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National Park Service

36 CFR Parts 1 and 9

General Provisions and Non-Federal Oil and Gas Rights; Proposed Rule

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Parts 1 and 9**

[NPS–WASO–NRSS–15890; PX.XVPAD0520.00.1]

RIN 1024–AD78

**General Provisions and Non-Federal Oil and Gas Rights**

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** We are proposing to update our service-wide regulations governing the exercise of non-federal oil and gas rights, to improve our ability to protect park resources, values, and visitors from potential impacts associated with non-federal oil and gas operations located within National Park Service units. The proposed rule would also make the regulations consistent with existing policies and practices, and update the format to improve clarity and simplify application and compliance for oil and gas operators and our employees.

**DATES:** Comments on the proposed rule must be received by December 28, 2015. Comments on the information collection requirements must be received by November 25, 2015

**ADDRESSES:** If you wish to comment on this proposed rule, you may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AD78, by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Edward O. Kassman, Jr., Geologic Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado 80225.

*Instructions:* Your comment must include the agency name and RIN (1024–AD78) for this rulemaking. Comments will be posted to <http://www.regulations.gov>, including any personal information provided. 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.

- Send your comments and suggestions on the information collection requirements to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) (email). You may review all documents submitted to OMB to support the proposed new information

collection requirements online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB. Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Room 2C114, Mail Stop 242, Reston, VA 20192 (mail); or [madonna\\_baucum@nps.gov](mailto:madonna_baucum@nps.gov) (email). Please reference “1024–O&G” in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:**

Edward O. Kassman, Jr., Geologic Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado 80225; [edward\\_kassman@nps.gov](mailto:edward_kassman@nps.gov); 303–969–2146.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

The National Park Service (NPS) is proposing to update the existing regulations at 36 CFR part 9, subpart B (9B regulations), which govern the exercise of non-federal oil and gas rights in NPS units, to improve the effectiveness of the regulations in protecting park resources and values and to improve the clarity of the regulations for both operators and the NPS.

Key updates to the regulations would include:

- Elimination of two regulatory provisions that exempt approximately 60% of the oil and gas operations located within the national park system;
- Elimination of the cap on financial assurance (bonding);
- Application of the penalty provisions of 36 CFR 1.3;
- Incorporation of fees for new access beyond that held as part of the operator’s mineral right;
- Addition of a new well-plugging provision;
- Clarification that access to oil and gas properties in Alaska is controlled by 43 CFR part 36, which implements provisions of the Alaska National Interest Lands Conservation Act;
- Clarification of well stimulation information requirements and operating standards;
- Incorporation of a new format that makes it easier to identify the information requirements for particular types of operations;
- Incorporation of a new format for operating standards so that both the NPS and the operator can readily identify what standards apply to particular operations;
- Elimination of redundant definitions and provisions;
- Consolidation of existing regulatory provisions; and

- Codification of some existing agency policies and practices.

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

**Background**

On December 8, 1978, the NPS promulgated the current regulations in 36 CFR part 9, subpart B (43 FR 57825), which govern the exercise of non-federal oil and gas rights in units of the National Park System (NPS units).

*Current 9B Regulations*

The current 9B regulations apply to all activities associated with non-federal oil and gas exploration and development inside NPS unit boundaries where access is on, across, or through federally owned or controlled lands or waters (36 CFR 9.30(a)). Under the existing regulations, an operator must obtain our approval of a proposed plan of operations before commencing non-federal oil and gas operations in an NPS unit (36 CFR 9.32(b)). This requirement covers exploration, drilling, production, transportation, plugging, and reclamation operations.

The plan of operations is a prospective operator’s blueprint of all intended activities and is our primary means for evaluating the operation’s potential adverse impacts on park resources and values. It must show that the operator is exercising a bona fide property right to non-federal oil and gas in an NPS unit (36 CFR 9.36(a)(2)). The plan of operations must also describe:

- The proposed operation, including the equipment, methods, and materials to be used in the operation;
- Access to the site;
- Mitigation measures that will be implemented to protect NPS resources and values;
- Environmental conditions in the vicinity of the site;
- Alternatives to the proposal; and
- The environmental impacts of the proposed operation (36 CFR 9.36(a)).

In addition to the plan of operations, the operator must submit a performance bond to ensure that funds are available to reclaim a site if the operator defaults on its obligations under an approved plan (36 CFR 9.48). In order to make the regulatory process as efficient and transparent as possible, we work collaboratively with operators early in their planning process to provide guidance on information requirements, alternative area of operations locations, and potential mitigation and avoidance measures.

As part of our approval process, we coordinate and consult with a variety of

state and other federal regulatory agencies to ensure that approval complies with applicable federal statutes, such as the National Environmental Policy Act of 1969, the Endangered Species Act, and the National Historic Preservation Act.

Operators conducting non-federal oil and gas operations in NPS units must also comply with all applicable state and local laws (36 CFR 9.36(a)(15)). Although state oil and gas regulations may contain provisions designed to protect natural resources (e.g., surface and groundwater), their primary focus is on oil and gas production and protection of associated ownership interests. The purpose and focus of the 9B regulations is to protect the National Park System's natural and cultural resources and visitor values and safety.

When the NPS Regional Director has determined that the proposal meets the requirements contained in the regulations and the NPS has completed the required environmental compliance, the Regional Director will approve the plan (36 CFR 9.37). The approved plan is the operator's authorization to conduct its operation in an NPS unit (36 CFR 9.32(a)).

During the life of an oil or gas operation in a park, the park manager has the authority to monitor and ensure compliance with the approved plan of operations (36 CFR 9.37(f)). If there is a change in circumstances, the NPS or the operator can make a request to supplement and modify the plan (36 CFR 9.40). The 9B regulations authorize us to enforce the terms of the plan, as may be necessary, by suspending operations or revoking plan approval (36 CFR 9.51). The operator may appeal a Regional Director's decision (36 CFR 9.49).

#### *Authority To Promulgate the Regulations*

The authority to promulgate these regulations is the statute commonly known as the NPS Organic Act (54 U.S.C. 100101 *et seq.*) as well as other statutes governing the administration of the National Park System. In the NPS Organic Act, Congress directs us to "promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The Organic Act also gives

us the authority to promulgate regulations "necessary or proper for the use and management of System units." (54 U.S.C. 100751). This includes the authority to regulate the exercise of non-federal oil and gas rights within park boundaries for the purpose of protecting the resources and values administered by the NPS.

In addition, the enabling legislation for several NPS units contains specific provisions authorizing us to regulate the exercise of non-federal oil and gas rights. In the authority section of the proposed rule, we list the individual enabling statutes that address non-federal oil and gas rights in specific NPS units.

Our authority to promulgate the 9B regulations has been recognized as a valid exercise of NPS's Organic Act authority by a U.S. District Court and the Fifth Circuit Court of Appeals. *See Dunn-McCampbell Royalty Interest v. National Park Service*, 964 F. Supp. 1125 (S.D. Tex. 1995), and *Dunn-McCampbell Royalty Interest v. National Park Service*, 630 F.3d 431 (5th Cir. 2011). Courts have consistently recognized NPS's authority to regulate non-federal interests within units of the National Park System. *See, e.g., United States v. Vogler*, 859 F.2d 638 (9th Cir. 1988), *cert. denied*, 488 U.S. 1006 (1989); *United States v. Garfield County*, 122 F. Supp. 2d 1201 (D. Utah 2000). *See also Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735, 746–47 (10th Cir. 2005).

As explained below, the NPS proposed rule uses most of the language from BLM's hydraulic fracturing information requirements at 43 CFR 3162.3–3(d)(1) through (7), which BLM recently promulgated under authority of the Mineral Leasing Act, 30 U.S.C. 189, the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and other BLM authorities. On September 30, 2015, the U.S. District Court for the District of Wyoming preliminarily enjoined these regulations. *State of Wyoming, et al. v. U.S. Department of the Interior*, Case No. 2:15–CV–043–SWS. This litigation is ongoing and the status of the litigation will be addressed by NPS in development of its final rule. NPS will consider any comments addressing NPS' authority to promulgate the proposed rules concerning well stimulation operations within units of the National Park System, as well as comments on the proposed requirements (see in particular, proposed §§ 9.88–9.90 and 9.118).

For NPS units in Alaska that were established under the Alaska National

Interest Lands Conservation Act (ANILCA), access to non-federal property is governed by the regulations at 43 CFR part 36, which implement section 1110(b) of ANILCA. This regulation gives operators the option to file for such access as part of their plans of operations, but they also may use a SF 299 as provided in the 43 CFR part 36 regulations. This is similar to the process applicable to mining claims under those regulations and the NPS regulations at 36 CFR part 9, subpart A. We also note that because these regulations are generally applicable to NPS units nationwide and to non-federal interests in those units, they are not "applicable solely to public lands within [units established under ANILCA]," and thus are not affected by section 103(c) of ANILCA. *See Sturgeon v. Masica*, 768 F.3d 1066, 1077–78 (9th Cir. 2014).

A unique provision exists under the Big Cypress National Preserve Addition Act of 1988, at 16 U.S.C. 698m–4. This provision states that the Secretary shall promulgate rules and regulations governing the exploration for and development and production of non-Federal interests in oil and gas located within the boundaries of the Big Cypress National Preserve and the Addition, and that such rules and regulations may be made by appropriate amendment to or in substitution of the rules and regulations respecting non-Federal oil and gas rights (currently codified at 36 CFR 9.30 *et seq.* (1986)). 16 U.S.C. 698m–4(a).

The Addition Act also authorizes the Secretary prior to the promulgation of rules or regulations under this section, to enter into interim agreements with owners of non-Federal oil and gas interests governing the conduct of oil and gas exploration, development or production activities within the boundary of the Addition. 16 U.S.C. 698m–4(e).

Consistent with that authority, the present oil and gas operations within the Addition Area are controlled under the terms of the *Agreement Governing The Exercise Of Reserved Oil And Gas Rights Of Collier Enterprises And Barron Collier Company*, which is Appendix 6 to the *Agreement Among the United States of America, Collier Enterprises, Collier Development Corporation, and Barron Collier Company* (May 12, 1988). If promulgated as proposed, the rule would supersede Appendix 6.

#### *Non-Federal Oil and Gas Rights in NPS Units*

Non-federal oil and gas rights exist within NPS units in situations where

the United States does not own the oil and gas interest, either because:

- The United States acquired the 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; nonprofit organizations; corporations, including Alaska Native corporations; or state and local governments. 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. Accordingly, from their initial promulgation, the existing regulations at 36 CFR 9.30(a) have stated that they are “not intended to result in the taking of a property interest, but rather to impose reasonable regulations on activities that involve and affect federally owned lands.” The proposed rule includes this same provision.

There are currently 534 non-federal oil and gas operations in a total of 12 NPS units. These units are: Alibates Flint Quarries National Monument (Texas), Aztec Ruins National Monument (New Mexico), Big Cypress National Preserve (Florida), Big Thicket National Preserve (Texas), Big South Fork National River and Recreation Area (Tennessee/Kentucky), Cumberland Gap National Historical Park (Tennessee), Cuyahoga Valley National Park (Ohio), Gauley River National Recreation Area (West Virginia), Lake Meredith National Recreation Area (Texas), New River Gorge National River (West Virginia), Obed Wild and Scenic River (Tennessee), and Padre Island National Seashore (Texas).

Based on the presence of split estates, exploration and production occurring on adjacent or nearby lands, and likely future increases in energy prices, we believe that non-federal oil and gas operations within park boundaries could affect up to 30 additional NPS units.

#### *Summary of Potential Impacts From Oil and Gas Operations on NPS Resources and Values*

The types of non-federal oil and gas operations conducted in NPS units generally 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; well plugging and abandonment; and site reclamation.

Oil and gas activities may adversely impact NPS unit resources in some or all of the following manners:

- Surface water quality degradation from spills, storm water runoff, erosion, and sedimentation. Through site inspections the NPS has documented 26 instances of sites with surface contamination;
  - Soil and ground water contamination from existing drilling mud pits, poorly constructed wells, spills, and leaks. Through site inspections the NPS has documented 47 instances of sites with wellhead leaks, pump jack leaks, tank battery leaks, and operations and maintenance spills;
  - Air quality degradation from dust, natural gas flaring, hydrogen sulfide gas, and emissions from production operations and vehicles. Through site inspections the NPS has documented 14 instances of notable odors emanating from the wellhead;
    - Increased noise from seismic operations, blasting, construction, oil and gas drilling and production operations. Through site inspections the NPS has documented 6 instances of noise issues from well pad equipment;
    - Noise and human presence effects on wildlife behavior, breeding, and habitat utilization;
    - Disruption of wildlife migration routes;
    - Adverse effects on sensitive and endangered species. Through site inspections the NPS has documented 15 sites with sensitive species or habitat;
    - Viewshed intrusion by roads, traffic, drilling equipment, production equipment, pipelines, etc.;
    - Night sky intrusion from artificial lighting and gas flares;
    - Disturbance to archeological and cultural resources from blasting associated with seismic exploration and road/site preparation, maintenance activities, or by spills. Through site inspections the NPS has documented 6 sites with associated cultural resources; and
    - 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. Through site inspections the NPS has documented 62 instances of visitor safety hazards.

Examples of documented impacts can be found in many parks. For example, at Big South Fork natural gas fired pump jack engines have caused notable noise at visitor overlooks that are 2 to 3 miles away. Simple mitigation such as a corrugated steel fence would abate this impact, however, due to the well's grandfathered status; the NPS is unable

to require this mitigation and forced to accept this unnecessary impact.

Another example of unnecessary impacts can be found at Aztec Ruins National Monument where an operation exempt from the 9B regulations due to the grandfathered exemption contained a road that traversed an undeveloped and buried archeological site. When this well lost its grandfathered status, the NPS was able to require the new operator to conduct a cultural resource survey to determine the impacts to the site. As mitigation the operator installed a layer of dirt between the resource and the road base to protect the resources. Unfortunately, in this case the damage was already done and it did not make sense to move the road but the resource is better preserved for future enjoyment.

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

On November 25, 2009, we issued an Advance Notice of Proposed Rulemaking (ANPRM) (74 FR 61597) to assist us in developing the proposed rule. The ANPRM and the analysis of public comments for the ANPRM are available online at [http://www.nature.nps.gov/geology/oil\\_and\\_gas/9b\\_index.cfm#prev\\_docs](http://www.nature.nps.gov/geology/oil_and_gas/9b_index.cfm#prev_docs). Although we are proposing updates to all of subpart B, the ANPRM focused its request for public comment on six topics that we identified as major areas of concern:

- (1) Regulation of previously exempt operations;
- (2) Directional drilling;
- (3) Operating standards;
- (4) Financial assurance;
- (5) Access fees; and
- (6) Assessments for non-compliance.

We received comments from oil and gas owners and operators (2), Alaska Native Corporations (2), unaffiliated private citizens (6), and environmental organizations (10), including 1,477 comments from members of the Sierra Club in the form of personal comments added to a form letter.

The majority of commenters were in favor of strengthening and expanding the regulations to better protect park resources and values. Some commenters requested that we not expand the scope of the 9B regulations, while others questioned the legality of regulating non-federal oil and gas operations in parks. Additionally, some comments asked us to consider the impacts of potential natural gas development of the Marcellus Shale formation in the eastern United States.

More information on the ANPRM and these comments is available at [http://www.nature.nps.gov/geology/oil\\_and\\_](http://www.nature.nps.gov/geology/oil_and_)

[gas/documents/2011-01-11%20ANPR\\_Comment\\_Analysis\\_Report.pdf](http://gas/documents/2011-01-11%20ANPR_Comment_Analysis_Report.pdf).

### Draft Environmental Impact Statement

We have prepared a draft environmental impact statement (DEIS), which will be published shortly after this proposed rule. The DEIS will be available for review and public comment at <http://parkplanning.nps.gov/DEIS9B> by clicking on the link entitled “Document List.”

The DEIS describes three alternatives: Alternative A—No action; Alternative B—preferred alternative and proposed rule; and Alternative C. Alternative C would include all the proposed changes in alternative B, except that it would expand NPS jurisdiction under the regulations to encompass surface and subsurface directional drilling operations outside the boundary of the park; would provide an operator, under limited circumstances, with an exemption to the operations permit requirement for operations located wholly on non-federally owned land within a park boundary; and would hold mineral owners and operators jointly and severally liable for compliance with an operations permit or other applicable provisions of the 9B regulations.

### Section-by-Section Analysis

| Proposed rule                                     | Existing regulation                                      |
|---|--|
| §§ 9.30 through 9.33<br><i>Purpose and Scope.</i> | § 9.30(a), (b), (c).<br>§ 9.32(a), (b).<br>§ 9.36(a)(2). |

#### §§ 9.30 through 9.33—Purpose and Scope

##### *Access on, Across, or Through Federally Owned or Controlled Lands or Waters*

The existing 9B regulations apply only when an operator’s “access [is] on, across, or through federally owned or controlled lands or waters.” Seventy-eight operations (15% of all oil and gas operations in NPS units) do not require access on, across, or through federally owned or controlled lands or waters and are thus outside the scope of the 9B regulations. These operators are not required to obtain an approved NPS plan of operations, post financial assurance, or otherwise comply with this subpart to protect park resources and values. However, our experience over the past three decades has demonstrated that these operations have the potential to have adverse effects on NPS resources, values, and visitor health and safety. Through site inspections, the NPS has found at least 10 instances of sites with oil spills or

leaks resulting in contamination of soils and water.

For example, a poorly operated oil tank battery within the boundary of Big Thicket National Preserve that is currently exempt because it does not require access across federally owned land has contaminated storm water runoff that runs into adjacent federally owned land near Village Creek. Another example is a large compressor that was located on nonfederal lands within the boundary of Big South Fork National River and Recreation Area. The compressor causes unabated noise for which the NPS is unable to require mitigation due to the current scope of the regulations.

In 1978 the NPS made a policy choice to limit the application of its non-federal-oil-and-gas regulatory program to operators requiring access on, across, or through federally owned or controlled lands or waters. That choice was not required by any statutory provision. The NPS now believes that it is appropriate to revisit and modify the application of its regulations.

Under the proposed rule at §§ 9.30 through 9.33, all operators conducting operations within NPS boundaries would be subject to permit requirements. The permitting process would include an evaluation to determine whether, and the extent to which, such operations would have an adverse effect on federally owned or administered lands, waters, or resources of NPS units, visitor uses or experiences, or visitor or employee health and safety. These operations would also be subject to measures to mitigate such adverse effects, as well as to the financial assurance and reclamation requirements.

##### *Regulations Not Intended To Result in a Taking*

Proposed § 9.30(c) retains the existing regulatory language from § 9.30(a) that the intention of this subpart is to reasonably regulate such activities, but not to result in a taking of private property. Although the NPS has placed park-protecting mitigation measures on proposed operations, we have never, in the more than 35 years of applying this subpart, denied prospective operators access to exercise their non-federal oil and gas rights. We will continue to work with operators to ensure they have reasonable access to their operations and that park resources and values are protected without resulting in a taking in violation of the Fifth Amendment of the United States Constitution.

##### *Interests Regulations Are Designed To Protect*

The existing regulations inconsistently describe the interests that the regulations are designed to protect. The proposed rule would clarify and consistently state that the 9B regulations are designed to protect federally owned or administered lands, waters, or resources of NPS units, visitor uses or experiences, and visitor or employee health and safety. The proposed rule would replace the phrase “federally owned or controlled” with the phrase “federally owned or administered” to be consistent with the terminology we use in our general regulations, at 36 CFR 1.2, and 36 CFR 1.4(a) (definition of “National Park System”), and in our NPS Management Policies (2006).

##### *Operations Subject to These Regulations*

Proposed § 9.31(a) applies these regulations to all nonfederal oil and gas operations within the boundary of an NPS unit. Proposed § 9.31(b) covers those operations that become part of an NPS unit either by boundary expansion or establishment of a new NPS unit. Proposed § 9.31(c) covers those operations that have accessed oil and gas rights from a surface location outside the park boundary but due to a boundary expansion or establishment of a new unit, the surface location is now within an NPS unit. Those operations covered under § 9.31(b) and (c) would be required to follow the same requirements and procedures as previously exempt operations at §§ 9.50 through 9.53.

##### *Type of Authorization Required*

Proposed § 9.32(a) would clarify that an operator must have either a temporary access permit or an operations permit before conducting either reconnaissance surveys or operations in an NPS unit.

##### *Demonstration of Valid Existing Right*

The existing regulation contains a requirement that operators demonstrate that they hold valid rights to conduct activities. The proposed rule would move this requirement to § 9.32(b) under “Scope and Purpose” to clarify that all operators must demonstrate “up front” that they hold a valid existing right to conduct operations in an NPS unit. Unless an operator can demonstrate a valid existing right to conduct operations, we would not undertake formal review of an operator’s operations permit application.

*Elimination of Unnecessary Regulatory Language*

The proposed rule would delete existing § 9.30(b) and (c). We view these sections as advisory and more appropriate for inclusion in guidance materials that we will develop following the promulgation of this subpart.

*Operations Authorized Under Previous 9B Regulations*

Proposed § 9.33(a) would authorize an operator that currently holds an approved plan of operations under the existing regulations to continue operations, subject to the applicable provisions of the regulations.

Proposed § 9.33(b) would authorize an operator that remains exempt from the plan of operations requirement because it is currently accessing oil and gas rights inside a park boundary from a surface location outside the park boundary to continue operations, subject to the General Terms and Conditions and the Compliance Procedure provisions of the regulations.

| Proposed rule            | Existing regulation                        |
|--------------------------|--|
| § 9.40 Definitions ..... | §§ 9.31(a) through (o), § 9.32(c) and (d). |

**§ 9.40 Definitions**

The proposed rule would organize the definitions in alphabetical order to make this section more user-friendly. The proposed rule would also delete several redundant definitions because the same terms are defined at 36 CFR 1.4. The definitions proposed for deletion are: “Secretary” (existing § 9.31(a)), “Director” (existing § 9.31(b)), “Person” (existing § 9.31(e)), and “Superintendent” (existing § 9.31(f)). The proposed rule also deletes two definitions that are no longer applicable: “Commercial Vehicle” (existing § 9.31(g)) and “Statement for Management” (existing § 9.31(o)).

*New or Revised Definitions*

The proposed rule would add a new term, “Area of Operations,” to the Definition section to replace the term “Site,” at existing § 9.31(m). The new term would identify all areas where an operator is authorized to conduct its activities, including access to the operations site.

The proposed rule would expand the definition of “Contaminating Substances,” at existing § 9.31(n), to include other toxic or hazardous substances. The NPS is proposing to remove the term “waste” from this definition and include a new separate definition of waste in the proposed rule.

The proposed rule would revise the definition of the term “Unit” to “NPS unit” and make this term the same as “National Park System (Park Area)” found at 36 CFR 1.4(a).

The proposed rule would change the definition of “Operations” at existing § 9.31(c), to clarify that “access” includes “any means of ingress to or egress from an area of operations.” The NPS intends this change to cover any and all types of access, including access via aircraft, to and from an area of operations. For access via aircraft, the NPS regulates only the time, place, and manner of aircraft landing on NPS administered lands or waters within an NPS unit. The NPS does not regulate aircraft overflight under the 9B regulations. Accordingly, the NPS would remove existing § 9.32(c), which regulates 9B aircraft access. The proposed rule would also delete existing § 9.32(d). This access is controlled by NPS commercial vehicle regulations at 36 CFR 5.6(c).

The definition of “Operations” also clarifies that the operation of a flowline or a gathering line is included within this definition, but not the installation, operation, or maintenance of oil and gas pipelines that are located within the park under authority of a deeded easement or other right-of-way, which are not covered by the 9B regulations.

The proposed rule would add a new term “Operations Permit” as the permitting vehicle for all operations. An operations permit will be a special use permit subject to cost recovery under 54 U.S.C. 103104, which authorizes the NPS to recover all costs associated with providing necessary services associated with special use permits.

The proposed rule would update the definition of “Operator” at existing § 9.31(d) by clarifying that responsibilities and liability under this subpart can attach to the operator or the operator’s agents, assignees, designees, lessees, or representatives.

The proposed rule defines “owner” as a “person” which incorporates the definition of “person” from § 1.4.

The proposed rule adds a new definition of “Previously Exempt Operation” to clarify which types of operations are covered by proposed §§ 9.50 through 9.53. This definition does not include those operations where the operator was granted an exemption under existing § 9.32(e) to the plan of operations requirement by the NPS because it accessed oil and gas rights inside the park boundary from a surface location outside the park boundary (which are covered by proposed § 9.33(b)).

The proposed rule would add a new term “Reconnaissance Survey” to clarify that reconnaissance surveys do not include surface disturbance activities, except minimal disturbance necessary to perform surveys.

The proposed rule would add a new term “Right to Operate” that incorporates much of the language in existing § 9.36(a)(2) (right to operate description for a Plan of Operations). The new definition would clarify that an operator’s right-to-operate documentation must demonstrate the proposed activities are within the scope of that right.

The proposed rule would add a new term “Technologically feasible, least damaging methods” to describe the general standard that all operators must satisfy when meeting applicable operating standards.

The proposed rule would add a new term “Temporary Access Permit” to clarify that under the proposed rule the NPS would grant temporary access only for reconnaissance surveys and to collect basic information necessary to prepare a permit application.

The proposed rule would add a new term “Third-Party Monitor” to identify a third-party monitor’s necessary qualifications.

The proposed rule would add a new term “Usable water” to describe the criteria that the NPS uses to identify protected sources of groundwater.

The proposed rule would add a new term “Waste” to differentiate between “waste” and “contaminating substances.”

The proposed rule would add a new set of terms “We and us” to refer to the National Park Service.

The proposed rule would add a definition of “You” to be consistent with the plain language format of this subpart.

| Proposed rule                                      | Existing regulation |
|--|---------------------|
| §§ 9.50 through 9.53 Previously Exempt Operations. | § 9.30(a), § 9.33.  |

**§§ 9.50 Through 9.53—Previously Exempt Operations**

The proposed rule would create a new section “Previously Exempt Operations” to describe the process for bringing all previously exempt operations into compliance with the proposed rule. These include operations that do not require access on, across, or through federal lands (15% of total operations are currently exempt due to existing § 9.30, see above discussion) and grandfathered operations (45% of total

operations are currently exempt due to existing § 9.33).

#### *Grandfathered Operations*

Under existing § 9.33, operators who were conducting operations at the time the regulations became effective (January 8, 1979) and who had already obtained a valid federal or state permit were “grandfathered.” These operators were not required to obtain an approved plan of operations; comply with NPS operating standards, including reclamation of their area of operations to NPS standards; or post a reclamation bond. The Superintendent does have authority under existing § 9.33(c) to suspend grandfathered operations if there is an “immediate threat of significant injury to federally owned or controlled lands or waters.” The NPS has used this authority, in limited cases, to suspend grandfathered operations—suspensions that would not have been necessary if the operators were proactively meeting NPS standards. For example, at Big Thicket National Preserve, the NPS suspended two grandfathered operations that were causing unnecessary impacts, including poor spill prevention equipment and methods resulting in localized contamination to soils, lack of proper vegetation control that increased risk of fire, and poor site security that presented risks to visitor health and safety. Under existing § 9.33(a)(1), when the existing federal or state permit expires and the operator is issued a new permit, the operator then becomes subject to all provision of the 9B regulations.

In 1978 the NPS expected that over time the permits associated with these operators would expire and that the operators would then be required to come into compliance with the 9B regulations. However, the rate of permit expiration has been much slower than anticipated. This has left approximately 45% of operations (241 wells service-wide) still exempt from the regulations over thirty years later, causing unnecessary and readily avoidable impacts to NPS-administered resources and values. For example, through site inspections, the NPS has found 20 instances of hydrocarbon spills and leaks, 3 instances of gas venting, 2 instances of notable noise issues, and 3 instances of notable hydrocarbon odors emanating from the well site. The grandfather exemption is not required by statute, and was a discretionary policy choice by the NPS to provide for a “smooth and fair phase in of [the 1978] regulations.” (43 FR 57822)

This rulemaking is intended to ensure that all operations within NPS units are

conducted in a manner that protects park resources and values. A majority of comments to the ANPRM regarding previously exempt operations suggested that to achieve this goal, the NPS’s new rule should require previously exempt operators to obtain an operations permit. The NPS agrees, and has tailored the process for obtaining an operations permit to the specific circumstances presented by previously exempt operations.

#### *Procedure for Bringing Previously Exempt Operations Into Compliance*

Proposed § 9.50(a) would establish that previously exempt operators must obtain an Operations Permit.

In proposed § 9.51, the NPS describes the information that a previously exempt operator would be required to submit to the NPS to obtain an operations permit. For a new oil and gas operation in an NPS unit, the NPS requires an operator to submit the information necessary for the NPS to select the least damaging locations for its access route, drilling site, production facilities, and gathering-line routes. However, for previously exempt 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 § 9.51, within 90 days after the effective date of this subpart, operators must provide the NPS with information that would enable the NPS to evaluate the previously exempt operation to determine whether these operations are being conducted in compliance with NPS operating standards. This information is also needed for future monitoring of the approved operations to ensure compliance with NPS operating standards. The information requirements under this proposed section also require operators to submit information if they intend to change existing operations (*e.g.*, if they intend to plug their wells).

Once the operator provides the information required under proposed § 9.51, the NPS would review the operations permit application under proposed § 9.52, which states that the NPS will review the application under the same standards that apply to new operations, §§ 9.100 through 9.104 (Operations Permit: Application Review Process).

Under proposed § 9.53, from the effective date of the final rule and during the time a previously exempt operator’s application is under consideration for approval by the NPS, the continuation of operations would be

limited to those activities and the specific area of disturbance as of the effective date. Previously exempt operations would also become subject to the General Terms and Conditions at proposed §§ 9.120 through 9.122 and the Prohibitions and Penalties at proposed §§ 9.180 through 9.182. Finally, proposed § 9.53(a)(2) provides that except in an emergency, the NPS would not take any steps to directly regulate the previously exempt operator’s activities under proposed §§ 9.180 through 9.182 within 90 days after the effective date of the final rule.

| Proposed rule  | Existing regulation |
|--|---------------------|
| §§ 9.60 through 9.63<br><i>Temporary Access Permits.</i> | § 9.38.             |

#### **§§ 9.60 Through 9.63—Temporary Access Permits**

Existing § 9.38(a)(2) (temporary approval for the continuance of existing operations) and existing § 9.38(b) (temporary approval of new operations) would not be retained in the proposed rule. Because the proposed rule would make all operations subject to the 9B regulations, including (after a 90-day grace period) previously exempt operations, temporary approval of existing operations is no longer applicable. Existing § 9.38(b) would also be deleted because the provision has rarely been used and the NPS does not anticipate a need for temporary approval of new operations.

Proposed § 9.60 would focus solely on the information requirements and approval process for obtaining temporary approval to collect basic information to develop the information required to obtain an Operations Permit. Proposed § 9.61 identifies the information necessary for the NPS to evaluate the operator’s proposal to collect this information. This includes intended future operations, so the NPS can determine what information is available and what additional information needs to be gathered. Proposed § 9.61(d) would require that the operator describe the qualifications of the specialist who will perform the reconnaissance survey. The requirement to hire a qualified specialist codifies existing NPS guidance and is included in the definition of “reconnaissance survey” so that information and conclusions are accurate and verifiable.

Proposed § 9.62 would clarify that under a Temporary Access Permit, an operator may not engage in ground disturbing activities unless they are minimal and necessary to conduct the surveys.

Under proposed § 9.63, Temporary Access Permits would be issued for a period not to exceed 60 days and may be extended for a reasonable additional period when justified by an operator.

| Proposed rule  | Existing regulation |
|--|---------------------|
| §§ 9.70 through 9.73<br><i>Accessing Oil and Gas Rights from a Surface Location Outside the Park Boundary.</i> | § 9.32(e).          |

**§§ 9.70 Through 9.73—Accessing Oil and Gas Rights From a Surface Location Outside the Park Boundary**

Existing § 9.32(e) allows operators to apply for an exemption from the regulations if they directionally drill from a surface location outside an NPS unit to reach a bottom hole located within NPS boundaries. This exemption is available if operations pose no significant threat of damage to NPS resources, both surface and subsurface, resulting from surface subsidence, fracture of geological formations with resultant fresh water aquifer contamination, or natural gas escape. Surface activities located outside the NPS boundary are not within the scope of the existing 9B regulation. Under these regulations, regulatory authority over these operations continues to begin at the subsurface point where the proposed operation (borehole) crosses the park boundary and enters federally owned or controlled lands or water, and applies to all infrastructure and activities within the NPS unit.

The availability of the exemption provides an incentive for operators to locate surface facilities outside an NPS unit. Location of operations outside an NPS unit generally avoids direct impacts to NPS resources and values. Therefore, proposed § 9.72 retains a similar exemption.

The NPS proposes to retain the “no significant threat of damage” review standard for exemption applications. Proposed § 9.70 updates and clarifies the review standards for exemption applications. If an operator is exempt from the Operations Permit requirement, it would still be subject to the General Terms and Conditions and the Prohibitions and Penalties provisions in the regulations. The proposed rule also addresses circumstances under which the method of operation or environmental conditions of an operation changes.

Proposed § 9.71 identifies the information an operator would be required to submit to the NPS to be considered for an exemption. Proposed

§ 9.71 directs operators to those information requirements, located at proposed § 9.89, applicable to proposed hydraulic fracturing operations.

Proposed § 9.72 describes how the NPS would review and consider information submitted by the operator under this section.

Proposed § 9.73 describes requirements that an operator still must meet if it does not need an operations permit.

| Proposed rule   | Existing regulation |
|---|---------------------|
| §§ 9.80 through 9.90<br><i>Operations Permit: Application Contents.</i> | § 9.36.<br>§ 9.42.  |

**§§ 9.80 Through 9.90—Operations Permit: Application Contents**

*Format*

The proposed rule at §§ 9.80 through 9.90 reorganizes information requirements for each type of operation. The proposed rule would separate information requirements into the following categories: § 9.83, information that must be included in all applications; § 9.87, additional information that must be included for a proposed geophysical exploration; § 9.88, additional information that must be included for a proposed drilling operations; § 9.89 additional information must be included for a proposed well stimulation operations, including hydraulic fracturing; and, § 9.90 additional information that must be included for a proposed production operations.

*Additions to and Clarification of Existing Information Requirements*

Some of the information requirements in the existing 9B regulation are minimally described. The NPS provided additional information on some of those information requirements in the NPS’s 2006 9B Operator’s Handbook. The NPS intends to clarify all information requirements in the proposed rule.

*Information Requirements That Apply to All Operations Permit Applications*

Some of the existing information requirements were incorporated into the proposed rule without substantial change. However, the NPS is proposing to clarify the following information requirements:

*Ownership Information*

Existing regulation § 9.83 limits identification of an operation’s key personnel to the operator, owners, and lessees. To ensure that the NPS has all appropriate contact information,

proposed § 9.83(b) requires that operators also identify agents, assignees, designees, contractors, and other representatives.

- *New Surface Disturbance and Construction*

Proposed § 9.84 requires an operator to specify site security measures and an operation’s power sources and transmission systems.

- *Use of Water*

Proposed § 9.83(e) would clarify and expand upon the existing § 9.36(a)(5). It would require information regarding the source, transportation method and quantity of water to be used in addition to how the operator will manage waste water.

- *Environmental Conditions and Mitigation Actions*

Proposed § 9.85 would codify the existing practice of requiring operators to include within their permit application natural resource and cultural resource survey reports for the operator’s proposed area of operations.

Proposed § 9.85 would require an operator to describe steps proposed to mitigate adverse environmental impacts and list and discuss the impacts that cannot be mitigated. Additionally, operators are required to describe all alternative technologically feasible, least damaging methods that were considered. Technologically feasible, least damaging alternatives are those alternatives that are viable (based on economic, environmental, and technological considerations) and conform to federal, state, and local laws and regulations.

- *Cultural Resources*

The NPS proposes to eliminate existing § 9.47(a), “Cultural Resource Protection,” because the section merely summarizes the requirements of the Antiquities Act (54 U.S.C. 320301 *et seq.*). Restating these statutory requirements in the 9B Regulations is unnecessary, and the section also fails to acknowledge other statutes that could also apply to these resources.

- *Spill Control and Emergency Preparedness Plan*

Proposed § 9.86 consolidates various sections of the existing regulation, clarifies that an operator must submit a Spill Control and Emergency Preparedness Plan (SCEPP) plan to the NPS, and identifies the information necessary to complete a SCEPP.

*Additional Information Requirements That Apply to Geophysical Operations*

Proposed § 9.87 clarifies the additional information a geophysical operator would need to submit to the NPS.



### *Additional Information Requirements That Apply to Drilling, Stimulation, and Production*

Proposed §§ 9.88 through 9.90 clarify the additional information an operator would need if it is proposing to drill, stimulate, or produce a well.

Proposed § 9.89 is a new set of information requirements for well stimulation, including hydraulic fracturing operations. Information requirements include identifying the geologic barriers between the target zone and the deepest usable water zone, verifying mechanical integrity of the wellbore, and describing water use and disposal management of flowback fluids. NPS 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 have carefully considered the BLM regulations to ensure that the NPS regulations are as consistent as possible. Here, the NPS proposed rule uses most of the language from BLM's hydraulic fracturing information requirements at 43 CFR 3162.3–3(d)(1) through (7). Where a BLM information requirement is not specifically included in proposed § 9.89, it is because NPS already has equivalent information requirements that are applicable to all operations. Additionally, NPS has specific guidance on the means to ensure well integrity standards are met in its NPS's 2006 9B Operator's Handbook.

| Proposed rule   | Existing regulation |
|---|---------------------|
| §§ 9.100 through 9.105 Operations Permit: Application Review Process. | § 9.37.<br>§ 9.48.  |

### **§§ 9.100 Through 9.105—Operations Permit: Application Review Process**

Existing § 9.37(a)(1) requires that, before approving a plan of operations, the Regional Director determine that the operator uses technologically feasible, least damaging methods that provide for protection of the park's resources and public health and safety.

The existing rule has two different approval standards, depending on whether the operation is proposed on non-federally or federally owned surface. For operations proposed on non-federally owned surface a Regional Director cannot approve an operation that would constitute a nuisance to federal lands or waters in the vicinity of the operations, or would significantly injure federally owned or controlled lands or waters. For more information

on what would constitute "significantly injury" please see *NPS Procedures Governing Nonfederal Oil and Gas (1992)*, pages 30–31, which can be found at <http://parkplanning.nps.gov/documentsList.cfm?projectID=28329>. For operations proposed on federally owned surface a Regional Director cannot approve an operation that would substantially interfere with management of the unit to ensure the preservation of its natural and ecological integrity in perpetuity, or would significantly injure federally owned or controlled lands or waters. If applying the standard for operations proposed on federally owned lands would constitute a taking of a property interest, the NPS may either approve the operations if it uses technologically feasible, least damaging methods or acquire the mineral interest.

Existing § 9.37(b) and (c) require the NPS to make a decision on the plan of operations within 60 days after the date that the NPS determines that the materials submitted under the plan are adequate. Within 60 days, the Regional Director must make one of six final decisions in writing. The final decisions are: Approval or rejection; conditional approval; modification to the plan or additional information is required; more time is necessary to complete review; environmental statement is required before approval; or more time is necessary for public participation and analysis of public comments.

Existing § 9.37(c) provides that failure of the NPS to make a final decision within 60 days constitutes a rejection of the plan. The operator has a right to appeal this decision under existing § 9.49.

#### *Proposed Application Review Process*

The proposed rule establishes a two-stage permit application review process, eliminates the dual approval standards, provides more realistic timeframes to provide notice back to an operator, and consolidates the final decisions the NPS can make on an operator's permit application.

#### *Stage One: Initial Review*

Proposed § 9.101 describes the NPS's initial review of an operator's permit application. During initial review the NPS would determine whether the applicant has supplied all information necessary for the NPS to evaluate the operation's potential effects affecting federally owned or administered lands, waters, or resources of NPS units, visitor uses or experiences, or visitor or employee health and safety. The NPS would respond to applicants within 30 days and tell them whether the information contained in their permit

applications is complete. If the NPS needs more time to complete the review, the NPS will provide the applicant with an estimate of the amount of additional time reasonably needed and an explanation for the delay. Once a permit application is complete the NPS conducts formal review.

#### *Stage Two: Formal Review*

During formal review under proposed § 9.102 the NPS evaluates whether the proposed operation meets the NPS approval standards (§ 9.103) and conducts its compliance responsibilities under applicable federal statutes (*e.g.* National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and National Historic Preservation Act (NHPA)).

#### *Timeframe for Final Action*

In light of NPS experience over the past 35 years in implementing the 9B regulations, the current 60-day period for reaching a final decision on a permit application is not realistic. 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 comply with the associated federal statutory responsibilities such as NEPA, ESA, and NHPA. The regulations should provide operators with realistic expectations of the timeframe to process operations permits in order to adequately plan for the start of operations. Similarly, the NPS must take into account realistic timeframes for its coordination with other federal and state agencies. Thus, proposed § 9.104 allows the NPS 180 days to complete its formal review. The proposed regulation would allow for a longer period of time, if the parties agree to it, or if the NPS determines that it needs more time to comply with applicable laws, executive orders, and regulations. In some cases, the NPS may be able to complete formal review in less than 180 days. The NPS is seeking comment on whether 180 days is reasonable and any incremental impacts on operators.

The proposed rule would remove existing section § 9.37(c), which results in a rejection of the proposal if the NPS does not respond within 60 days, and replaces it with § 9.104, which authorizes the Superintendent to notify the operator in writing that additional time is necessary to make a final decision.

#### *Elimination of Dual Approval Standards*

Proposed § 9.103 would replace the existing dual approval standards with a single three-part approval standard that

applies to all operations, regardless of surface ownership. Oil and gas operations located on non-federally owned surface have the potential to impact federally owned or administered lands, waters, or resources of NPS units, visitor uses or experiences, or visitor or employee health and safety to the same degree as operations sited on federally owned surface.

Proposed § 9.103(a) lists three basic determinations that the Regional Director must make before approving an application for an operations permit.

Proposed § 9.103(b) adds two other prerequisites to approval: (1) Submittal of adequate financial assurance and (2) proof of adequate liability insurance.

*Final Actions*

Proposed § 9.104 would establish two final actions: (1) Approved, with or without conditions, or (2) denial, and the justification for the denial. The Regional Director would notify the operator in writing of the final action. If approved, this written notification constitutes the NPS’s authorization to conduct activities.

The NPS has eliminated the proviso in the approval standard in current section § 9.37(a)(3), which allows for approval using only the “technologically feasible, least damaging methods” standard of section § 9.37(a)(1) if application of the more stringent § 9.37(a)(3) standard would constitute a taking of a property interest. Over the past 35 years of implementing the 9B Regulations, the NPS has never used this exception. In every instance, the NPS has authorized operators’ access and protected park resources and values by applying reasonable avoidance and mitigation measures to the exercise of operators’ mineral rights. As noted in the Purpose and Scope section above, the proposed rule at § 9.30(c) maintains the existing regulatory provision stating that the 9B regulations are not intended to result in a taking of mineral rights. The approval standard in the proposed rule simply incorporates that provision by reference, rather than expressly spelling it out as part of the standard. This change is not intended or expected to authorize any taking of property rights, and is intended solely to simplify the approval standards and avoid redundancy and confusion. The NPS will continue to work with operators to help plan and design their operations in a way that meets NPS operating standards and other applicable provisions of these regulations.

*Compliance With Big Cypress National Preserve Addition Act*

The Big Cypress National Preserve Addition Act (BCNPAA), (16 U.S.C. 698m–4), requires that the NPS include language describing the procedures for reviewing an Operations Permit application within the Big Cypress National Preserve and Addition Area.

Accordingly, proposed § 9.105 describes the procedure for initial review of a proposed operation in Big Cypress National Preserve. This procedure would differ slightly from the service-wide procedure described in §§ 9.101 and 9.102. The NPS’s service-wide proposed rule incorporates the 30-day initial review period from the BCNPAA. However, the BCNPAA at 16 U.S.C. 698m–4(b)(2)(C) places a regulatory limit on the amount of collaboration that can occur between the NPS and the operator. Under this provision, there is no regulatory mechanism for the NPS to request further information from an operator after the NPS has made its initial request for additional information. After making such a request, the NPS’s only options are to approve or deny the application. This procedure could conceivably result in denial of applications that would have been approved if the NPS had the regulatory authority to again request the additional information necessary to fully evaluate a proposed operation. In practice, the NPS will continue to collaborate with prospective operators in Big Cypress National Preserve early in their planning process and as much as possible during initial review, in order to reduce such theoretical problems. The NPS is not proposing to use the Big Cypress procedure in its service-wide regulations, because it does not want to constrain its ability to have more robust collaboration with operators.

The BCNPAA also differs slightly from the proposed service-wide rule in that under the BCNPAA the 90-day time period for final action begins upon submission of the permit application to the NPS. For the service-wide rule, the NPS has chosen not to adopt submission of the permit application as the triggering event for the 180-day time period. Rather, the NPS proposed service-wide rule provides that the 180-day time period begins upon the NPS determination that the operator’s permit application contains complete information. This is consistent with the existing 9B Regulations at 36 CFR 9.36(c). Before the NPS can begin to conduct an analysis of an operator’s proposal, it must have all necessary information from an operator. For

proposals within Big Cypress National Preserve, the NPS will strive to meet the applicable timeframe for final action while otherwise complying with applicable laws including NEPA and the ESA.

The NPS has decided to include applicable language from the BCNPAA in this regulation instead of in a new park-specific regulation in Part 7, because the remaining sections of the 9B regulation still apply to oil and gas operations in Big Cypress National Preserve and the NPS believes it will be easier for operators to have all applicable regulations in one place.

| Proposed rule                               | Existing regulation |
|---|---------------------|
| §§ 9.110 through 9.118 Operating Standards. | § 9.35.             |
|   | § 9.39.             |
|   | § 9.41.             |
|   | § 9.42.             |
|   | § 9.43.             |
|   | § 9.44.             |
|   | § 9.45.             |
|   | § 9.46.             |
| § 9.47.                                     |                     |

**§§ 9.110 Through 9.118—Operating Standards**

*Purpose and Function*

Proposed § 9.110 clarifies the purpose and function of operating standards. The NPS would maintain the current practice of setting non-prescriptive operating standards to allow operators the flexibility to design their proposed operation using the latest technological innovations that will best protect park system resources, values, and visitor health and safety.

Proposed § 9.110(c) is a general standard that requires all operators to use technologically feasible, least damaging methods to protect NPS resources and values while assuring human health and safety.

Proposed § 9.110(a) maintains the practice of incorporating applicable operating standards into an approved operations permit so that the operating standards become enforceable terms and conditions of an approved permit.

The existing regulation has a specific operating standards provision at § 9.41. Additional operating standards are scattered throughout other sections of the existing regulations (See, §§ 9.43 through 9.46).

*Reorganization*

The proposed rule would reorganize operating standards into one section and separate operating standards into the following categories: §§ 9.111 through 9.116, are operating standards that apply to all operations; § 9.117, additional operating standards that

apply to geophysical operations; and § 9.118, additional operating standards that apply to drilling, stimulation, and production operations. The NPS believes that organizing the standards in this manner would allow the NPS and the operator to readily understand which operating standards are applicable to the particular type of proposed operation.

#### *Additions to and Clarification of Existing Operating Standards*

Some of the operating standards in the existing 9B regulation are minimally described. The NPS has clarified some operating standards in its 2006 9B Operator's Handbook. The NPS proposes to include all operating standards in the proposed rule. The NPS would incorporate some operating standards from the existing regulations into the proposed rule largely without substantive change; those standards are not further discussed here. The standards summarized below either clarify existing standards or are new standards that the NPS proposes to add to the regulations.

#### *Operating Standards That Apply to All Operations*

The NPS is proposing to include new standards at § 9.111(a) to ensure that either existing or newly created surface disturbance is kept to the minimum necessary for safe conduct of operations.

The NPS is proposing to include new standards at § 9.114 and § 9.115 that would reasonably limit the visual and sound impacts of oil and gas operations on park visitor use and experience.

The NPS is proposing to add a new standard at § 9.111(h) that would avoid or limit the introduction of exotic species.

The NPS is proposing to add specific standards at § 9.112 that would address hydrologic connectivity.

#### *Reclamation Operating Standards*

Proposed § 9.116 would specify reclamation operating standards.

#### *Operating Standards That Apply to Geophysical Operations*

Proposed § 9.117 covers operating standards for surveying methods; source points; use of equipment and methods; and shot holes.

#### *Operating Standards That Apply to Drilling, Stimulation, and Production Operations*

Proposed § 9.118(a)(1) requires all operators to use containerized mud systems during drilling operations.

Proposed § 9.118(a)(2) prohibits the establishment of new earthen pits for

any use. Use of existing earthen pits may continue if the pits are in compliance with applicable law and subject to the Superintendent's periodic inspection.

Proposed § 9.118(b) is a new section that establishes standards for well stimulation, including standards that address hydraulic fracturing operations, such as ensuring the mechanical integrity of the wellbore, water use and disposal, and management of flowback fluids. We have carefully considered the recently promulgated BLM oil and gas regulations to ensure that the NPS regulations are as consistent as possible. The two agencies take different approaches to operating standards, though, because of their differing statutory bases for regulating the exercise of oil and gas rights. BLM's regulatory authority is derived primarily from the Mineral Leasing Act and the Federal Land Policy and Management Act and controls the use of federal property. The NPS 9B regulations address private property rights within park units and are based largely on the directive of the NPS Organic Act to "conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." As a result, BLM can and has appropriately set more prescriptive standards in its regulation, while NPS has generally set required non-prescriptive operating standards which allow operators flexibility to design operations while still protecting park system resources, values, 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 water, and BLM also prescribes regulatory measures necessary to achieve and verify the performance standard (43 CFR 3162.3-3(e)). NPS's approach is to review an operator's submissions to determine if they meet the overall operating standard of using the most "technologically feasible, least damaging methods" that protect park resources and values, and all other applicable operation standards. If not, the NPS would add terms and conditions in the permits to ensure that they do so. Guidance on the specific means to meet NPS operating standards is found in NPS's 2006 9B Operator's Handbook, which is distributed to every operator and available electronically.

| Proposed rule  | Existing regulation   |
|--|---|
| §§ 9.120 through 9.122 <i>General Terms and Conditions</i> . | § 9.35.<br>§ 9.36(a)(15).<br>§ 9.37(f).<br>§ 9.41(g).<br>§ 9.42.<br>§ 9.46.<br>§ 9.51(b). |

#### **§§ 9.120 Through 9.122—General Terms and Conditions**

The NPS proposes a new "General Terms and Conditions" section to summarize those terms and conditions that apply to all operations. This section consolidates existing: §§ 9.35; 9.36(a)(15); 9.37(f); 9.41(g); 9.42; 9.46; 9.47(b); and, 9.51(a) and (b).

The water use section at existing § 9.35 does not address all state water law systems under which water rights are established or decided. Proposed § 9.120(b) would require that the NPS approve, in accordance with NPS policy, the use of surface or groundwater owned or administered by the United States.

Because monitoring and reporting requirements apply, in varying degrees, to all operations, the NPS is proposing to include monitoring and reporting requirements under General Terms and Conditions. Some of these monitoring and reporting requirements are taken from the existing regulation while others are new requirements. The new requirements are described below.

Proposed § 9.121(b) would allow the NPS to require that operators hire third party monitors when they are necessary to ensure compliance and protect park resources and values. The NPS currently requires the use of third party monitors to help the NPS ensure that it receives unbiased, reliable, and timely monitoring information demonstrating an operator's compliance with its plan of operations. See, 2006 9B Operator's Handbook, Chapter 3 (Geophysical Exploration). Over the past fifteen years, Big Thicket National Preserve, Padre Island National Seashore, Jean Lafitte National Historic Site, and Big Cypress National Preserve have required operators to use third party monitors for geographically extensive and logistically complex 3D seismic operations. The use of third party monitors has allowed the NPS to augment monitoring by park staff so that the operator can simultaneously engage in multiple operations at different locations, while still ensuring compliance with the operator's plan. The proposed rule would also make the NPS's requirements more consistent with the practice of other federal agencies (BLM, the U.S. Forest Service, and the U.S.

Fish and Wildlife Service have all required third party monitoring for oil and gas operations on lands they administer), as well as state oil and gas regulatory agencies. This section describes the criteria that the NPS will consider when making the decision to require a third party monitor. The third party monitor would report directly to the NPS to ensure oversight and accountability.

Proposed § 9.121(e) would broaden the reporting requirement to require that the operator submit any information requested by the Superintendent that is necessary to verify compliance with either a provision of the operations permit or this subpart. To ease this 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, similar to existing § 9.42.

Proposed § 9.122 would require reporting related to the hydraulic fracturing process, including the disclosure of chemicals used in the hydraulic fracturing process and the volume of recovered fluids. In § 9.122, NPS has used BLM's post-hydraulic fracturing reporting requirements, but did not include two provisions (requirement for affidavit of compliance and general supporting documentation), as these requirements are addressed in other sections of this proposed rule.

| Proposed rule   | Existing regulation |
|---|---------------------|
| §§ 9.130 through 9.132 <i>Access to Oil and Gas Rights.</i> | § 9.50.             |

**§§ 9.130 Through 9.132—Access to Oil and Gas Rights**

Existing § 9.50 authorizes the NPS to charge a fee for commercial vehicles using NPS administered roads.

Proposed 9.130(b) would clarify that adequate and feasible access to oil and gas rights located within the boundaries of NPS units in Alaska is governed by the regulations at 43 CFR part 36, which implements § 1110(b).

Proposed § 9.131(a)(1) would supplement that authority to allow a fee based on fair market value for access (e.g., roads or gatherings lines) across federal lands outside the scope of an operator's oil and gas right. The NPS would set fees consistent with NPS Part 14 Rights-of-way guidance (NPS Reference Manual 53, Special Park Uses, Appendix 5, Exhibit 2).

The NPS is seeking public comment on whether the NPS should include a provision that would allow the NPS to authorize an operator to undertake

compensatory mitigation in lieu of payment. The value of the compensatory mitigation would be proportional to the reasonable estimated cost of the access fee. This would allow the operator and the NPS to agree on an option to, for example, reclaim an area of previously disturbed land elsewhere within the park to offset the operator's new access.

| Proposed rule                                      | Existing regulation |
|--|---------------------|
| §§ 9.140 through 9.144 <i>Financial Assurance.</i> | § 9.48.             |

**§§ 9.140 Through 9.144—Financial Assurance**

The NPS proposes to rename the "Performance Bond" section as "Financial Assurance" to reflect the variety of instruments that an operator can provide to the NPS to meet its obligation under this section.

Existing § 9.48(a) requires an operator to file a performance bond, or other acceptable method of financial assurance, for all types of non-federal oil and gas operations and all phases of the operations. The performance bond requirement ensures that in the event an operator becomes insolvent or defaults on its obligations under an approved plan of operations, adequate funds will be available for reclamation.

Existing § 9.48(d)(3) limits the performance bond amount to \$200,000 per operator, per NPS unit. Therefore, if one operator has multiple wells in an NPS unit, the NPS can only require up to \$200,000 financial assurance from that operator. The existing \$200,000 limit was established in 1979 and in most cases no longer represents the current potential costs of reclamation. In the event of a default by the operator, reclamation costs exceeding the limit could require the NPS to bring a civil action in federal court to recover the additional costs.

Proposed § 9.141 would make the financial assurance amount equal to the estimated cost of reclamation. This revision would substantially reduce the risk of the American taxpayers being left to assume the operator's reclamation-responsibility costs if an operator defaults on its obligations.

Proposed § 9.142 outlines the process for adjusting the amount of financial assurance due to changed conditions. Proposed § 9.143 describes the conditions under which the NPS would release the financial assurance. Proposed § 9.144 describes those circumstances that would result in forfeiture.

Proposed § 9.144(b)(3) is a new provision allowing the NPS to suspend review of an operator's pending permit applications, if that operator has forfeited its financial assurance. Suspension would last until the Superintendent determines that all violations have been resolved.

| Proposed rule                                  | Existing regulation |
|--|---------------------|
| §§ 9.150— <i>Modification to an Operation.</i> | § 9.40.             |

**§ 9.150—Modification to an Operation**

Proposed § 9.150, would rename the "Supplementation or Revision of Plan of Operations" section as "Modification to an Operation" to characterize any change to an approved operations permit. This section would clarify that either the NPS or the operator can request modification of the operator's permit, and describes the modification procedures. Approval of any modification to an approved permit must meet the same criteria that apply to Temporary Access Permits (proposed §§ 9.60 through 9.63) or Operations Permit: Application Review Process (proposed §§ 9.100 through 9.105).

Proposed § 9.150(c) would prohibit an operator from implementing a modification until the NPS has provided written approval of the modification to the operator.

| Proposed rule                                 | Existing regulation |
|---|---------------------|
| §§ 9.160 and 9.161 <i>Change of Operator.</i> | § 9.34.             |

**§§ 9.160 and 9.161—Change of Operator**

This proposed section renames the existing § 9.34 "Transfer of Interest" section as "Change of Operator."

Existing § 9.34(a) provides that a previous owner remains liable on its financial assurance until it informs the NPS that the rights have been transferred to another party. A new owner cannot operate until it posts financial assurance and ratifies the existing plan of operations. If the previous owner provides notice to the Superintendent, the previous owner could request release of its financial assurance before the new owner posts its own financial assurance with the NPS. Therefore, if the new owner abandons operations before posting financial assurance with the NPS, the burden of reclaiming the site could fall on the taxpayers.

Proposed § 9.160 holds the previous operator responsible to the NPS until

the new operator adopts and agrees to the terms and conditions of the previous operator's permit and provides financial assurance. Proposed § 9.160(a) addresses a transfer of operation where the previous operator did not have an approved NPS permit. Proposed § 9.160(b) requires the previous operator to notify the NPS of its transfer.

Proposed § 9.161 requires that the new operator adopts and agrees to the terms and conditions of any previous operator's operations permit. Proposed § 9.161(b) addresses transfer of an operation where an exemption was previously granted under proposed § 9.72.

| Proposed rule                               | Existing regulation |
|---|---------------------|
| §§ 9.170 and 9.171<br><i>Well Plugging.</i> | § 9.39.             |

**§§ 9.170 and 9.171—Well Plugging**

This section replaces, in part, existing § 9.39(a)(2)(iv) and creates a new section "Well Plugging."

Existing § 9.39(a)(2)(iv) requires operators to plug and cap all non-productive wells and to fill dump holes, ditches, reserve pits, and other excavations. Proposed § 9.116(d)(1) (Operating Standards) would retain the requirement that an operator conduct reclamation by plugging all wells. However, the existing regulations do not give the NPS the authority to require an operator to plug wells that have been in extended shut-in status. As a result inactive wells have remained unplugged for years and, in some instances, decades. Unplugged wells could adversely impact park resources and could also present risks to park visitors.

Proposed § 9.170(a) would establish that operators are required to plug a well within a specified time period after cessation of drilling or production operations or upon the expiration of NPS approved shut-in status. Under proposed § 9.171, an operator can seek an extension to the plugging requirement if the operator describes why drilling or production operations have ceased and its reasonable future use of the well, demonstrates mechanical integrity, and follows maintenance requirements.

The proposed procedures are consistent with the way many states approach the issue of inactive wells, and recognize that certain economical 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 regulation provides assurance that shut-in wells are maintained in an

environmentally sound and safe manner.

| Proposed rule  | Existing regulation   |
|--|-----------------------|
| §§ 9.180 through 9.182<br><i>Prohibitions and Penalties.</i> | § 9.48(e).<br>§ 9.51. |

**§§ 9.180 Through 9.182—Prohibitions and Penalties**

Existing § 9.51(c) provides two different compliance procedures for suspending an operation, depending on whether or not the violation poses an "immediate threat of significant injury to federally owned lands or waters." Proposed § 9.181 would allow the Superintendent discretion to suspend an operation regardless of whether an operator's violation poses an "immediate threat of significant injury." Whether the threat is immediate or not, any violation that results in a threat of damage to park resources and values should be addressed by the Superintendent.

*Prohibited Acts*

Proposed § 9.180 lists the prohibited acts to provide operators with notice of the acts that would constitute a violation of the 9B regulations. The proposed rule expands the prohibited acts to include not only violation of the terms and conditions of an Operations Permit, but also violations of other provisions of the 9B regulations.

*Incorporating Existing 36 CFR 1.3 Penalties Provision in the 9B Regulations*

Existing § 9.51 authorizes the NPS to suspend an operation for non-compliance and if the violation or damage is not corrected, revoke an operator's plan of operations. The process to suspend an operation requires coordination between park staff and other NPS offices during which time damage to park system resources and values may continue. Additionally, suspension and revocation are not necessarily the most appropriate means to correct minor acts of non-compliance (minor leaks and spills, improper road maintenance, or not maintaining proper site security). Therefore, we are proposing to incorporate our existing penalties at 36 CFR 1.3 that would allow NPS law enforcement rangers and special agents to issue citations, which would result only in fines for minor acts of non-compliance, while treating the more serious acts as ones that may be subject to a fine or imprisonment, or both.

*No New Authorization Unless Operator Is in Compliance*

Under proposed § 9.182 NPS would not review any new operating permit applications or continue to review any pending permit applications anywhere in the National Park System until an operator comes into compliance with a violation of this subpart or a violation of a term or condition of an operations permit.

| Proposed rule   | Existing regulation |
|---|---------------------|
| §§ 9.190 through 9.194<br><i>Reconsideration and Appeals.</i> | § 9.49.             |

**§§ 9.190 Through § 9.194—Reconsideration and Appeals**

Most of the procedures outlined in existing § 9.49 remain the same. The operator continues to have the right to appeal a decision made by either the Superintendent or the Regional Director. The operator now must exhaust these remedies before the NPS decision is considered a final agency action that is subject to review under the Administrative Procedure Act (APA).

The proposed rule now describes the first step of the process as a request for "reconsideration," rather than an appeal, since it is directed to the same official who issued the original decision. The proposed rule also includes other clarifications of the existing language, makes editorial corrections, and reorganizes the sequence of some of the paragraphs.

Consistent with the APA, proposed § 9.193(a) would provide that during the reconsideration and appeals process the NPS's decision will be suspended and the decision will not become effective until the completion of the appeals process. Proposed § 9.193(b) addresses suspension of operations due to emergencies that pose an immediate threat of injury to injury to federally owned or controlled lands or waters.

| Proposed rule                           | Existing regulation |
|---|---------------------|
| § 9.200<br><i>Public Participation.</i> | § 9.52.             |

**§ 9.200—Public Participation**

The proposed rule renames the "Public Inspection of Documents" section to "Public Participation."

Existing § 9.52(a) requires a Superintendent to publish a notice in a local newspaper of a request to conduct non-federal oil and gas operations whether or not a complete plan of operations is ever submitted by an

operator. Existing § 9.52(b) further requires a Superintendent to publish a notice in the **Federal Register** of receipt of a plan of operations. The proposed rule eliminates the public notice steps currently required under existing § 9.52(a) and (b) and replaces them with a more efficient public involvement and review process.

The proposed rule retains 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 NPS decision maker. The NPS has also included proposed provisions that allow an operator engaged in hydraulic fracturing operations to withhold chemical formulations that are deemed to be a trade secret.

| Proposed rule                          | Existing regulation |
|--|---------------------|
| § 9.210 <i>Information Collection.</i> | <i>New Section.</i> |

**§ 9.210—Information Collection**

See Paperwork Reduction Act discussion below.

**Renumbering and Redesignation of Subpart D**

As a result of the new organization and section numbering in the proposed subpart B, it is necessary to renumber the sections in the existing part 9, subpart D. In addition, because we see no reason to continue to reserve subpart C, the proposed rule redesignates the existing subpart D as subpart C. The proposed rule makes no substantive changes to these provisions.

**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 in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs 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 proposed rule in a manner consistent with these requirements. As noted above, we have carefully considered the BLM regulations to ensure consistency to the greatest extent possible between provisions of these proposed NPS regulations that relate to hydraulic fracturing, and the recent BLM regulations. The NPS 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, 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 (RFA)**

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 *Cost-Benefit and Regulatory Flexibility Analyses: U.S. Department of the Interior, National Park Service for Proposed Revisions to 36 CFR Part 9, Subpart B* which can be viewed at [http://www.nature.nps.gov/geology/oil\\_and\\_gas/9b\\_index.cfm](http://www.nature.nps.gov/geology/oil_and_gas/9b_index.cfm).

**Small Business Regulatory Enforcement Fairness Act (SBREFA)**

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

- (a) Does 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) Does 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 upon the cost-benefit and regulatory flexibility analysis found in the report entitled *Cost-Benefit and Regulatory Flexibility*

*Analyses: U.S. Department of the Interior, National Park Service for Proposed Revisions to 36 CFR Part 9, Subpart B* which can be viewed at [http://www.nature.nps.gov/geology/oil\\_and\\_gas/9b\\_index.cfm](http://www.nature.nps.gov/geology/oil_and_gas/9b_index.cfm).

**Unfunded Mandates Reform Act (UMRA)**

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. It addresses use of national park lands, and imposes 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)**

The proposed rule does not take private property or authorize the taking of private property. Moreover, NPS believes that implementation of the proposed rule is not likely to result in a taking of private property. Accordingly, NPS believes that the proposed rule does not require the preparation of a takings implications assessment under Executive Order 12630.

The proposed rule would update regulations that have been in effect since 1979. It would update various provisions of the existing regulations in a manner that is consistent with current industry standards and technological capabilities, prevailing industry and investor expectations, and the most recent developments in regulatory and takings law. It would authorize NPS to recover its legitimate permit-processing and monitoring costs and to charge operators for privileged access across federal lands (*i.e.*, access that is not a legal right incident to the mineral estate). Although it would potentially increase the amount of financial assurance that operators must post, it would do so only to a level commensurate with the cost of restoring the federally owned surface estate.

The proposed rule would extend the applicability of the 9B regulations to most currently exempt operations located within park boundaries. During the 36 years that the existing regulations have been in place, however, NPS has never disapproved a submitted plan of operations and no mineral owner or operator has ever filed a claim asserting that implementation of the regulations has resulted in a taking of private property. Moreover, as described above, the proposed rule would update the

existing regulations in a manner consistent with current industry standards and technological capabilities. Accordingly, NPS does not believe that the application of the proposed rule to currently exempt operations is likely to result in a taking. The proposed rule would continue to allow operators reasonable access across federally owned surface to develop non-federal mineral rights. No other private property is affected. The proposed rule would bring outdated provisions into line with modern regulatory practice and, NPS believes, is a reasonable exercise of its regulatory authority.

Finally, the regulatory text will continue to state (as do the existing regulations) that it is not intended to result in a taking. The existing regulations also contain a second provision that expressly applies the lower of the two standards of review in the event of a possible taking. Because the proposed rule would contain only one standard of review (in an effort to simplify the rule), such a provision no longer appears appropriate. NPS has never actually needed to invoke that second provision, nor has it ever failed to provide final approval for a plan of operations that has been sought. Under the proposed rule, NPS would retain discretion to make individual permit decisions that will avoid a taking if an unexpected problem should arise.

For the foregoing reasons, NPS believes that a takings implications assessment is not required.

#### **Federalism (Executive Order 13132)**

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. It addresses use of national park lands, and imposes 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 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 and that consultation under the Department's tribal consultation policy is not required. Nonetheless, NPS has consulted with all federal tribes traditionally associated with Category 1 parks, which have current oil and gas operations, and Category 2 parks, which do not have active operations, but have potential for future operations.

#### **Paperwork Reduction Act of 1995 (PRA)**

This proposed rule contains information collection requirements that we are submitting to the Office of Management and Budget (OMB) for review and 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.

OMB has reviewed and approved the current information collection requirements associated with non-Federal oil and gas rights in national parks and assigned OMB Control Number 1024-0064, which expires March 31, 2016. We are asking OMB to assign a new OMB Control Number for the information collection requirements in this proposed rule. If OMB approves this request, we plan to keep the new number for subpart B requirements after we publish the final rule. We will delete the burden associated with subpart B from OMB Control No. 1024-0064.

We are proposing to collect the following information under 36 CFR Part 9, Subpart B associated with non-Federal oil and gas operations within units of the National Park System.

#### **Previously Exempt Operations (§§ 9.50 Through 9.53)**

Previously exempt operators must submit the following information to the NPS:

- Brief description of the current operations and any anticipated changes to the current operations.
- Documentation showing the right to operate within an NPS unit.

- State well identification permit number or American Petroleum Institute (API) well number.
- Maps delineating the area of operations and the area of surface disturbance and equipment layout within the area of operations.
- Spill Control Environmental Preparedness Plan.
- Documentation of the current operating methods, surface equipment, downhole well construction and completion, materials produced or used, and monitoring methods.
- Description of how the operation will meet NPS operating standards.
- Description of procedures to be used and cost estimates for well plugging and surface reclamation.
- Results of any necessary reconnaissance surveys.

#### **Temporary Access Permits (9.60 Through 9.63)**

##### *Application for Temporary Access Permit*

To gather necessary background information for an Operations Permit, the operator will need to obtain a Temporary Access permit by submitting the following information to the NPS:

- Brief description of the intended future operation.
- Demonstration of the right to operate.
- Contact information for the person responsible for the overall management of the proposed operations.
- Contact information and qualifications of all specialists responsible for conducting the reconnaissance surveys.
- Map delineating the proposed reconnaissance survey area.
- Description of proposed means of access and routes to the survey area; and a description of the survey methods.

##### *Extension of Temporary Access Permit*

To extend the term of a Temporary Access Permit, operators must submit a written request that explains why the extension is necessary.

#### **Accessing Oil and Gas Rights From a Surface Location Outside the Park Boundary (9.70 Through 9.73)**

##### *Application for Exemption*

This proposed rule allows operators to apply for an exemption from the operations permit requirement of the regulations if they directionally drill from a surface location outside an NPS unit to reach a bottom hole located within NPS boundaries. To apply for an exemption, NPS requires the following information.

- Names and addresses of the operator; the mineral owner; and any



agents, assignees, designees, lessees, contractors, employees, or other representatives of the operator responsible for the overall management of the proposed operations.

- Documentation demonstrating the legal right to operate in an NPS unit.
- Contact information for the operator's representative responsible for field supervision of the proposed operations and for emergency response for the proposed operations.
- Maps and plats to scale showing the boundaries of each of the mineral tracts that are relevant to the proposed operations within the NPS unit boundary.
- Maps and plats to scale showing all proposed surface uses (well site, access route, flowlines, production facilities) that occur outside the NPS unit.
- Description, including depths, thicknesses, and properties of geologic horizons between the target zone and the base of the deepest aquifer.
- Drilling plan, including directional-drilling program, horizontal distance along the wellbore's path from well's surface location to the park boundary, depth at which wellbore crosses NPS unit boundary, and timeline for operations.
- Casing, cementing, and mud programs.
- Stimulation programs.
- Well plugging and abandonment program.
- If hydraulic fracturing is proposed, information required in § 9.89.

#### *Notification of Change*

Within 30 days, operators must notify NPS if the method of operation or environmental conditions of operation change.

#### **Operations Permit: Application Contents (§§ 9.80 Through 9.90)**

##### *All Applications*

All applications for an Operations Permit, must contain the following information:

- Documentation demonstrating the right to operate within an NPS unit.
- Contact information for the operator; the mineral owner; any agents, assignees, designees, contractors, or other representatives of the owner; and the operator's representative responsible for overall management, field supervision, and emergency response for the proposed operation.
- Existing condition and proposed area of operations, including all information required by § 9.84.
- Reclamation Plan, including (1) a description of the specific equipment and methods used to meet the operating

standards for reclamation (§ 9.116); and (2) a breakdown of the estimated costs that a third party would charge to complete reclamation as proposed in the reclamation plan.

- Use of water, including (1) the source, quantity, access route, and transportation/conveyance method for all water to be used in access road and pad construction, well drilling, stimulation, and production; and (2) estimations of any anticipated waste water volumes generated and how they will be managed (*i.e.*, handled, temporarily stored, disposed, recycled, reused) throughout stages of the operation.
- Environmental condition and mitigation actions, including all information required in § 9.85.
- Spill control and emergency preparedness plan, including all information required by § 9.86.

#### *Additional Information*

*Geophysical Exploration (§ 9.87).* If you are proposing geophysical exploration, the application must include:

- Number of crews and number of workers in each crew.
- Names and depths of geologic zones targeted for imaging.
- Description of the acquisition methods, including the procedures, specific equipment you will use, and energy sources (*e.g.*, explosives or vibroseis trucks).
- Methods of access along each survey line for personnel, materials, and equipment.
- 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.

• Map showing the positions of each survey line including all source and receiver locations as determined by a locational survey, and including shotpoint offset distances from wells, buildings, other infrastructure, and areas the NPS has indicated to you as environmentally sensitive areas.

*Drilling Operations (§ 9.88).* If you are proposing drilling operations, the application must include:

- 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.
- Drill-rig and equipment layout, including rig components, fuel tanks, testing equipment, support facilities,

storage areas, and all other well-site equipment and facilities.

- Drilling program, including hole size for each section and the directional program, if applicable.
- Proposed drilling depth and the estimated depths and names of usable water, brine, hydrocarbon, geothermal, or other mineral-bearing zones.
- Type and characteristics of the proposed mud systems.
- Casing program, including the size, grade, weight, and setting depth of each string.
- Cementing program, including downhole location of any stage equipment, cement types, volumes, and additives to be used, and a description of pressure tests and cement verification techniques used that will be run to evaluate cement placement and integrity.
- Minimum specifications for pressure control equipment function and pressure testing frequency and the blowout preventer stack arrangement.
- Proposed logging, coring, and testing programs. Proposed completion program, including completion type (open-hole, perforated, slotted liner, etc.).
- Procedures, including considerations for well control.
- Description of the equipment, materials, and procedures proposed for well plugging, including plug depths, plug types, and minimum mud weight.

*Well Simulation Operations (§ 9.89).* If you are proposing well simulation operations, including hydraulic fracturing, the application must include:

- Geologic names, a geologic description, and the estimated depths (measured and true vertical) to the top and bottom of the formation into which hydraulic fracturing fluids are to be injected. The estimated minimum vertical distance between the top of the fracture zone and the nearest usable water zone, and the measured depth of the proposed perforated or open-hole interval.
- Estimated depths (measured and true vertical) to the top and bottom of the confining zone(s). Include a map showing the location, orientation, and extent of any known or suspected faults or fractures within one-half mile (horizontal distance) of the wellbore trajectory that may transect the confining zone(s).
- Map showing all existing wellbore trajectories, regardless of type, within one-half mile (horizontal distance) of any portion of the wellbore into which hydraulic fracturing fluids are to be injected. The true vertical depth of each wellbore identified on the map must be indicated.



- Steps to be taken before treatment to verify mechanical integrity of all downhole tubulars and tools and cement quality, including pressure tests and cement bond logs (or other logs acceptable to the Superintendent) demonstrating that the occurrences of usable water zones have been isolated to protect them from contamination.

- Detailed description of the proposed well-stimulation design, including:

- (1) Proposed stimulation fluid, including, but not limited to, the base fluid and each additive by trade name, and purpose of additive.

- (2) Proposed proppant system.

- (3) Estimated total volume of fluid to be used.

- (4) Anticipated surface treating pressure range.

- (5) Maximum anticipated surface pressure that will be applied during the hydraulic fracturing process.

- (6) Trajectory of the wellbore into which hydraulic fracturing fluids are to be injected and the estimated direction and length of the fractures that will be propagated and a notation indicating the true vertical depth of the top and bottom of the fractures; and

- (7) Any microseismic monitoring planned or proposed in conjunction with well stimulation.

- Source and location of water supply, such as reused or recycled water, rivers, creeks, springs, lakes, ponds, and water supply wells, and the source and location of water supply, such as reused or recycled water, rivers, creeks, springs, lakes, ponds, and water supply wells.

- Storage, mixing, pumping, and control equipment needed to perform the stimulation.

- Information on recovered fluids, including:

- (1) Estimated volume of stimulation fluids to be recovered during flow back.

- (2) Proposed methods of handling the recovered fluids including any onsite treatment for re-use of fluids in other stimulation activities.

- (3) Proposed disposal method of the recovered fluids, including, but not limited to, injection, hauling by truck, or transporting by pipeline.

*Production Operations (§ 9.90).* If you are proposing to produce a well, you must submit all of the following information:

- Dimensions and the to-scale layout of the wellpad, 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 pick-up points; gas compressor, including size and type (if applicable); and any other well site equipment.

- Size, grade, weight, and setting depth of all casing and tubing strings; cementing history; type and size of packers and subsurface flow control devices; top and bottom depths of each completed interval; and method of completion.

- Well history, including completions, stimulations, servicing, and workovers.

- Minimum specifications for pressure-control equipment, function, and pressure-testing frequency.

- Method and means used to transport produced oil and gas, including vehicular transport; flowline and gathering line construction; operation; pipe size; operating pressure; cathodic protection methods; surface equipment use; surface equipment location; maintenance procedures; maintenance schedules; pressure detection methods; and shutdown procedures.

- Road and wellpad 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 exotic species.

- Storm water management plan on the well site.

- Produced water storage and disposal plan.

- Procedures proposed for well plugging, the depths and the types of plugs, and minimum mud weight.

#### **Operating Standards (§§ 9.110–9.118)**

*Simulation operations (§ 9.118(a)).*

You must:

- Not begin injection activities before you demonstrate the mechanical integrity of all surface and downhole tubulars and equipment to differential pressures equal to at least those calculated at the maximum anticipated treating pressure. Continuously monitor and record the treating pressures and all annular pressures before, during, and after the treatment to ensure that treatment materials are directed to the intended zone.

- If mechanical integrity is lost during the treatment, immediately cease the operation and notify the Superintendent as soon as feasible, but no later than 24 hours after the incident.

- Within 15 days after the occurrence, submit to the Superintendent a report containing all details pertaining to the incident, including corrective actions taken.

*Production (§ 9.118(b)).* You must:

- Monitor producing conditions to document maintenance of mechanical integrity of both surface and subsurface equipment.

- Identify wells and related facilities by a sign, which must remain in place until the well is plugged and abandoned and the related facilities are closed. The sign 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.

#### **General Terms and Conditions (§§ 9.120 Through 9.122)**

- Provide the NPS an affidavit, 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 NPS is true and correct. (§ 9.120(c)).

- Third party monitor will report to NPS on compliance with permit. (§ 9.121(b)(2)).

- Notify the Superintendent of any accidents involving serious personal injury or death and of any fires or spills on the site within 24 hours after the accident occurs. (§ 9.121(c)).

- Submit a full written report on the accident to the Superintendent within 90 days after the accident occurs. (§ 9.121(c)).

- Notify the Superintendent within 24 hours after the discovery of any cultural or scientific resource you encounter that might be altered or destroyed by your operation. (§ 9.121(d)).

- Submit reports or other information necessary to verify compliance with your permit or with any provision of this subpart. (§ 9.121(d)).

- If your operations include hydraulic fracturing, you must provide the Superintendent with a report including all of the information below within 30 days after the completion of the last stage of hydraulic fracturing operations for each well (§ 9.122):

- (a) 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).

(b) The actual source(s) and location(s) of the water used in the hydraulic fracturing fluid;

(c) The maximum surface pressure and rate at the end of each stage of the hydraulic fracturing operation and the actual flush volume.

(d) The actual, estimated, or calculated fracture length, height, and direction.

(e) The actual measured depth of perforations or the open-hole interval.

(f) Actual volume of stimulation fluids recovered during flow back, including a description of how the volumes were measured or calculated.

(g) The following information concerning the handling of fluids recovered, covering the period between the commencement of hydraulic fracturing and the implementation of the approved permit for the disposal of produced water under NPS requirements:

(1) Methods of handling the recovered fluids, including, but not limited to, transfer pipes and tankers, holding pond use, re-use for other stimulation activities, or injection; and

(2) Disposal method of the recovered fluids, including, but not limited to, the percent injected, the percent stored at an off-lease disposal facility, and the percent recycled.

(h) Continuous monitoring records of annulus pressure at the bradenhead and other annular pressures that document pressures before, during, and after injection operations.

#### **Financial Assurance (§§ 9.140 Through 9.144)**

All operators are required to post adequate financial assurance with the NPS and are required to submit the following documentation to the NPS:

- Proof of financial assurance in a form acceptable to the Regional Director and payable upon demand.

- If necessary, an adjustment to the financial assurance amount because of any circumstance that increases or decreases the estimated costs.

#### **Modification to an Operation (§ 9.150)**

Operators may request or we may require an operator to modify their operations. To request a modification to an approved permit, operators must provide written notice to the Superintendent describing the modification and why it is needed.

#### **Change of Operator (§§ 9.160 and 9.161)**

If an operator transfers its operation to a new operator, both the old and new

operator must provide information to the NPS.

*Information Current Owner Must Provide.* When current operator transfers operations, current operator must:

- Notify the Superintendent in writing within 30 calendar days after the date the new owner acquires the rights to conduct operations providing:

(a) Names and addresses of the person or entity conveying the right and the person or entity acquiring the right.

(b) Effective date of transfer.

(c) Description of the rights, assets, and liabilities being transferred and which ones, if any, are being reserved by the previous owner.

(d) Written acknowledgement from the new owner that the contents of the notification are true and correct.

#### **Information New Operator Must Provide**

- Adopt and agree in writing to conduct operations in accordance with all terms and conditions of the previous operator's operations permit;

- File financial assurance with us that is acceptable to the Regional Director and made payable to the NPS.

If the previous operator was granted an exemption for accessing oil and gas rights from a surface location outside the park boundary, you must provide to the Superintendent:

- Documentation demonstrating that you hold the right to operate within an NPS unit;

- The names and addresses of the operator; the mineral owner; any agents, assignees, designees, lessees, or other representatives of the operator; the operator's representative responsible for the overall management of the proposed operations; the operator's representative responsible for field supervision of the proposed operations; and the operator's representative responsible for emergency response for the proposed operations.

#### **Well Plugging (§§ 9.170 and 9.171)**

An operator may apply for either an operations permit or a modification to its approved operations permit to maintain its well in a shut-in status for up to 5 years. The application must include the following information:

- Explanation of why the well is shut-in or temporarily abandoned and your future plans for utilization.

- Demonstration of the mechanical integrity of both surface and downhole equipment such that there is no migration of fluid from any formation in which it originally occurred or from the surface to the well.

- Description of the manner in which the operator well, equipment, and area of operations will be maintained.

#### **Reconsideration and Appeals (§§ 9.190 Through 9.194)**

To appeal an NPS decision, the operator must submit a written statement describing the alleged factual or legal errors in the original decision and requesting that the Regional Director reconsider the decision.

#### **Public Participation (§ 9.200)**

An operator may request that information required to be reported under these regulations concerning chemical formulations that are deemed to be trade secrets be withheld from disclosure. To make this request the operator must:

- Identify the owner of the withheld information and provide the name, address and contact information for a corporate officer, managing partner, or sole proprietor of the owner of the information.

- Identify the Federal statute or regulation that would prohibit the NPS from publicly disclosing the information if it were in the NPS's possession.

- Affirm 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.

- Affirm that the information is not publicly available.

- Affirm that the information is not required to be publicly disclosed under any applicable laws and policies local, State, tribal, or Federal law;

- Affirm 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;

- Affirm 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
- Affirm that the information is not readily apparent through reverse engineering with publicly available information.

*Title:* Non-Federal Oil and Gas Rights, 36 CFR part 9, subpart B.

*OMB Control Number:* 1024-XXXX.

*Service Form Number:* None.

*Type of Request:* Request for a new OMB control number.

*Description of Respondents:* Businesses.

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

Frequency of Collection: On occasion.

| Activity/requirement  | Estimated number of annual responses | Completion time per response (hours) | Estimated total annual burden hours |
|---|--------------------------------------|--------------------------------------|-------------------------------------|
| Previously Exempt Operations (§§ 9.50–9.53) .....   | 106                                  | 10                                   | 1,060                               |
| Application for Temporary Access Permit (§§ 9.60–9.63) .....  | 5                                    | 15                                   | 75                                  |
| Amendment of Temporary Access Permit .....  | 1                                    | 1                                    | 1                                   |
| Accessing Oil and Gas Rights From a Surface Location Outside the Park Boundary—Application for Exemption (§§ 9.70–9.73) ..... | 3                                    | 80                                   | 240                                 |
| Accessing Oil and Gas Rights From a Surface Location Outside the Park Boundary—Notice of change (§§ 9.70–9.73) .....          | 1                                    | 2                                    | 2                                   |
| Operations Permit Operations Permit (New Operations):   |                                      |                                      |                                     |
| Application Contents—(§§ 9.80–9.90) .....   | 5                                    | 140                                  | 700                                 |
| Operating Standards—Stimulation Operations (§ 9.118(b)):  |                                      |                                      |                                     |
| Demonstrate mechanical integrity .....  | 5                                    | 4                                    | 20                                  |
| Record treating pressures and all annular pressures .....   | 5                                    | 4                                    | 20                                  |
| Notify Superintendent if mechanical integrity is lost .....   | 1                                    | 1                                    | 1                                   |
| Report of accident .....  | 2                                    | 1                                    | 2                                   |
| Operating Standards—Production (§ 9.118(c)):  |                                      |                                      |                                     |
| Document maintenance of mechanical integrity .....  | 534                                  | 2                                    | 1,068                               |
| Signage to identify wells .....   | 5                                    | 4                                    | 20                                  |
| General Terms and Conditions (§§ 9.120–9.122):  |                                      |                                      |                                     |
| Affidavit that proposed operations are in compliance with all laws and that information submitted to NPS is accurate .....    | 111                                  | 1                                    | 111                                 |
| Third-Party Monitor Report .....  | 60                                   | 17                                   | 1,020                               |
| Notification—Accidents involving Serious Personal Injuries/Death and Fires/Spills .....                                       | 2                                    | 1                                    | 2                                   |
| Written Report—Accidents Involving Serious Injuries/Deaths and Fires/Spills .....   | 2                                    | 16                                   | 32                                  |
| Notification—Discovery of any cultural or scientific resources .....  | 1                                    | 1                                    | 1                                   |
| Report—Verify Compliance with Permits .....   | 534                                  | 4                                    | 2,136                               |
| Reporting for Hydraulic Fracturing .....  | 1                                    | 2                                    | 2                                   |
| Financial Assurance (§§ 9.140–9.144) .....  | 5                                    | 1                                    | 5                                   |
| Modification to an Operation (§ 9.150) .....  | 1                                    | 16                                   | 16                                  |
| Change of Operator (§§ 9.160–9.161) .....   | 5                                    | 8                                    | 40                                  |
| Well Plugging (§§ 9.170–9.171) .....  | 33                                   | 14                                   | 462                                 |
| Reconsideration and Appeals (§§ 9.190–9.194) .....  | 1                                    | 16                                   | 16                                  |
| Public Participation (§ 9.200) .....  | 1                                    | 4                                    | 4                                   |
| <b>Total</b> .....  | <b>1,430</b>                         | <b>.....</b>                         | <b>7,056</b>                        |

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB–OIRA. See **ADDRESSES** section for instructions on submitting comments.

#### National Environmental Policy Act of 1969 (NEPA)

This rule constitutes a major Federal action with the potential to significantly affect the quality of the human environment. We have prepared the DEIS under the requirements of NEPA. The DEIS will publish shortly after this proposed rule and be available online at <http://parkplanning.nps.gov/DEIS9B>, by clicking on the link entitled “Document List.”

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

This proposed 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 Regulation

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 this proposed 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 NPS staff in the Geologic Resources Division, parks, and field offices, with assistance from the Division of Jurisdiction, Regulations and Special Park Uses.

## 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 midnight of the close of the comment period. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

We are particularly interested in comments concerning:

1. Substantive differences between NPS'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 not applying this rule to inholdings, and to operators' surface operations when accessing oil and gas rights inside an NPS unit from a surface location outside the park boundary.
3. Whether relevant guidance presently, or planned to be, included in the NPS 9B Operators Handbook should instead be included in this rule.
4. Whether the performance and operating standards are clear and certain in their purpose, including §§ 9.30(a), 9.103(a), 9.110(c), and 9.118.
5. Alternative approaches to removing public financial exposure including multi-well blanket bonding, the establishment of industry provided plugging fund, or increasing the financial assurance cap to a fixed amount higher than \$200,000. Please note that these alternatives were considered but dismissed from further analysis in the DEIS because they do not meet a fundamental purpose of the rulemaking, which is to ensure that bonding amounts are sufficient to meet reclamation needs and do not result in taxpayer liability.

## 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

### 36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements

### 36 CFR Part 9

National parks, Oil and gas exploration, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR parts 1 and 9 as follows:

## PART 1—GENERAL PROVISIONS

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

**Authority:** 54 U.S.C. 100101, 100751, 320102.

- 2. Revise § 1.3 to read as follows:

### § 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in parts 1 through 7, part 9 subpart B, and parts 12 and 13 of this chapter, within a park area not covered in paragraphs (b) or (c) of this section, shall be punished by a fine as provided by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

(b) A person who knowingly and willfully violates any provision of the regulations contained in parts 1 through 5, 7, part 9 subpart B, and part 12 of this chapter, within any national military park, battlefield site, national monument, or miscellaneous memorial transferred to the jurisdiction of the Secretary of the Interior from that of the Secretary of War by Executive Order No. 6166, June 10, 1933, and enumerated in Executive Order No. 6228, July 28, 1933, shall be punished by a fine as provided by law, or by imprisonment for not more than 3 months, or by both.

**Note:** These park areas are enumerated in a note under 5 U.S.C. 901.

(c) A person convicted of violating any provision of the regulations contained in parts 1 through 7, and part 9 subpart B of this chapter, within a park area established pursuant to the Act of August 21, 1935, 49 Stat. 666, shall be punished by a fine as provided by law and shall be adjudged to pay all costs of the proceedings. 54 U.S.C. 320105.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section, a person convicted of violating § 2.23 of this chapter shall be punished by a fine as provided by law. 16 U.S.C. 6811.

## PART 9—MINERALS MANAGEMENT

- 3. Revise subpart B to read as follows:

### Subpart B—Non-Federal Oil and Gas Rights

#### Purpose and Scope

Sec.

- 9.30 What is the purpose and scope of this subpart?
- 9.31 When does this subpart apply to me?
- 9.32 What authorization do I need to conduct operations?
- 9.33 If am already operating under an NPS authorization, what do I need to do?

#### Definitions

- 9.40 What do the terms used in this subpart mean?

#### Previously Exempt Operations

- 9.50 Do I need an operations permit for my previously exempt operations?
- 9.51 How do I apply for my operations permit?
- 9.52 What will the NPS do with my application?
- 9.53 May I continue to operate while the NPS reviews my application?

#### Temporary Access Permits

- 9.60 When do I need a temporary access permit?
- 9.61 How do I apply for a temporary access permit?
- 9.62 When will the NPS grant a temporary access permit?
- 9.63 How long will I have to conduct my reconnaissance surveys?

#### Accessing Oil and Gas Rights From a Surface Location Outside the Park Boundary

- 9.70 Do I need an operations permit for accessing oil and gas rights from outside the park boundary?
- 9.71 What information must I submit to the NPS?
- 9.72 How will the NPS act on my submission?
- 9.73 If I don't need an operations permit, are there still requirements that I must I meet?

#### Operations Permit: Application Contents

- 9.80 Who must apply for an operations permit?
- 9.81 May I use previously submitted information?
- 9.82 What must I include in my application?
- 9.83 What information must be included in all applications?
- 9.84 Existing conditions.
- 9.85 Environmental conditions and mitigation actions.
- 9.86 Spill control and emergency preparedness plan.
- 9.87 What additional information must be included if I am proposing geophysical exploration?
- 9.88 What additional information must be included if I am proposing drilling operations?
- 9.89 What additional information must be included if I am proposing well stimulation operations, including hydraulic fracturing?

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

#### Operations Permit: Application Review Process

- 9.100 How will NPS process my application?
- 9.101 How will the NPS conduct initial review?
- 9.102 How will the NPS conduct formal review?
- 9.103 What standards must be met to approve my application?
- 9.104 What final actions may the Regional Director take on my Operations Permit application?
- 9.105 What is the approval process for operations in Big Cypress National Preserve?

#### Operating Standards

- 9.110 What are the purposes and functions of NPS operating standards?
- 9.111 What general facility design and management standards must I meet?
- 9.112 What hydrologic standards must I meet?
- 9.113 What safety standards must I meet?
- 9.114 What lighting and visual standards must I meet?
- 9.115 What noise reduction standards must I meet?
- 9.116 What reclamation and protection standards must I meet?
- 9.117 What additional operating standards apply to geophysical operations?
- 9.118 What additional operating standards apply to drilling, stimulation, and production operations?

#### General Terms and Conditions

- 9.120 What terms and conditions apply to all operators?
- 9.121 What monitoring and reporting is required for all operators?
- 9.122 What additional reports must I submit if my operation includes hydraulic fracturing?

#### Access to Oil and Gas Rights

- 9.130 May I cross Federal property to reach the boundary of my mineral right?
- 9.131 Will the NPS charge me a fee for access?
- 9.132 Will I be charged a fee for emergency access to my operations?

#### Financial Assurance

- 9.140 Do I have to provide financial assurance to the NPS?
- 9.141 How does the NPS establish the amount of financial assurance?
- 9.142 Will the NPS adjust my financial assurance?
- 9.143 When will the NPS release my financial assurance?
- 9.144 Under what circumstances will I forfeit my financial assurance?

#### Modification to an Operation

- 9.150 Can my approved permit be modified?

#### Change of Operator

- 9.160 What are my responsibilities if I transfer my operations?

9.161 What must I do if operations are transferred to me?

#### Well Plugging

- 9.170 When must I plug my well?
- 9.171 Can I get an extension to the well plugging requirement?

#### Prohibitions and Penalties

- 9.180 What acts are prohibited under this subpart?
- 9.181 What enforcement actions can the NPS take?
- 9.182 How do violations affect my ability to obtain a permit?

#### Reconsideration and Appeals

- 9.190 Can I request reconsideration of NPS decisions?
- 9.191 How does the NPS process my request for reconsideration?
- 9.192 Can I appeal the Regional Director's decision?
- 9.193 Will filing a request for reconsideration or appeal stop the NPS from taking action under this subpart?
- 9.194 What if the original decision was made by the Superintendent?

#### Public Participation

- 9.200 How can the public participate in the approval process?

#### Information Collection

- 9.210 Has the Office of Management and Budget approved the information collection requirements?

#### Subpart B—Non-Federal Oil and Gas Rights

**Authority:** 16 U.S.C. 230a(a)(4), 459d-3, 460cc-2(i), 460ee(c)(4), 698c(b)(2), 698i(b)(2), and 698m-4; 18 U.S.C. 3571 and 3581; 31 U.S.C. 9701; 54 U.S.C. 100101, 100751, and 103104.

#### Purpose and Scope

##### § 9.30 What is the purpose and scope of this subpart?

(a) This subpart ensures that operators exercising non-federal oil and gas rights within an NPS unit use technologically feasible, least damaging methods to:

(1) Protect federally owned or administered lands, waters, or resources of NPS units;

(2) Protect NPS visitor uses or experiences, or visitor or employee health and safety; and

(3) Protect park resources and values under the statute commonly known as the NPS Organic Act;

(b) This subpart applies to all operators conducting non-federal oil or gas operations on lands or waters within an NPS unit, regardless of the ownership or jurisdictional status of those lands or waters.

(c) We do not intend for this subpart to result in a taking of a property interest. The purpose of this subpart is to reasonably regulate operations

affecting federally owned or administered lands, waters, and resources of NPS units, visitor uses and experiences, and visitor and employee health and safety.

##### § 9.31 When does this subpart apply to me?

(a) This subpart applies to you if you are an operator who conducts or proposes to conduct non-federal oil or gas operations.

(b) If you were operating outside of an NPS unit and your operation has been included within an existing NPS unit as a result of a change to the boundary, or included within a newly established NPS unit, you are subject to §§ 9.50 through 9.53.

(c) If you were operating under an exemption because your operation accessed oil and gas rights inside the park boundary from a surface location outside the park boundary, and your surface location has been included within an existing NPS unit as a result of a change to the boundary, or included within a newly established NPS unit, you are subject to §§ 9.50 through 9.53.

##### § 9.32 What authorization do I need to conduct operations?

(a) Except as provided in §§ 9.70 through 9.73, you must obtain a temporary access permit under §§ 9.60 through 9.63 or an operations permit under §§ 9.80 through 9.90 before starting operations.

(b) You must demonstrate that you have the right to operate in order to conduct activities within an NPS unit.

##### § 9.33 If I am already operating under an NPS authorization, what do I need to do?

(a) If you already have an NPS-approved plan of operations, you may continue to operate according to the terms and conditions of that approval, subject to the provisions of this subpart. For purposes of this subpart, we will consider your approved plan of operations to be either a temporary access permit or operations permit.

(b) This section applies to you if we have granted you an exemption to the plan of operations requirement because your operation accesses oil and gas rights inside a park boundary from a surface location outside the park's boundary. You may continue to operate under the exemption provided that your operations comply with the general terms and conditions of §§ 9.120 through 9.122. You are also subject to the prohibitions and penalties in §§ 9.180 through 9.182.

## Definitions

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

In addition to the definitions in 36 CFR 1.4, the following definitions apply to this subpart:

*Area of operations* means lands or waters within an NPS unit on which operations are approved to be carried out, including roads or other areas where you are authorized to exercise the oil and gas rights.

*Contaminating substance* means any toxic or hazardous substance which is used in or results from the conduct of operations and is listed under the Clean Water Act at 40 CFR part 116, the Resource Conservation and Recovery Act at 40 CFR part 261, or the Hazardous Materials Transportation Act at 49 CFR part 172. This includes, but is not limited to, explosives, radioactive materials, brine waters, formation waters, petroleum products, petroleum by-products, and chemical compounds used for drilling, production, processing, well testing, well completion, and well servicing.

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

*NPS unit* has the same meaning as "National Park System (Park Area)" defined at 36 CFR 1.4(a).

*Oil* means any viscous combustible liquid hydrocarbon or solid hydrocarbon substance easily liquefiable on warming that occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas without resort to manufacturing process.

*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 an NPS unit.

(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; 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 the park under authority of a deeded or other right-of-way.

*Operations permit* means an NPS special use permit authorizing an operator to conduct operations in an NPS unit. An operations permit is subject to cost recovery under 54 U.S.C. 103104.

*Operator* means any person or entity, agent, assignee, designee, lessee, or representative thereof who is conducting operations or proposing to exercise non-federal oil and gas rights within the boundaries of an NPS unit.

*Owner* means the person that holds title to non-federal oil and gas minerals.

*Previously exempt operations* means those operations being conducted in an NPS unit without an approved permit from the NPS as of the effective date of these regulations. This term does not include operations where, before the effective date of these regulations, the NPS granted the operator an exemption to the plan of operations requirement because the operation accessed oil and gas rights inside the park from a surface location outside the park.

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

(1) A reconnaissance survey 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) A reconnaissance survey 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 an NPS unit.

*Technologically feasible, least damaging methods* are those that we determine, on a case-by-case basis, to be most protective of park resources and values 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 an NPS special use permit authorizing an operator to access that operator's proposed area of operations to conduct reconnaissance surveys necessary to collect basic information necessary to prepare an operations permit application. A temporary access permit is subject to cost recovery under 54 U.S.C. 103104.

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

*Usable water* means an aquifer or its portion which supplies any public water system; or which 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 which 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; contaminated soil; synthetic materials; man-made structures or equipment; or native and nonnative materials.

*We* and *us* mean the National Park Service.

*You* and *I* mean the operator, unless otherwise specified or indicated by the context.

## Previously Exempt Operations

### § 9.50 Do I need an operations permit for my previously exempt operations?

Yes. You must obtain an NPS operations permit in accordance with §§ 9.80 through 9.90.

### § 9.51 How do I apply for my operations permit?

Within 90 days after [effective date of the final rule] or within 90 days after the effective date of a boundary change, or establishment of a new NPS unit, as applicable, you must submit the following to the Superintendent of the NPS unit in which you propose to continue to conduct operations:

(a) A brief description of the current operations and any anticipated changes to the current operations;

(b) Documentation demonstrating that you hold the right to operate within an NPS unit;

(c) The State well-identification permit number or American Petroleum Institute (API) well number;

(d) Maps to scale that clearly delineate your proposed area of operations as of [effective date of the final rule] or the effective date of a boundary change, or establishment of a new NPS unit, as applicable, and that identify the area of surface disturbance and equipment layout within your proposed area of operations;

(e) A spill control environmental preparedness plan as required by § 9.86;

(f) Documentation of the current operating methods, surface equipment, downhole well construction and completion, materials produced or used, and monitoring methods;

(g) A description of how your proposed operation will meet each applicable operating standard in this subpart;

(h) A description of the procedures to be used and cost estimates for well plugging and surface reclamation; and

(i) The results of any reconnaissance surveys you have conducted to be used by the Superintendent to identify resource protection measures in your operations permit.

#### **§ 9.52 What will the NPS do with my application?**

The NPS will review your application and take action under §§ 9.100 through 9.104.

#### **§ 9.53 May I continue to operate while the NPS reviews my application?**

Before obtaining an approved operations permit, you may continue to conduct operations subject to the following conditions:

(a) Continuation of operations is limited to those methods and the area of disturbance that existed on [insert effective date] or the effective date of a boundary change, or establishment of a new NPS unit, as applicable.

(b) Your operation is also subject to the general terms and conditions in §§ 9.120 through 9.122 and the prohibitions and penalties in §§ 9.180 through 9.182.

(c) Except in an emergency, we will not take any steps to directly regulate your operation before 90 days after [effective date of the final rule] or 90 days after the effective date of a boundary change, or establishment of a new NPS unit, as applicable.

#### **Temporary Access Permits**

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

You must apply to the Regional Director 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 Regional Director.

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

To apply for a temporary access permit, you must submit the following information to the Superintendent of the NPS unit in which you propose to conduct operations:

(a) A brief description of the intended future operation so that we can determine what information needs to be gathered;

(b) Documentation demonstrating that you hold a legal right to operate located within an NPS unit;

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

(d) The name, legal address, telephone number, and qualifications of all specialists responsible for conducting the reconnaissance surveys;

(e) A map delineating the proposed reconnaissance survey area in relation to the park boundary and the proposed area of operations at a minimum scale of 1:24,000, or a scale specified by the Superintendent as acceptable;

(f) A description of proposed means of access and routes proposed for conducting the reconnaissance surveys; and

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

#### **§ 9.62 When will the NPS grant a temporary access permit?**

If the Regional Director determines that your proposed reconnaissance survey will not result in surface disturbance, except for minimal disturbance necessary to perform surveys, the Regional Director will issue you a temporary access permit within 30 days after receipt of a complete application, unless the Regional Director notifies you that additional time is necessary to evaluate or process your application.

#### **§ 9.63 How long will I have to conduct my reconnaissance surveys?**

Your temporary access permit will be in effect for a maximum of 60 days from the date of issuance. The Regional Director may extend the term of the temporary access 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 Surface Location Outside the Park Boundary**

#### **§ 9.70 Do I need an operations permit for accessing oil and gas rights from outside the park boundary?**

Your downhole activities inside an NPS unit are subject to these regulations. If you wish to access your oil and gas rights located inside an NPS unit from a surface location outside the unit, you must submit the information required by § 9.71. We will evaluate this information to determine whether your operations are exempt or require an operations permit. We will require an operations permit only if we determine that permit requirements are needed to protect against a significant threat of damage to:

(a) Federally owned or administered lands, waters, or resources within NPS units;

(b) NPS visitor uses or experiences; or

(c) Visitor or employee health or safety.

#### **§ 9.71 What information must I submit to the NPS?**

You must provide the information required by this section to the Superintendent of the relevant NPS unit. You must provide all of the following.

(a) The names and addresses of:

(1) The operator;

(2) The mineral owner; and

(3) Any agents, assignees, designees, lessees, contractors, employees, or other representatives of the operator responsible for the overall management of the proposed operations.

(b) Documentation demonstrating that you hold a legal right to operate in an NPS unit.

(c) Contact information for the operator's representative responsible for field supervision of the proposed operations and for emergency response for the proposed operations.

(d) Maps and plats to scale showing the boundaries of each of the mineral tracts that are relevant to your proposed operations within the NPS unit boundary.

(e) Maps and plats to scale showing all proposed surface uses (well site, access route, flowlines, production facilities) that occur outside the NPS unit.

(f) Information regarding downhole operations and conditions, including:

(1) Description, including depths, thicknesses, and properties of geologic horizons between the target zone and the base of the deepest aquifer;

(2) Drilling plan, including directional-drilling program, horizontal

distance along the wellbore's path from well's surface location to the park boundary, depth at which wellbore crosses NPS unit boundary, and timeline for operations;

- (3) Casing, cementing, and mud programs;
- (4) Stimulation programs; and
- (5) Well plugging and abandonment program.
- (g) If you propose hydraulic fracturing, then you must also provide the information required by § 9.89.

**§ 9.72 How will the NPS act on my submission?**

- (a) Within 30 days after receiving your submission under § 9.71, the Superintendent will notify you in writing that your information is complete, you need to submit more information, or we need more time to review your submission.
- (b) Within 30 days after receiving your complete submission, the Superintendent will notify you in writing that either:
  - (1) No further action is required by the NPS and you are exempt from the operations permit requirement; or
  - (2) You must obtain an operations permit.
- (c) If you need an operations permit, the information provided under § 9.71 is your permit application and the NPS will review your application under §§ 9.100 through 9.104.

**§ 9.73 If I don't need an operations permit, are there still requirements that I must I meet?**

If the NPS notifies you under § 9.72 that you do not need an operations permit, you are still subject to the general terms and conditions in §§ 9.120 through 9.122, the prohibitions and penalties in §§ 9.180 through 9.182, and the requirements in this section.

- (a) You must notify the NPS within 30 days if your method of operation or the environmental conditions of your operation change.
- (b) The Regional Director may notify you in writing that you are no longer exempt from the operations permit requirement after determining that operational requirements are needed to protect against a significant threat of damage to any of the following:
  - (1) Federally owned or administered lands, waters, or resources of NPS units;
  - (2) NPS visitor uses or experiences; or
  - (3) Visitor or employee health or safety.
- (c) Within 30 days after receiving this notification, you must file your operations permit application with the Superintendent.

**Operations Permit: Application Contents**

**§ 9.80 Who must apply for an operations permit?**

Except as otherwise provided §§ 9.70 through 9.73, an operator proposing to conduct operations within the boundary of an NPS unit must submit an application for an operations permit to the Superintendent.

**§ 9.81 May I use previously submitted information?**

- (a) In satisfying the requirements of §§ 9.82 through 9.90, you do not need to resubmit information that is already on file with the NPS. Instead, you may reference the previously submitted information in your permit application.
- (b) You may submit documents and materials containing the information required by §§ 9.82 through 9.90 that you have submitted to other Federal and State agencies. If you do this, you must clearly identify the information required by §§ 9.82 through 9.90.

**§ 9.82 What must I include in my application?**

(a) Your application for an operations permit must include all of the information required by § 9.83. You must also submit the information required by §§ 9.87 through 9.90, where applicable, and any additional information that the Superintendent may require.

(b) You may provide information for only the phase of operations you propose. Each permit application is only required to describe those functions for which you want immediate approval. However, approval of an Operations Permit covering one phase of operations does not guarantee future approval of an Operations Permit covering a subsequent phase.

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

All applications must include the information required by this section.

|  |   |
|--|---|
| All operations permit applications must include information on . . . | and must include the following detailed information . . .   |
| (a) Ownership .....  | documentation demonstrating that you hold the right to operate inside of an NPS unit.   |
| (b) The owner/operator .....   | names, addresses, and other contact information for: <ul style="list-style-type: none"> <li>(1) The operator;</li> <li>(2) The mineral owner;</li> <li>(3) Any agents, assignees, designees, contractors, or other representatives of the operator;</li> <li>(4) The operator's representatives responsible for overall management, field supervision, and emergency response for the proposed operations.</li> </ul> |
| (c) Existing conditions and proposed area of operations.             | all the information required by § 9.84.   |
| (d) Reclamation plan .....   | (1) A description of the specific equipment and methods used to meet the operating standards for reclamation at § 9.116; and<br>(2) A breakdown of the estimated costs that a third party would charge to complete reclamation as proposed in your reclamation plan.  |
| (e) Use of water .....   | (1) The source, quantity, access route, and transportation/conveyance method for all water to be used in access road and pad construction, well drilling, stimulation, and production; and<br>(2) Estimations of any anticipated waste water volumes generated and how they will be managed (i.e. handled, temporary stored, disposed, recycled, reused) throughout stages of the operation.                          |
| (f) Environmental conditions and mitigation actions.                 | all the information required by § 9.85.   |
| (g) The spill control and emergency preparedness plan.               | all the information required by § 9.86.   |

**§ 9.84 Existing conditions.**

(a) You must submit to-scale maps that clearly identify:

(1) The boundaries of each of your mineral tracts in relation to your

proposed operations and the relevant NPS unit boundary;



(2) The natural features, including, but not limited to, streams, lakes, ponds, topographic relief, and areas the NPS has indicated to you as environmentally sensitive;

(3) The locations of existing roads, trails, railroad tracks, pads, and other disturbed areas; and

(4) The locations of existing structures that your operations could affect, including, but not limited to: Buildings, pipelines, producing oil and gas wells, freshwater wells, underground and overhead electrical lines, and other utility lines.

(b) You must submit the following information about geologic conditions under natural conditions and under the proposed operating conditions:

(1) Estimated depths and names of zones of usable water, brine, hydrocarbon, geothermal, or other mineral-bearing zones based on the best available information;

(2) Potential hazards to persons and the environment such as abnormal pressure zones, lost circulation zones, hydrogen sulfide gas, or karst formations; and

(3) Nature and extent (depth if known) of near-surface bedrock fracturing/jointing relative to proposed cemented surface casing-seat depth and any open annular interval proposed in the well design.

(c) You must submit the following information about new surface disturbances and construction:

(1) Maps showing the proposed area of operations; boundaries of new surface disturbances as determined by a location survey; and proposed access routes as determined by a location survey;

(2) Maps showing the proposed location of all support facilities, including those for transportation (e.g., vehicle parking areas, airstrips, helicopter pads), sanitation, occupation, staging areas, fuel dumps, refueling areas, loading docks, water supplies, and disposal facilities;

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

(4) The number and types of equipment and vehicles, including an estimate of vehicular round trips associated with each phase of your operation;

(5) An estimated timetable for each phase of the proposed operations, including any operational timing constraints;

(6) The type and extent of security measures proposed at your area of operations;

(7) The power sources and their transmission systems for the proposed operations; and

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

#### **§ 9.85 Environmental conditions and mitigation actions.**

You must submit the following information about environmental conditions and mitigation actions:

(a) The natural resource and the cultural resource survey reports for your proposed area of operations;

(b) A description of the steps you propose to take to mitigate any adverse environmental impacts on park resources and values, including but not limited to, the unit'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; and

(c) A discussion of:

(1) Any anticipated impacts that you cannot mitigate; and

(2) All alternative technologically feasible, least damaging methods of operations, their costs, and their environmental effects.

#### **§ 9.86 Spill control and emergency preparedness plan.**

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

(a) A list of names, addresses, and telephone numbers of persons that the Superintendent can contact in the event of a spill, fire, or accident, including the order in which the persons should be contacted;

(b) Notification and reporting procedure in the event of a spill, fire, or accident;

(c) Identification of contaminating or toxic substances used within your area of operations or expected to be encountered during operations;

(d) 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;

(e) Measures (e.g., procedures, facility design, equipment) to minimize risks to human health and safety and the environment;

(f) 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;

(g) 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;

(h) A storm water drainage plan and actions intended to mitigate storm water runoff;

(i) Safety data sheets for each material you will use or encounter during operations; including expected quantities maintained at your area of operations;

(j) A description of the emergency actions you will take in the event of accidents causing human injury; and

(k) 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.

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

If you propose to conduct geophysical exploration, you must submit the following additional information:

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

(b) Names and depths of geologic zones targeted for imaging;

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

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

(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; and

(f) A map showing the positions of each survey line including all source and receiver locations as determined by a locational survey, and including shotpoint offset distances from wells, buildings, other infrastructure, and areas the NPS has indicated to you as environmentally sensitive areas.

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

If you are proposing to drill a well, you must submit the following additional information:

(a) 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) 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) The drilling program, including hole size for each section and the directional program, if applicable;

(d) Proposed drilling depth and the estimated depths and names of usable water, brine, hydrocarbon, geothermal, or other mineral-bearing zones;

(e) The type and characteristics of the proposed mud systems;

(f) The casing program, including the size, grade, weight, and setting depth of each string;

(g) The cementing program, including downhole location of any stage equipment, cement types, volumes, and additives to be used, and a description of pressure tests and cement verification techniques used that will be run to evaluate cement placement and integrity;

(h) The minimum specifications for pressure control equipment function and pressure testing frequency and the blowout preventer stack arrangement;

(i) The proposed logging, coring, and testing programs;

(j) The proposed completion program, including completion type (open-hole, perforated, slotted liner, etc.) and procedures, including considerations for well control; and

(k) A description of the equipment, materials, and procedures proposed for well plugging, including plug depths, plug types, and minimum mud weight.

**§ 9.89 What additional information must be included if I am proposing well-stimulation operations, including hydraulic fracturing?**

If you are proposing well stimulation operations, including hydraulic fracturing, you must submit the following additional information:

(a) The geologic names, a geologic description, and the estimated depths (measured and true vertical) to the top and bottom of the formation into which hydraulic fracturing fluids are to be injected. The estimated minimum vertical distance between the top of the fracture zone and the nearest usable water zone, and the measured depth of the proposed perforated or open-hole interval.

(b) The estimated depths (measured and true vertical) to the top and bottom of the confining zone(s). Include a map showing the location, orientation, and extent of any known or suspected faults or fractures within one-half mile

(horizontal distance) of the wellbore trajectory that may transect the confining zone(s).

(c) A map showing all existing wellbore trajectories, regardless of type, within one-half mile (horizontal distance) of any portion of the wellbore into which hydraulic fracturing fluids are to be injected. The true vertical depth of each wellbore identified on the map must be indicated.

(d) Steps to be taken before treatment to verify mechanical integrity of all downhole tubulars and tools and cement quality, including pressure tests, monitoring of cement returns to surface, and cement evaluation logs (or other logs acceptable to the Superintendent) demonstrating that the occurrences of usable water zones have been isolated to protect them from contamination.

(e) A detailed description of the proposed well-stimulation design, including:

(1) The proposed stimulation fluid, including, but not limited to, the base fluid and each additive by trade name, and purpose of additive;

(2) Proposed proppant system;

(3) The estimated total volume of fluid to be used;

(4) The anticipated surface treating pressure range;

(5) The maximum anticipated surface pressure that will be applied during the hydraulic fracturing process;

(6) The trajectory of the wellbore into which hydraulic fracturing fluids are to be injected and the estimated direction and length of the fractures that will be propagated and a notation indicating the true vertical depth of the top and bottom of the fractures; and

(7) Any microseismic monitoring planned or proposed in conjunction with well stimulation.

(f) The source and location of water supply, such as reused or recycled water, rivers, creeks, springs, lakes, ponds, and water supply wells, and the source and location of water supply, such as reused or recycled water, rivers, creeks, springs, lakes, ponds, and water supply wells.

(g) The storage, mixing, pumping, and control equipment needed to perform the stimulation.

(h) The following information concerning the handling of recovered fluids:

(1) The estimated volume of stimulation fluids to be recovered during flow back;

(2) The proposed methods of handling the recovered fluids including any onsite treatment for re-use of fluids in other stimulation activities; and

(3) The proposed disposal method of the recovered fluids, including, but not

limited to, injection, hauling by truck, or transporting by pipeline.

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

If you are proposing to produce a well, you must submit all of the following information:

(a) The dimensions and the to-scale layout of the wellpad, 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 pick-up points; gas compressor, including size and type (if applicable); and any other well site equipment;

(b) The size, grade, weight, and setting depth of all casing and tubing strings; cementing history; type and size of packers and subsurface flow control devices; top and bottom depths of each completed interval; and method of completion;

(c) The well history, including completions, stimulations, servicing, and workovers;

(d) The minimum specifications for pressure-control equipment, function, and pressure-testing frequency;

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

(f) Road and wellpad maintenance plan, including equipment and materials to maintain the road surface and control erosion;

(g) Vegetation management plan on well sites, roads, pipeline corridors, and other disturbed surface areas, including control of exotic species;

(h) Storm water management plan on the well site;

(i) Produced water storage and disposal plan; and

(j) The procedures proposed for well plugging, the depths and the types of plugs, and minimum mud weight.

**Operations Permit: Application Review Process****§ 9.100 How will NPS process my application?**

We will conduct initial review of your application to determine if all information is complete. Once your information is complete, we can begin formal review. If you propose operations in Big Cypress National Preserve, the requirements in § 9.105 apply instead of those in § 9.101 and § 9.102.

**§ 9.101 How will the NPS conduct initial review?**

(a) Within 30 days after receipt of your application, the Superintendent will notify you in writing that either:

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

(2) Your permit application does not meet the information requirements and additional information is required before the NPS will conduct formal review of your permit application; or

(3) More time is necessary to complete the review, in which case the NPS will provide you an estimate of the amount of additional time reasonably needed and an explanation for the delay.

(b) If you resubmit information requested by the NPS under this section and the Superintendent determines that you have met all applicable information requirements, the Superintendent will notify you within 30 days after receipt of the additional information that either:

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

(2) More time is necessary to complete the review, in which case the NPS will provide you an estimate of the amount of additional time reasonably needed and an explanation for the delay.

**§ 9.102 How will the NPS conduct formal review?**

(a) The Superintendent will evaluate the potential impacts of your proposal on federally owned or administered lands, waters, or resources within NPS units, visitor uses and experiences, and visitor and employee health and safety. As part of this evaluation process, the NPS will comply with all applicable federal laws, including the National Environmental Policy Act of 1969. The Superintendent will then make a recommendation to the Regional Director regarding final action on your operations permit.

(b) As part of the evaluation process, the Superintendent may consult with other Federal, State, and local agencies.

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

(a) In order to approve your operations permit application, the

Regional Director first must determine that your operations:

(1) Will not impair park resources and values under the statute commonly known as the NPS Organic Act;

(2) Will meet all applicable operating standards; and

(3) Will comply with all applicable Federal, State, and local laws and regulations.

(b) Before approval of your permit application, you must submit to the Superintendent:

(1) Financial assurance in the amount specified by the Regional Director and in accordance with the requirements of §§ 9.140 through 9.144; and

(2) Proof of liability insurance with limits sufficient to cover injuries to persons or property caused by your operations.

**§ 9.104 What final actions may the Regional Director take on my Operations Permit application?**

(a) The Regional Director will take final action within 180 days after the date the NPS deems your application complete unless:

(1) We and you agree that such final action 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) The Regional Director will notify you in writing that your permit application is:

(1) Approved, and provide you a list of required operating conditions; or

(2) Denied, and provide you justification for the denial. Any such denial must be consistent with § 9.30(c).

**§ 9.105 What is the approval process for operations in Big Cypress National Preserve?**

(a) Within 30 days after the date of submission of your application, we will notify you whether the application contains all information reasonably necessary to allow us to consider the application and, if not, will request that you provide additional information. After receiving this notification, you must either supply any reasonably necessary additional information or must notify us that you believe that the application contains all reasonably necessary information and is therefore complete; whereupon we may:

(1) Within 30 days after receipt of the notice from the applicant, determine that the application does not contain all reasonably necessary additional information and, on that basis, deny the application; or

(2) Review the application and take final action within 60 days after the date that you provided notification to the NPS that your application is complete.

(b) The Regional Director will take final action within 90 days after the date you submitted your application unless:

(1) We and you agree that final action can 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.

**Operating Standards****§ 9.110 What are the purposes and functions of NPS operating standards?**

(a) You must comply with all operating standards in §§ 9.111 through 9.116, as well as with the standards in §§ 9.117 and 9.118, if applicable. The standards apply only to operations that occur within a park unit, including downhole activities, and do not apply to surface activities located outside a park unit. These operating standards are incorporated into the terms and conditions of your operations permit. Violation of these operating standards will subject you to the prohibitions and penalties provisions of §§ 9.180 through 9.182.

(b) NPS operating standards ensure protection of federally owned administered lands, waters, and resources of NPS units, visitor uses and experiences, and visitor and employee health and safety. The operating standards give us and the operator flexibility to consider using alternative methods, equipment, materials design, and conduct of operations.

(c) In applying standards to a particular operation, you must use technologically feasible, least damaging methods to protect federally owned or administered lands, waters, and resources of NPS units, visitor uses and experiences, and visitor and employee health and safety.

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

(a) You must 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 the NPS has indicated to you as sensitive resources.

(b) You must 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) You must keep temporarily stored waste in the smallest feasible area, and confine it to prevent escape as a result of percolation, rain, high water, or other causes. You must regularly remove waste from the NPS unit and lawfully dispose of it in a direct and workable timeframe. Under 36 CFR part 6, you may not establish a solid waste disposal site in an NPS unit.

(d) You must use engines that adhere to current Federal and State emission standards.

(e) You must construct, maintain, and use roads to minimize fugitive dust emissions;

(f) You must use equipment and practices that minimize releases or flaring of gas.

(g) You must provide a safe environment for fish and wildlife free from exposure to physical and chemical hazards.

(h) You must control the invasion of exotic plant and animal species in your area of operations from the beginning through final reclamation.

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

(a) You must not conduct ground-disturbing operations within 500 feet of surface water, including an intermittent or ephemeral watercourse, or wetland; or within 500 feet of any structure or facility used by the NPS for interpretation, public recreation, or administration. The Superintendent may increase or decrease this distance as needed to protect federally owned or administered lands, waters, or resources of NPS units, visitor uses or experiences, or visitor or employee health and safety. Measurements for purposes of this paragraph are by map distance.

(b) You must construct facilities in a manner that maintains hydrologic connectivity between surface water and groundwater.

(c) You must not cause measureable degradation of surface water or groundwater beyond that of existing conditions.

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

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

(a) You must maintain your area of operations in a manner that avoids or minimizes the cause or spread of fires and does not intensify fires originating outside your operations area.

(b) You must maintain structures, facilities, improvements, and equipment in a safe and professional manner in order to provide a safe environment for park resources, park visitors, and NPS employees, free from exposure to physical and chemical hazards.

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

#### **§ 9.114 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.

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

(c) You must use road and pad materials similar in structure to soils in surrounding profiles whenever feasible.

#### **§ 9.115 What noise reduction standards must I meet?**

You must prevent or minimize all noise that:

(a) Adversely affects the natural soundscape or other park resources or values, taking into account frequency, magnitude, or duration; or

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

#### **§ 9.116 What reclamation and protection standards must I meet?**

(a) You must promptly clean up and remove any released contaminating substances and provide documentation to the Superintendent that the substances were disposed of in accordance with all applicable Federal, State, and local laws.

(b) You must perform partial reclamation of areas no longer necessary to conduct operations. You must begin final reclamation as soon as possible but no later than 6 months after you complete your permitted operations unless the Regional Director authorizes a longer period in writing.

(c) You must protect all survey 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, and roads and all other man-made 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 preexisting elevations that are most appropriate to maximizing ecologic functional value;

(6) Restoring conditions to pre-disturbance 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 reclaimed areas do not interfere with visitor use or with administration of the unit;

(9) Meeting conditions compatible with the management objectives of the park; and

(10) Ensuring proper and equitable apportionment of reclamation responsibilities by coordinating with us or with other operators who may be using a portion of your area of operations.

#### **§ 9.117 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 NPS units, visitor uses and experiences, and visitor and employee health and safety; and

(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.

**§ 9.118 What additional operating standards apply to drilling, stimulation, and production operations?**

If you conduct drilling, stimulation, and production operations, you must meet all of the standards in this section.

(a) *Drilling.* (1) You must use containerized mud circulation systems for operations.

(2) You must not create earthen pits for any use. Earthen pits used solely for secondary containment on sites existing before [effective date of the final rule] may continue in use; however, the Superintendent may require such structures to be lined or removed depending on site-specific operational and environmental conditions.

(3) You must take all necessary precautions to keep your wells under control at all times, use only contractors or employees trained and competent to drill and operate the wells, and use only oil field equipment and practices generally used in the industry.

(4) You must design, implement, and maintain integrated casing, cementing, drilling fluid, completion, stimulation, and blowout prevention programs. These programs must be based upon sound engineering principles 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) *Stimulation operations including hydraulic fracturing.* (1) You must not begin injection activities before you demonstrate the mechanical integrity of all surface and downhole tubulars and equipment to differential pressures equal to at least those calculated at the maximum anticipated treating pressure.

(2) You must continuously monitor and record the treating pressures and all annular pressures before, during, and after the treatment to ensure that treatment materials are directed to the intended zone.

(3) If mechanical integrity is lost during the treatment, you must immediately cease the operation and notify the Superintendent as soon as feasible, but no later than 24 hours after the incident. Within 15 days after the occurrence, you must submit to the Superintendent a report containing all details pertaining to the incident, including corrective actions taken.

(c) *Production.* (1) You must monitor producing conditions to document maintenance of mechanical integrity of both surface and subsurface equipment.

(2) You must maintain your well 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.

(3) You must identify wells and related facilities by a sign, which must remain in place until the well is plugged and abandoned and the related facilities are closed. The sign 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) You must remove all equipment and materials that are no longer needed for a particular phase of your operation.

(5) You must plug all wells to:

(i) Prevent a pathway of migration for fluids along any portion of the bore; and

(ii) Leave the surface in a clean and safe condition that will not impede surface reclamation or pose a hazard to human health and safety.

**General Terms and Conditions**

**§ 9.120 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 operator's operations permit:

(a) The operator/permittee is responsible for ensuring that all of its contractors and subcontractors comply fully with all of the requirements of this subpart;

(b) The operator/permittee may not use any surface water or groundwater owned or administered by the United States that has been diverted or withdrawn from a source located within the boundaries of an NPS unit unless the use has been approved in accordance with NPS policy;

(c) The operator/permittee must provide the NPS an affidavit, 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 NPS is true and correct; and

(d) The operator/permittee agrees 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 the operator and its employees, agents, representatives, contractors, and subcontractors in the conduct of activities under the operations permit.

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

(a) The NPS may access your area of operations at any time to monitor the potential effects of the operations and to ensure compliance with this subpart where applicable.

(b) The Regional Director may determine that third-party monitors are necessary to protect federally owned or administered lands, waters, or resources of NPS units, visitor uses or experiences, or visitor or employee health and safety.

(1) The Regional Director's determination will be based on the scope and complexity of the proposed operation and whether the park 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 NPS at intervals determined by the Superintendent, and you will be responsible for the cost of the third party monitor. We will make the information reported available to you upon your request.

(c) You must notify the Superintendent of any accidents involving serious personal injury or death and of any fires or spills on the site within 24 hours after the accident occurs. You must submit a full written report on the accident to the Superintendent within 90 days after the accident occurs.

(d) You must notify the Superintendent within 24 hours after the discovery of any cultural or scientific resource you encounter that might be altered or destroyed by your operation. You must cease operations if necessary and leave the discovered resource intact until the Superintendent provides you with instructions. The Superintendent will determine, within 10 working days after notification what action will be taken with respect to the discovery.

(e) Upon the Superintendent's 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 the NPS reports that you have submitted to the State under State regulations, or that you have submitted to any other Federal agency.

**§ 9.122 What additional reports must I submit if my operation includes hydraulic fracturing?**

If your operations include hydraulic fracturing, you must provide the Superintendent with a report including all of the following details of the stimulation within 30 days after the

completion of the last stage of hydraulic fracturing operations for each well. The information required in paragraph (a) of this section must be submitted to the authorized officer through FracFocus or another NPS-designated database:

(a) 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).

(b) The actual source(s) and location(s) of the water used in the hydraulic fracturing fluid;

(c) The maximum surface pressure and rate at the end of each stage of the hydraulic fracturing operation and the actual flush volume.

(d) The actual, estimated, or calculated fracture length, height and direction.

(e) The actual measured depth of perforations or the open-hole interval.

(f) You must submit the actual volume of stimulation fluids recovered during flow back, including a description of how the volumes were measured or calculated.

(g) The following information concerning the handling of fluids recovered, covering the period between the commencement of hydraulic fracturing and the implementation of the approved permit for the disposal of produced water under NPS requirements:

(1) The methods of handling the recovered fluids, including, but not limited to, transfer pipes and tankers, holding pond use, re-use for other stimulation activities, or injection; and

(2) The disposal method of the recovered fluids, including, but not limited to, the percent injected, the percent stored at an off-lease disposal facility, and the percent recycled.

(h) You must submit continuous monitoring records of annulus pressure at the bradenhead and other annular pressures that document pressures before, during, and after injection operations. You must submit a signed certification that wellbore integrity was maintained throughout the operation.

#### Access to Oil and Gas Rights

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

(a) The Regional Director may grant you the privilege of access on, across, or through federally owned or

administered lands or waters in any NPS unit to reach the boundary of your oil and gas right.

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

##### **§ 9.131 Will the NPS charge me a fee for access?**

(a) The Regional Director may charge you a fee if you use federally owned or administered lands or waters outside the scope of your oil and gas right.

(1) If you require use of federally owned or administered lands or waters for your operation, the Regional Director will charge you a fee based on the fair market value of the use of the lands for access.

(2) If access to your mineral right is across an existing park road, the Regional Director will charge the fee according to a posted fee schedule.

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

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

The Regional Director 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 the Regional Director determines that the circumstances require an immediate response to either:

(a) Prevent or to minimize injury to park resources; or

(b) Ensure public health and safety.

#### Financial Assurance

##### **§ 9.140 Do I have to provide financial assurance to the NPS?**

Yes. You must file financial assurance with us in a form acceptable to the Regional Director and payable upon demand. This financial assurance is in addition to any financial assurance required by any other regulatory authority.

##### **§ 9.141 How does the NPS establish the amount of financial assurance?**

We will base the financial assurance amount upon the estimated cost for a third-party contractor 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.

##### **§ 9.142 Will the NPS adjust my financial assurance?**

The Regional Director 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 § 9.141.

##### **§ 9.143 When will the NPS release my financial assurance?**

(a) Your responsibility and that of any surety under the financial assurance will continue until either:

(1) The Regional Director 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 §§ 9.160 through 9.161.

(b) You will be notified within 30 days after the Regional Director's determination that your financial assurance has been released.

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

(a) You will forfeit all or part of your financial assurance if all efforts to secure your compliance with your reclamation responsibilities under the approved permit or any provisions of this regulation are unsuccessful.

(b) If you forfeit your financial assurance, we may:

(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, or resources of NPS units, visitor uses or experiences, or visitor or employee health and safety; and

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

(4) Seek recovery as provided in § 9.141 for all costs of reclamation in excess of the posted financial assurance.

#### Modification to an Operation

##### **§ 9.150 Can my approved permit be modified?**

The Regional Director may modify an approved temporary access or operations permit to adjust to changed conditions or to address unanticipated conditions, either unilaterally or at your request.

(a) To request a modification to your approved permit, you must provide written notice to the Superintendent

describing the modification and why it is needed. The Regional Director will review your request for modification, under the approval standards and timeframes at § 9.62 or 9.104.

(b) If the Regional Director authorizes a modification to your 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 Regional Director's written approval.

### Change of Operator

#### § 9.160 What are my responsibilities if I transfer my operations?

Until you meet the requirements of this subpart and the Regional Director accepts the new operator's financial assurance, you remain responsible for compliance with your operations permit and we will retain your financial assurance.

(a) If you were operating without an operations permit, you are subject to §§ 9.120 through 9.122 and §§ 9.180 through 9.182 until the new operator meets the requirements of this subpart and the Regional Director accepts the new operator's financial assurance.

(b) You must notify the Superintendent in writing within 30 calendar days after the date the new owner 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 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 owner, and
- (4) A written acknowledgement from the new owner that the contents of the notification are true and correct.

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

(a) If another operator transfers operations to you, you must:

(1) Adopt and agree in writing to conduct operations in accordance with all terms and conditions of the previous operator's operations permit; and

(2) File financial assurance with us that is acceptable to the Regional Director and made payable to the NPS.

(b) If the previous operator was granted an exemption under § 9.72, you must provide to the Superintendent:

(1) Documentation demonstrating that you hold the right to operate within an NPS unit; and

- (2) The names and addresses of:
  - (i) The operator;
  - (ii) The mineral owner;
  - (iii) Any agents, assignees, designees, lessees, or other representatives of the operator;
  - (iv) The operator's representative responsible for the overall management of the proposed operations;
  - (v) The operator's representative responsible for field supervision of the proposed operations; and
  - (vi) The operator's representative responsible for emergency response for the proposed operations.

### Well Plugging

#### § 9.170 When must I plug my well?

Except as provided in § 9.171, you must plug your well when any of the following occurs:

- (a) Your drilling operations have ended and you have taken no further action on your well within 60 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.

#### § 9.171 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. The application must include:

- (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 both surface and downhole equipment such that there is no migration of fluid from any formation in which it originally occurred or from the surface to the well; and
- (3) A description of the manner in which your well, equipment, and area of operations will be maintained.

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

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

### Prohibitions and Penalties

#### § 9.180 What acts are prohibited under this subpart?

The following are prohibited:

- (a) Operating in violation of terms or conditions of a temporary access permit,

or an approved operations permit, or any provision of this subpart;

(b) Damaging federally owned or administered lands, waters, or resources of an NPS unit as a result of failure to comply with the terms or conditions of a temporary access permit, an operations permit, or any provision of this subpart;

(c) Conducting operations without a temporary access permit or operations permit;

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

(e) Failure to comply with any applicable Federal, State, or local laws.

#### § 9.181 What enforcement actions can the NPS take?

If you engage in a prohibited act described in § 9.180:

(a) You may be subject to a fine or imprisonment, or both, in accordance with 36 CFR 1.3;

(b) The Superintendent may suspend your operations; or

(c) The Regional Director may revoke your approved temporary access permit or operations permit.

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

Until you comply with this subpart or the terms and conditions of an existing temporary access permit or operations permit, we will not consider any new requests for access to conduct operations within any NPS units.

### Reconsideration and Appeals

#### § 9.190 Can I, as operator, request reconsideration of NPS decisions?

Yes. If you disagree with a decision of the Regional Director under this subpart, you may file with the Regional Director a written statement describing the alleged factual or legal errors in the original decision and requesting that the Regional Director reconsider the decision. You must file your request for reconsideration within 60 calendar days after your receipt of the Regional Director's decision. The NPS will dismiss as untimely any request for reconsideration received more than 60 days after your receipt of the original decision.

#### § 9.191 How does the NPS process my request for reconsideration?

The Regional Director will review his or her original decision and, within 90 days after receipt of your appeal, provide you with a written statement reversing, affirming, or modifying that decision, unless the Regional Director notifies you that he or she needs additional time to review the original



decision. When issued, that written statement constitutes the Regional Director's final decision on the matter.

**§ 9.192 Can I appeal the Regional Director's decision?**

(a) If the Regional Director affirms or modifies his or her original decision after you file a request for reconsideration, you may then file an appeal with the NPS Director within 60 calendar days after your receipt of the Regional Director's decision under § 9.191.

(b) Your appeal must include a statement of exceptions specifying your specific disagreements with the Regional Director's final decision. If you do not file your statement of exceptions within 60 calendar days, your appeal will be dismissed, and the Regional Director's decision will constitute the NPS's final decision on the matter.

(c) If you timely file your statement of exceptions, the Regional Director will forward his or her decision and the record for the appeal to the NPS Director. The record will consist of NPS's official files on the proposed permit application, as well as any documents submitted by the parties upon which the Regional Director based his or her decision. The Regional Director will maintain that record under separate cover and will certify that he or she based the decision on that record. The Regional Director will make the record available to you at your request.

(d) If, upon review, the NPS Director considers the record inadequate, then the NPS Director may require additional appropriate documentation or information, or may remand the case to the Regional Director with appropriate instructions for further action.

(e) Within 45 calendar days from the date the NPS Director receives your statement of exceptions, the Director will make his or her decision in writing. If the Director requires more than 45 calendar days to reach his or her decision, then the Director will notify you and specify the reasons for the delay. The Director's written decision will include:

- (1) A statement of facts;
- (2) A statement of conclusions; and
- (3) An explanation of the reasons upon which he or she based his or her conclusions.

(f) No NPS decision under these regulations that is subject to appeal to the Regional Director or the Director shall be considered final agency action subject to judicial review under 5 U.S.C. 704 until the Director has rendered his or her decision on the matter. The decision of the NPS Director will constitute NPS's final agency action,

and no further appeal will lie in the Department from that decision.

**§ 9.193 Will filing a request for reconsideration or appeal stop the NPS from taking action under this subpart?**

(a) Except as provided for in paragraph (b) of this section, during the reconsideration and appeal processes, the decision at issue will be stayed (suspended). The decision will not become effective until the appeals process is completed.

(b) If NPS suspends your operation due to an emergency within your area of operation that poses an immediate threat of injury to federally owned or controlled lands or waters, you have a right to request reconsideration and appeal the decision under §§ 9.190 through 9.194, but the suspension will not be stayed until the threat is corrected.

**§ 9.194 What if the original decision was made by the Superintendent?**

Where the Superintendent has the authority to make the original decision, requests for reconsideration and appeals may be filed in the manner provided by the preceding sections, except that:

- (a) The request for reconsideration will be filed with and decided by the Superintendent;
- (b) The appeal will be filed with and decided by the Regional Director; and
- (c) The Regional Director's decision will constitute the final agency action on the matter.

**Public Participation**

**§ 9.200 How can the public participate in the approval process?**

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

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

(c) For the information required in § 9.122 of this subpart, 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 NPS-designated database. For information required under § 9.122 of this subpart that the

owner of the information claims to be exempt from public disclosure and is withheld from the NPS, 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 NPS from publicly disclosing the information if it were in the NPS'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.

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

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

(f) If the NPS determines that the information submitted under paragraph (e) of this section is not exempt from disclosure, the NPS 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 NPS's determination.



(g) The operator must maintain records of the withheld information until the later of the NPS's release of the operator's financial assurance, or 6 years after completion of hydraulic fracturing operations on Indian lands, or 7 years after completion of hydraulic fracturing operations on Federal 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 NPS, even if the information is in the custody of its owner.

(h) If any of the chemical identity information required in § 9.122 of this subpart is withheld, the operator must provide the generic chemical name in the submission required by § 9.122 of this subpart. 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

##### § 9.210 Has the Office of Management and Budget approved the information collection requirements?

(a) The Office of Management and Budget (OMB) has reviewed and

approved the information collection requirements in 36 CFR part 9, subpart B, and assigned OMB Control Number 1024-XXXX. 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 use the information collected to:

- (1) Evaluate proposed operations;
- (2) Ensure that all necessary mitigation measures are employed to protect park resources and values; and
- (3) Ensure compliance with all applicable laws and regulations.

(b) You may submit comments on any aspect of the information collection requirements to the Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Room 2C114, Mail Stop 242, Reston, VA 20192.

#### Subpart D—[Redesignated as Subpart C]

- 4. Redesignate subpart D as subpart C.

#### Subpart C—[Amended]

- 5. The authority citation for newly redesignated subpart C is revised to read as follows:

**Authority:** 16 U.S.C. 410hh; 16 U.S.C. 3101, *et seq.*; 16 U.S.C. 347; 16 U.S.C. 410bb; 16 U.S.C. 1131 *et seq.*; 54 U.S.C. 320301; 54 U.S.C. 100101, *et seq.*

- 6. In newly redesignated subpart C, redesignate §§ 9.80 through 9.89 as §§ 9.300 through 9.309.

- 7. In newly redesignated § 9.302, in paragraph (b)(2), remove the reference § 9.86 and add in its place the reference § 9.306.

- 8. In newly redesignated § 9.304, in paragraph (a), remove the reference § 9.84(b) and add in its place the reference § 9.304(b) and remove the reference § 9.83(b) and add in its place the reference § 9.303(b).

- 9. In newly redesignated § 9.306, in paragraph (a), remove the reference § 9.84 and add in its place the reference § 9.304.

- 10. In newly redesignated § 9.308, in paragraph (a), remove the reference § 9.86 and add in its place the reference § 9.306.

Dated: October 16, 2015.

**Karen Hyun,**

*Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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