitted information?**

Yes.

(a) You do not need to resubmit information that is already on file with the Service, provided that such information is still current and accurate. You may reference this information in your oil and gas operations permit application.

(b) You may submit documents and materials submitted to other Federal and State agencies noting how the information meets the specific requirements of §§ 29.93 through 29.97.

**§ 29.93 Do I need to submit information for all possible future operations?**

No. You need only provide information for those operations for which you are seeking immediate approval. Approval of activities beyond the scope of your application may be subject to a new application and approval process.

**§ 29.94 What information must be included in all applications?**

All applications must include the information requested on FWS Form 3–2469 (or SF–299, if applicable), including, but not limited to:

(a) The name, legal address, and telephone number of the operator, employee, agent, or contractor responsible for overall management of the proposed operations.

(b) Documentation demonstrating that you hold the legal right to operate within the refuge.

(c) A description of the natural features of your proposed area of operations, such as: streams, lakes, ponds, wetlands (including estimated depths to the top and bottom of zones of usable water); topographic relief; and areas the Service has indicated to you are sensitive.

(d) The location of existing roads, trails, railroad tracks, pipeline rights-of-way, pads, and other disturbed areas.

(e) The location of existing structures that your operations could affect, including buildings, pipelines, oil and gas wells including both producing and plugged and abandoned wells, injection wells, freshwater wells, underground and overhead electrical lines, and other utility lines.

(f) Descriptions of the natural resource and cultural resource survey reports for your proposed area of operations.

(g) Locations map(s) (to-scale and determined by us to be acceptable) that clearly identifies:

(1) Proposed area of operations, existing conditions, and proposed new surface uses, including the boundaries of each of your oil and gas tracts in relation to your proposed operations and the relevant refuge boundary.

(2) Proposed access routes of new surface disturbances as determined by a location survey.

(3) Proposed location of all support facilities, including those for transportation (e.g., vehicle parking areas, helicopter pads, etc.), sanitation, occupation, staging areas, fuel storage areas, refueling areas, loading docks, water supplies, and disposal facilities.

(h) The method and diagrams, including cross-sections, of any proposed pad construction, road construction, cut-and-fill areas, and surface maintenance, including erosion control.

(i) The number and types of equipment and vehicles, including an estimate of vehicular round trips associated with your operation.

(j) An estimated timetable for the proposed operations, including any operational timing constraints.

(k) The type and extent of security measures proposed at your area of operations.

(l) The power sources and their transmission systems for the proposed operations.

(m) The types and quantities of all solid and liquid waste generated and the proposed methods of storage, handling, and disposal.

(n) The source, quantity, access route, and transportation/conveyance method for all water to be used in operations, including hydraulic fracturing, and estimations of any anticipated wastewater volumes generated, including flowback fluids from hydraulic fracturing, and the proposed methods of storage, handling, and recycling or disposal.

(o) The following information regarding mitigation actions and alternatives considered:

(1) A description of the steps you propose to take to mitigate anticipated adverse environmental impacts on refuge resources and uses, including, but not limited to, the refuge's land features, land uses, fish and wildlife, vegetation, soils, surface and subsurface water resources, air quality, noise, lightscapes, viewsheds, cultural resources, and economic environment.

(2) A description of any anticipated impacts that you cannot mitigate.

(3) A description of alternatives considered that meet the criteria of technologically feasible, least-damaging methods of operations, as well as the costs and environmental effects of such alternatives.

(p) You must submit the following information about your spill control and emergency preparedness plan. You may use a spill prevention control and countermeasure plan prepared under 40 CFR part 112 if the plan includes all of the information required by this section. You must submit:

(1) The names, addresses, and telephone numbers of the people whom the Service can contact in the event of a spill, fire, or accident, including the order in which the individuals should be contacted.

(2) The notification procedures and steps taken to minimize damage in event of spill, fire, or accident.

- (3) Identification of contaminating or toxic substances used within your area of operations or expected to be encountered during operations.
- (4) Trajectory analysis for potential spills that are not contained on location.
- (5) Identification of abnormal pressure, temperature, toxic gases or substances, or other hazardous conditions at your area of operations or expected to be encountered during operations.
- (6) Measures (e.g., procedures, facility design, equipment, etc.) to minimize risks to human health and safety, and the environment.
- (7) Steps to prevent accumulations of oil or other materials deemed to be fire hazards from occurring in the vicinity of well locations and lease tanks.
- (8) The equipment and methods for containment and cleanup of contaminating substances, including a description of the equipment available at your area of operations and equipment available from local contractors.
- (9) A stormwater drainage plan and actions intended to mitigate stormwater runoff.
- (10) Material safety data sheets, where required by law, for each material you will use or encounter during operations, including expected quantities maintained at your area of operations.
- (11) A description of the emergency actions you will take in the event of injury or death to fish and wildlife or vegetation.
- (12) A description of the emergency actions you will take in the event of accidents causing human injury.

(13) Contingency plans for conditions and emergencies other than spills, such as if your area of operations is located in areas prone to hurricanes, flooding, tornadoes, fires, or earthquakes.

(q) A description of the specific equipment, materials, methods, and schedule that will be used to meet the operating standards for reclamation at § 29.117.

(r) An itemized list of the estimated costs that a third party would charge to complete reclamation.

**§ 29.95 What additional information must be included if I am proposing geophysical exploration?**

If you propose to conduct geophysical exploration, you must submit the information requested on FWS Form 3–2469, including, but not limited to:

(a) A map showing the positions of each survey line including all source and receiver locations as determined by a locational survey, and including shot point offset distances from wells, buildings, other infrastructure, cultural resources, and environmentally sensitive areas;

(b) The number of crews and numbers of workers in each crew;

(c) A description of the acquisition methods, including the procedures and specific equipment you will use, and energy sources (e.g., explosives, vibroseis trucks);

(d) A description of the methods of access along each survey line for personnel, materials, and equipment; and

(e) A list of all explosives, blasting equipment, chemicals, and fuels you will use in the proposed operations, including a description of proposed disposal methods, transportation methods, safety measures, and storage facilities.

**§ 29.96 What additional information must be included if I am proposing drilling operations?**

If you are proposing to drill a well, you must submit the information requested on FWS Form 3–2469, including, but not limited to:

(a) A description of the well pad construction, including dimensions and cross sections of cut-and-fill areas and excavations for ditches, sumps, and spill control equipment or structures, including lined areas;

(b) A description of the drill rig and equipment layout, including rig components, fuel tanks, testing equipment, support facilities, storage areas, and all other well-site equipment and facilities;

(c) A description of the type and characteristics of the proposed drilling mud systems; and

(d) A description of the equipment, materials, and methods of surface operations associated with your drilling, well casing and cementing, well control, well evaluation and testing, well completion, hydraulic fracturing or other well stimulation, and well plugging programs.

**§ 29.97 What additional information must be included if I am proposing production operations?**

If you are proposing to produce a well, you must submit the information requested on FWS Form 3–2469, including, but not limited to:

(a) The dimensions and the to-scale layout of the well pad, clearly identifying well locations, noting partial reclamation areas; gathering, separation, metering, and storage equipment; electrical lines; fences; spill control equipment or structures, including lined areas, artificial lift equipment, tank batteries, treating and separating vessels, secondary or enhanced recovery facilities, water disposal facilities, gas compression and/or injection facilities; metering points; sales point (if on lease); tanker pickup points; gas compressor, including size and type (if applicable); and any other well site equipment.

(b) A general description of anticipated stimulations, servicing, and workovers.

(c) A description of the procedures and equipment used to maintain well control.

(d) A description of the method and means used to transport produced oil and gas, including vehicular transport; flowline and gathering line construction and operation, pipe size, and operating pressure; cathodic protection methods; surface equipment use; surface equipment location; maintenance procedures; maintenance schedules; pressure detection methods; and shutdown procedures.

(e) A road and well pad maintenance plan, including equipment and materials to maintain the road surface and control erosion.

(f) A vegetation management plan on well sites, roads, pipeline corridors, and other disturbed surface areas, including control of noxious and invasive species.

(g) A stormwater management plan on the well site.

(h) A produced water storage and disposal plan.

(i) A description of the equipment, materials, and procedures proposed for well plugging.

## **OPERATIONS PERMIT: APPLICATION REVIEW**

### **§ 29.100 How will the Service process my application?**

We will conduct initial review of your application to determine if all information is complete. Once your information is complete, we will begin formal review.

### **§ 29.101 How will the Service conduct an initial review?**

(a) Within 30 calendar days of receipt of your application, the Service will notify you in writing that one of the following situations exists:

(1) Your application is complete, and the Service will begin formal review;

(2) Your application does not meet the information requirements, in which case we will identify the additional information required to be submitted before the Service will be able to conduct formal review of your application; or

(3) More time is necessary to complete the review, in which case the Service will provide the amount of additional time reasonably needed along with a justification.

(b) If you submit additional information as requested under § 29.101(a)(2), and the Service determines that you have met all applicable information requirements, the Service will notify you within 30 calendar days from receipt of the additional information that either:

(1) Your application is complete, and the Service will begin formal review; or

(2) More time is necessary to complete the initial review, in which case the Service will provide the amount of additional time reasonably needed along with a justification.

(c) When ANILCA title XI/Access to inholdings applies, 43 CFR 36.5 governs the review.

### **§ 29.102 How will the Service conduct a formal review?**

For those applications for which the Service determines that the applicant holds a valid property right, the Service will conduct a formal review of your application by:

- (a) Evaluating the potential impacts of your proposal on federally owned or administered lands, waters, or resources of refuges; visitor uses or experiences; or visitor or employee health and safety in compliance with applicable Federal laws; and
- (b) Identifying any additional operating conditions that would apply to your approved application.

### **§ 29.103 What standards must be met to approve my application?**

(a) In order to approve your operations permit application, it must comply with all applicable Federal, State, and local laws, and the Service must determine that your operations will:

- (1) Use technologically feasible, least-damaging methods; and
  - (2) Meet all applicable operating standards.
- (b) Before operations begin, you must submit to the Service:
- (1) Financial assurance in the amount specified by the Service and in accordance with the requirements of §§ 29.150 through 29.154, FINANCIAL ASSURANCE; and
  - (2) Proof of liability insurance with limits sufficient to cover injuries to persons or property caused by your operations.

### **§ 29.104 What actions may the Service take on my operations permit application?**

(a) We will make a decision on your application within 180 days from the date we deem your application complete unless:

(1) We and you agree that such decision will occur within a shorter or longer period of time; or

(2) We determine that an additional period of time is required to ensure that we have, in reviewing the permit application, complied with other applicable laws, Executive Orders, and regulations.

(b) For ANILCA title XI/Access to inholding timelines, 43 CFR part 36 governs.

(c) We will notify you in writing that your permit application is:

(1) Approved, with or without operating conditions; or

(2) Denied, and provide justification for the denial. Any such denial must be consistent with § 29.40(c).

## **OPERATING STANDARDS**

### **§ 29.110 What are the purposes of the Service's operating standards?**

The purposes are to:

(a) Protect federally owned or administered lands, waters, and refuge resources; wildlife-dependent visitor uses and experiences; and visitor and employee health and safety; and

(b) Ensure use of technologically feasible, least-damaging methods. The operating standards give us and the operator flexibility to consider using alternative methods, equipment, materials design, and conduct of operations.

**§ 29.111 What general facility design and management standards must I meet?**

As a permittee, you must:

(a) Design, construct, operate, and maintain access to your operational site to cause the minimum amount of surface disturbance needed to safely conduct operations and to avoid areas we have identified as containing sensitive resources.

(b) Install and maintain secondary containment materials and structures for all equipment and facilities using or storing contaminating substances. The containment system must be sufficiently impervious to prevent discharge and must have sufficient storage capacity to contain, at a minimum, the largest potential spill incident.

(c) Keep temporarily stored waste in the smallest area feasible, and confine the waste to prevent escape as a result of percolation, rain, high water, or other causes. You must regularly remove waste from the refuge and lawfully dispose of the waste in a direct and workable timeframe. You may not establish a solid waste disposal site on a refuge.

(d) Use engines that adhere to current Federal and State emission standards.

(e) Construct, maintain, and use roads in a manner to minimize fugitive dust emissions.

(f) Use equipment and implement work practice standards that are consistent with good air pollution control practices to minimize emissions of air pollutants, and releases or flaring of gas.

(g) Design, operate, and maintain your operations and equipment in a manner consistent with good air pollution control practices so as to minimize leaks of air pollutants and hydrocarbons to the atmosphere to the extent reasonably practicable.

(h) Control the invasion of noxious and invasive plant and animal species in your area of operations from the beginning through final reclamation.

(i) Avoid conducting ground-disturbing operations within 500 feet of any refuge structure or facility used by refuges for interpretation, public recreation, or administration. We may increase or decrease this distance as needed to protect federally owned or administered structures or facilities, visitor uses or experiences, or visitor or employee health and safety; or to ensure that you have reasonable access to your non-Federal oil and gas. Measurements for purposes of this paragraph are by map distance.

#### **§ 29.112 What fish and wildlife protection standards must I meet?**

To protect fish and wildlife resources on the refuge, you must:

(a) Along with your employees and contractors, adhere to all refuge regulations for the protection of fish, wildlife, and plants;

(b) Ensure that you, your employees, and contractors have been informed and educated by the refuge staff on the appropriate protection practices for wildlife conservation;

(c) Provide a safe environment for fish and wildlife that minimizes or avoids exposure to unpermitted physical and chemical hazards; and

(d) Comply with all seasonal buffers or restrictions to protect wildlife.

#### **§ 29.113 What hydrologic standards must I meet?**

You must:

(a) Avoid conducting ground-disturbing operations within 500 feet of surface water, including an intermittent or ephemeral watercourse, or wetland. We may increase or decrease

this distance as needed to protect federally owned or administered lands, waters, or resources of the refuge, visitor uses or experiences, or visitor or employee health and safety; or to ensure that you have reasonable access to your non-Federal oil and gas. Measurements for purposes of this paragraph are by map distance.

(b) Construct facilities in a manner that maintains hydrologic movement and function.

(c) Not cause measurable degradation of surface water or groundwater beyond that of existing conditions.

(d) Conduct operations in a manner that maintains natural processes of erosion and sedimentation.

#### **§ 29.114 What safety standards must I meet?**

To ensure the safety of your operations, you must:

(a) Maintain your area of operations in a manner that avoids or minimizes the cause or spread of fire and does not intensify fire originating outside your operations area;

(b) Maintain structures, facilities, improvements, and equipment in a safe and professional manner in order to provide a safe environment for refuge resources, visitors, and employees, free from exposure to physical and chemical hazards; and

(c) Provide site-security measures to protect visitors from hazardous conditions resulting from the conduct of your operations.

#### **§ 29.115 What lighting and visual standards must I meet?**

(a) You must design, shield, and focus lighting to minimize the effects of spill light on the night sky or adjacent areas; and

(b) You must reduce visual contrast in the landscape in selecting the area of operations, avoiding unnecessary disturbance, choosing appropriate colors and materials for roads and permanent structures, and other means.

**§ 29.116 What noise reduction standards must I meet?**

You must prevent or minimize all noise that:

(a) Adversely affects refuge resources or uses, taking into account frequency, magnitude, or duration; or

(b) Exceeds levels that have been identified through monitoring as being acceptable to or appropriate for uses at the sites being monitored.

**§ 29.117 What reclamation and protection standards must I meet?**

(a) You must promptly clean up and remove from the refuge any released contaminating substances in accordance with all applicable Federal, State, and local laws.

(b) You must perform partial reclamation of areas that are no longer necessary to conduct operations. You must begin final reclamation within 6 months after you complete your authorized operations unless we authorize a different reclamation period in writing.

(c) You must protect all survey markers (e.g., monuments, witness corners, reference monuments, and bearing trees) against destruction, obliteration, or damage from operations. You are responsible for reestablishment, restoration, and referencing of any monuments, corners, and bearing trees that are destroyed, obliterated, or damaged by your operations.

- (d) You must complete reclamation by:
- (1) Plugging all wells;
  - (2) Removing all above-ground structures, equipment, roads, and all other manmade material and debris resulting from operations;
  - (3) Removing or neutralizing any contaminating substances;
  - (4) Reestablishing native vegetative communities, or providing for conditions where ecological processes typical of the ecological zone (e.g., plant or wildlife succession) will reestablish themselves;
  - (5) Grading to reasonably conform the contours to pre-existing elevations that are most appropriate to maximizing ecologic functional value;
  - (6) Restoring conditions to predisturbance hydrologic movement and functionality;
  - (7) Restoring natural systems using native soil material that is similar in character to the adjacent undisturbed soil profiles;
  - (8) Ensuring that reclamation does not interfere with visitor use or with administration of the unit;
  - (9) Attaining conditions that are consistent with the management objectives of the refuge, designed to meet the purposes for which the refuge was established; and
  - (10) Coordinating with us or with other operators who may be using a portion of your area of operations to ensure proper and equitable apportionment of reclamation responsibilities.

**§ 29.118 What additional operating standards apply to geophysical operations?**

If you conduct geophysical operations, you must do all of the following:

- (a) Use surveying methods that minimize the need for vegetative trimming and removal.
- (b) Locate source points using industry-accepted minimum safe-offset distances from pipelines, telephone lines, railroad tracks, roads, power lines, water wells, oil and gas wells, oil- and gas-production facilities, and buildings.
- (c) Use equipment and methods that, based upon the specific environment, will minimize impacts to federally owned or administered lands, waters, and resources of refuges; visitor uses and experiences; and visitor and employee health and safety.
- (d) If you use shot holes, you must:
  - (1) Use biodegradable charges;
  - (2) Plug all shot holes to prevent a pathway for migration for fluids along any portion of the bore; and
  - (3) Leave the site in a clean and safe condition that will not impede surface reclamation or pose a hazard to human health and safety.
- (e) For geological and geophysical exploration for oil and gas within the coastal plain of the Arctic National Wildlife Refuge, the regulations at 50 CFR part 37 apply.

**§ 29.119 What additional operating standards apply to drilling and production operations?**

If you conduct drilling and production operations, you must meet all of the following standards:

- (a) To conduct drilling operations, you must:
  - (1) Use containerized mud circulation systems for operations;
  - (2) Not create or use earthen pits;

(3) Take all necessary precautions to keep your wells under control at all times, using only employees, contractors, or subcontractors trained and competent in well control procedures and equipment operation, and using industry-accepted well control equipment and practices; and

(4) Design, implement, and maintain integrated casing, cementing, drilling fluid, completion, stimulation, and blowout prevention programs to prevent escape of fluids to the surface and to isolate and protect usable water zones throughout the life of the well, taking into account all relevant geologic and engineering factors.

(b) To conduct production operations, in addition to meeting the standards of paragraphs (a)(1) through (a)(4) of this section, you must do all of the following:

(1) Monitor producing conditions for early indications that could lead to loss of mechanical integrity of producing equipment.

(2) Maintain all surface equipment and the wellhead to prevent leaks or releases of any fluids or air pollutants.

(3) Identify wells and related facilities with appropriate signage. Signs must remain in place until the well is plugged and abandoned and the related facilities are removed. Signs must be of durable construction, and the lettering must be legible and large enough to be read under normal conditions at a distance of at least 50 feet. Each sign must show the name of the well, name of the operator, and the emergency contact phone number.

(4) Regularly remove all equipment and materials that are no longer needed for a particular phase of your operation.

(5) Plug all wells, leaving the surface in a clean and safe condition that will not impede surface reclamation or pose a hazard to human health and safety, in accordance with § 29.117.

## GENERAL TERMS AND CONDITIONS

### § 29.120 What terms and conditions apply to all operators?

The following terms and conditions apply to all operators, regardless of whether these terms and conditions are expressly included in the operations permit:

(a) You must comply with all applicable operating standards in §§ 29.111 through 29.119; these operating standards will be incorporated in the terms and conditions of your operations permit. Violation of these operating standards, unless otherwise provided in your operations permit, will subject you to the PROHIBITED ACTS AND PENALTIES provisions of §§ 29.190 through 29.192.

(b) You are responsible for ensuring that all of your employees, agents, contractors, and subcontractors comply fully with the requirements of this subpart.

(c) You may be required to reimburse the Service for the costs of processing and administering temporary access permits and operations permits.

(d) If not covered by a State-held water right, any use of water within a refuge must be approved by the Service upon the Service's determination that it will not impair any refuge resource or use.

(e) You must provide the refuge a statement under penalty of perjury, signed by an official who is authorized to legally bind the company, stating that proposed operations are in compliance with all applicable Federal, State, and local laws and regulations and that all information submitted to the Service is true and correct.

(f) You agree to indemnify and hold harmless the United States and its officers and employees from and against any and all liability of any kind whatsoever arising out of or resulting from the acts or omissions of you and your employees, agents, representatives, contractors, and subcontractors in the conduct of activities under the operations permit.

(g) You will be required to take all reasonable precautions to avoid, minimize, rectify, or reduce the overall impacts of your proposed oil and gas activities to the refuge. You may be required to mitigate for impacts to refuge resources and lost uses by providing for habitat creation, habitat restoration, land purchase, or other compensation agreed to by the Service.

(h) You will be responsible for unanticipated and unauthorized damages as a direct or indirect result of your operations. You will be responsible for the actions and consequences of your employees and subcontractors. You will also be responsible for any reclamation of damages to refuge resources caused by your operations as a result of severe weather, fire, earthquakes, or the like thereof.

#### **§ 29.121 What monitoring and reporting is required for all operators?**

(a) The Service may access your area of operations at any time to monitor the effects of your operations to ensure compliance with the regulations in this subpart.

(b) The Service may determine that third-party monitors are necessary to ensure compliance with your operations permit and to protect federally owned or administered lands, waters, or the resources of refuges, visitor uses and experiences, and visitor or employee health and safety.

(1) The Service's determination will be based on the scope and complexity of the proposed operation, reports that you are required to submit under paragraph (e) of this section,

and whether the refuge has the staff and technical ability to ensure compliance with the operations permit and any provision of this subpart.

(2) A third-party monitor will report directly to the Service at intervals determined by the Service. We will make the information reported available to you upon your request.

(3) You will be responsible for the cost of the third-party monitor.

(c) You must notify the Service within 24 hours of any injuries to or mortality of fish, wildlife, or endangered or threatened plants resulting from your operations.

(d) You must notify the Service of any accidents involving serious personal injury or death and of any fires or spills on the site immediately after the accident occurs. You must submit a full written report on the accident to the Service within 90 days after the accident occurs.

(e) Upon our request, you must submit reports or other information necessary to verify compliance with your permit or with any provision of this subpart. To fulfill this request, you may submit to us reports that you have submitted to the State under State regulations, or that you have submitted to any other Federal agency.

(f) If your operations include hydraulic fracturing, you must provide the Service with a report including the true vertical depth of the well, total water volume used, and a description of the base fluid and each additive in the hydraulic fracturing fluid, including the trade name, supplier, purpose, ingredients, Chemical Abstract Service Number (CAS), maximum ingredient concentration in additive (percent by mass), and maximum ingredient concentration in hydraulic fracturing fluid (percent by mass). The report must be submitted through FracFocus or another Service-designated database.

**§ 29.122 For how long is my operations permit valid?**

Operations permits remain valid for the duration of the operation. Provisions of § 29.160 apply.

**ACCESS FEES**

**§ 29.140 May I cross Federal property to reach the boundary of my oil and gas right?**

(a) The Service may grant you the privilege of access on, across, or through federally owned or administered lands or waters in any refuge to reach the boundary of your oil and gas right. You should contact the Service to determine if additional permits are necessary for access.

(b) In refuge units in Alaska, regulations and standards at 43 CFR part 36 govern access, including access fees, to an operator's oil and gas right.

**§ 29.141 Will the Service charge me a fee for access?**

(a) The Service will charge you a fee if you require use of federally owned or administered lands or waters outside the boundary or scope of your oil and gas right:

(1) If you require new use of federally owned or administered lands or waters, we will charge you a fee based on the fair market value of that use.

(2) Fees under this section will not be charged for access within the scope of your oil and gas right or access to your right that is otherwise provided for by law.

(b) If access to your oil and gas right is across an existing refuge road, we may charge a fee according to a posted fee schedule.

(c) We, to the extent permitted by law, may allow you to undertake in-kind services to offset fees.

**§ 29.142 Will I be charged a fee for emergency access to my operations?**

No.

(a) The Service will not charge a fee for access across federally owned or administered lands beyond the scope of your oil and gas right as necessary to respond to an emergency situation at your area of operations if we determine after the fact that the circumstances required an immediate response to either:

- (1) Prevent or minimize injury to refuge resources; or
- (2) Ensure public health and safety.

(b) You will be liable for any damage caused to refuge resources as a result of such emergency access.

**FINANCIAL ASSURANCE**

**§ 29.150 When do I have to provide financial assurance to the Service?**

You will need to provide financial assurances as a condition of approval for your operations permit when you submit your application. You must file financial assurance with us in a form acceptable to the Service and payable upon demand. This financial assurance is in addition to any financial assurance required by any other Federal or State regulatory authority.

**§ 29.151 How does the Service establish the amount of financial assurance?**

(a) We will base the financial assurance amount upon the estimated cost that a third-party contractor would charge to complete reclamation in accordance with this subpart. If the cost of reclamation exceeds the amount of your financial assurance, you will remain liable for all costs of reclamation in excess of the financial assurance.

(b) The Service will reduce the required amount of your financial assurance during the pendency of operations by the amount we determine is represented by in-kind reclamation you provide during your operations.

**§ 29.152 Will the Service adjust the amount required for my financial assurance?**

The Service may require, or you may request, an adjustment to the financial assurance amount because of any circumstance that increases or decreases the estimated costs established under § 29.151.

**§ 29.153 When will the Service release my financial assurance?**

(a) Your responsibility under the financial assurance will continue until either:

(1) The Service determines that you have met all applicable reclamation operating standards and any additional reclamation requirements that may be included in your operations permit; or

(2) A new operator assumes your operations, as provided in § 29.170(b).

(b) You will be notified by the Service within 30 calendar days of our determination that your financial assurance has been released.

**§ 29.154 Under what circumstances will I forfeit my financial assurance?**

(a) You may forfeit all or part of your financial assurance if we cannot secure your compliance with the provisions of your operations permit or a provision of this subpart. The part of your financial assurance forfeited is based on costs to the Service to remedy your noncompliance.

(b) In addition to forfeited financial assurance, we may temporarily:

(1) Prohibit you from removing all structures, equipment, or other materials from your area of operations;

(2) Require you to secure the operations site and take any necessary actions to protect federally owned or administered lands, waters, and resources of the refuge; visitor uses; and visitor or employee health and safety; and

(3) Suspend review of any permit applications you have submitted until we determine that all violations of permit provisions or of any provision of this subpart are resolved.

(4) Seek recovery as provided in § 29.151 for all costs of reclamation in excess of the posted financial assurance.

## **MODIFICATION TO AN OPERATION**

### **§ 29.160 Can I modify operations under an approved permit?**

The Service may amend an approved temporary access permit or an operations permit to adjust to changed conditions or to address unanticipated conditions, either upon our own action or at your request.

(a) To request a modification to your operation, you must provide, in writing, to the Service, your assigned permit number, a description of the proposed modification, and an

explanation of why the modification is needed. We will review your request for modification under the approval standards at §§ 29.72 or 29.103.

(b) If the Service needs to amend your temporary access permit or operations permit, you will receive a written notice that:

- (1) Describes the modification required and justification; and
- (2) Specifies the time within which you must incorporate the modification into your operations.

(c) You may not implement any modification until you have received the Service's written approval.

## **CHANGE OF OPERATOR**

### **§ 29.170 What are my responsibilities if I transfer my right to operate?**

(a) If your operations are being conducted under § 29.44, you must notify the Service in writing within 30 calendar days from the date the new operator acquires the rights to conduct operations. Your written notification must include:

- (1) The names and addresses of the person or entity conveying the right and of the person or entity acquiring the right;
- (2) The effective date of transfer;
- (3) The description of the rights, assets, and liabilities being transferred and which ones, if any, are being reserved by the previous operator; and
- (4) A written acknowledgement from the new operator that the contents of the notification are true and correct.

(b) If your operations are being conducted under § 29.43 or an operations permit:

(1) You must provide notice under paragraph (a) of this section.

(2) You remain responsible for compliance with your operations permit, and we will retain your financial assurance until the new operator:

(i) Adopts and agrees in writing to conduct operations in accordance with all terms and conditions of your operations permit;

(ii) Provides financial assurance with us that is acceptable to the Service and made payable to the Service; and

(iii) Receives written notification from the Service that transfer of the operations permit has been approved.

#### **§ 29.171 What must I do if operations are transferred to me?**

(a) If another operator transfers operations conducted under § 29.44, as the transferee you may continue operating under the requirements of that section, but within 30 calendar days from the date of the transfer, you must provide to the Service:

(1) Documentation demonstrating that you hold the right to operate; and

(2) The names, phone numbers, and addresses of your:

(i) Primary company representative;

(ii) Representative responsible for field supervision; and

(iii) Representative responsible for emergency response.

(b) If another operator transfers operations conducted under § 29.43 or an operations permit, in addition to the information required under paragraph (a) of this section, you must within 30 days of commencing transferred operations:

- (1) Agree in writing to conduct operations in accordance with all terms and conditions of the previous operator's permit; and
  - (2) File financial assurance with us that is acceptable to the Service and made payable to the Service; and
  - (3) Receive written approval from the Service for the transfer of the operation's permit.
- (c) You may modify operations transferred to you in accordance with § 29.160.

## **WELL PLUGGING**

### **§ 29.180 When must I plug my well?**

Except as provided in § 29.181, you must plug your well, in accordance with the standards and procedures outlined in this subpart, when any of the following occurs:

- (a) Your drilling operations have ended and you have taken no further action on your well within 60 calendar days;
- (b) Your well, which has been completed for production operations, is continuously inactive for a period of 1 year; or
- (c) The period approved in your operations permit to maintain your well in shut-in status has expired.

### **§ 29.181 Can I get an extension to the well plugging requirement?**

(a) You may apply for either an operations permit or a modification to your approved operations permit to maintain your well in a shut-in status for up to 5 years. Provide the information requested on FWS Form 3–2469, including, but not limited to:

(1) An explanation of why the well is shut-in or temporarily abandoned and your future plans for utilization;

(2) A demonstration of the mechanical integrity of the well; and

(3) A description of the manner in which your well, equipment, and area of operations will be maintained in accordance with the standards in the subpart.

(b) Based on the information provided under this section, we may approve your application to maintain your well in shut-in status for a period up to 5 years.

(c) You may apply for additional extensions by submitting a new application under paragraph (a) of this section.

## **PROHIBITED ACTS AND PENALTIES**

### **§ 29.190 What acts are prohibited under this subpart?**

The following acts are prohibited:

(a) Operating in violation of the terms or conditions of a temporary access permit, an operations permit, a permit under § 29.43, or any applicable provision of this subpart, including § 29.60 for pre-existing operations.

(b) Damaging federally owned or administered lands, waters, or resources of a refuge as a result of failure to comply with the terms or conditions of a temporary access permit, an

operations permit, operations being conducted under §§ 29.43 or 29.44, or any provision of this subpart.

(c) Conducting operations without a temporary access permit or an operations permit, unless conducting operations under §§ 29.43 or 29.44.

(d) Failure to comply with any suspension or revocation order issued under this subpart.

(e) Failure to comply with any applicable Federal law or regulation, including any applicable State law or regulation. Unless specifically covered by the general and special regulations set forth in this subchapter, the laws and regulations of the State within whose exterior boundaries a national wildlife refuge or portion thereof is located will govern the exploration, production, storage, and transportation of oil and gas. Such non-conflicting State laws and regulations that are now or may hereafter be in effect are hereby adopted and made a part of the regulations in this part.

(f) Failure to comply with any of the above in Alaska, except for violations of 43 CFR part 36, which are governed by the regulations in subpart B of this part.

### **§ 29.191 What enforcement actions can the Service take?**

If you engage in a prohibited act:

(a) The Service may suspend and/or revoke your approved operations permit and your authorization for operations as set forth at § 29.43 and § 29.44; and/or

(b) All prohibited acts are subject to the penalty provisions set forth at § 28.31 of subchapter C of this chapter.

**§ 29.192 How do violations affect my ability to obtain a permit?**

Until you comply with the regulations in this subpart, we will not consider a new request to conduct any operations within a refuge.

**APPEALS**

**§ 29.200 Can I, as operator, appeal Service decisions?**

Yes. If you disagree with a decision made by the Service under this subpart, you may use the appeals process in § 25.45 of subchapter C of this chapter. For ROWs, appeals would still be governed by § 29.22; in Alaska, appeals would still be governed by 43 CFR 36.8.

**PUBLIC INFORMATION**

**§ 29.210 How can the public learn about oil and gas activities on refuge lands?**

(a) Interested parties may view the publicly available documents at the refuge's office during normal business hours or by other means prescribed by the refuge. The availability for public inspection of information about the nature, location, character, or ownership of refuge resources will conform to all applicable law and implementing regulations, standards, and guidelines.

(b) The refuge will make available for public inspection any documents that an operator submits to the Service under this subpart except those that you have identified as proprietary or confidential.

(c) For the information required in § 29.121(f), the operator and the owner of the information will be deemed to have waived any right to protect from public disclosure information submitted through FracFocus or another Service-designated database.

(d) For information required under this subpart that the owner of the information claims to be exempt from public disclosure and is withheld from the Service, a corporate officer, managing partner, or sole proprietor of the operator must sign and the operator must submit to the authorized officer an affidavit that:

(1) Identifies the owner of the withheld information and provides the name, address, and contact information for a corporate officer, managing partner, or sole proprietor of the owner of the information;

(2) Identifies the Federal statute or regulation that would prohibit the Service from publicly disclosing the information if it were in the Service's possession;

(3) Affirms that the operator has been provided the withheld information from the owner of the information and is maintaining records of the withheld information, or that the operator has access and will maintain access to the withheld information held by the owner of the information;

(4) Affirms that the information is not publicly available;

(5) Affirms that the information is not required to be publicly disclosed under any applicable local, State, tribal, or Federal law;

(6) Affirms that the owner of the information is in actual competition and identifies competitors or others that could use the withheld information to cause the owner of the information substantial competitive harm;

(7) Affirms that the release of the information would likely cause substantial competitive harm to the owner of the information and provides the factual basis for that affirmation; and

(8) Affirms that the information is not readily apparent through reverse engineering with publicly available information.

(e) If the operator relies upon information from third parties, such as the owner of the withheld information, to make the affirmations in paragraphs (d)(6) through (d)(8) of this section, the operator must provide a written affidavit from the third party that sets forth the relied-upon information.

(f) The Service may require any operator to submit to the Service any withheld information, and any information relevant to a claim that withheld information is exempt from public disclosure.

(g) If the Service determines that the information submitted under paragraph (e) of this section is not exempt from disclosure, the Service will make the information available to the public after providing the operator and owner of the information with no fewer than 10 business days' notice of the Service's determination.

(h) The operator must maintain records of the withheld information until the later of the Service's release of the operator's financial assurance or 7 years after completion of operations on refuge lands. Any subsequent operator will be responsible for maintaining access to records required by this paragraph during its operation of the well. The operator will be deemed to be maintaining the records if it can promptly provide the complete and accurate information to the Service, even if the information is in the custody of its owner.

(i) If any of the chemical identity information required in this subpart is withheld, the

operator must provide the generic chemical name in the submission required. The generic chemical name must be only as nonspecific as is necessary to protect the confidential chemical identity, and should be the same as or no less descriptive than the generic chemical name provided to the Environmental Protection Agency.

## **INFORMATION COLLECTION**

### **§ 29.220 Has the Office of Management and Budget approved the collection of information?**

The Office of Management and Budget reviewed and approved the information collection requirements contained in this subpart and assigned OMB Control No. 1018-XXXX. We use the information collected under this subpart to manage non-Federal oil and gas operations within refuge boundaries for the purpose of protecting wildlife and habitat, water quality and quantity, wildlife-dependent recreational opportunities, and the health and safety of employees and visitors on NWRS lands. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed in 50 CFR 2.2.

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Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.