

**4312-52**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Parts 1 and 9**

**[NPS-WASO-NRSS-21688; GPO Deposit Account 4311H2]**

**RIN 1024-AD78**

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

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We are updating 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 nonfederal oil and gas operations located within National Park Service units outside Alaska. The rule also makes the regulations consistent with existing policies and practices, and updates the format to improve clarity and simplify application and compliance for oil and gas operators and our employees.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:**

**Background.**

*Proposed Rule and Public Comment Period.*

On October 26, 2015, the National Park Service (NPS) published the proposed rule in the Federal Register (80 FR 65572). The rule was open for public comment for 60 days, until December 28, 2015. The NPS invited comments via mail and the Federal eRulemaking Portal at <http://www.regulations.gov>.

At the start of the comment period, the NPS distributed over 1,000 newsletters to non-governmental organizations, individuals, industry groups, Alaska native corporations, and state agencies, primarily the oil and gas regulatory agencies from multiple states (Alaska, Alabama, California, Colorado, Florida, Indiana, Kentucky, Kansas, Louisiana, Mississippi, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming). These newsletters summarized the proposed rule, alternatives considered in the related draft environmental impact statement (DEIS), and how the public could comment on the proposed rule and DEIS. In an effort to reach an even broader audience, the NPS hosted a pre-recorded webinar describing the proposed rulemaking. This online webinar soliciting public comment on the DEIS and the proposed rule and was open to any member of the public.

The NPS received 20 comment letters on the proposed rule during the comment period. These included unique comment letters and form letters. Some comment letters received were submitted improperly and not considered. Additionally, many comments were signed by more than one person. NPS counted a letter as a single set of comments, regardless of the number of signatories. A summary of comments and NPS responses is provided below in the section entitled “Summary of and Responses to Public Comments.”

After considering the public comments and additional review, the NPS made changes in the final rule. These changes are summarized below in the section entitled “Changes in the Final Rule.”

### *1978 Regulations*

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

The 1978 Regulations applied to all activities associated with non-federal oil and gas exploration and development inside System unit boundaries where access is on, across, or through federally owned or controlled lands or waters (36 CFR 9.30(a)). Under the 1978 Regulations, an operator utilizing such access must obtain our approval of a plan of operations before commencing non-federal oil and gas operations in a System unit (36 CFR 9.32(b)). This requirement covered exploration, drilling, production, transportation, plugging, and reclamation operations.

The proposed plan of operations was an operator's blueprint of all intended activities and was our primary means for evaluating the operation's potential adverse impacts on park resources and values. The operator must demonstrate that it is exercising a bona fide property right to non-federal oil and gas located within a System unit (36 CFR 9.36(a)(2)). Generally, the proposed 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 proposed plan of operations, and prior to approval, 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.

During our approval process, we coordinate and consult with a variety of state and other federal regulatory agencies to ensure that approval complies with applicable laws, such as the National Environmental Policy Act of 1969, the Endangered Species Act, the National Historic Preservation Act, and the Clean Water Act.

The 1978 Regulations required that operators conducting non-federal oil and gas operations in System units provide an affidavit that operations planned are in compliance 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 NPS's regulation of non-federal oil and gas operations 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 a System 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 or modify the plan (36 CFR 9.40). The 1978 Regulations authorize us to enforce the terms of the plan, as may be necessary, including 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. The Organic Act directs the Secretary of the Interior, acting through the NPS, 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 grants the NPS 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 acts for several System units contain specific provisions directing or authorizing us to regulate the exercise of non-federal oil and gas rights. In the authority section of the rule, we list the individual enabling statutes that address non-federal oil and gas rights in those System units.

Our authority to promulgate regulations that govern the exercise of non-federal oil and gas operations has been recognized as a valid exercise of NPS's Organic Act authority by a U.S.

District Court and the United States Court of Appeals for the Fifth Circuit. 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 also recognized NPS's authority to regulate other non-federal property 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).

System units in Alaska would have been subject to the regulations in the proposed rule. As explained in the preamble to the proposal, we relied upon *Sturgeon v. Masica*, 768 F.3d 1066, 1077-78 (9th Cir. 2014), for the proposition that “because these regulations are generally applicable to System 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.” This Ninth Circuit opinion recently was vacated by the Supreme Court and remanded for further consideration. *Sturgeon v. Frost*, 136 S.Ct. 1061 (2016). NPS also received several comments stating that application of the proposed rule to nonfederal oil and gas activities on private land would be contrary to section 103(c) of ANILCA. In light of the pending litigation, the applicability of the ANILCA Title XI regulations in 43 CFR part 36, and the lack of current oil and gas development proposals and resource threats, NPS has decided to apply this rule only to operations within System units outside of Alaska. NPS may reconsider this exemption upon receipt of a final decision in the *Sturgeon* litigation, and if appropriate, to consider Alaska specific special regulations which could be included along with the other NPS Alaska regulations in 36 CFR part 13.

The rule has no effect on the above-referenced regulations at 43 CFR part 36, promulgated by the Department of the Interior in 1986 to implement section 1110(b) of ANILCA, which apply to persons who use lands and waters administered by NPS to conduct activities on, or for access to, non-federal inholdings within Alaska parks.

A unique provision exists under section 8 of the Big Cypress National Preserve Addition Act of 1988 (Addition Act), codified at 16 U.S.C. 698m-4. In addition to authorizing the Secretary to promulgate rules and regulations specifically for Big Cypress National Preserve, the Addition Act authorized the Secretary 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). Such agreements had been interpreted to obviate the need for operators to propose a plan of operations under the 1978 Regulations for their operations on the Addition lands.

Consistent with the statute, the present oil and gas operations within the Addition Area had been 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). This rule supersedes Appendix 6.

#### *Non-federal Oil and Gas Rights in System Units*

Non-federal oil and gas rights exist within System 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; 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 1978 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.” This rule includes this same provision.

There are currently 534 non-federal oil and gas operations in a total of 12 System units. These units are: Alibates Flint Quarries National Monument, Texas (5 operations); Aztec Ruins National Monument, New Mexico (4 operations); Big Cypress National Preserve, Florida (20 operations); Big Thicket National Preserve, Texas (39 operations); Big South Fork National River and Recreation Area, Tennessee/Kentucky (152 operations); Cumberland Gap National Historical Park, Tennessee (2 operations); Cuyahoga Valley National Park, Ohio (90 operations); Gauley River National Recreation Area, West Virginia (28 operations); Lake Meredith National Recreation Area, Texas (174 operations); New River Gorge National River, West Virginia (1 operation); Obed Wild and Scenic River, Tennessee (5 operations); and Padre Island National Seashore, Texas (14 operations).

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

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



Examples of non-federal oil and gas activities conducted in System units 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.

Such oil and gas activities may adversely impact System unit resources in various ways:

- Surface water quality degradation from spills, storm water runoff, erosion, and sedimentation. Through site inspections the NPS has documented 26 instances of in-park operation 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;
- Noise from seismic operations, blasting, construction, oil and gas drilling and production operations. Through site inspections the NPS has documented 6 instances of excess 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 can be heard at visitor overlooks that are 2 to 3 miles away. Simple mitigation such as a corrugated steel fence around the operations would abate this impact; however, due to the well's grandfathered status, the NPS has been unable to require this mitigation and is therefore forced to accept this adverse impact.

Another example of avoidable impacts was found at Aztec Ruins National Monument where an operation exempt from the 1978 Regulations due to the grandfathered exemption contained a road that traversed an unexcavated archeological site. Only when this well lost its grandfathered status due to a change of operator was the NPS 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 archeological site and the road base to protect the resources.

## **Final Rule.**

### *Summary of Final Rule*

The summary below details the significant differences between the 1978 Regulations and this final rule. As appropriate, this summary also briefly describes the reasons changes were

made to this rule as a result of public comments received.

### *Purpose and Scope of the Regulation*

#### Interests Protected Under These Regulations

After careful review we have found that the 1978 Regulations were inconsistent in their description of the interests that the regulations were designed to protect. This rule at § 9.30(a) and throughout consistently states that the purpose of the regulations is to protect federally owned or administered lands, waters, or resources of System units, visitor uses or experiences, and visitor or employee health and safety. The NPS evaluates operators' proposals on a case-by-case basis and applies avoidance and mitigation measures and requires financial assurance amounts to the extent necessary to protect the interests described above. Depending on the type of activity proposed, environmental factors, visitor use patterns, and land ownership status (activity either on federal or non-federal lands), the NPS will adjust its avoidance and mitigation measures and financial assurance amounts accordingly.

This rule replaces 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").

#### Operators Subject to the Regulation

Under § 9.30(a) of the 1978 Regulations, application of the rule was predicated on "access on, across, or through federally owned or controlled lands or waters." This rule at 9.30(b) applies to all operators conducting non-federal oil or gas operations on lands or waters within a System unit, regardless of the ownership or legislative jurisdictional status of those lands or waters.

#### Reasonable Regulation of Non-federal Oil and Gas Rights

Section 9.30(c) of this rule retains language from § 9.30(a) of the 1978 Regulations stating that the intention of this subpart is to reasonably regulate non-federal oil and gas activities in a System unit, but not to result in a taking of private property. Although the NPS has required mitigation measures on proposed operations, we have never, in the more than 37 years of applying this subpart, failed to approve a plan of operations. We will continue to work with operators to ensure they have reasonable access to their oil and gas rights while protecting park resources and values without resulting in a taking in violation of the Fifth Amendment of the United States Constitution.

#### Scope of the Regulations

Section 9.31(a) of this rule changes the scope to cover all nonfederal oil and gas operations within the boundary of a System unit outside of Alaska. Section 9.31(b) of this rule also covers those operations that become located within a System unit either by statutory boundary expansion or establishment of a new System unit. Section 9.31(c) of this rule covers those operations that access 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 a System unit. Under § 9.31(b) and (c) such operations follow the same requirements and procedures as those for previously exempt operations at §§ 9.50 through 9.53 of this rule.

#### Type of Authorization Required

Section 9.32(a) of this rule provides that an operator must have either a temporary access permit before conducting reconnaissance surveys on NPS administered lands or an operations permit for operations in a System unit.

#### Demonstration of Valid Existing Right

The 1978 Regulations contained a requirement that operators demonstrate that they hold

valid rights to conduct activities under the plan of operations information requirements. This rule moves this requirement to § 9.32(b) to clarify that all operators must demonstrate up front that they hold a valid existing right to conduct operations in a System unit. Until an operator can demonstrate a valid existing right to conduct all operations described in its operation permit application, we will not undertake formal review of an operator's operations permit application.

### Definitions

This rule deletes several redundant definitions because the terms are defined at 36 CFR 1.4. The definitions being deleted from the 1978 Regulation are: "Secretary" (former § 9.31(a)), "Director" (former § 9.31(b)), "Person" (former § 9.31(e)), and "Superintendent" (former § 9.31(f)). This rule also deletes two definitions that are no longer used: "Commercial Vehicle" (former § 9.31(g)) and "Statement for Management" (former § 9.31(o)).

This rule adds a new term, "Area of Operations," to replace the term "Site," at former § 9.31(m). The new term means all areas where an operator is authorized to conduct its activities, including access to the operations site.

This rule expands the definition of "Contaminating Substances," at former § 9.31(n), to include other toxic or hazardous substances. This definition no longer uses the term "waste," and the rule includes a separate definition of "waste."

This rule deletes the term "Unit" and instead the text of the rule uses the statutory term "System unit," which is defined at 54 U.S.C. 100102(6).

This rule changes the definition of "Operations" at § 9.31(c) of the 1978 Regulation, to clarify that "access" includes "any means of ingress to or egress from an area of operations." This change covers any and all types of access, including access via aircraft (time, place, and manner of aircraft landing on or taking off) to an area of operations. Accordingly, the NPS

removed former § 9.32(c), which regulated 9B aircraft access.

The definition of “Operations” under this rule 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 trans-park oil and gas pipelines that are under authority of a deeded easement or other right-of-way and which are not covered by this regulation.

This rule adds a new term “Operations permit” as the permitting instrument for all operations. An operations permit is 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.

This rule updates the definition of “Operator” at § 9.31(d) of the 1978 Regulations by clarifying that responsibilities and liability under this subpart can attach to the operator or the operator’s agents, assignees, designees, lessees, or representatives.

This rule defines “owner” as a “person” (the definition of “person” is found at 36 CFR 1.4).

This rule adds a new definition of “Previously exempt operation” to clarify which types of operations are covered under §§ 9.50 through 9.53. This definition does not include those operations where the operator was granted an exemption under § 9.32(e) of the 1978 Regulations 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 § 9.33(b) of this rule).

This rule adds a new term “Reconnaissance survey” to clarify that reconnaissance surveys do not include surface disturbance activities, except the minimal disturbance necessary to perform the surveys.

This rule adds a new term “Right to operate” that incorporates much of the language in § 9.36(a)(2) of the 1978 Regulations (right to operate description for a Plan of Operations). This new definition clarifies that an operator’s documentation must demonstrate that all proposed activities are within the scope of that right.

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

This rule adds a new term “Temporary access permit” to clarify that the NPS grants temporary access only for reconnaissance surveys and to collect basic information necessary to prepare a permit application.

This rule adds a new term “Third-party monitor” to identify a third-party monitor’s necessary qualifications.

This rule adds a new term “Usable water” to describe the criteria that the NPS uses to identify protected sources of groundwater.

This rule adds a new term “Waste” to differentiate between “waste” and “contaminating substances.” Further, the NPS changed the definition of Waste from the proposed rule by replacing the term “toxic or hazardous substance” with the phrase “contaminating substance” to more clearly explain the differences between wastes and contaminating substances.

This rule adds a new set of terms “We and us” to refer to the National Park Service.

This rule adds a definition of “You” to be consistent with the plain language format of this subpart.

### Commercial Vehicles

This rule deletes former § 9.32(d). This access is controlled by NPS commercial vehicle

regulations at 36 CFR 5.6(c).

### Previously Exempt Operations

This rule creates a new section “Previously Exempt Operations” to describe the process for bringing exempt operations under the 1978 Regulations into compliance with the requirements of this rule. These include operations that do not require access on, across, or through federal lands (former § 9.30) and grandfathered operations (former § 9.33).

The 1978 Regulations applied only when an operator’s “access [was] on, across, or through federally owned or controlled lands or waters.” Seventy-eight current operations (15% of all oil and gas operations in System units) did not require access on, across, or through federally owned or controlled lands or waters and thus were not covered by the 1978 Regulations. These operators were 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 adversely affect NPS resources, values, and visitor health and safety. The NPS identified at least 10 instances of previously exempt sites with oil spills or leaks resulting in contamination of soils and water.

Under this rule at §§ 9.30 through 9.33, all operators conducting operations within NPS boundaries are subject to permit requirements. The permitting process includes 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 System units, visitor uses or experiences, or visitor or employee health and safety. These operations are also subject to measures to mitigate such adverse effects, as well as to the financial assurance and reclamation requirements.



Under § 9.33 of the 1978 Regulations, operators who were conducting operations at the time the regulations became effective (January 8, 1979) and who had already obtained any 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 had authority under § 9.33(c) of the 1978 Regulations to suspend grandfathered operations if there was an “immediate threat of significant injury to federally owned or controlled lands or waters.” Under § 9.33(a)(1) of the 1978 Regulations, when the existing federal or state permit expired and was replaced with a new permit, a plan of operations would then be required.

In 1978, the NPS had expected that over time the permits associated with these operations would expire and that the operators would then be required to come into compliance with the 1978 Regulations. However, the rate of permit expiration has been much slower than anticipated. This has resulted in approximately 45% of operations (241 wells service-wide) remaining exempt from the regulations despite the passage of over thirty-seven years. As discussed above, this has resulted in readily avoidable impacts to NPS-administered resources and values. The grandfather exemption was intended 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 System units are conducted in a manner that protects park resources and values. This rule in §§ 9.50 through 9.53 sets forth the procedure for bringing previously exempt operations into compliance.

#### Temporary Access

This rule requires an operator to obtain a temporary access permit in order to conduct reconnaissance surveys on NPS administered lands and waters and removes provisions from the

1978 Regulations that allowed the NPS to authorize temporary access for existing operations and for new operations. Those provisions are no longer necessary because operations within the boundary of a System unit are required to obtain an Operations Permit. This rule identifies at §§ 9.60 through 9.63 the procedure for obtaining a temporary access permit and what information is necessary for the NPS to evaluate an operator's proposal. No comments were received on this provision of the proposed rule.

#### Accessing Oil and Gas Rights from a Surface Location Outside The Park Boundary

Section 9.32(e) of the 1978 Regulations allowed operators to apply for an exemption from the regulations if they directionally drilled from a surface location outside a System unit to reach a bottom hole located within NPS boundaries and the drillbore passed under any land or water the surface of which was owned by the United States. This exemption was available if operations within the park boundary posed 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 were not within the scope of the 1978 Regulations. Under this regulation, regulatory authority over these operations is exercised beginning at the subsurface point where the proposed operation (borehole) crosses the park boundary, and applies to all infrastructure and activities within the System unit regardless of the ownership of the surface estate. NPS will review your proposed operations and provide an exemption from the operations permit requirement whenever it determines that your downhole operations within the park boundary do not pose a significant threat to park resources or park visitors. For further guidance on applying for an exemption for such operations, please see the 9B Operator's Handbook.

The availability of the exemption is intended to continue to provide an incentive for

operators to locate surface facilities outside a System unit. Location of operations outside a System unit generally avoids direct impacts to NPS resources and visitors. Therefore, this rule at § 9.70 is consistent with the concepts that underlay the former rule exemption, but operators are subject to the General Terms and Conditions and the Prohibitions and Penalties provisions for operations located within the boundary of a System unit.

#### Operations Permit Application

This rule details the information requirements that an operator must satisfy when submitting a complete Operations Permit application. These requirements are separated 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

This rule contains the following new or updated information requirements from the 1978 Regulations for all operations permit applications:

- *Contact Information* - Section 9.83 of the 1978 Regulations limited identification of an operation's key personnel to the operator, owners, and lessees. To ensure that the NPS has all appropriate contact information, § 9.83(b) of this rule requires that operators also identify agents, assignees, designees, contractors, and other representatives.
- *Use of Water* – Section 9.83(e) of this rule clarifies and expands upon § 9.36(a)(5) of the 1978 Regulations. Section 9.83(e) requires information regarding the source,

transportation method and quantity of water to be used in addition to how the operator will manage waste water.

- *New Surface Disturbance and Construction* - Section 9.84 of this rule requires an operator to specify site security measures and an operation's power sources and transmission systems.
- The NPS has updated language from the proposed rule at § 9.84(a)(2) to add “wetlands, seepage areas, springs, shallow water aquifers, . . .” to the example list of natural features.
- *Environmental Conditions and Mitigation Actions* - Section 9.85(a) of this rule has been updated from the proposed rule to clarify that natural resource conditions include baseline soil and water testing (e.g., use of photoionization detectors, conductivity meters, or titration strips) within an operator's area of operation. Further, § 9.85(b) of this rule requires an operator to describe steps proposed to mitigate adverse environmental impacts and list and discuss the impacts that cannot be mitigated. Operators are required to consider and describe all alternative technologically feasible, least damaging methods. Technologically feasible, least damaging alternatives are defined in § 9.31 as those alternatives that are viable (based on economic, environmental, and technological considerations) and conform to federal, state, and local laws and regulations.
- *Cultural Resources* – In this rule, the NPS eliminates § 9.47(a) of the 1978 Regulations, “Cultural Resource Protection,” because the section merely summarized the requirements of the Antiquities Act (54 U.S.C. 320301 *et seq.*). Restating those statutory requirements in this rule is unnecessary, and the 1978 Regulations reference failed to include other statutes that also applied to such resources.
- *Spill Control and Emergency Preparedness Plan* - Section 9.86 of this rule consolidates

various provisions of the 1978 Regulations, includes a requirement that an operator must submit a Spill Control and Emergency Preparedness Plan (SCEPP) plan to the NPS, and identifies the information necessary for a SCEPP. The NPS has made nonsubstantive changes to the proposed rule so the term “Spill control and emergency preparedness plan” is used consistently throughout the final rule.

This rule at § 9.87 clarifies the additional information a geophysical operator must submit to the NPS. Furthermore, this rule at §§ 9.88 through 9.90 clarifies the additional information an operator must submit if it is proposing to drill, stimulate, or produce a well. The final rule adds language to §§ 9.88 and 9.89 of the proposed rule to include any proposed stimulation technique including hydraulic fracturing.

This rule also contains, § 9.89, 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. The NPS rule is similar to BLM’s hydraulic fracturing information requirements at 43 CFR 3162.3-3(d)(1) through (7), which BLM recently promulgated under various authorities, including the Mineral Leasing Act, 30 U.S.C. 189, the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.* As previously discussed, that rule has not gone into effect, and is the subject of litigation. Regardless of BLM’s authorities under the statutes it implements, we have determined, as discussed below, that the limited information and reporting requirements and performance standards for well stimulation activities under this rule are consistent with the Secretary’s regulatory authority under the Organic Act. Additionally, since 2006 NPS has provided specific guidance on means to ensure that well

integrity standards are met in its 9B Operator's Handbook.

#### Operations Permit: Application Review Process

Section 9.37(a)(1) of the 1978 Regulations required 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 1978 Regulations had two different approval standards, depending on whether the operation was proposed on non-federally or federally owned surface. For operations proposed on non-federally owned surface a Regional Director could not 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 operations proposed on federally owned surface a Regional Director could not 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 could have either approved the operations if the operator used technologically feasible, least damaging methods or acquire the mineral interest.

Section 9.37(b) and (c) of the 1978 Regulations required 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 was required to make one of six final decisions in writing. The final decisions were: 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.

Section 9.37(c) of the 1978 Regulations provided that failure of the NPS to make a final decision within 60 days constituted a rejection of the plan for which the operator had the option of appealing immediately to the Regional Director under former § 9.49.

This 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

Section 9.101 of this rule describes the NPS's initial review of an operator's permit application. During initial review the NPS determines whether the applicant has supplied all information necessary for the NPS to evaluate the operation's potential impacts on federally owned or administered lands, waters, or resources of System units, visitor uses or experiences, or visitor or employee health and safety. The NPS will respond to applicants in writing within 30 days and notify them whether the information contained in their permit applications is complete. If the NPS needs more time to complete the initial 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 a formal review.

#### *Stage Two: Formal Review*

During formal review under § 9.102, the NPS evaluates whether the proposed operation meets the NPS approval standards (§ 9.103) and complies with 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 37 years in implementing the 1978 Regulations, the 60-day period for reaching a final decision on a permit application has proven to be unrealistic. 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 statutory responsibilities such as NEPA, ESA, and NHPA. These regulations provide operators with realistic expectations of the timeframe necessary to process operations permits. Similarly, the NPS has taken into account time frames for its coordination with other federal and state agencies. Thus, § 9.104 allows the NPS to complete its legal compliance responsibilities and then take final action on the operations permit within 30 days. This rule allows 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 legal requirements.

This rule removes § 9.37(c) of the 1978 Regulations, which allowed an operator to immediately appeal the failure to reach a decision within 60 days. This rule, at § 9.104, authorizes the Superintendent to notify the operator in writing that additional time is necessary to make a final decision.

### Elimination of Dual Approval Standards

Section 9.103 replaces the dual approval standards under the 1978 Regulations 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 System units, visitor uses or experiences, or visitor or employee health and safety to the same degree as operations sited on federally owned surface.



Section 9.103(a) of the proposed rule has been changed in two ways. First, in response to comment the NPS changed the introductory language to expressly provide that if an operator meets the approval standards, the Regional Director will approve the operation permit. Second, this section lists two (rather than three) determinations that the Regional Director must make in order to approve an operations permit. The NPS clarified the language in § 9.103(a)(1) to include statutes that may apply to operations in particular System units. The NPS also removed language in paragraph (b)(3) in the proposed rule that required the Regional Director to make a “determination” that an operator was in compliance with all other applicable federal, state, and local laws. Rather, as a prerequisite to approval of an operations permit, the modified language requires that the operator provide the Regional Director with an affidavit stating that it is in compliance with all applicable federal, state, and local laws.

Thus, revised § 9.103(b) requires three prerequisites for final approval: (1) submittal of adequate financial assurance, (2) proof of adequate liability insurance, and (3) an affidavit stating that the operations planned are in compliance with all applicable Federal, State, and local laws and regulations.

#### Final Actions

Section 9.104 of this rule establishes two final actions: (1) approved, with or without conditions, or (2) denial, and the justification for the denial. The Regional Director will 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 simplified the language at § 9.104(a)(2) to read “all applicable legal requirements.”

The NPS has eliminated the proviso in the approval standard in current § 9.37(a)(3) of the 1978 Regulations, which allows for approval using only the “technologically feasible, least

damaging methods” standard of § 9.37(a)(1) if application of the more stringent § 9.37(a)(3) standard would cause a taking of a property interest. Over the past 37 years of implementing the 1978 Regulations, the NPS has never invoked this exception. In every instance, the NPS been able to authorize operators’ access while protecting park resources and values. Section 9.30(c) continues the 1978 regulatory statement that application of the regulations are not intended to result in a taking of mineral rights and § 9.104(b)(2) requires that any denial of an operations permit must be consistent with that provision. This change from the 1978 Regulations 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 Addition Act, 16 U.S.C. 698m-4, directs the NPS to promulgate rules and regulations governing the exploration for and development and production of nonfederal oil and gas interests within the Big Cypress National Preserve and Addition Area.

Accordingly, § 9.105 of this rule describes the procedure for initial review of a proposed operation in Big Cypress National Preserve. This procedure differs slightly from the service-wide procedure described in §§ 9.101 and 9.102. The NPS’s service-wide rule incorporates the 30-day initial review period from the Addition Act. However, the Addition Act at 16 U.S.C. 698m-4(b)(2)(C) places a limit on the amount of collaboration that can occur between the NPS and the operator. Under this provision, there is no mechanism for the NPS to require 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 using 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 Addition Act also differs slightly from the proposed service-wide rule in that under the Addition Act 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 final action. Rather, the NPS service-wide rule provides that final action must occur within 30 days after the completion of NPS legal compliance responsibilities (such as NEPA, ESA, and NHPA). 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, ESA, and NHPA.

The NPS has decided it is more appropriate to include these Big Cypress-specific provisions in this regulation instead of in a new park-specific regulation in part 7, because other provisions of this regulation still apply to oil and gas operations in Big Cypress National Preserve. It will be easier for operators to have all applicable provisions in one rule.

#### Operating Standards

Section 9.110 of this rule clarifies the purpose and function of operating standards. The NPS will maintain the current practice under the 1978 Regulations 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.

Section 9.110(a) of this rule clarifies the practice under the 1978 Regulations that applicable operating standards will be incorporated into an approved operations permit so that the operating standards become enforceable terms and conditions of an approved permit.

Section 9.110(c) of this rule requires all operators to use technologically feasible, least damaging methods to protect NPS resources and values while assuring human health and safety. In the 1978 Regulations, “technologically feasible, least damaging methods” was part of an overall plan of operations approval standard at 36 CFR 9.37(a)(1).

#### Reorganization of Operating Standards

This rule organizes all operating standards into one section and separates the 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. Organizing the standards in this manner will allow the NPS and operators to readily understand which operating standards are applicable to the particular type of operation proposed.

#### Clarification of and Additions to Former Operating Standards

Some of the operating standards in the 1978 Regulations were minimally described. Additional operating standards were included in the NPS’s 2006 9B Operator’s Handbook. This rule now contains all operating standards. To the extent this rule incorporates operating standards from the 1978 Regulations without substantive change; those standards are not further discussed below. The operating standards summarized below are either clarifications to the 1978 Regulations, are new standards that the NPS has added, or are revisions to those included in the

proposed rule.

### Operating Standards That Apply To All Operations

This rule modifies language from § 9.112(a) of the proposed rule to remove the phrase “ground disturbing” because no activities incident to oil and gas operations, whether or not they disturb the ground, may be conducted within 500 feet of any structure or facility used by the NPS for interpretation, public recreation, or administration. The NPS moved § 9.112(a) of the proposed rule to § 9.111(a) of this rule. Section 9.111(a) of this rule modifies language from § 9.112(a) of the proposed rule to clarify that Superintendents may increase or decrease the 500 foot setback consistent with the need to protect federally owned or administered lands, water, or resources of System units, visitor uses or experiences, or visitor or employee health and safety. The NPS also added the phrase “within 500 feet of the mean high tide line” to § 9.111(a) of this rule to provide notice to operators that the general 500 foot setback also applies to tidal areas.

This rule includes a new standard at § 9.111(b) to require that either existing or newly created surface disturbance is kept to the minimum necessary for safe conduct of operations.

This rule modifies language from § 9.111(d) of the proposed rule to clarify how waste must be handled.

This rule modifies language from § 9.111(g) of the proposed rule to clarify that hydrocarbon and air pollutant releases are to be minimized along with minimizing the flaring of gas.

This rule adds new standards at §§ 9.114 and 9.115 that limit the visual and sound impacts of oil and gas operations on park visitor use and experience.

This rule adds a new standard at § 9.111(h) that requires operators to control the introduction of exotic species.

This rule adds new standards at § 9.112 that address hydrologic connectivity.

#### Reclamation Operating Standards

Section 9.116 of this rule describes the standards for reclamation.

#### Operating Standards That Apply to Geophysical Operations

Section 9.117 of this rule describes standards for geophysical surveying methods including source points, use of equipment and methods, and shot holes.

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

Section 9.118(a)(1) of this rule requires all operators to use containerized mud systems during drilling, stimulation, and production operations.

Section 9.118(a)(2) of this rule prohibits the establishment of new earthen pits for any use. Use of existing earthen pits may continue, however, the Superintendent may require the pits be lined or removed depending on site specific conditions.

Section 9.118(b) of this rule 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.

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 any other applicable operation standards. If not, the NPS will add terms and conditions in the permits to address specific deficiencies. In light of our previous experience under the 1978 Regulations addressing downhole operations, we expect that application of these requirements will result in little or no change to well stimulation activities proposed by an operator and approved by the state. We also expect that in most cases the information needed to be reviewed by NPS will be that already submitted to the state for its

approval. Guidance on 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.

### General Terms and Conditions

This rule contains a new "General Terms and Conditions" section listing terms and conditions that apply to all operations. This section consolidates the following sections from the 1978 Regulations: §§ 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). Described below are either clarifications to the 1978 Regulations, new terms and conditions that the NPS has added, or revisions to those included in the proposed rule.

The water use section at § 9.35 of the 1978 Regulations did not address all state water law systems under which water rights are established or decided. Section 9.120(b) of this rule requires that an operator 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 a System unit unless the use has been approved in accordance with NPS policy.

Because monitoring and reporting requirements are necessary for all operations, the NPS includes monitoring and reporting requirements under General Terms and Conditions. Section 9.121(a) authorizes the NPS to access an operator's area of operations at any time to monitor operations and to ensure compliance with the regulations. To the extent such operations are located on non-federally administered lands and waters, the NPS will provide the operator reasonable notice in advance of such access, other than in emergencies. Section 9.121(b) of this rule allows the NPS to require that operators hire third party monitors when they are necessary to ensure compliance and protection of park resources and values. The NPS had previously required in some operations plans the use of third party monitors to help ensure that it received 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, operators at Big Thicket National Preserve, Padre Island National Seashore, Jean Lafitte National Historic Site, and Big Cypress National Preserve were required to use third party monitors for certain geographically extensive and logistically complex 3D seismic operations. The use of third party monitors allowed the NPS to augment monitoring by park staff while ensuring plan compliance and enabling operators to simultaneously engage in multiple operations at different locations. This provision also more closely conforms the NPS's requirements with practices of other federal agencies (BLM, the U.S. Forest Service, and the U.S. Fish and Wildlife Service have each in some instances 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 criteria that the NPS will consider when making the decision to require a third party monitor. The third party monitor will report directly to the NPS to ensure oversight and accountability.

The NPS has modified language from § 9.121(c) and (d) of the proposed rule to clarify the timing for reporting of incidents occurring on an operations site and for reporting requirements for cultural or scientific resources encountered on an operations site, respectively.

Section 9.121(e) broadens the reporting requirement from the 1978 Regulations 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 rule allows an operator to submit the same reports it submits to a state or other federal agency as long as those reports meet the information requirements of this subsection. This is similar to § 9.42 of the 1978 Regulations.

Section 9.122 requires 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 those requirements are addressed in other sections of this rule.

#### Access to Oil and Gas Rights

This rule contains a new section that addresses access across federally owned or administered lands or waters to reach the boundary of an operator's oil and gas right. Section 9.50 of the 1978 Regulations authorized the NPS to charge a fee for commercial vehicles using NPS administered roads. Despite this longstanding authority, we are not aware that such fees had actually been collected. This new section expands upon former § 9.50.

Section 9.131(a)(1) of this rule allows the NPS to charge an operator a fee based on fair market value for access (e.g., use of existing roads as well as constructing new roads, or running gathering lines) across federal lands outside the scope of an operator's oil and gas right. The NPS will set fees consistent with NPS part 14 rights-of-way guidance (NPS Reference Manual 53, Special Park Uses, Appendix 5, Exhibit 2). Section 9.131(b) provides that NPS will not charge a fee for access that is within the scope of the operator's oil and gas right, or access that is otherwise provided for by law. Section 9.132 addresses access across federally owned or administered lands or waters necessary to respond to an emergency.

#### Financial Assurance

The NPS renamed this section of the rule "Financial Assurance" (titled "Performance Bond" under the 1978 Regulations) to better reflect the variety of instruments that operators can provide to the NPS to meet their obligation under this section.

Section 9.48(a) of the 1978 Regulations required 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 ensured that in the event an operator becomes insolvent or defaults on its obligations under an approved plan of operations, the defaulted funds would be paid to the United States.

Section 9.48(d)(3) of the 1978 Regulations limited the performance bond amount to \$200,000 per operator, per System unit. Therefore, if one operator had multiple wells in an System unit, the NPS could only require up to \$200,000 financial assurance from that operator. The \$200,000 limit was established in 1979 and in most cases did not reflect the potential costs of reclamation. In the event of a default by the operator, reclamation costs exceeding the limit could have required the NPS to bring a civil action in federal court to recover the additional costs.

Section 9.140 of this rule requires the operator to file with the NPS financial assurance in a form acceptable to the Regional Director. The current 9B Operator's Handbook identifies acceptable forms of financial assurance as including: corporate surety bonds, US Treasury bonds, irrevocable letters of credit, cash. The NPS will update the Handbook as additional guidance is provided.

Section 9.141 of this rule makes the financial assurance amount equal to the estimated cost of reclamation. This substantially reduces the risk of the American taxpayers being left to assume reclamation costs in the event of operator default.

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

Section 9.144(b)(3) of this rule allows the NPS to suspend review of an operator's pending permit applications, if that operator has forfeited its financial assurance in any System unit. Suspension would last until the Superintendent determines that all violations have been resolved.

#### Modification to an Operation

Section 9.150 of this rule renames 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 clarifies 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 relevant criteria applicable to Temporary Access Permits (§§ 9.60 through 9.63) or Operations Permit: Application Review Process (§§ 9.100 through 9.105).

Section 9.150(c) of this rule prohibits an operator from implementing a modification until the NPS has provided written approval of the modification. No comments were received on this provision of the proposed rule.

#### Change of Operator

This section renames § 9.34 "Transfer of Interest" of the 1978 Regulations to "Change of Operator."

Section 9.34(a) of the 1978 Regulations provided that a previous operator remained liable on its financial assurance until it informed the NPS that the rights had been transferred to another party. A new operator could not operate until it posted financial assurance and ratified the existing plan of operations. Once the previous operator provided notice to the Superintendent, the previous owner could request release of its financial assurance before the new owner posted

its own financial assurance with the NPS. Therefore, if the new operator abandoned operations before posting financial assurance with the NPS, the burden of reclaiming the site would fall on the taxpayers.

Section 9.160(a) requires the previous operator to notify the NPS of a transfer of operations and provide contact information. Section 9.160(b) 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; provides proof of liability insurance; and an affidavit demonstrating compliance with applicable federal, state, or local laws. Section 9.160(c) addresses a transfer of operation where the previous operator did not have an operations permit.

Section 9.161(a) of this rule requires the new operator who acquires an operation that was under an operations permit to adopt the previous permit. Section 9.161(b) addresses the transfer of an operation where an exemption has been granted under § 9.72 of this rule. Section 9.161(c) addresses transfer of an operation where the previous operator did not have an operations permit. No comments were received on this provision of the proposed rule.

### Well Plugging

This section replaces, in part, § 9.39(a)(2)(iv) of the 1978 Regulations and creates a new section entitled "Well Plugging."

Section 9.39(a)(2)(iv) of the 1978 Regulations required operators to plug and cap all non-productive wells and to fill dump holes, ditches, reserve pits, and other excavations. Section 9.116(d)(1) (Operating Standards) retains the requirement that an operator conduct reclamation by plugging all wells. However, the 1978 Regulations did not directly address whether NPS could require an operator to plug wells that have been in an extended shut-in status. As a result,

inactive wells have remained unplugged for years and, in some instances, decades. Such unplugged wells have caused adverse impacts to park resources and presented risks to park visitors.

Section 9.170(a) of this rule requires operators to plug a well within 60 days after cessation of drilling, or 1 year after completion of production operations, or upon the expiration of NPS approved shut-in status. Under § 9.171, an operator may obtain an extension to the plugging requirement if the operator demonstrates mechanical integrity, a plan for future use of the well, and that the operator will follow maintenance requirements.

These 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 rule is intended to ensure that shut-in wells are maintained in an environmentally sound and safe manner.

#### Prohibitions and Penalties

Section 9.51(c) of the 1978 Regulations provided two different compliance procedures for suspending an operation, depending on whether or not the violation posed an “immediate threat of significant injury to federally owned lands or waters.”

Section 9.181 of this rule authorizes the Superintendent 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

Section 9.180 lists prohibited acts to provide operators with notice of the acts that

constitute a violation of these regulations. The prohibited acts in this rule include violations of the terms and conditions of an Operations Permit, as well as violations of other provisions of these regulations.

#### Incorporation of 36 CFR 1.3 Penalties

Section 9.51 of the 1978 Regulation authorized the NPS to suspend an operation for non-compliance, and if the violation or damage was not corrected, revoke an operator's plan of operations. The process to suspend an operation required coordination between park staff and other NPS offices, during which time damage to park system resources and values may continue. Additionally, suspension and revocation were 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 incorporating our existing penalties provision at 36 CFR 1.3, which allows NPS law enforcement rangers and special agents to issue citations, which result in fines for minor acts of non-compliance, while treating serious acts as ones that may be subject to a fine or imprisonment, or both.

#### No New Authorization Unless Operator is in Compliance

Under § 9.182 of this rule, NPS will not review any new operating permit applications or continue review of any pending permit applications in any System unit until an operator comes into compliance with this subpart or the terms or conditions of an operations permit. No comments were received on this provision of the proposed rule.

#### Reconsideration and Appeals

Most of the procedures outlined in § 9.49 of the 1978 Regulations 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 a

final agency action that is subject to review under the Administrative Procedure Act (APA).

This rule renames 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 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, § 9.193(a) of this rule provides 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. Section 9.193(b) addresses suspension of operations due to emergencies that pose an immediate threat of injury to injury to federally owned or administered lands or waters.

Under section 9.194, if the Superintendent has the authority to make the original decision, requests for reconsideration and appeals are to be filed in the manner provided under §§ 9.190 through 9.193, except that requests for reconsideration are directed to the Superintendent, and appeals are directed to the Regional Director.

No comments were received on these provisions of the proposed rule.

### Public Participation

The rule renames the "Public Inspection of Documents" section to "Public Participation." Section 9.52(a) of the 1978 Regulation required 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 was ever submitted by an operator. Section 9.52(b) of the 1978 Regulation further required a Superintendent to publish a notice in the Federal Register of receipt of a plan of operations. This rule eliminates the public notice steps currently required under § 9.52(a) and (b) of the 1978 Regulation and replaces them with a more efficient public involvement and

review process.

The 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 provisions that allow an operator engaged in hydraulic fracturing operations to withhold chemical formulations that are deemed to be a trade secret. The NPS has updated § 9.200(c) from the proposed rule to include reference to §§ 9.88 and 9.89 to allow operators to maintain proprietary information for stimulation techniques. The NPS has also removed language from § 9.200(g) of the proposed rule regarding record retention for operations on Indian and Federal lands to make this provision conform to the scope of this regulation.

#### Information Collection

See Paperwork Reduction Act discussion below.

#### **Summary of and Responses to Public Comments**

A summary of substantive comments and NPS responses is provided below followed by a table that sets out changes we have made in the final rule based on the analysis of the comments and other considerations.

#### NPS Authority to Regulate Non-Federal Oil and Gas Rights

1. *Comment:* Commenters noted that additional regulation of private oil and gas rights on NPS land could infringe on private property rights or could represent a taking.

*NPS Response:* Based on its long experience implementing the 1978 Regulation, NPS disagrees with the commenter’s conclusion that application of this rule is likely to result in an actual taking of private property. This is discussed in further detail in the takings analysis above.



2. *Comment:* Commenters stated that the NPS does not have authority to regulate oil and gas operations taking place on lands outside of a System unit boundary or on non-federally owned lands within the boundaries of System units.

*NPS Response:* This rule states that the regulations only apply to operations that are conducted within the boundaries of System units. See § 9.30(a) and (b), the definition of “Operations” at § 9.40, and § 9.70.

Although the NPS does not generally assert regulatory authority over activities on non-federal lands, *see* 36 CFR 1.2(b), the NPS has long regulated three types of activities on non-federal lands that have a high potential to harm park resources and values – the operation of solid waste disposal sites, 1872 Mining Law claims and operations, and non-federal oil and gas operations. As stated above, courts have consistently recognized NPS’s authority to regulate non-federal interests within units of the National Park System. Courts have also recognized that on split estate lands. Where the federal government owns the surface estate and the mineral estate is privately held, the subsurface is within the boundary of a National Park System unit.

This rule applies to all operations conducted within the boundary of a System unit, with the exception of System units in the State of Alaska, where this rule does not apply. As explained in the preamble to the proposed rule: “[NPS’s] experience over the past three decades has demonstrated that [operations conducted on non-federal lands] 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 [on non-federal lands] with oil spills or leaks resulting in contamination of soils and water.” (80 FR 65575). That an operation is located on non-federal lands within a System unit does not mean that the operation has no potential to affect NPS administered resources and values.

3. *Comment:* One commenter suggested the NPS require the mineral owner and the operator to assume joint and several liability arising from oil and gas operations.

*NPS Response:* The NPS included joint and several liability as an alternative in the DEIS because it could encourage owners to emphasize to their lessees requirements for strict compliance with applicable laws and regulations, including the responsibility to plug and reclaim their operations. Because we have included in this rule a bonding requirement that covers the full estimated cost of reclamation, we have concluded that the joint and several liability provision is unnecessary.

#### State Oil and Gas Regulation

4. *Comment:* One commenter opposed the rule, stating that existing state oil and gas laws and regulations already provide sufficient oversight.

*NPS Response:* In reviewing the state oil and gas regulations for the 8 states where non-federal oil and gas operations are currently undertaken in System units, the NPS found that the focus of these state regulations is primarily limited to the protection of mineral rights, maximization of production of oil and gas resources, protection of water resources, and managing waste by-products of oil and gas operations. While these states have general provisions that address protection of the environment and public health, they do not adequately protect NPS administered resources to the standards developed under this rule.

Congress mandated that System units be managed “for the benefit and inspiration of all the people of the United States.” In the context of these regulations, the NPS fulfills its mandate by applying a consistent set of Servicewide standards to govern oil and gas activities in all System units. These regulations are designed to protect the unique and nationally significant natural and cultural resources that constitute each System unit, including: geological resources,

air quality, water quality and quantity, vegetation, fish and wildlife and their habitat, floodplains and wetlands, archeological resources, paleontological resources, soundscapes, night skies, viewsheds, cultural landscapes, and ethnographic resources. These regulations are also designed to protect visitor health and safety.

5. *Comment:* One commenter expressed concern that the rule duplicates requirements in state regulations.

*NPS Response:* To fulfill the NPS's mission to protect park resources and values, the NPS must have sufficient information from an applicant to adequately evaluate an operator's proposed operations. When applying for an operations permit, § 9.81(b) allows an operator to submit the same reports it submits to a state or other federal agency as long as those reports meet the information requirements of this subsection. This is similar to § 9.42 of the 1978 Regulations. The NPS will review this information and determine if it meets NPS information requirements and operating standards. This reduces the potential burden on applicants who have already applied for a state permit.

#### Big Cypress National Preserve

6. *Comment:* Commenters requested the NPS clarify how these regulations will apply to oil and gas activities in Big Cypress National Preserve in light of existing statutory provisions included in the Big Cypress enabling legislation.

*NPS Response:* The relationship between this rule and Appendix 6 (to the Agreement Among the United States of America, Collier Enterprises, Collier Development Corporation, and Barron Collier Company (May 12, 1988)) is explained in the Summary of Final Rule section above. The Addition Act states that such "agreements shall be superseded by the rules and regulations promulgated by the Secretary, when applicable..." 16 U.S.C. 698m-4(e). This rule

applies to operations in both the original preserve and the Addition Area.

### National Environmental Policy Act

7. *Comment:* One commenter suggested that operators should be able to submit Environmental Assessments for agency use, and that the regulations should be updated to allow an operations permit application to function as a draft Environmental Assessment.

*NPS Response:* The NPS will comply with Council on Environmental Quality and DOI NEPA regulations, and NPS NEPA guidance documents. This rule does not alter those requirements. An operations permit application generally does not contain all of the required elements of an Environmental Assessment. The NPS will continue its existing practice of allowing applicants to prepare the draft of the appropriate NEPA document. NPS will update its guidance manual to reflect this practice.

### Purpose and Scope

8. *Comment:* One commenter suggested that 9B Rules be expanded to govern other non-federal mineral rights such as sand, gravel, and coal.

*NPS Response:* Regulating the extraction of sand, gravel, and coal is beyond the scope of this rulemaking, which was to revise the former rules applicable to the exercise of non-federal oil and gas rights. Coal extraction is generally prohibited within System units under the Surface Mining Control and Reclamation Act. There are no current coal operations in any System units. The NPS generally is able to regulate non-federal sand and gravel extraction through the use of special use permits and applicable provisions of regulations set forth at 36 CFR part 6.

9. *Comment:* Commenters suggested that the NPS consider buying out nonfederal mineral rights.

*NPS Response:* The NPS has determined that acquisition of all mineral rights in System

units is economically inefficient, financially infeasible, and unnecessary to protect park system resources and values.

NPS will continue to determine, on a case by case basis and in collaboration with prospective operators, whether a proposed operation meets the operating standards and approval standards of these regulations. If the proposed operation does not meet 9B approval standards, the NPS has the authority to seek to acquire the mineral right from the operator.

10. *Comment:* One commenter stated that the NPS has not demonstrated that there are systemic problems with the 1978 Regulations, or that existing regulatory schemes (including the 1978 Regulations) are inadequate.

*NPS Response:* As described above in the “Summary of Potential Impacts from Oil and Gas Operations on NPS Resources and Values,” the NPS concluded the problems that necessitated this rule were systemic and that existing laws or regulatory schemes were inadequate to address protection of the nationally significant resources administered by the NPS.

#### Demonstration of Right to Conduct Operations

11. *Comment:* One commenter suggested that the rule clarify that an operator does not need to demonstrate a right to conduct oil and gas operations beneath the operator’s access route, in cases where an operator needs to traverse some other area of the unit to access its operations area.

*NPS Response:* As addressed by § 9.130—Access to Oil and Gas Rights, the NPS may have the discretion to grant access rights outside the boundary of an operator’s oil and gas right when the operator does not hold a statutory or deeded right of access. In such cases, the operator does not need to demonstrate a right to conduct operations.

12. *Comment:* One commenter suggested that the rule should better define the type of

information that operators may submit to demonstrate the right to conduct operations. This commenter proposed other types of documents that could demonstrate a right to operate.

*NPS Response:* The definition of “right to operate” in § 9.40 of the rule lists specific examples of documents – deed, lease, memorandum of lease, designation of operator, assignment of right – that would meet the requirement. The NPS has included the phrase “other documentation” in the rule because there may be documentation that is not listed that would demonstrate a legal right to conduct the operations in a System unit. This provides greater flexibility to the applicant. What the NPS deems an acceptable demonstration of a legal right to conduct operations is evaluated on a case by case basis.

13. *Comment:* One commenter stated that the NPS should implement a conditional approval process that would allow the operator to access a mineral right over NPS land, subject to later demonstrating that the operator has acquired access to that mineral right.

*NPS Response:* The NPS has long required the operator to demonstrate a right to operate prior to formally analyzing a proposal. This requirement ensures the NPS does not expend taxpayer funds on proposals that are ultimately not viable because an operator lacks sufficient rights. A parallel or contingent approval process would further complicate the regulations, and any time and cost savings for certain viable proposals would be outweighed by the unnecessary time and cost spent reviewing proposals that are not viable. However, an operator who has acquired only a portion of the rights it expects to eventually hold may, under § 9.82(b), submit its application in phases covering only those rights it holds at the time of the application.

14. *Comment:* One commenter suggested that the permit review and approval process run parallel to the NPS’s review of the operator’s right to operate documentation.

*NPS Response:* As explained in the previous response, NPS requires complete

demonstration of a right to operate prior to formally analyzing a proposal, which includes the permit review and approval process. This provision is meant to ensure that the agency does not expend taxpayer money unnecessarily on proposals that may not be possible because of the lack of complete acquisition of the right to operate. For example, an operator proposing a 3D seismic survey covering many acres within a park may not ultimately be able to acquire all rights within the proposed operations area.

### Definitions

15. *Comment:* One commenter suggested that the definition of “Waste” should not include items such as fuel drums, pipes, oil, or contaminated soil that have any residue of oil, which contains benzene, toluene, xylene, and other hazardous chemicals. This commenter said these items should instead be included under the definition of “Contaminating Substances.”

*NPS Response:* The items described by the commenter fall under the definitions of both “waste” and “contaminating substances.” Any “waste” that contains a “contaminating substance” is required to be properly discarded from an operations site, but also handled in a manner that ensures proper containment and clean-up of the contaminating substance.

16. *Comment:* One commenter suggested that the definition of “usable water” should not just refer to whether the water is usable for humans but also should include whether the water is usable for wildlife, ecosystems, and people's wells.

*NPS Response:* The definition of the term “usable water” is the same as the definition of the term “underground source of drinking water” that is used by the Environmental Protection Agency (EPA) in the Underground Injection Control Program. A similar definition is used by several states with NPS units that have non-federal oil and gas operations (Texas, New Mexico, Florida). The EPA and these states use these definitions to regulate specific downhole activities

of oil and gas operations and ensure protection of zones of groundwater. Water that is used by wildlife, ecosystems, and people's wells is addressed by other standards and requirements of the rule. See, hydrologic operating standards at § 9.112, and water use requirements at § 9.120. The definition for usable water does not need to be changed.

#### Previously Exempt Operations

17. *Comment:* One commenter expressed concern that elimination of the access and grandfathered exemptions would negatively impact individuals who rely on mineral resources located within the National Park System.

*NPS Response:* The NPS has analyzed the effects of this rulemaking on the regulated public and found that the updates to the 1978 Regulations will not have a significant economic impact on a substantial number of 9B operators. The cost-benefit and regulatory flexibility analysis, 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, can be viewed at [https://parkplanning.nps.gov/CBA\\_9B](https://parkplanning.nps.gov/CBA_9B).

18. *Comment:* One commenter stated that the rule should phase out previously exempt “grandfathered” operations over a period of time, rather than requiring these operations to comply with the rule immediately.

*NPS Response:* While not all previously exempt operations present an immediate threat to park resources and values, there are a significant number of operations exhibiting operating conditions not consistent with current NPS standards that the NPS concludes are necessary to address as soon as possible. These operations qualified for the regulatory exemption under the 1978 Regulations because they were in operation as of January 8, 1979, and the operators held a valid state or federal permit at that time. More than 37 years have passed during which these



operations have not been subject to NPS regulation. The NPS is promulgating this rule to bring these operations up to NPS operating standards, including NPS reclamation and financial assurance standards, in order to protect park resources and values.

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

19. *Comment:* Some commenters opposed the provision in the rule that would authorize the NPS to exempt directional drilling operations outside the park boundary from the operations permit requirement. Commenters also sought clarification regarding what aspects of a directional drilling operation are covered by these regulations.

*NPS Response:* As stated in the preamble to the proposed rule: “The availability of the exemption [for directional drilling operations] provides an incentive for operators to locate surface facilities outside a System unit. Location of operations outside a System unit generally avoids direct impacts to NPS resources and values.” (80 FR 65578). Regulating surface activities outside the boundary of the park would eliminate this incentive. Such surface activities are not themselves located on NPS-administered land. While there might be some benefits to the neighboring or nearby NPS-administered property, based on our years of experience, on the whole any such benefits would be outweighed by the loss of the incentive to place such operations outside the boundary, resulting in more direct impacts to park resources and values. Although law review articles and the Office of the Solicitor have indicated that the Organic Act could be interpreted to authorize NPS to regulate activities occurring outside park boundaries, to date NPS has not promulgated any such regulations.

Regulatory authority over directional drilling operations begins at the subsurface point where the proposed operation (borehole) crosses the park boundary and enters federally owned or administered lands or water, and applies to all infrastructure and activities within the System

unit. Section 9.70 of this rule states that “downhole activities inside an NPS unit are subject to these regulations.”

The NPS does not require financial assurance from directional drilling operators because, although the operation is drilling to a bottom hole location within the System unit, the surface operation is located outside the park boundary on lands not administered by the NPS. Each state has requirements for plugging, abandonment, surface reclamation, and financial assurance from the operator.

The NPS examines each exemption application to ensure that the downhole portion of the operation that is inside the park boundary meets the NPS approval standard. If the NPS finds, through monitoring of the operation, that the operation inside the park is causing damage to park administered resources or values, the NPS may require the operator to rectify the violation. The NPS has additional guidance describing the process for applying for such an exemption in the 9B Operator’s Handbook.

20. *Comment:* One commenter questioned whether the NPS has the authority to apply the General Terms and Conditions and Prohibitions and Penalties to directional drilling operations that cross beneath privately owned surface estate inside the System unit boundary.

*NPS Response:* The General Terms and Conditions and the Prohibitions and Penalties provisions in the rule apply to operations located inside the boundaries of the System unit. The authority to apply these provisions to operations inside the unit on non-federal lands is summarized in the preamble to the proposed rule at 80 FR 65573.

21. *Comment:* One commenter suggested that the rule require operators to comply with mitigation measures required by other natural resource agencies for directional drilling operations where the surface location is located outside the boundaries of System units.

*NPS Response:* NPS has concluded that it does not need to separately enforce the requirements of other natural resource agencies or determine whether operators are in compliance with those authorities. NPS does generally coordinate and share information with other federal and state agencies, but it does not need to provide for duplicative enforcement of mitigation measures required by other authorities. Nothing in this rule relieves the permittee from compliance with other applicable, Federal, State, and local laws and regulations.

22. *Comment:* One commenter suggested that the rule require mandatory rather than voluntary mitigation requirements for directional drilling operations located outside the boundary of the System unit.

*NPS Response:* This rule requires mandatory rather than voluntary mitigation requirements for directional drilling operations. Therefore, these operating standards are mandatory for operations conducted inside the park boundary. To maintain the incentive to have operators locate surface facilities outside the System unit, mandatory operating standards only apply to operations located within the boundary of the System unit. The NPS will not apply mandatory mitigation measures to operations outside System units.

#### Operations Permit Requirement

23. *Comment:* One commenter suggested that the rule should not require oil and gas operations to carry out mitigation and reclamation that are not required for other commercial activities.

*NPS Response:* Exploration and development of non-federal oil and gas resources are high-impact industrial activities that can generally be expected to have some adverse effects on park resources. The mitigation and reclamation requirements contained in the final rule are similar to those required for other high impact industrial activities occurring within System units,

e.g., mining activities under the part 9A regulations but do differ from those that may apply to other types of commercial activities, e.g., park concessions.

24. *Comment:* One commenter requested that well permitting standards should require a baseline assessment of environmental conditions, including groundwater testing, before construction and operations commence.

*NPS Response:* The proposed rule was intended to allow NPS to require the applicant to undertake specified testing and submit baseline data for evaluation. Section 9.85(a) of this rule has been updated from the proposed rule to clarify that the NPS may require any information it needs about natural and cultural resources, including groundwater resources that may reasonably be impacted by surface operations. This information may include data from baseline testing of soils and surface waters within the area of operations.

25. *Comment:* One commenter suggested the examples listed for natural features should also include wetlands, seepage areas, springs, and shallow water aquifers.

*NPS Response:* The NPS has included these as additional examples of natural features in the final rule.

26. *Comment:* One commenter noted that the phrase spill control environmental preparedness plan was not referred to consistently throughout the proposed regulation.

*NPS Response:* NPS has made nonsubstantive changes to address this in the final rule.

27. *Comment:* One commenter suggested that maps of surface and subsurface operations be recorded in land records so that future oil and gas operations do not damage existing or closed wells.

*NPS Response:* Operators proposing new operations within System units must submit a state drilling permit as part of an operations permit application. As part of the state permitting

process, the state conducts an evaluation of the proposed well path in relation to existing (including plugged and abandoned) wells. Records of surface and subsurface operations, including maps and permit applications, are kept by the state oil and gas permitting agency and are used by the state to evaluate subsequent applications.

#### Operations Permit Approval

28. *Comment:* Commenters suggested that the permit approval standards could be interpreted to give the NPS the authority to determine whether an operator has complied with state and local law.

*NPS Response:* NPS did not intend to make such determinations. As a result, we have clarified this rule so that it simply requires at § 9.120(c) that an operator provide an affidavit to the NPS stating that it is in compliance with all applicable Federal, state, and local laws. The Regional Director will review affidavits submitted by an operator prior to approval of an operations permit.

29. *Comment:* The NPS sought comments on whether the 180 day timeline for final action is reasonable and on any resulting incremental impacts on operators. Commenters expressed concern that the rule gives the NPS too much time to review a permit application, and that the NPS could take more time in order to comply with applicable laws without a hard deadline for taking a final action. One commenter suggested that the NPS review all operations permit applications within 90 days, with an automatic 60-day extension if needed as well as additional time as the applicant agrees. The commenter modeled that recommendation on the time frame for reviewing biological opinions in the Endangered Species Act, which allows for a total of 185 days for review. One commenter recommended that the NPS add a provision that would allow for automatic approval of an operations permit if the NPS did not reach a deadline.

*NPS Response:* In response to comments and upon further review, the NPS has decided to change the timeframe for final action in this rule to “within 30 days of completing all required legal compliance, including compliance with the National Environmental Policy Act...” The NPS is making this change because it more accurately reflects the timeframe for the process that the NPS must follow before taking final action on an Operations Permit. Under this rule, the NPS has 30 days to conduct its “initial review” to determine whether an operator’s application is complete, request more information from the operator, or inform the operator that more time is necessary and written justification for the delay. Once an application is deemed complete the NPS must complete its legal compliance responsibilities, which include, but are not limited to, compliance with NEPA (for example, preparing an Environmental Assessment and a Finding of No Significant Impact), compliance with the ESA (for example, consulting with the U.S. Fish & Wildlife Service under Section 7), and consultation with Indian tribes. Once the legal compliance is completed, the NPS will take final action within 30 days. The NPS may only take more time if the operator agrees, or if it is necessary for the NPS to comply with unanticipated legal requirements.

Providing for automatic approval of a permit application if the NPS does not meet a deadline would most likely violate procedural and substantive legal requirements for agency actions.

30. *Comment:* One commenter recommended that the rule: 1) state the criteria on which the NPS will deny operation permit applications; 2) state that the NPS shall approve a plan of operations if the plan complies with existing law and applicable operating standards; and 3) include a reference to the enabling statutes for System units and any standards that may be contained therein.

*NPS Response:* Operations permits would be approved or denied based on whether the plan meets the approval standards. Therefore this rule only needs one set of standards.

Accordingly, the NPS has clarified the language in this rule. The final rule states that the Regional Director will approve an operations permit if the NPS determines that the operations meet the approval standards.

Section 9.103(a)(1) of this rule has been updated from the proposed rule to reflect that the Regional Director must determine that the operations will not impair park resources and values under the NPS Organic Act, or violate other statutes governing administration of specific units of the National Park System. Enabling statutes are mentioned because NPS is required to comply with requirements imposed by Congress for individual System units.

#### Operating Standards

31. *Comment:* One commenter requested that the rule exempt certain operations from specific operating standards on a case by case basis.

*NPS Response:* To the extent that certain operating standards are not applicable to a particular proposal, those standards would not be applied by the NPS. Accordingly, there is no need for an exemption. The NPS does not find it necessary or advisable to allow for exemptions to otherwise applicable operating standards.

32. *Comment:* One commenter suggested the rule clarify the: 1) applicability of the technologically feasible, least damaging methods standard to site specific conditions regarding environmental and operating methods that are presented by an operator's proposal; and 2) prohibition of "ground disturbing operations" within 500 feet of any structure or facility used by the NPS for interpretation, public recreation, or administration.

*NPS Response:* Section 9.110(c) of this rule requires operators, when applying standards

to a particular operation, to use technologically feasible, least damaging methods to protect federally owned or administered lands, waters, and resources of System units, visitor uses and experiences, and visitor and employee health and safety. The NPS applies the “technologically feasible, least damaging methods” standard consistently to all aspects of an operation. The NPS included the phrase “to a particular operation” in this section, however, to recognize that the methods used to meet the technologically feasible, least damaging methods standard may vary depending on the individual operation and the environmental conditions of the proposed operation.

The NPS has removed the phrase “ground disturbing” from this rule because generally no activities incident to oil and gas operations, whether or not they disturb the ground, may be conducted within 500 feet of any structure or facility used by the NPS for interpretation, public recreation, or administration. We have clarified the language in this rule regarding the Superintendent’s discretion to increase or decrease this distance consistent with the need to protect federally owned or administered lands, waters, or resources of System units, visitor uses or experiences, or visitor or employee health and safety.

33. *Comment:* Commenters suggested that the rule should require the use of best management practices and specific, prescriptive performance standards.

*NPS Response:* Executive Order 12866 requires federal agencies, to the extent feasible, to specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt. Consistent with this direction, and because this approach has worked well under the 1978 Regulations, this rule maintains the current practice of setting non-prescriptive operating standards that provide operators the flexibility to design their proposed operation using the latest technological innovations that best protect park system resources,



values, and visitor health and safety.

### Wildlife and Habitat Protection

34. *Comment:* One commenter suggested that the proposed rule address how listed species under the Endangered Species Act (ESA) will be conserved in areas impacted by oil and gas activities, including those using hydraulic fracturing completion methods.

*NPS Response:* NPS will consult with FWS and NOAA in accordance with the requirements of Section 7 of the ESA. It is not necessary to repeat or separately incorporate those requirements in this regulation.

35. *Comment:* One commenter suggested that the rule identify habitats and implement seasonal closures and other time limitations to protect wildlife and other resources.

*NPS Response:* Through interdisciplinary review of each site-specific proposal under the regulation, the NPS identifies potential effects from oil and gas operations on species and habitat. The NPS applies mitigation and avoidance measures, which may include seasonal closures, to protect these resources, and also implements requirements imposed or recommended by FWS and NOAA through the Section 7 process.

### Hydraulic Fracturing Completion Methods

36. *Comment:* One commenter expressed concern that the rules for hydraulic fracturing are premature due to ongoing litigation concerning the Bureau of Land Management (BLM) final rule to manage hydraulic fracturing on federal and tribal lands (80 FR 16128).

*NPS Response:* The U.S. District Court for the District of Wyoming, in *State of Wyoming v. U.S. Department of the Interior*, Case No. 2:15-CV-043-SWS, issued an order on June 21, 2016, setting aside the BLM regulations. That order is under appeal in the U.S. Court of Appeals for the Tenth Circuit. That case concerns different statutory authorities that do not apply

to the NPS, and is unlikely to set any precedent that is applicable to regulations issued under NPS's authorities, which require NPS to conserve park resources and protect against their impairment, and which do not generally provide for any development of federally owned oil and gas in System units.

37. *Comment:* One commenter opposed the rule because it would allow operators to withhold disclosure of fracking chemicals.

*NPS Response:* The NPS supports and through this rule requires the disclosure of all chemicals used in any hydraulic fracturing operation. Operators may provide this information to the NPS through FracFocus or another existing database available to the public. Because Federal law provides for the protection of trade secrets, the NPS will allow that information to be withheld if the operator and any other owner of the trade secret submits to the NPS an affidavit containing specific information explaining the reasons for the claim for protection. If the NPS has questions about the validity of the claim for protection, the NPS may require the operator to provide the withheld information to the NPS, and the NPS will then determine whether the data must be disclosed to the public.

38. *Comment:* One commenter recommended that the rule be revised to require disclosure of chemicals for all types of well stimulation operations, not just hydraulic fracturing operations.

*NPS Response:* NPS has added language in §§ 9.88 and 9.89 of the rule to clarify that operators must disclose all chemicals used for well stimulation activities in a System unit. These disclosures are subject to any lawful trade secret protections that may be demonstrated by an operator.

39. *Comment:* One commenter suggested that the rule ban hydraulic fracturing or set

specific standards to protect park resources from the potential effects of hydraulic fracturing.

*NPS Response:* Congress has directed the NPS to “ensure that management of System units is enhanced by the availability and utilization of a broad program of the highest quality science and information.” 54 U.S.C. 100702. Some studies show that oil and gas operations that include hydraulic fracturing stimulation methods can negatively affect surrounding resources and the environment and can increase the risks of such impacts where appropriate measures are not taken before, during, and after hydraulic fracturing operations (e.g., improper cementing of casing and well integrity issues or surface mismanagement of fracking and flowback fluids). However, studies also show that proper implementation of such measures can substantially reduce—to a level close to that of conventional well operations—the risks to the surrounding environment from hydraulic fracturing operations. Based on the NPS’s research and review of studies provided during the public comment period, a blanket ban on hydraulic fracturing completion methods in System units is not necessary at this time. The NPS will continue to review information on hydraulic fracturing completion methods as it becomes available. Proposed well completion programs using hydraulic fracturing are not given blanket approval. The rule includes operating standards and approval standards that are designed to ensure that operators employ the least damaging methods that are technologically feasible, and that such methods do not impair park system resources or values. The NPS will consider hydraulic fracturing operations on a case by case basis and analyze potential impacts on park resources and values according to the approval standards in the rule.

40. *Comment:* One commenter expressed concern that operators are not required to retain records long enough to provide adequate protections from hydraulic fracturing operations.

*NPS Response:* The rule requires the operator (and any subsequent operators) to maintain

records until the later of when the NPS releases the operator's financial assurance or 7 years after completion of hydraulic fracturing operations. The rule does not allow the operator to destroy withheld information before the NPS releases the operator's financial assurance. The NPS does not release the operator's financial assurance until the operator has completed operations, including site reclamation. These timeframes provide for an adequate length of time to require an operator to retain records, and are consistent with other federal agency requirements for record retention, see BLM Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands (80 FR 16128). The NPS has determined that a perpetual retention requirement is not necessary.

#### General Terms and Conditions

41. *Comment:* One commenter suggested that the rule contain language that would ensure that third party monitors have no conflict of interest.

*NPS Response:* Although the third party monitor, if required by the NPS, is hired by the operator, the monitor reports directly to the NPS. Additionally, this rule requires that the monitor demonstrate its qualifications to the NPS. These requirements are sufficient to avoid conflicts of interest.

42. *Comment:* One commenter suggested shortening the notification and reporting timeframe for equipment failure (including loss of mechanical integrity), accident, injury to persons or resources, or notification of change of operator.

*NPS Response:* The reporting and notification timeframes are appropriate to protect park resources and values. The NPS is declining to shorten the time frames because we conclude that the proposed timeframes sufficiently address both protection of park resources and the practical needs of the operator for time to prepare appropriate notices to NPS. For loss of mechanical integrity, the rule requires the operator to immediately cease the operation and notify the

Superintendent as soon as feasible, but no later than 24 hours after the incident. For accidents and injury to persons and resources, § 9.121(c) and (d) of this rule has been updated from the proposed rule to require notification as soon as feasible, but no later than 24 hours. For change of operator, the rule reduces the seller's notification time from 60 in existing regulations to 30 days. This 30 day period is sufficient because the rule holds the previous owner responsible until the Regional Director accepts the new operator's financial assurance.

#### Access Fees

43. *Comment:* One commenter questioned the legal authority of the NPS to charge access fees to parties who own subsurface oil and gas rights underneath the access route leading to the boundary of the oil and gas right being developed and the legal basis for charging access fees for oil and gas operators in excess of those it charges for other recreational users.

*NPS Response:* Federal law states that charges should be assessed against each identifiable recipient for special benefits beyond those received by the general public from Federally-permitted activities. 31 U.S.C. 9701. This statute authorizes the NPS to impose a user charge for the value of the facilities or lands used, or the services provided. The NPS does not charge oil and gas operators for access that is pursuant to a right (e.g., access within the boundary of the oil and gas right that is being developed) or via a deeded or statutory right to use the park-administered lands. NPS is only charging for access that is granted as a privilege "outside the scope of an operator's oil and gas right." This sort of access is a special benefit that warrants such a user charge. Unless otherwise authorized by law, such funds collected are deposited in the general fund of the Treasury as miscellaneous receipts.

44. *Comment:* One commenter suggested the rule should contain criteria that would be used to determine how the NPS would authorize an operator to undertake compensatory

mitigation in lieu of paying a fee to access oil and gas rights.

*NPS Response:* At this time, the NPS is unable to identify the necessary statutory authority to promulgate a regulatory provision authorizing use of compensatory mitigation in lieu of payment of fees for access. However, if such authority becomes available in the future, the NPS intends to re-evaluate whether it can then authorize the substitution of compensatory mitigation projects.

#### Financial Assurance

45. *Comment:* One commenter stated that the removal of the bond cap and the mechanism for calculating a bond amount for non-federal lands is not adequately explained in the rule.

*NPS Response:* The NPS applies the financial assurance provisions on a case by case basis, including the calculation of the amount of financial assurance necessary to reclaim and restore the federally owned surface estate. To calculate the amount of financial assurance, the NPS considers the following costs: plugging wells (if applicable), removing all equipment and debris, restoring topographic grade, replacing topsoil, vegetation planting/seeding, exotic species control, and monitoring the success of reclamation. For proposed operations that are located on non-federal surface estate within a System unit, the NPS will consider whether that operation requires any reclamation of adjacent federal lands (e.g., reclamation of temporary access road across NPS administered lands). If a particular operation located on non-federal land has no potential to require reclamation of federal land, the NPS will not require financial assurance from that operator.

46. *Comment:* One commenter suggested that the amount of financial assurance required for oil and gas operations should incorporate the amount of financial assurance already required

under state law, such that the total amount of financial assurance provided to all government entities be considered when determining if the amount of financial assurance meets the total potential cost of reclamation. The commenter gave an example that if the total cost of reclamation by a third party would be \$500,000, and the state is requiring a \$200,000 reclamation bond, then the NPS should only require an additional \$300,000 financial assurance (\$500,000 - \$200,000) for the project. This would protect taxpayers in the event of a default, and would not require an operator to pledge financial assurance that is in excess of the required amount.

*NPS Response:* The NPS is responsible for ensuring that an operator fulfills its reclamation responsibilities after operations cease protecting park resources and values and ensuring that there is adequate bonding to do so is a high priority. In many states, the required reclamation bond is a blanket bond. In the commenter's example, the state-required \$200,000 reclamation bond is likely not for a single well, but would cover multiple wells. For example, the State of Texas allows operators to post a blanket bond of \$250,000 to cover one hundred or more wells. (Texas Statewide Rule 78). In this scenario, should an operator become insolvent and not meet its reclamation requirements, the state required blanket bond is likely not an adequate amount to reclaim each of the operator's 100-plus well sites. Further, the State could not ensure the NPS that the bonded funds would be available to reclaim the operator's sites within a System unit. In many states, funds collected from insolvent operators go into a plugging fund, and funds are assigned to oil and gas sites based on a prioritized list established by the State. We are not aware of any state assurance programs, where the amount paid to the State would with certainty be available to NPS. For these reasons, the rule requires the full estimated amount of assurance be provided to NPS.

## Well Plugging

47. *Comment:* One commenter suggested the NPS shorten the approval period for a shut-in well so that public lands are not left in a degraded condition any longer than necessary.

*NPS Response:* Five years is a reasonable amount of time to allow an operator to meet the criteria it needs to obtain authorization to shut in its well. All applicable laws and regulation related to well-bore integrity and testing will still apply during the shut-in period, which will protect park resources and values until the operator obtains the shut-in authorization.

## Public Participation

48. *Comment:* One commenter expressed concern about the removal of specific public notice requirements under the proposed rule.

*NPS Response:* Sections 9.52(a) and (b) of the 1978 Regulations are removed by this rule because these provisions created an inefficient method of public involvement. Section 9.52(a) of the 1978 Regulations required the Superintendent to publish a notice of access requests in a newspaper of general circulation in the county(s) where the lands were situated, or in publications deemed appropriate by the Superintendent. At that point in the operator's planning process, the scope and methods of the proposed operation were not finalized. Further, after initial scoping and planning, an operator may sometimes abandon its proposal. Notice to the public at such a preliminary stage of the operator's planning was premature for meaningful public engagement.

Section 9.52(b) of the 1978 Regulations required the Superintendent to publish a notice in the Federal Register advising the public that the plan of operations was available for public review and comment. Under this rule, the NPS will provide the opportunity for public review and comment (on both the complete permit application and draft environmental review



documents) in accordance with NEPA and other applicable legal requirements. See § 9.200(a). In general, public notice includes a 30-day public comment period.

49. *Comment:* One commenter requested that the NPS issue guidance materials for public review and comment prior to finalizing the rule.

*NPS Response:* The NPS will follow its standard procedures for review and issuance of guidance documents. See NPS Management Policies (2006), Introduction (Law, Policy, and Other Guidance), page 5. Because any new guidance documents must be consistent with these regulations, these regulations must be issued first.

### Alaska

50. *Comment:* Commenters expressed concerns regarding the conflict between the rule and the access provision found in ANILCA section 1110(b), including the possible imposition of access fees or compensatory mitigation on those interests subject to the ANILCA access provision. Other commenters stated that NPS lacked the authority to regulate such activities on park inholdings section 103(c) of ANILCA.

*NPS Response:* As stated above, the NPS has chosen to limit the rule to System units outside of Alaska. We have also clarified above that the Departmental regulations at 43 CFR part 36 are unaffected by this rule. This addresses or moots the concerns raised in these comments and will allow NPS to address concerns expressed in a future rulemaking if appropriate, once the *Sturgeon* litigation is resolved.

### **Changes in the Final Rule.**

After taking the public comments into consideration and after additional review, the NPS made the following substantive changes in the final rule as described in the table below. The NPS also made numerous non-substantive changes to the regulatory language and formatting in

the final rule. These non-substantive changes are not included in the table below.

§§ 9.30(a) and (b)	Added “. . . within System units outside of Alaska, . . .”
§ 9.31(a)	Added “. . . proposes to conduct non-federal oil or gas operations outside of Alaska.”
§ 9.40	<p>Definition of Waste – changed “toxic or hazardous substance” to “contaminating substance.”</p> <p>Definition of Unit - deleted the term “Unit.” The text of this rule uses the statutory term “System unit,” which is found at 54 U.S.C. 100102(6).</p> <p>Definition of Operations - changed to “. . . occurring within a System unit outside of Alaska.”</p> <p>Definition of Operator - changed to “. . . within the boundaries of a System unit outside of Alaska.”</p> <p>Definition of Technologically Feasible Least Damaging Methods – removed “on a case-by-case basis, . . .”</p> <p>Definition of Third Party Monitor – removed “demonstrated to the NPS . . .”</p>
§ 9.63	Removed 60 day maximum time for reconnaissance survey permit and replaced it with “based upon the scope of the reconnaissance surveys needed.”
§ 9.70	Modified language to clarify when an operations permit is required for operations that access oil and gas rights located inside a System unit from a surface location outside the unit.
§ 9.84(a)(2)	Added “wetlands, seepage areas, springs, shallow water aquifers, . . .” to the list of examples of natural features.
§ 9.85(a)	Modified language to clarify that the NPS may require an operator to conduct baseline testing.
§ 9.88(j)	Added “any proposed stimulation techniques” to the list of completion reporting requirements.
§ 9.89(a)	Modified language to clarify what geologic information is required in an operations permit application that proposes well stimulation activities.
§ 9.89(e)(1)	Modified language to clarify the stimulation fluid information requirement in an operations permit application.

§ 9.103(a)	Modified language to clarify the criteria under which the Regional Director will approve operations permits.
§ 9.103(a)(1)	Modified language to clarify the NPS laws that apply to the approval of operations permits.
§ 9.103(b)(3)	Changed the approval section to reflect that the Regional Director will review affidavits that the operator submits showing that the operations proposed are in compliance with all applicable federal, state, and local laws and regulations.
§ 9.104(a)	Modified language to clarify the timeframe for a Regional Director to take final action on an operations permit application.
§ 9.104(a)(2)	Removed “Executive Orders” from the list of requirements with which the Regional Director must ensure consistency to approve an operations permit and changed to read “all applicable legal requirements.”
§ 9.111(a)	Section 9.112(a) of the proposed rule moved to § 9.111(a). Section 9.111(a) was modified to clarify the required setbacks from surface water; wetlands the mean high tide line; or structures or facilities.
§ 9.111(d)	Changed to read “...confine in a manner appropriate to prevent escape...”
§ 9.111(g)	Modified to clarify the operating standard for minimizing the release of air pollutants and hydrocarbons, and flaring of gas.
§ 9.111(i)	Inserted new operating standard for the protection of sensitive wildlife.
§ 9.112	Paragraphs changed to reflect movement of § 9.112(a) of the proposed rule to § 9.111(a) of this rule
§ 9.120(a)	Modified to clarify that operators are responsible for ensuring that all employees, contractors, and subcontractors comply with NPS requirements.
§ 9.121(b)(3)	Added paragraph (b)(3) to clarify that third party monitors must disclose any potential conflicts of interest to the NPS.
§ 9.130	Added “. . . in any System unit outside of Alaska . . .”
§ 9.150	We added language to this section to provide more clarity on the processes to modify an operations permit.
§ 9.160	We added language to this section to provide more clarity on the processes for an operator to transfer operations.

§ 9.161	We added language to this section to provide more clarity on the processes for a new operator to acquire operations.
§ 9.170(b)	Changed from “continuously inactive for a period of 1 year” to “has no measureable production quantities for 12 consecutive months.”
§ 9.200(c)	We added reference to § 9.88(j) to clarify that proprietary information submitted pursuant to § 9.88 can be withheld from disclosure.
§ 9.200(g)	Modified language to clarify the record retention requirements after completion of hydraulic fracturing operations.

**Compliance With Other Laws, Executive Orders, and Department Policy.**

**Regulatory Planning and Review (Executive Order 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 rule is significant because it may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive order.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

**Regulatory Flexibility Act (RFA).**

This rule does 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 [https://parkplanning.nps.gov/CBA\\_9B](https://parkplanning.nps.gov/CBA_9B).

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

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

- (a) Does not have an annual effect on the economy of \$100 million or more;
- (b) Will 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 [https://parkplanning.nps.gov/CBA\\_9B](https://parkplanning.nps.gov/CBA_9B).

**Unfunded Mandates Reform Act.**

This 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 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 NPS received public comment that additional regulation of private oil and gas rights on NPS land could infringe on private property rights or could represent a taking. The rule does not take private property or authorize the taking of private property. Moreover, implementation of the rule is not likely to result in a taking of private property.

The rule updates regulations that have been in effect since 1979. It updates 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 authorizes 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 may potentially increase the amount of financial assurance that operators must post, it will do so only to a level commensurate with the cost of restoring the federally owned surface estate.

The rule extends the applicability of these 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 rule updates the existing regulations in a manner consistent with current industry standards and technological capabilities. Accordingly, the application of the rule to currently exempt operations is not likely to result in a taking. The rule continues to allow operators reasonable access across federally owned surface to develop non-federal mineral rights. No other private property is affected. The rule brings outdated provisions into line with modern regulatory practice and 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 this rule contains 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 rule, NPS retains discretion to make individual permit decisions that will avoid a taking if an unexpected problem should arise.

**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 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 (E.O. 13175 and Department policy) and ANCSA Native Corporations.**

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 evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and 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 consulted with all federal tribes traditionally associated with System units that have current oil and gas operations, and System units that do not have active operations, but have potential for future operations. The NPS initially consulted with federal tribes during scoping for the DEIS. Upon initial consultation, the NPS received letters back from the Choctaw Nation of Oklahoma, the Hopi Tribe, the Navajo Nation, and the San Carlos Apache Tribe of the San Carlos Reservation requesting consultation and review of the DEIS, once available. The NPS again consulted with all federal tribes traditionally associated with System units that have current oil and gas operations, and System units that do not have active operations, but have potential for future operations when the DEIS and proposed rule were released for the 60 day public comment period. The NPS received letters/emails back from the Choctaw Nation of Oklahoma, Pueblo of Santa Ana and Pueblo of Santa Clara on its second consultations letters. These letters are available in the appendix to the FEIS. In recognition of its relationship with tribal affiliates, the NPS Alaska Regional office reached out directly to Alaska tribes. NPS received no follow up comments from the Alaska tribal affiliates.

**Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).**

This rule contains information collection requirements that have been approved by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*). 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 June 30, 2019. OMB has assigned OMB Control Number 1024-0274 (expires XX/XX/2019) for information collection associated with 36 CFR part 9, subpart B, contained in this rule. We plan to transfer the corresponding burden for the subpart B requirements to OMB Control No. 1024-0064 after the final rule goes into effect and will then discontinue the new number. 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.

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

**OMB Control Number:** 1024-0274.

**Service Form Number:** None.

**Type of Request:** New.

**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
Extension 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
<b>Operations Permit Operations Permit (New Operations)</b>			
Application Contents – (§§ 9.80 – 9.90)	5	140	700
<b>Operating Standards – Stimulation Operations (§ 9.118(b))</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
<b>Operating Standards – Production (§9.118(c))</b>			
Document maintenance of mechanical integrity	534	2	1068
Signage to identify wells	5	4	20
<b>General Terms and Conditions (§§ 9.120 – 9.122)</b>			
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>7,056</b>

Currently, there are oil and gas operations in 12 of the 410 parks in the National Park System, and about 60 percent of those operations are exempt from NPS regulations. This rule would apply NPS regulations to operations that are currently exempt and any future oil and gas operations in the National Park System. We will 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. We will collect information associated with non-Federal oil and gas operations within units of the National Park System under the below listed sections of 36 CFR part 9, subpart B:

*Previously Exempt Operations (§§ 9.50 through 9.53)*

*Temporary Access Permits (9.60 through 9.63)*

*Accessing Oil and Gas Rights from a Surface Location Outside the Park Boundary (9.70 through 9.73)*

*Operations Permit: Application Contents (§§ 9.80 through 9.90)*

*Operating Standards (§§ 9.110-9.118)*

*Financial Assurance (§§ 9.140 through 9.144)*

*Modification to an Operation (§ 9.150)*

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

*Well Plugging (§§ 9.170 and 9.171)*

*Reconsideration and Appeals (§§ 9.190 through 9.194)*

*Public Participation (§ 9.200)*

During the proposed rule stage, we received one comment which addressed the issue of the information requested under this rule. The commenter suggested that the NPS collect baseline and historical data on groundwater levels, water quality, aquifer conditions, groundwater discharge, natural features, and aquatic and wildlife habitats that could be used to evaluate potential effects and actual impacts of mineral development on habitats, communities, homeowners, farms and ranches within and surrounding national parks.

**NPS Response:** This rule contains information requirements that will allow the NPS to collect and evaluate the information that the commenter is suggesting. For instance, the rule allows the NPS to request that the operator provide baseline water quality data in its permit application. See, § 9.85(a). Further, each permit application will be evaluated under the requirements of the National Environmental Policy Act for impacts to the human environment.

The public may comment, at any time, on the accuracy of the information collection burden in this rule and may submit any comments to the Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive (Mail Stop 242), Reston, VA 20192.

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

This rule constitutes a major Federal action with the potential to significantly affect the quality of the human environment. We have prepared the FEIS under the requirements of NEPA. On October 20, 2016, the Director of the National Park Service signed the Record of Decision identifying Alternative B in the FEIS as the selected action. The FEIS and ROD are available online at <https://parkplanning.nps.gov/FEIS9B> and [https://parkplanning.nps.gov/ROD\\_9B](https://parkplanning.nps.gov/ROD_9B).

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

This rule is not a significant energy action under the definition in Executive Order 13211.

A statement of Energy Effects is not required.

## **Drafting Information**

This rule reflects the collective efforts of NPS staff in the Geologic Resources Division, parks, and field offices, with assistance from the Regulations, Jurisdiction, and Special Park Uses Division.

## **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 amends 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 paragraph (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 to paragraph (b): 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**

### **Subpart D--Alaska Mineral Resource Assessment Program**

3. The authority citation for part 9, subpart D, 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.*

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

4. Redesignate subpart D, consisting of §§ 9.80 through 9.89, as subpart C, consisting of

§§ 9.300 through 9.309.

5. 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 SYSTEM UNIT

BOUNDARY

9.70 Do I need an operations permit for accessing oil and gas rights from outside the System unit 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 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 and proposed area of operations.

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 operations permit?



9.104 What final actions may the Regional Director take on my operations permit?

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 oil and gas 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 the NPS retain my financial assurance?

#### MODIFICATION TO AN OPERATION

9.150 How can an 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, as operator, 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) The purpose of this subpart is to ensure that operators exercising non-federal oil and gas rights within a System unit outside of Alaska use technologically feasible, least damaging methods to:

- (1) Protect federally owned or administered lands, waters, or resources of System 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 System units outside of Alaska, regardless of the ownership or legislative jurisdiction status of those lands or waters.

(c) We do not intend for this subpart to result in a taking of a property interest.

Application of this subpart is intended to reasonably regulate operations within System units that may affect federally owned or administered lands, waters, and resources, 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 outside of Alaska.

(b) If you were operating outside of a System unit and your operation has been included within an existing System unit as a result of a change to the boundary, or included within a newly established System 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 System unit boundary from a surface location outside the boundary, and your surface location has been included within an existing System unit as a result of a change to the boundary, or included within a newly established System 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 conducting operations.

(b) You must demonstrate that you have the right to operate in order to conduct activities within a System 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 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 System unit boundary from a surface location outside the 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 a System unit on which your 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.

*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 a System unit outside of Alaska.

(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 System unit 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 a System unit.

*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 a System unit outside of Alaska.

*Owner* means the person that holds title to non-federal oil or gas rights.

*Previously exempt operations* means those operations being conducted in a System unit

without an approved permit from the NPS as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except operations for which the NPS had granted the operator an exemption to the plan of operations requirement before such date, because the operator accessed oil and gas rights inside the System unit from a surface location outside the System unit.

*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) Except for the minimal surface disturbance necessary to perform cultural resource surveys, natural resource surveys, and location surveys required under this subpart, surface disturbance activities are beyond the scope of a reconnaissance survey.

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

*Technologically feasible, least damaging methods* are those that we determine 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 the proposed area of operations to conduct reconnaissance surveys necessary to collect basic information necessary to prepare an operations permit application.

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

*Usable water* means an aquifer or its portion that:

- (1)(i) Supplies any public water system; or
- (ii) Contains a sufficient quantity of ground water to supply a public water system and either:
  - (A) Currently supplies drinking water for human consumption; or
  - (B) Contains fewer than 10,000 mg/l total dissolved solids; and
- (2) Is not an exempted aquifer under state law.

*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 contaminating 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.

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

Within 90 days after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or within 90 days after the effective date of a boundary change, or establishment of a new System unit, as applicable, you must submit the following to the



Superintendent of the System unit in which you propose to continue to conduct operations:

(a) The names and contact information of the operator, the owner, and the individuals responsible for overall management, field supervision, and emergency response of the proposed operations;

(b) Documentation demonstrating that you hold a right, and the extent of such right, to operate within the System unit;

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

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

(e) Maps to scale that clearly delineate your current area of operations as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or the effective date of a boundary change, or establishment of a new System unit, as applicable, and that identify the area of surface disturbance and equipment layout within your proposed area of operations;

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

(g) A spill control and emergency preparedness plan as required by § 9.86;

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

(i) A description of how your proposed operation will meet each applicable operating standard at §§ 9.110 through 9.116 and 9.118; and

(j) A description of the procedures to be used and cost estimates for well plugging and

surface reclamation.

**§ 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?**

During this interim period, 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 DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or the effective date of a boundary change, or establishment of a new System unit, as applicable.

(b) Your operation is 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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or 90 days after the effective date of a boundary change, or establishment of a new System unit, as applicable.

TEMPORARY ACCESS PERMITS

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

(a) You must apply to the Regional Director for a temporary access permit to access your proposed area of operations that is on NPS administered lands or waters 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.

(b) A temporary access permit is subject to cost recovery under 54 U.S.C. 103104.

### **§ 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 System unit in which you propose to conduct operations:

- (a) Documentation demonstrating that you hold a right, and the extent of such right, to operate within the System unit;
- (b) A map delineating the proposed reconnaissance survey areas in relation to the System unit boundary and the proposed area of operations at a minimum scale of 1:24,000, or a scale specified by the Superintendent as acceptable;
- (c) A brief description of the intended operation so that we can determine the scope of the reconnaissance surveys needed;
- (d) The name and contact information of the operator, employee, agent, or contractor responsible for overall management of the proposed reconnaissance surveys;
- (e) The name, legal address, telephone number, and qualifications of all specialists responsible for conducting the reconnaissance surveys;
- (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 surveys will not result in surface disturbance, except for minimal disturbance necessary to perform required 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?**

The duration of your temporary access permit will be stated in the permit, based upon the scope of the reconnaissance surveys needed. The Regional Director may, upon written request, extend the term of the temporary access permit.

ACCESSING OIL AND GAS RIGHTS FROM A SURFACE LOCATION OUTSIDE THE SYSTEM  
UNIT BOUNDARY

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

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

- (a) Federally owned or administered lands, waters, or resources within System 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 System unit. You must provide all of the following.

- (a) The names and contact information of:
  - (1) The operator;

(2) The owner; and

(3) The individuals responsible for overall management, field supervision, and emergency response of the proposed operations.

(b) Documentation demonstrating that you hold a right, and the extent of such right, to operate within the System unit.

(c) Maps and plats to scale showing the boundaries of each of the oil or gas rights that are relevant to your proposed operations within the System unit boundary.

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

(e) 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 System unit boundary, depth at which wellbore crosses the boundary, and timeline for operations;

(3) Casing, cementing, and mud programs;

(4) Stimulation programs; and

(5) Well plugging and abandonment program.

(f) 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) After NPS receives your complete submission, and completes compliance with applicable federal laws, including the National Environmental Policy Act, the Superintendent will notify you in writing within 30 days 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 meet?**

If the NPS notifies you under § 9.72 that you do not need an operations permit, your operations 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 the methods or the environmental conditions of your downhole operations materially change.

(b) The Regional Director may notify you in writing that you are no longer exempt from the operations permit requirement after determining that downhole 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 System 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?**

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

(b) An operations permit is subject to cost recovery under 54 U.S.C. 103104.

### **§ 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 submit 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 and, to the extent applicable, the information required by §§ 9.87 through 9.90, as well as any additional information that the Superintendent may require by written request.

(b) You may provide information for only the phase of operations you propose. Each permit application is only required to describe those activities for which you request approval. Approval of an operations permit covering one phase of operations does not assure future approval of, or the terms of future approval for, 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.

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<b>All operations permit applications must include information on...</b>	<b>and must include the following detailed information ...</b>
(a) Ownership	documentation demonstrating that you hold a right, and the extent of such right, to operate within the System unit.
(b) The owner/operator	names, addresses, and other contact information for: (1) The operator; (2) The owner; (3) Any agents, assignees, designees, contractors, or other representatives of the operator including those responsible for overall management, field supervision, and emergency response of the proposed operations.
(c) Existing conditions and proposed area of operations	all the information required by § 9.84.
(d) Reclamation plan	(1) A description of the equipment and methods used to meet the operating standards for reclamation at § 9.116; and (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 (including documentation verifying a water right), 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, 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.

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**§ 9.84 Existing conditions and proposed area of operations.**

- (a) You must submit to-scale maps that clearly depict:
  - (1) The boundaries of your oil or gas rights in relation to your proposed operations and



the relevant System unit boundary;

(2) The natural features, including, but not limited, to streams, lakes, ponds, wetlands, seepage areas, springs, shallow water aquifers, topographic relief, and areas we have 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, existing or permitted oil or gas wells, freshwater wells, underground and overhead electrical lines, and other utility lines.

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

(1) Estimated depths and names of known 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 known abnormal pressure zones, lost circulation zones, hydrogen sulfide gas, or karst formations; and

(3) Nature, extent, and depth (if known) of near-surface bedrock fracturing or 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 for any new surface disturbances or construction:

(1) Maps depicting the proposed area of operations, boundaries of new surface disturbances and proposed access routes;

(2) Maps depicting 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 methods 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 trips, associated with each phase of your operation;

(5) An estimated time to complete each phase of the proposed operations, including any operational timing constraints;

(6) The type and extent of security measures proposed within 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 off-site disposal.

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

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

(a) Description of the natural and cultural resource conditions from your reconnaissance surveys or other sources collected for your proposed area of operations. The Superintendent may require, on a case by case basis, baseline field testing of soils and field or laboratory testing of surface, or near-surface, waters within your area of operations, as well as any groundwater resources that may reasonably may be impacted by your surface operations;

(b) 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 System 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) 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) Your reporting procedures in the event of a spill, fire, or accident;

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

(d) Identification of abnormal pressure, temperature, toxic gases or substances, or other hazardous conditions 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 conditions creating fire hazards in the vicinity of well locations and lease tanks;

(g) List of equipment and methods for containment and cleanup of contaminating substances, including a list of the equipment to be maintained on site as well as a list of equipment to be 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 expected to be used or encountered during operations, including quantities expected to be 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 relevant conditions and emergencies other than spills, based on the particular geographic area, such as hurricanes, flooding, tornadoes, 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 expected 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 plans, 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 plans, 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 completion program, including completion type (open-hole, perforated, slotted liner, etc.), any proposed stimulation techniques, and procedures, including considerations for well control; and

(k) A description of the equipment, materials, and procedures 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 target formation(s). The estimated minimum vertical distance between the top of the completion 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 well completions 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 total proposed volume of stimulation fluid to be used; total proposed base fluid volume, description of proposed base fluid, and each additive in the proposed stimulation 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);

(2) Proposed proppant system if applicable;

(3) The anticipated surface treating pressure range;

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

(5) 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

(6) 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 production operations, you must submit the following information:

(a) The dimensions with a 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 methods and means to be 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 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?**

If you propose operations in System units, other than Big Cypress National Preserve, we will process your application in accordance with §§ 9.101 through 9.104. If you propose operations in Big Cypress National Preserve, we will process your application in accordance with §§ 9.103 and 9.105.

### **§ 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 System 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. 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 operations permit?**

(a) The Regional Director will approve your operations permit if the NPS has determined that your operations:

(1) Will not violate the laws governing administration of units of the National Park System; and

(2) Will meet all applicable operating standards.

(b) Before approval of your operations permit, 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;

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

(3) An affidavit stating that the operations planned are in compliance with all applicable Federal, State, and local laws and regulations.

**§ 9.104 What final actions may the Regional Director take on my operations permit?**

(a) The Regional Director will take final action within 30 days of completing all required legal compliance, including compliance with the National Environmental Policy Act, 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 all applicable legal requirements.

(b) The Regional Director will notify you in writing that your operations permit is:

(1) Approved with the operating conditions contained therein; 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 System unit, including downhole activities, and do not apply to surface activities located outside a System 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 are applied to ensure protection of federally owned or administered lands, waters, and resources of System 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 System 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 not conduct operations within 500 feet of surface water, including an intermittent or ephemeral watercourse, or wetland; within 500 feet of the mean high tide line; 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 consistent with the need to protect federally owned or administered lands, water, or resources of System units, visitor uses or experiences, or visitor or employee health and safety while ensuring that you have reasonable access to your non-Federal oil and gas rights. Measurements for purposes are by horizontal distance.

(b) 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.

(c) 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.

(d) You must keep temporarily stored waste in the smallest feasible area, and confine in a manner appropriate to prevent escape as a result of percolation, rain, high water, or other causes. You must regularly remove waste from the System unit and dispose of it in a lawful manner. Nothing in this subpart affects the application of the regulations found at 36 CFR part 6.

(e) You must use engines that adhere to applicable Federal and State emission standards.

(f) You must construct, maintain, and use roads to minimize fugitive dust.

(g) You must use equipment and practices that minimize releases of air pollutants and hydrocarbons, and flaring of gas.

(h) You must conduct operation in a manner that does not create an unsafe environment for fish and wildlife by avoiding or minimizing exposure to physical and chemical hazards.

(i) You must conduct operations in a manner that avoids or minimizes impacts to sensitive wildlife, including timing and location of operations.

(j) 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 maintain hydrologic connectivity between surface water and groundwater

during all operations.

(b) You must not cause measurable degradation of surface water or groundwater.

(c) You must conduct operations in a manner that maintains natural channel and floodplain processes and functions.

#### **§ 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 site security, 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.

#### **§ 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 composition 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 reestablishing, restoring, and referencing 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 System 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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] 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 in order to maintain the 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:

(a) The operator/permittee is responsible for ensuring that all of its employees and 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 a System 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;

(d) The operator/permittee must agree to indemnify and hold harmless the United States and its officers and employees from and against any and all liability of any kind whatsoever arising out of or resulting from the acts or omissions of the operator and its employees, agents, representatives, contractors, and subcontractors in the conduct of activities under the operations permit; and

(e) The operator/permittee must agree to take all reasonable precautions to avoid, minimize, rectify, or reduce the overall impacts of your proposed oil and gas activities to System units. You may be required to mitigate for impacts to NPS resources and lost uses. Mutually agreed-upon mitigation tools for this purpose may include providing or restoring alternative habitat and resources to offset those impacts by the operations.

**§ 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 required when necessary to protect federally owned or administered lands, waters, or resources of System 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.

(3) Third party monitors must disclose to the NPS any potential conflicts of interest that could preclude objectivity in monitoring an operator's compliance with the operations permit and any provision of this subpart.

(c) You must notify the Superintendent of any accidents involving serious personal injury or death and of any fires or spills on the site as soon as feasible, but no later than 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 as soon as feasible, but no later than 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:

- (a) The true vertical depth of the well; total water volume used; 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). This information may be submitted to the Superintendent through FracFocus or another existing database available to the public;
- (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) 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; and

(h) 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?**

The Regional Director may grant you the privilege of access, subject to the provisions of any applicable law, on, across, or through federally owned or administered lands or waters in any System unit outside of Alaska to reach the boundary of your oil and gas right.

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

(a) Except as provided in paragraph (b) of this section, the Regional Director may charge you a fee if you use federally owned or administered lands or waters that are outside the scope of your oil and gas right.

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

such use.

(2) If access to your mineral right is on or across an existing park road, the Regional Director may charge you a 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 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 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?**

We will release your financial assurance within 30 days after the Regional Director:

- (a) Determines that you have met all applicable reclamation operating standards and any additional reclamation requirements that may be included in your operations permit; or
- (b) Accepts a new operator's financial assurance under § 9.160(b) or (c).

**§ 9.144 Under what circumstances will the NPS retain my financial assurance?**

(a) We will retain all or part of your financial assurance if compliance with your reclamation responsibilities under the approved permit or any provisions of this subpart is incomplete.

(b) In addition, we may also:

- (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 System 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 How can an approved permit be modified?**

(a) You may request modification to a temporary access permit or operations permit by providing the Regional Director with written notice describing the modification and why you think it is needed.

(b) The Regional Director may propose to modify an approved temporary access or operations permit to address changed or unanticipated conditions within your area of operations. You will be notified in writing of the proposed modifications and the justifications therefore, and the time within which you must either notify the Regional Director that you accept the modifications to your permit or explain any concerns you may have

(c) The Regional Director will review requests made under paragraph (a) of this section or responses provided under paragraph (b) of this section applying the approval standards and timeframes at § 9.62 or § 9.104, respectively. You will be notified in writing of the Regional Director's decision and any revisions approved to the terms of the permit.

## CHANGE OF OPERATOR

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

(a) 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 contact information of the person or entity conveying the oil or gas right, and the names and contact information of the person or entity acquiring the oil or gas right;

(2) The effective date of transfer;

(3) The description of the rights, assets, and liabilities being transferred and those 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.

(b) Until you meet the requirements of this section and the Regional Director provides notice to you that the new operator has complied with § 9.161(a) you remain responsible for compliance with your operations permit, and we will retain your financial assurance.

(c) 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 section and the Regional Director provides notice to you that the new operator has complied with § 9.161(b) or (c), as applicable.

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

(a) If you acquire rights to conduct operations, you must provide to the Superintendent:

(1) Written acknowledgment that you adopt the previous operator's operations permit, and that you agree to conduct operations in accordance with all terms and conditions thereof, or that you adopt the previous operator's operations permit and are also requesting approval for modification of the previous operator's permit consistent with the procedures at § 9.150;

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

(3) Proof of liability insurance with limits sufficient to cover injuries to persons or property caused by your operations; and

(4) An affidavit stating that your operations are in compliance with all applicable Federal, State, and local laws and regulations.

(b) If the previous operator was granted an exemption under § 9.72, you must provide the Superintendent the following information within 30 calendar days after the date you acquire the

rights to conduct operations:

(1) Right to operate documentation demonstrating that you are the successor in interest to the previous operator's right, and the extent of such right, to operate within the System unit; and

(2) The names and contact information of:

(i) The operator;

(ii) The owner; and

(iii) The individuals responsible for overall management, field supervision, and emergency response of the proposed operations.

(c) If the previous operator was operating without an operations permit, you will be considered a previously exempt operator and must obtain an operations permit. Within 90 days after acquiring the rights to conduct operations, you must submit the information at § 9.51(a) through (j), and your operations permit application will be processed in accordance with §§ 9.52 and 9.53.

## 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 to produce the well within 60 days;

(b) Your well, which has been completed for production operations, has no measureable production quantities for 12 consecutive months; 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 a modification to your approved operations permit or, in the case of previously exempt operations, an 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) Proof of the mechanical integrity of both surface and production casing demonstrating that no migration of fluid can be expected to occur; 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 the 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 a System unit as a result of violation of the terms or conditions of a temporary access permit, an operations permit, or any provision of this subpart;

(c) Conducting operations or activities without a required permit;

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

(e) Failure to comply with any applicable Federal law or regulation, or non-conflicting State law or regulation, pertaining to your oil and gas operation.

**§ 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 are in compliance with this subpart or the terms and conditions of an existing temporary access permit or operations permit, we will not consider any new permit requests to conduct operations within any System unit.

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 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 appeal within 60 calendar days, your appeal will be dismissed as untimely.

(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 all documents and materials considered by NPS that are related to the matter appealed. The Regional Director will maintain that record under separate cover and will certify that the decision was based on that record. The Regional Director will make a copy of the record available to you at your request.

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

(e) Within 45 calendar days from the date the NPS Director receives your statement of

exceptions, the Director will issue a written decision. If the Director requires more than 45 calendar days to reach a decision, 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 basis for the decision.

(f) No NPS decision under these regulations that is subject to appeal to the Director, or the Regional Director pursuant to § 9.194, will be considered final agency action subject to judicial review under 5 U.S.C. 704 unless the appropriate official has rendered a decision on the matter. That decision 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 administered lands or waters, or to public health and safety, 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 eliminated.

**§ 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 §§ 9.190 through 9.193,



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 §§ 9.88, 9.89, and 9.122, the operator and the submitter of the information will be deemed to have waived any right to protect from public disclosure information submitted to the NPS. For information required under §§ 9.88, 9.89, and 9.122 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 Superintendent 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 7 years after completion of hydraulic fracturing operations. 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 is withheld, the operator must provide the generic chemical name in the submission required by § 9.122. 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 1024-0274. 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.

§ 9.302 [Amended]

6. In newly redesignated § 9.302:

a. In paragraphs (b)(1) and (2), remove the comma and add in its place a semicolon.

b. In paragraph (b)(2), remove the reference “§ 9.86 of this subpart” and add in its place the reference “§ 9.306.”

§ 9.304 [Amended]

7. 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).”

§ 9.306 [Amended]

8. In newly redesignated § 9.306, in paragraph (a), remove the reference “§ 9.84” and add in its place the reference “§ 9.304.”

§ 9.308 [Amended]

9. In newly redesignated § 9.308, in paragraph (a), remove the reference “§ 9.86” and add in its place the reference “§ 9.306.”

Dated: October 21, 2016.

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Karen Hyun, Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.  
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