the phase-in provision detailed in § 31h.19.

§ 31h.131 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in fiscal year 1982.

The Director, in consultation with the tribes and school boards, shall determine appropriate weight factors needed to include pre-kindergarten programs in the Indian School Equalization Formula in fiscal year 1982. Based on a needs assessment, to be completed by January 1, 1980, pre-kindergarten programs shall be included in the Bureau's education request for fiscal year 1982.

Subpart L—Contract School Operation and Maintenance Fund

§ 31h.140 Definitions.

Contract school operation and maintenance costs for fiscal year 1979 means the sum of costs for custodial salaries and fringe benefits, related supplies and equipment and equipment repair, insurance, and school operation utilities costs, where such costs are not paid by the Division of Facilities Management or other noneducation Bureau sources.

§ 31h.141 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.

There is established in the Division of Facilities Management a separate fund entitled the Contract School Operation and Maintenance Fund. The Secretary shall cause the distribution of an amount of $2.5 million, under the fiscal year 1980 appropriation for the Bureau, from budget activity 3500. "General Management and Facilities Operations", to the schools through this fund and shall create an appropriate account or subaccount for the Contract School Operation and Maintenance Fund.

§ 31h.142 Distribution of funds.

(a) Each contract school shall receive in fiscal year 1980 a portion of the Contract School Operation and Maintenance Fund determined by the percentage share which that school's fiscal year 1979 operation and maintenance cost represents in the total fiscal year 1979 operation and maintenance cost for all such schools.

(b) To be eligible for these funds, a contract school shall submit a detailed report of actual operation and maintenance costs for fiscal year 1979 to the Director by November 23, 1979. These cost figures will be subject to verification by the Director to assure their accuracy prior to the allotment of any funds under this subpart.

(c) Any funds generated under this subpart shall be included in the computation of the phase-in amount as set forth in § 31h.19 if supplemental operation and maintenance funds were included in a school's fiscal year 1979 3100 contract funds.

§ 31h.143 Future consideration of contract school operation and maintenance funding.

The Assistant Secretary shall arrange for full funding for operation and maintenance of contract schools by fiscal year 1981.

October 18, 1979.

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

[FR Doc. 79-33070 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-02-M

Federal Register

Friday
October 26, 1979

Part VI

Department of the Interior

Bureau of Land Management

Sale of Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Group 2700

Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Secretary of the Interior is authorized by section 203 of the Federal Land Policy and Management Act of 1976 to sell tracts of public land, except lands in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails where such action is indicated as a result of land use planning and specific criteria set forth in the Act are met. This proposed rulemaking sets forth the procedure for sales of public land.

DATE: Comments by: December 26, 1979.

ADDRESS: Send comments to: Director (650), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address from 7:45 a.m. to 4:15 p.m. on regular work days.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen H. Spector, (202) 343-8731; or Mr. Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (43 U.S.C. 1701) declares in Section 102(a)(1) that it shall be the policy of the United States that "the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest." Section 203(a) provides for such disposals by authorizing the sale of a tract of public lands, where, as a result of land use planning, the Secretary determines that the sale of such a tract meets specific disposal criteria. This proposed rulemaking sets forth the rules and procedures under which the Secretary of the Interior proposes to carry out this authority.

The procedure outlined in this proposed rulemaking utilizes the Bureau of Land Management's land use planning system to the maximum extent possible for determining which tracts of public land meet the disposal criteria. In the Federal Land Policy and Management Act, Congress expressed its desire that future disposals be subject to land use planning and public participation. The procedure outlined in the draft proposed rulemaking provides for Bureau initiated actions, with public and individual input coming during the planning process.

Proposals from the public nominating tracts of public lands for disposal through sale can be considered by the authorized officer either as a step in the planning process, in the context of an existing plan or as a revision or amendment to an existing land use plan.

Many specific procedures for the sale of land are prescribed in the statute. Other procedures in the proposed rulemaking were adopted or modified from former sales procedures.

The Act authorizes modified or noncompetitive bidding but does not mandate any specific procedure. The proposed rulemaking allows the authorized officer, usually the District Manager, discretion in determining when to deviate from competitive bidding and what type bidding method to employ. These bidding procedure decisions and justifications will be published prior to the sale.

The principal author of this proposed rulemaking is Stepen H. Spector, Division of Land Resources and Realty, Bureau of Land Management assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 43332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 44.

Under the authority of sections 203 and 310 of the Federal Land Policy and Management Act (43 U.S.C. 1713, 1740), it is proposed to amend Group 2700, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations as set forth below:

1. Part 2710 is revised as follows:

Group 2700—Disposition—Sales

PART 2710—SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

Subpart 2710—Sales—General Provisions

Sec.

Subpart 2711—Sales—Procedures

Sec.

Authority: 43 U.S.C. 1713, 1740.

Subpart 2710—Sales—General provisions

§ 2710.0-1 Purpose.

The regulations in this part implement the sale authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713).

§ 2710.0-2 Objective.

The objective is to provide for the orderly disposition at not less than fair market value of public lands identified for sale as part of the land use planning process.

§ 2710.0-3 Authority.

(a) The Secretary of the Interior is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), to sell public lands where, as a result of land use planning, it is determined that the sale of such tract meets the following disposal criteria:

(1) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(2) Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership; or

(3) Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

(b) The Secretary of the Interior is authorized by section 310 of the Federal

Land Policy and Management Act (43 U.S.C. 1740) to promulgate rules and regulations to carry out the purpose of the Act.

§ 2710.0-5 Definitions.

As used in this part, the term

(a) "Public lands" means any lands and interest in lands owned by the United States and administered by the Secretary through the Bureau of Land Management, except:

(1) Lands located on the Outer Continental Shelf;

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(d) "Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

(e) "Family sized farm" means the unit of public lands determined to be chiefly valuable for agriculture, that is sufficient to provide an anticipated adequate return and main source of income for the farm family. The determination of the smallest practical size is an economic decision to be made on a local area basis considering, but not limited to, factors such as: climatic conditions, soil character, availability of irrigation water, topography, usual crop(s) of the locale, marketability of the crop(s), production and development costs, and other physical characteristics which shall give reasonable assurance of continued production under proper conservation management.

§ 2710.0-6 Policy.

(a) Sales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with part 1600 of this title.

(b) Public lands determined to be suitable for sale shall be offered only on the initiative of the Bureau of Land Management. Indications of interest to have specific tracts of public lands offered for sale shall be accomplished through public input to the land use planning process. (See §§ 1601.1-1 and 1601.8 of this title).

(c) Sales of public lands shall generally be through competitive bidding procedures provided for in § 2711.3-1 of this title.

(d) Sales of public lands determined to be chiefly valuable for agriculture shall be no larger than necessary to support a family-sized farm.

(e) The sale of family-sized farm units shall be limited to one unit per bidder and one unit per family. The limit of one unit per family is not to be construed as limiting children eighteen years or older from bidding in their own right.

(f) Sales under this part shall not be made at less than fair market value. Such value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions*. Technical review and approval for conformance with the appraisal standards shall be conducted by the authorized officer.

(g) Constraint and discretion shall be used with regard to the terms, covenants, conditions and reservations authorized by section 208 of the act that are to be in sales patents and other conveyance documents, except where inclusion of such provisions is required by law or for protection of valid existing rights.

§ 2710.0-8 Lands subject to sale.

All public lands, as defined by § 2710.0-5 of this title, are subject to sale pursuant to this part, except:

(a) Those public lands within the revested Oregon California Railroad and reconveyed Coos Bay Wagon Road grants which are more suitable for management and administration for permanent forest protection and other purposes as provided for in the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181(a)); May 24, 1939 (53 Stat. 753); and section 701(b) of the act.

(b) Public lands in units of the National Wilderness Preservation System, National Wild and Scenic Rivers System and National System of Trails.

Subpart 2711—Sales—Procedures

§ 2711.1 Initiation of sale.

§ 2711.1-1 Identification of tracts by land use planning.

(a) Tracts of public lands shall only be offered for sale in implementation of land use planning prepared and/or approved in accordance with subpart 1601 of this title.

(b) Public input proposing tracts of public lands for disposal through sale as part of the land use planning process may be made in accordance with §§ 1601.3, 1601.6-3 or 1601.8 of this title.

§ 2711.1-2 Notice of realty action.

(a) A notice of realty action offering for sale a tract or tracts of public lands identified for disposal by sale shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the sale. The notice shall include the terms, covenants, conditions and reservations which are to be included in the conveyance document and the method of sale. The notice shall also provide for the right of comment by the public and interested parties to the appropriate official as provided in the review procedures of part 2400 of this title within 30 days after issuance under applicable regulations. Such right of comment shall extend only to discretionary land use factors and is not subject to the right of appeal pursuant to part 4 of this title.

(b) The notice shall be sent to the Governor of the State within which the public lands are located and the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographical area within which the public lands are located not less than 60 days prior to the sale. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

(c) The notice shall be published in the **Federal Register** on the first Wednesday of the month and weekly thereafter for three weeks in a newspaper of general circulation in the vicinity of the public lands being sold.

(d) For tracts of public lands in excess of 2,500 acres, the notice shall be submitted to the Senate and the House of Representatives not less than the 90 days prescribed by section 203 of the act (43 U.S.C. 1713(c)) prior to the date of sale. The sale may not be held prior to the completion of the congressional notice period unless such period is waived by Congress.

§ 2711.1-3 Sales requiring grazing permit or lease cancellations.

When the sale of a tract, as identified, requires the cancellation of a grazing permit or lease, notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (See 43 CFR 4110.4-2(b)).

§ 2711.2 Qualified conveyees.

Tracts sold under this part may only be conveyed to:

(a) a citizen of the United States 1 years of age or over;

(b) a corporation subject to the law of any State or of the United States; or

(c) a State, State instrumentality or political subdivision authorized to hold property.

§ 2711.3 Procedures for sale.

§ 2711.3-1 Sales through competitive bidding.

When public lands are offered through competitive bidding:

(a) The date, time, place and manner for submitting bids shall be specified in the notice required by § 2711.1-2 of this title.

(b) Bids may be made by a principal or a duly qualified agent.

(c) Sealed bids shall be considered only if received at the place of sale prior to the hour fixed in the notice and are made for at least the fair market value. Each bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing.

(d) The highest qualifying sealed bid received shall be publicly declared by the authorized officer. If the notice published pursuant to § 2711.1-2 of this title provides for oral bids, such bids, in increments specified by the authorized officer, shall then be invited. After oral bids, if any, are received, the highest qualifying bid shall be declared by the authorized officer. The person declared to have entered the highest qualifying oral bid shall submit payment by cash, personal check, bank draft, money order, or any combination for not less than one-fifth of the amount of the bid immediately following the close of the sale. The successful bidder shall submit the remainder of the full bid price within 30 days of the sale. Failure to submit the full bid price within 30 days shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale. In the event the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer shall determine whether the public lands shall be withdrawn from the market or be reoffered.

(e) If the public lands are not sold pursuant to the notice issued under § 2711.1-2 of this title, they may remain available for sale on a continuing basis until sold as specified in the notice.

(f) The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after receipt of such offer unless the offerer waives his right to a decision within such 30-day period. Prior to the expiration of such periods the authorized officer may refuse to accept any offer or may withdraw any tract from sale if he determines that:

(1) Consummation of the sale would be inconsistent with the provisions of any existing law; or

(2) Collusive or other activities have hindered or restrained free and open bidding; or

(3) Consummation of the sale would encourage or promote speculation in public lands.

(g) Until the acceptance of the offer and payment of the purchase price, the bidder has no contractual or other rights against the United States, and no action taken shall create any contractual or other obligations of the United States.

§ 2711.3-2 Sale by other than competitive bidding.

(a) Public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

(1) Modified competitive bidding includes, but is not limited to:

(i) Offering to designated bidders the right of refusal to meet the highest bid price; or

(ii) A limitation of persons permitted to bid on a specific tract of land offered for sale.

(2) Factors that shall be considered in determining when modified competitive bidding procedures shall be used, include but are not limited to: needs of State and/or local government, adjoining landowners, historical users, and other needs for the tract. A description of the method of modified competitive bidding to be used and a statement indicating the purpose or objective of the bidding procedure selected shall be specified in the notice of realty action required in § 2711.1-2 of this title.

(b) Noncompetitive sales may be utilized when, in the opinion of the authorized officer the public interest would best be served by a direct sale. Examples include, but are not limited to: (1) a tract identified for transfer to State or local government; (2) a tract identified for sale that is an integral part of a project of public importance and speculative bidding would jeopardize the timely completion and economic viability of the project; or (3) there is a need to recognize authorized use, for example, when an existing business would be threatened if the tract were purchased by other than the authorized user.

(c) Once the method of modified competitive or noncompetitive sale is determined and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be by the same instruments as authorized in § 2711.3-1(c) of this title.

§ 2711.4 Compensation for authorized improvements.

§ 2711.4-1 Grazing improvements.

No public lands in a grazing lease or permit may be conveyed until the provisions of part 4100 of this title concerning compensation for any authorized grazing improvements have been met.

§ 2711.4-2 Other private improvements.

Where public lands to be sold under this part contain authorized private improvements, other than those identified in § 2711.4-1 of this title or those subject to a patent reservation, the owner of such improvements shall be given an opportunity to remove them, or the prospective purchaser may compensate the owner of such authorized private improvements and submit proof of compensation to the authorized officer.

§ 2711.5 Conveyance documents.

§ 2711.5-1 Mineral reservation.

Patents and other conveyance documents issued under this part shall contain a reservation to the United States of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe. However, upon the filing of an application as provided in part 2720 of this title, the Secretary may convey the mineral interest if all requirements of the law are met.

§ 2711.5-2 Terms, convenants, conditions, and reservations.

Patents or other conveyance documents issued under this part may contain such terms, convenants, conditions, and reservations as the authorized officer determines are necessary in the public interest to insure proper land use and protection of the public interest.

§ 2711.5-3 Notice of conveyance.

The authorized officer shall immediately notify the Governor and the heads of local government of the issuance of conveyance documents for public lands within their respective jurisdiction.

2. Group 2700 is further revised by the deletion of the following parts.

PART 2730 [DELETED]

(a) Part 2730 is deleted. However, this Part will remain applicable to existing Small Tract Act leases and their renewal or sale pursuant to subpart 2913 by reference in that subpart.

PART 2750 [DELETED]

(b) Part 2750 is deleted.

PART 2760 [AMENDED]

(c) Part 2760, except subparts 2764 and 2765 are retained.

Guy R. Martin,

Assistant Secretary of the Interior.

October 23, 1979.

[FR Doc. 79-33094 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-84-M

federal register

Friday
October 26, 1979

Part VII

Department of the Interior

Geological Survey

Outer Continental Shelf; Oil and Gas and Sulphur Operations

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule incorporates the modifications of 30 CFR Part 250 required to conform to the Outer Continental Shelf Lands Act Amendments of 1978, 92 Stat. 629 (herein referred to as the "Act"). A proposed rule was published on March 12, 1979, in the **Federal Register** (44 FR 13527). This rule describes new procedures and, to the extent required, modifications of existing practices and procedures that govern oil and gas and sulphur operations in the Outer Continental Shelf (OCS). The more important changes are: (1) The establishment of a "Remedies and Penalties" procedure which implements the civil penalty requirements of section 24 of the Act; and (2) the revision of the provisions of section 250.12 to incorporate the new lease suspension and cancellation provisions of sections 5, 11, and 25 of the Act. Part 250, as modified, also contains changes designed to make it more readable as directed by Executive Order 12044 and 43 CFR Part 14.

DATE: This rule shall become effective December 13, 1979.

ADDRESSES: A copy of this final rule may be obtained from the following offices of the Geological Survey:

Chief, Conservation Division, U.S. Geological Survey, National Center—Mail Stop 620, Reston, Virginia 22092.

Conservation Manager—Eastern Region, U.S. Geological Survey, 1725 K Street, N.W., Suite 204, Washington, D.C. 20006.

Conservation Manager—Gulf of Mexico Region, U.S. Geological Survey, 336 Imperial Office Building, P.O. Box 7944, Metairie, Louisiana 70010.

Conservation Manager—Western Region, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025.

Area Oil and Gas Supervisor—Pacific Area, U.S. Geological Survey, 1340 West Sixth Street, Room 160, Los Angeles, California 90017.

Area Oil and Gas Supervisor—Alaska Area, U.S. Geological Survey, 800 "A" Street, Suite 109, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, National Center—Mail Stop 620, Reston, Virginia 22092 (703) 860-7531.

SUPPLEMENTARY INFORMATION:

Background. On September 18, 1978, the Act was signed into law. Certain provisions of the Act supersede the existing practices and procedures and necessitate their revision. In addition, on March 23, 1978, the President issued Executive Order 12044 directing executive Agencies to make regulations as simple and clear as possible. By **Federal Register** notice of March 12, 1979 (44 FR 13527), the Department of the Interior published proposed revisions to 30 CFR Part 250, Oil and Gas and Sulphur Operations in the OCS. The notice explained that most of the proposed changes were designed to eliminate unnecessary and redundant provisions, to reorganize Part 250 into a more coherent program, and to assure that the provisions of the regulations are written in clear English.

Comments. A total of 22 sets of comments and recommendations were timely submitted in response to the invitation contained in the notice of proposed rule published March 12, 1979. The comments and recommendations varied widely in their nature, scope, and content. They presented the views of 2 environmental organizations, 5 State and Federal Government Agencies, and 15 oil and gas companies and trade organzations.

Public Hearings. Oral testimony relating to the proposed revision of 30 CFR Part 250 was also taken at a public hearing held in Washington, D.C., on May 8, 1979.

Differences Between Proposed Rule and Final Rule. The differences between the provisions of the final rule published today and the proposed rule are the result of the Department's efforts to incorporate the comments of the public, to make the provisions of the final rule clearer, and to insure conformance with the Act.

Discussion of Major Comments

General Comments

Dual regulation. Several respondents commented that a clearer identification of the administrative responsibilities of the Geological Survey and other Agencies, both within and outside the Department of the Interior, is needed. The regulations issued by this notice apply only to those responsibilities and authorities of the Secretary of the Interior under the Act and other laws applicable to oil and gas and sulphur activities on the OSC, which the Geological Survey administers. The Act and other statutes applicable to the OCS establish responsibilities and authorities for Agencies other than the Department of the Interior. For example, section 22(a) of the Act requires the Secretary of the Interior, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Army to enforce safety and environmental regulations pursuant to the Act. These regulations are not intended to duplicate, and are not inconsistent with, the regulations of other Agencies. In fact, section 21(f)(1) of the Act requires that the Secretary of the Interior consult with the heads of other appropriate Departments and Agencies to assure that inconsistent or duplicative requirements are not imposed. We do not believe, however, that these regulations should delineate the OCS-related responsibilities of any Agency except the Geological Survey.

Need for regulatory analysis. Several respondents indicated that implementation of the regulations, as proposed, represents a significant regulatory action and, pursuant to Executive Order 12044, requires preparation of a regulatory analysis. Prior to the publication of the proposed modifications of 30 CFR Part 250, the Geological Survey prepared a Negative Declaration and Regulatory Analysis. The document examined the criteria for determining whether the proposed revisions to the regulations constituted a significant regulatory action. The review resulted in a determination that the proposed revision of 30 CFR Part 250 to implement the Act did not constitute a significant regulatory action.

A review of that determination, in light of the comments of respondents, failed to show any basis for changing this determination. We therefore reject the contention that a regulatory analysis is called for by the criteria set out in Executive Order 12044.

Identity of official to administer regulations. Several respondents expressed concern over the designation of the Director of the Geological Survey as the responsible official for administering the regulations in 30 CFR Part 250. Current regulations identify the Supervisor as the responsible official. Respondents indicated that the proposed change would tend to create delays and confusion, and would disrupt the present system which has worked well for many years. We have not adopted the suggestion to designate the Supervisor as the Geological Survey official administering these regulations. However, the change incorporated into these regulations will not appreciably alter present practices and procedures under which the Area Oil and Gas Supervisors and District Supervisors administer the provisions of 30 CFR Part

250. Most of the authorities previously delegated to the Supervisor through the regulations will be delegated to the Supervisor or a comparable officer through a Delegation of Authority from the Director. This approach anticipates a pending reorganization of the Conservation Division which will modify the organizational structure of offices at the Region, Area, and District levels.

Effective date of rule. One respondent noted that the notice of proposed rule gave on effective date for the final rule. This notice identifies the effective date of these regulations as December 13, 1979, because this is the date the regulations in section 250.34 of this part will be effective.

Section-By-Section Discussion

General Provisions

Section 250.1 Purpose and authority

Two respondents suggested minor language changes to indicate that the revised regulations will be applicable to leases issued after the effective date for the revised regulations. This recommendation was not adopted. The regulations in this Part are applicable to all operations conducted under a lease issued or maintained under the Act. Therefore, the regulations are applicable to all leases issued under section 8 or validated under section 6 of the Act. The establishment of a December 13, 1979, effective date addresses the need for leadtime to make required procedural changes.

Section 250.2 Definitions

Several respondents recommended that the term "affected State" be defined more precisely. Adoption of the definition of "affected State" proposed by notice in the **Federal Register** of June 7, 1978 (43 FR 24710), was recommended by some respondents. We have not adopted this recommendation. Whether a State is an affected State under the criteria established under section 201(f) of the Act depends on the proposed OCS activities and the location and significance of onshore activities relating to those OCS activities. No further action will be taken on the notice published June 7, 1978 (43 FR 24710), which tentatively identified "affected States." For purposes of the regulations in Part 250, the identification of "affected States" will be made on a case-by-case basis by the Director or the Director's designee.

A number of respondents requested the development of a definition for "affected local government" and a revision in the proposed definition of "area adjacent to a State."

The new definition of "affected local government" reflects the congressional intent to provide Governors of affected States with a degree of discretion in the identification of affected local governments. The new definition of "area adjacent to a State" was taken from paragraph 4(a)(2) of the OCS Lands Act.

Several respondents suggested revisions to the proposed definition of "correlative rights." One suggestion was to delay publishing a definition of correlative rights until revisions to the regulations governing unitization, pooling, and drilling agreements are published. These recomendations have been rejected. There appears to be confusion over what is meant by "correlative rights." The term "correlative rights" does not indicate an ownership of the minerals in place. Instead, it applies to the lessee's rights to explore for and to develop and produce oil and gas from the leasehold. As long as these rights are not unfairly restricted, as compared to the rights of lessees on adjacent leaseholds, the lessee's correlative rights have been protected. One means for protecting correlative rights is the limitation of the number of wells that can be drilled in a field, pool, or like area, i.e., well-spacing. The responsibility and authority for placing limitations on the number of wells drilled to a given reservoir are found in § 250.17 and OCS Order No. 11.

A number of respondents recommended that the definition of "drilling operations" be broadened to include such things as waiting for severe weather to subside or moving off location. These recommendations have not been adopted. Instead, the definition of "drilling operations" have been modified to clearly indicate that the physical penetration of the seafloor, in preparation to create a borehole, is required.

One respondent recommended that the proposed definition of "exploration" be expanded to include onshore support and administrative activities necessitated by offshore exploration. This recommendation has not been adopted. The onshore support and administration activities relating to the offshore exploration activities of a lessee were not viewed by Congress as a proper element to be included in the definition of exploration activities. [See section 2(k) of the Act (43 U.S.C. 1333).]

One respondent indicated that the definition of "fair market value" is insufficient and that guidelines should be included to indicate how the Secretary will make "fair market value" determinations. We have rejected this recommendation. Although the definition used has been modified to make the language more clear, it is similar to the definition found in section 201 of the Act. Also, the guidelines used by the Director to make value determinations are contained in a different section of the regulations (i.e., § 250.64).

After reviewing the comments on § 250.80 (i.e., "Remedies and Penalties"), we decided to change the title "Hearing Officer" to "Reviewing Officer" because we feel that that title more precisely reflects the role these individuals will play in the process outlined in § 250.80. Also, we decided to include a definition of "Reviewing Officer" in § 250.2.

A number of respondents recommended the deletion of the proposed definition of "knowingly and willfully." They argued that this term is well defined in case law and that it is unnecessary for the Department to attempt a refinement of the standard administratively. We agree and have deleted the definition from the final rule.

The definition of "minerals" has been modified to conform to the definition of minerals in 43 CFR 3300.0–5 published in the **Federal Register** on June 29, 1979 (44 FR 38277).

One respondent suggested that the proposed definition of "production" be shortened by deleting the statement that the definition of production depends on the context in which the term is used. This suggestion has not been adopted. The meaning of the term "production" varies as to the context in which it is used. Thus, it is appropriate for the definition of "production" to state that the specific meaning depends on the context in which the word is used.

One respondent recommended that the proposed definition of "violation" be expanded to cover violations of acts other than the Act and the regulations promulgated under the Act. This recommendation has not been adopted. Section 24 of the Act explicitly states that the Secretary is empowered to enforce "* * * any provison of *this Act*, any regulation or order issued under *this Act*, or any term of a lease, license, or permit issued pursuant to *this Act*."

A number of respondents recommended the expansion of the proposed definition of "waste of oil and gas" to include the "production of oil or gas in excess of transportation facilities" because this language is contained in existing regulations. This recommendation has not been adopted. The language in question was not used in the proposed rule because the current and predicted shortages of domestically produced oil and gas make it

unnecessary. We continue to believe that the language is not needed.

One respondent recommended changes in the proposed definition of "well reworking operations." The definition has been refined to indicate more clearly that work needed to increase the capability of a service well to perform a needed service, and work which is related to cleanout operations to increase or restore production also constitute well reworking operations.

Section 250.3 Data and information to be made available to the public.

This section appeared as § 250.97 in the proposed rule. It has been moved to § 250.3 in the final rule because we believe that the contents of the section more properly fall under the "General Provisions" portion of the regulations in Part 250.

Section 250.4 Privileged and proprietary data and information to be made available to affected States.

The provisions of this section have been added to implement the provisions of section 8(g) of the Act.

Section 250.5 Effect of regulations on provisions of section 6 leases.

This section appeared as § 250.100 in the proposed rule. It has been moved to § 250.5 in the final rule because we believe that the contents of the section more properly fall under the "General Provisions" portion of the regulations in Part 250.

Jurisdiction and Functions of the Director

Section 250.10 Jurisdiction.

Several recommendations were received with reference to this section. Two respondents suggested that language be added to make it clear that the Director's jurisdiction covers activities conducted pursuant to a lease. We adopted this recommendation because there are activities, such as fishing within the area covered by a leasehold, that are not subject to the jurisdiction of the Director.

Section 250.11 Functions.

Several respondents recommended changes in the proposed provisions describing the functions of the Director. Some suggested the elimination of language which they felt created an imbalance between protection of the environment and orderly energy resource development. Still others recommended broadening the functions by making a specific reference to the need to protect marine sanctuary and fishery resources. We have rejected these recommendations. The functions listed have been derived from the provisions of the Act, and any effort to constrict or expand these functions would be inconsistent with the provisions of the Act. Section 250.11(a)(5) has been expanded to indicate that the Director's consultation process may also include executives of affected local governments and other interested parties. We view the phrase "other interested parties" as including lessees and permittees whose interests may be affected by an action of the Director.

Section 250.12 Suspension of operations and lease cancellation.

Several respondents submitted comments and recommendations for the reorganization of this section and its modification to make the provisions more logical and readable. To the maximum extent practicable, these comments and recommendations have been adopted.

While these modifications incorporate many changes suggested by respondents, some were rejected. For example, the suggestions that the lease term be suspended while exploration plans are processed under § 250.34–1 or while development and production plans are being processed pursuant to § 250.34–2 have not been adopted. It is the Department's view that it is the lessee's responsibility to assure that comprehensive exploration plans are submitted and carried out early enough in the initial term of a lease to allow for the discovery and delineation of hydrocarbon accumulations, and to prepare and submit a schedule for the expeditious initiation of production. Similarly, we rejected the recommendation that a suspension not become effective until 30 days following the lessee's receipt of notice of the suspension. Suspensions, particularly suspensions for protection of the environment, are designed to meet special situations which may demand immediate action.

Several respondents commented upon the proposed provisions of § 250.12(d)(2)(i) [now § 250.12(d)(1)], which spelled out the Director's authority to require a lessee to conduct site-specific studies to identify and evaluate the cause(s) of the hazard(s) generating a suspension, the potential damage from the hazard(s), and the mitigating measures for the hazard(s). Some supported this provision, but many opposed it for varying reasons. As a result of these comments, the text of § 250.12(d)(1) has been modified to indicate that cost of the studies will be borne by the lessee unless the Director arranges for the cost to be borne by a party other than the lessee. We did not adopt the recommendation that the Director's report, which is to be made to the Secretary on the basis of the study conducted under § 250.12(d)(1), be made available for public comment prior to being finalized and forwarded to the Secretary. This approach, however, does not preclude the Director from inviting public comment on the report.

Several respondents questioned the provision of § 250.12(d)(2)(iv) of the proposed rule which limited suspensions to 5 years. This provision has been dropped from the final rule, and language from section 5(a)(2)(A) and (B) of the Act has been incorporated as § 250.12(e).

One respondent recommended that the hearing procedures to be followed before a lease is cancelled be described in detail in these regulations. This suggestion has not been adopted because hearing procedures are clearly spelled out in other regulations of the Department (see: 43 CFR Part 4). Since any effort to cancel a lease would be taken by an authorized representative of the Secretary, the action would be subject to appeal pursuant to Department regulations. Then, depending on the facts of the case, the lease may be cancelled administratively subject to judicial review in a U.S. District Court, or cancelled through the initiation of cancellation proceedings in the U.S. District Court.

Several respondents recommended that the provisions of § 250.12 recognize, where appropriate, the ability to cancel a lease pursuant to subsection (5)(a)(2) of the Act. This suggestion has been adopted and has had a significant bearing on the overall organization of the section.

Several respondents recommended that provisions relating to the cancellation of leases for failure to submit a development and production plan provide an exemption for leases in the western Gulf of Mexico. We believe the Act allows the Department to continue to require the submission of development and production plans for leases in the western Gulf of Mexico and that such an exemption would, therefore, be inappropriate.

Section 250.13 Temporary approvals.

Two respondents suggested that temporary approvals are really advance approvals and that the title of the section should be changed accordingly. We did not adopt this recommendation. The approvals granted under this section are *temporary* because they are contingent upon subsequent official confirmation. We also rejected the

recommendation that temporary approvals be granted only after public review, because the whole purpose of this section is to give the Geological Survey the administrative flexibility it needs to promptly and efficiently deal with a wide variety of day-to-day circumstances.

Section 250.15 Drilling and abandonment of wells.

A number of respondents suggested dropping the phrase "no longer used" from § 250.14(a). They pointed out that wells that are not being used may still be useful and should, therefore, not be abandoned. We have adopted the recommended change. Also, the language of § 250.15(a) has been modified to make it clear that the Director must determine that an unused well is no longer useful before requiring a lessee to abandon it. The language has also been modified to make it clear that drilling and other operations pursuant to a lease must be conducted in accordance with a plan approved or prescribed by the Director in accordance with the regulations in 30 CFR Part 250.

Section 250.16 Well potentials and permissible flow.

and

Section 250.17 Well spacing.

The recommendation that environmental considerations be incorporated in these provisions has not been adopted. The regulations in these sections are directed to the proper development and production of oil and gas accumulations by wells on the OCS. Environmental considerations that are applicable to these wells are addressed in other sections of the regulations in this Part.

Section 250.18 Right of use and eastment.

One respondent pointed out that §§ 250.18 and 250.19 (Platforms and Pipelines) ignore the environmental protection requirements of section 5(e) of the Act. As the respondent points out, section 5(e) of the Act relates to "rights-of-way" through the OCS. What the respondent apparently did not recognize is that the provisions of §§ 250.18 and 250.19 relate to grants of "rights of use and easements" and not grants of "rights-of-way." Rights of use and easements for pipelines are addressed in section 5(f) of the Act and not section 5(e). However, platforms and pipelines clearly involve the application of technologies which, if they failed, would have a significant effect on safety, health, or the environment. For this reason, they are subject to the provisions of section 21(b) of the Act. We have, therefore, added language to make it clear that the best available and safest technologies, as defined by section 21(b) of the Act, must be used.

Several respondents suggested modification of § 250.18(c) to include, as one of the uses for which pipelines can be constructed on the OCS, the delivery of production to a point of transfer. This recommendation has not been adopted. *Instead, we have incorporated* the specific language of section 5(f)(2) of the Act to describe the pipelines under the Geological Survey's jurisdiction. The recommendation that the Director's authority be expanded to include grants of rights of use and easement to State lessees has not been adopted. Rights of use and easements can only be granted to Federal lessees. State lessees wishing to obtain a right-of-way across the OCS must apply for a grant from the Bureau of Land Management. Finally, the recommendation that § 250.18(b)(3) be modified to permit a lessee a period of 30 days to comment on an application submitted by another lessee has not been adopted. However, as now written, the lessee of any land affected by a grant of a right of use and easement must be notified and given an opportunity to comment on the application for a right of use and easement.

Section 250.19 Access to platforms.

The recommendation that this section be modified to recognize that the best available and safest technologies must be applied to platforms and pipelines has been adopted through the modifications made in § 250.18. Section 250.19 has been revised and renamed to limit the scope of its provisions to the Department's access to platforms.

Section 250.21 Reduction of royalty or net profit share.

Several respondents recommended that one criterion for granting a royalty reduction should be continued production. This recommendation has not been adopted. However, if a well is in danger of being abandoned because of an uneconomic rate of production, the lessee should be able to demonstate that the continuance of that well in production would actually represent an increase in production when compared with the volume of production that would come from the lease if the well were abandoned. Thus, a reduction in royalty could be granted to "increase production" if the Director determines that such a reduction is justified.

One respondent recommended that a lessee should not be required to show full informaton regarding carved out interests. This recommendation has not been adopted. We believe that requests for reductions in royalty or net profit share should be justified by a full disclosure of all information relevant to the request.

Requirements for Lessees

Subsection 250.30 Lease terms, regulations, waste, damage, and safety.

One respondent suggested that making oral orders effective when issued deprived lessees of an opportunity to comment on the order. The circumstances under which oral orders are issued are usually such that there is no time for notice or comment. We have, therefore, decided to maintain the language contained in the proposed rule.

Three respondents recommended that the threat of harm or damage referred to in subsection 250.30(b) should be qualified by incorporating language which appears in section 5(a)(1)(B) of the Act (i.e., that there must be a serious, irreparable, or immediate threat). We have not adopted the qualifying language. Section 5(a)(1)(B) relates to circumstances under which a lease must be suspended, whereas this provision deals with the degree of protection lessees are required to provide on a day-to-day basis. We believe that a lessee's daily activities on a leasehold must provide a level of protection that is well above the level of protection which would result in a lease suspension under section 5(a)(1)(B).

Section 250.33 Drilling and production obligations.

Several respondents argued that the Secretary does not have the authority to require the lessee to drill a well. We disagree with this argument. Section 5 of the Outer Continental Shelf Lands Act of 1953 provides the Secretary with the authority and this has been strengthened by the language in the Act. Implicit in this mandate is the authority to require the submission of plans because wells must be drilled in accordance with an approved plan.

Section 250.34 Exploration, development, and production plans.

Regulations in this section were published as a final rule on September 14, 1979, in the **Federal Register**. They will be effective December 13, 1979.

Section 250.35 Effect of drilling or well reworking on lease term.

Several respondents expressed concern that the proposed language of § 250.35 failed to recognize a situation where a lease was beyond its primary

term when production ceases. Language has been added to subsection 250.35(a) to make it clear that, when a lease is beyond its primary term and production ceases, the lease will not expire if drilling or well reworking operations are started within 90 days after production ceases.

Section 250.37 Marking platforms, structures, and wells.

The recommendation that the lessee's name not be required on each well on a platform has been adopted.

Section 250.38 Well records.

The recommendation that the regulation state that the Director show cause for requiring reports or records that are not customarily required from all lessees has not been adopted. Although there are specific records and reports which the Director requires of all lessees, there are reports and records that are only required under specific or unusual circumstances. If a lessee believes that the Director should be denied access to records or reports not customarily required from all lessees, the lessee can appeal for relief pursuant to 30 CFR Part 290.

Section 250.39 Tests, surveys, and samples.

A number of respondents recommended that the tests, surveys, and samples referred to in this section should be performed "when required by the Director." This language appears in existing regulations, but was dropped in the proposed rule. The lessee is responsible for designing and carrying out *adequate* sampling, testing, and surveying programs which are essential for safe and efficient operations. Given the mandates of the Act, we believe that the mandatory language is appropriate and reasonable and have, therefore, rejected this recommendation. This is also the rationale for rejecting the recommendation that the lessee be given some sort of veto power over whether or not the samples, tests, and surveys are performed. When, in the Director's opinion, the sampling, testing, and surveying programs of the lessee are inadequate, the Director has the authority to require the lessee to initiate and conduct the sampling, testing, and surveying activities necessary to assure the adequacy of the programs.

Section 250.40 Directional survey.

One respondent recommended that the regulations specify an interval between test points in drilling wells. This recommendation was not adopted because an interval is already specified in the OCS Order No. 2.

Section 250.42 Treatment of production.

Two respondents recommended that this section be modified to recognize that certain bidding systems provided for in section 205 the Act do not call for the payment of royalty. We have not adopted this recommendation because all of the bidding systems currently in use require the payment of royalty, and we believe it is understood that if and when a system is used which does not require the payment of royalty, then no royalty would be due under § 250.42.

Section 250.43 Pollution and waste disposal.

One respondent recommended that § 250.43(b) be modified to limit the lessee's responsibility for control and cleanup of pollution to something less than "total" because the respondent believed the provision is unreasonable. This recommendation has not been adopted. The provision, as written, conforms to the provisions of section 304 of Title III of the Act. Also, two respondents recommended deleting language that indicates that the cleanup shall be at the expense of the lessee because others might legitimately be responsible for some of the costs. Once again, this recommendation was rejected because it is inconsistent with the provision of section 304 of Title III of the Act.

Section 250.44 Borehole abandonment.

Two respondents recommended that a specific requirement be added to the regulations that the wellheads of abandoned wells be removed to a sufficient depth to prevent obstructions to commercial fishing in the area. This recommendation has not been adopted because the specific details for well abandonment are contained in OCS Order No. 3, which prohibits leaving obstructions which may interfere with commercial fishing operations.

Section 250.45 Accidents, fires, and malfunctions.

Several respondents recommended that the scope of the Director's jurisdiction, as compared to that of other agencies having parallel jurisdictions (e.g., the Coast Guard), be clarified. Language has been adopted to indicate that the accidents, fires, and malfunctions referred to in this section relate to activities associated with operations pursuant to a lease.

Section 250.47 Sales contracts.

This section has been clarified to indicate that the term "all contracts" includes all contract modifications such as amendments and terminations.

Section 250.49 Royalty, net profit share, and rental payments.

This section has had clarifying language added to indicate that the payments of rentals, royalties, and net profit shares may be made by "electronic transfer of funds." The section has also been clarified to show that interest is due and payable on the late payments of rentals, royalties, or net profit shares. The amount of interest specified is that specified in section 304(g)(2) of Title III of the Act.

Section 250.54 Marking of equipment.

Several respondents requested the addition of clarifying language to require the marking of equipment that is "of such a nature" as to interfere with commercial fishing. This suggestion has been adopted. Language has also been added to indicate that the manner in which materials, tools, containers, etc., are marked must be approved or prescribed by the Director.

Section 250.56 Fishermen's Contingency Fund.

One respondent recommended that "geophysical permits" be exempt from the payment of money into the Fishermen's Contingeny Fund. This recommendation has been rejected because section 402(c) of Title IV of the Act makes specific reference to the holders of permits in identifying those who must contribute to the Fishermen's Contingency Fund.

Measurement of Production and Computation of Royalties

Section 250.61 Measurement of gas.

One respondent recommended the use of a standard pressure base of 14.73 pounds per square inch absolute, 60° Fahrenheit, and corrected for deviation from Boyle's Law. This recommendation has not been adopted. The system of contracts and conversion practices presently being used by operators would be unnecessarily disrupted by a change of this base. However, it should also be noted that the language of the provision allows adequate flexibility for the use of other standards.

Section 250.63 Quantity basis for substances extracted from gas.

Two respondents recommended that the definition of net output of a plant be limited to substances produced "for sale." We have rejected this suggestion. We regard the net output of a plant to include all of the substances produced by the plant without regard to the ultimate disposition of those substances.

Section 250.64 Value basis for computing royalties.

The suggestion that the "Director" rather than the "Secretary" establish the reasonable unit value has been rejected. The reasonable unit value, when established by the Secretary, serves as a floor value. The value that the Director uses to compute royalties due the United States under § 250.64 may not be less than "reasonable unit value" established by the Secretary, if the Secretary establishes such a value.

Section 250.65 Royalty on oil.

Several respondents objected to including oil used as fuel in the computation of royalty. Since this question currently is the subject of litigation [*Amoco Production Co. v Andrus No. 77–3351–C(E.D. La.)*], they recommended that the language in the existing regulations not be changed pending a decision by the court. Since regulations implement administration policy as well as statutory mandates, we believe it is appropriate for the language of the final rule to be consistent with the Department's policy on this matter, and have, therefore, rejected this recommendation.

Section 250.66 Royalty on unprocessed gas.

This section has been modified to make it clear that the value of wet gas and entrained liquids may be established by using a Btu or some other appropriate adjustment factor to adjust the value of the gas without the entrained liquids. This provision is consistent with the Department's current policy on this matter.

Remedies and Penalties

Section 250.80 Remedies and penalties.

Several respondents submitted extensive comments and recommendations regarding the provisions of § 250.80.

Before discussing the changes made in this section, two points must be made about the overall approach envisioned in the requirements contained in this section. First, the provisions conform to the recommendations adopted by the Administratative Conference of the United States on June 8, 1979. (See: Recommendation 79–3: "Agency Assessment and Mitigation of Civil Money Penalties.") Second, as pointed out in the preamble of the proposed rule, practices and procedures being adopted parallel those under which the U.S. Coast Guard carries out its responsibilities for assessing and collecting civil penalties.

Several respondents argued that the person responsible for the initial handling of a case following the issuance of a citation for an alleged violation should be an impartial party. Some suggested the use of Administrative Law Judges instead of Geological Survey designated Reviewing Officers (formerly Hearing Officers). We agree that the Reviewing Officer must be an impartial party and have incorporated language indicating that the Reviewing Officer is to have no part in the prosecution as well as the investigation of the alleged violation. We do not agree, however, with the implication that a Geological Survey employee is incapable of conducting an impartial inquiry. Section 24 of the Act does not alter existing enforcement procedures. Instead, it expands them to include the assessment of civil penalties. Since existing enforcement procedures are conducted by Geological Survey personnel, we feel it is appropriate that the initial handling of cases following the issuance of a citation for an alleged violation be conducted by a Geological Survey employee. It should be noted that any appeal from a decision of the Director, U.S. Geological Survey, will be handled by Administrative Judges of the Board of Land Appeals.

Numerous respondents recommended that alleged violators be provided with an early notice of the alleged violation. We agree and have included language in § 250.70, "Reports and Investigations of Apparent Violations," indicating that alleged violators will be notified of the matters under investigation.

Several respondents suggested that the alleged violator should be given a copy of the report on the alleged violation that is transmitted from the Director's designee to the Reviewing Officer. We have rejected this suggestion. In order to protect against frivolous claims (a concern expressed by one of the respondents), we have incorporated a number of reviews of the evidence before further action is taken on any alleged violation. One of these reviews is conducted by the Reviewing Officer when the report is first forwarded by the Director's designee. If the Reviewing Officer's preliminary examination confirms that an alleged violation may have occurred, then the Reviewing Officer will notify the party of the allegation and its right to examine the material in the case file.

Some respondents questioned whether the transmission of the alleged violator's prior record would prejudice the Reviewing Officer's evaluation of the evidence that the alleged violation occurred, and one respondent recommended that the alleged violator's prior record should only be used in the consideration of the size of the penalty to assess. We understand the concern expressed and have decided to modify the final rule to indicate that the party's prior record will not be forwarded until the determination that a violation has occurred, and that the prior record shall be used to determine the amount of the penalty to assess.

One respondent recommended that the Geological Survey should limit its investigations to alleged violations of rules under its jurisdiction. This respondent appears to be confused over the provisions of the proposed rule. Under both the proposed and final rule, authorized representatives of the Survey, the Coast Guard, and the Corps of Engineers will continue to enforce their own rules and issue citations in accordance with their own regulations. Those citations which call for the consideration of imposing a civil or criminal penalty under the Act will be forwarded to the Director's designee for further action. This approach is consistent with the requirements of the provisions of section 24 of the Act, and it insures the efficient handling of enforcement actions.

A number of respondents objected to the provisions which protect the identity of confidential informants. They argued that the accused should be afforded the opportunity to confront the accuser. We have decided to maintain this provision, but have modified it to indicate that the protection of confidential informants is limited to the civil proceedings outlined in § 250.80–1. This provision is designed to protect an employee of the party under investigation from retaliation for reporting an alleged violation.

One respondent recommended that the public be notified of the proceedings under § 250.80–1 and that interested parties be allowed to intervene in the proceedings. We have rejected these recommendations. The proceeding contemplated under § 250.80–1 is an extension of the Geological Survey's existing enforcement functions, and is designed to insure that cases are handled in an expeditious fashion with due regard for the protection of the party's legal rights. However, any person or group that is involved in the report of the alleged violation will be notified of the initiation of proceedings.

Some respondents suggested that the Geological Survey require that a verbatim transcript be kept of all hearings. In the interest of efficiency and economy, we do not believe that such a requirement is necessary. However, a party in the proceeding can arrange for a verbatim transcript, at the

party's expense, to be made of the proceeding.

Specific Changes in Section 250.80

The changes made in § 250.80 are primarily organizational in nature and have been made to clarify the provisions. We have moved the content of § 250.80(a) and divided it into two new §§ 250.70 and 250.71. These new sections are entitled "Investigations" and "Report on investigations." Subsections 250.80 (r) and (s) have been combined as § 250.80–2.

Subsection 250.80(q) has been moved and made into a new § 250.72, "Knowing and Willful Violations." This provision follows the language of subsection 24(a) of the Act. The language of the final rule also makes it clear that in those instances where a knowing and willful violation may have occurred, the case will be referred immediately to the Department of Justice.

Other refinements have been made in the text of § 250.80 to make it clear that determinations under the provisions of the section will be subject to the appeals process described in 30 CFR Part 290.

One respondent objected to the interest provision found in § 250.80(p). In response to that objection, § 250.80(p) has been modified by deleting the flat 12% interest charge and by substituting a requirement to pay the average highest commercial interest rate for the period during which interest is due. This new language follows the language of the Act [see: paragraph 304(g)(2)]

Authors. Thomas McCloskey, Office of the Assistant Secretary—Energy and Minerals, U.S. Department of the Interior (202/343–4457); Douglas Fant, Office of the Solicitor, U.S. Department of the Interior (202/343–4325); and Gerald D. Rhodes, Geological Survey, U.S. Department of the Interior (703/860–7531).

Environmental Impact and Regulatory Analysis. The Department of the Interior has determined that the revision of the regulations in 30 CFR Part 250, in accordance with this notice, is not a major Federal action significantly affecting the quality of the human environment and will not require preparation of an Environmental Impact Statement. The Department has also determined that this notice of final rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and implementing regulations 43 CFR Part 2.

Dated: October 23, 1979.

Joan M. Davenport,

Assistant Secretary of the Interior.

30 CFR Part 250 is revised in its entirety with the exception of § 250.34 which was revised and published on Sept. 14, 1979 to read as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

General Provisions

Sec.

Jurisdiction and Functions of the Director

Requirements for Lessees

Measurement of Production and Computation of Royalties

Sec.

Investigations

Remedies and Penalties

Reports To Be Made by All Lessees (Including Operators)

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. § 4332 et seq. (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1451 et seq.

Cross Reference: For other regulations pertaining to the issuance and recognition of mineral leases covering submerged lands in the Outer Continental Shelf, see 43 CFR Part 3300.

General Provisions

§ 250.1 Purpose and authority.

The Act authorizes the Secretary to prescribe rules and regulations necessary to carry out the provisions of the Act. The Secretary is authorized to prescribe and amend regulations that the Secretary determines to be necessary and proper in order to provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf (OCS) and the protection of correlative rights therein, and these rules and regulations apply as of their effective date to all operations conducted under a lease issued or maintained under the provisions of the Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary is authorized to cooperate with other relevant Departments and Agencies of the Federal Government and of affected States. Subject to the supervisory authority of the Secretary, and unless otherwise specified, the

regulations in this Part shall be administered by the Director of the Geological Survey.

§ 250.2 Definitions.

When used in the regulations in this Part, the following terms shall have the meanings given below:

(a) "Act" means the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.).

(b) "Affected local government" means the principal governing body of a locality which is in an affected State and is identified by the Governor of that State as a locality which will be significantly affected by oil and gas activities on the OCS.

(c) "Affected State" means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2)(A) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artifical island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving or, in accordance with the proposed activity, will receive oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment or a State in which there will be significant changes in the social, governmental, or economic infrastructure resulting from the exploration, development, and production of oil and gas anywhere in the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

(d) "Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluids, and descriptions of hydrocarbon encounters or hazardous conditions.

(e) "Area adjacent to a State" means that portion of the OCS which would be within the area of a State if the State's boundaries were extended seaward to the outer margin of the OCS.

(f) "Coastal environment" means the physical, atmospheric, and biolgical components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

(g) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shoreline to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be indentified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act.

(h) "Coastal Zone Management Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 et seq.).

(i) "Correlative rights," when used with respect to lessees of adjacent tracts, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, oil or gas, or both, from a common source.

(j) "Cultural resource" means a site, structure, or object of historical or archeological significance.

(k) "Data" means facts and statistics or samples which have not been analyzed or processed.

(l) "Development" means those activities which take place following discovery of minerals in paying quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.

(m) "Directional drilling" means the deviation of a borehole from the vertical or from its normal course in an intended predetermined direction or course with respect to the points of the compass. Directional drilling shall not include deviations made for the purpose of straightening a hole that has become crooked in a normal course of drilling or deviations made at random, without regard to compass direction, in an attempt to sidetrack a portion of the hole on account of mechanical difficulty in drilling.

(n) "Director" means the Director of the Geological Survey of the U.S. Department of the Interior or a subordinate authorized to act on the Director's behalf.

(o) "Drilling operations" means actual operations including the physical penetration of the seafloor for the purpose of creating a borehole, testing activities to demonstrate the capability of a well to produce oil or gas, and the completion operations needed to make a well physically able to produce oil or gas, or both.

(p) "Eastern Gulf of Mexico" means all OCS areas in the Gulf of Mexico deemed by the Director to be adjacent to the State of Florida.

(q) "Exploration" means the process of searching for minerals. Exploration activities include but are not limited to: (1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals and (2) any drilling, whether on or off a known geological structure. Exploration also includes the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional well, after a discovery, which is needed to delineate a reservoir and to enable the lessee to determine whether to proceed with development and production.

(r) "Fair Market Value" means the value of any mineral computed at a unit price equivalent to the average unit price at which the mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to the lease. If the Secretary finds that there were no sales or there were an insufficient number of sales to equitably determine the value, computed at the average unit price at which the mineral was sold pursuant to other leases in the same region of the OCS during the period, or if the Secretary finds there were no sales of the mineral from the region during the period or there were an insufficient number of sales to equitably determine the value, fair market value shall be computed at an appropriate price determined by the Secretary.

(s) "Gas" means any fluid, either combustible or noncombustible, which

is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(t) "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to a Governor pursuant to the Act.

(u) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

(v) "Information," when used without a qualifying adjective, includes analyzed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

(w) "Interpreted geological information" means knowledge often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

(x) "Interpreted geophysical information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

(y) "Lease" means (1) any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals, or (2) the area covered by that authorization, whichever is required by the context.

(z) "Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this Part. The term includes all parties holding that authority by or through the lessee.

(aa) "Major Federal Action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act (i.e., an action which will have a significant impact upon the quality of the human environment requiring preparation of an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act).

(bb) "Marine environment" means the physical, atomspheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

(cc) "Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are disposable under mineral laws applicable to the public lands.

(dd) "National Environmental Policy Act" means the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et seq.).

(ee) "OCS Order" means a formal numbered Order, issued by the Director, that implements the regulations in this Part and specifically applies to operations in an area identified in the Order.

(ff) "Oil" means any fluid hydrocarbon substance other than gas which is extracted in a fluid state from a reservoir and which exists in a fluid state under the existing temperature and pressure conditions of the reservoir. Oil includes liquefiable hydrocarbon substances such as drip gasoline or other natural condensates recovered or recoverable in a liquid state from produced gas.

(gg) "Operator" means the individual, partnership, firm, or corporation having control or management of operations on the leased area or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

(hh) "Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(ii) "Party," when used in § 250.80, means the person alleged to have violated any provision of the act, or any term of a lease, license, or permit issued pursuant to the Act, or any regulation or order issued under the Act, and includes an individual or a public or private corporation, partnership or other association, or a government entity.

(jj) "Permittee" means the party authorized by a permit issued pursuant to Part 251 of this Chapter to conduct activities on the OCS.

(kk) "Processed geophysical information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

(ll) "Pollution contingency plan" means the National Multi-Agency Oil and Hazardous Materials Pollution Contingency Plan or any successor plan thereto.

(mm) "Production" means those activities which take place after the successful completion of any means for the removal of minerals. Production includes removal of minerals, field operations, transfer of minerals to shore, operation monitoring, maintenance, and/or workover drilling, and depends upon the context in which the term is used.

(nn) "Reviewing Officer" means an employee of the Geological Survey who is delegated the authority to assess civil penalties and, when appropriate, to recommend the initiation of criminal proceedings.

(oo) "Secretary" means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

(pp) "Violation" means a failure to comply with any provision of the Act, or of a regulation or order issued under the Act, or any term of a lease, license, or permit issued pursuant to the Act.

(qq) "Waste of oil and gas" means: (1) The physical waste of oil and gas; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of, reservoir energy; (3) the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and (4) the inefficient storage of oil.

(rr) "Well reworking operations" means physical activities designed to restore the capability of a well to produce oil or gas, or both, in paying quantities, or to increase the capability of a service well (e.g., an injection well, a water source well, or a disposal well) to perform the needed function. Reworking operations include, but are not limited to, efforts to clean out, recomplete a well in a different formation, and the physical penetration of formations to relocate the borehole of a well to a more advantageous drainage point within the same formation.

(ss) "Western Gulf of Mexico" means all OCS areas of the Gulf of Mexico except those deemed by the Director to be adjacent to the State of Florida.

§ 250.3 Data and information to be made available to the public.

(a) Except as provided in (c) of this section or in § 252.7 of this Chapter, geophysical data, processed geophysical information, and interpreted geological and geophysical information, submitted pursuant to the requirements of this Part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect, or for a period of 10 years after the date of submission, whichever is less unless the Director determines that earlier release of such information is necessary for the proper development of the field or area.

(b) Except as provided in (c) of this section or in § 252.7 of this Chapter, geological data and analyzed geological information, submitted pursuant to the requirements of this Part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 2 years after the date of submission, whichever is less, unless the Director determines that earlier release of such information is necessary for the proper development of the field or area.

(c) Geophysical data, processed geophysical information and interpreted geophysical information collected on a lease with high resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler and magnetometer) in compliance with stipulations or orders concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Director. However, unless the lessee can demonstrate to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position, the Director may release the information and data at an earlier time if the Director determines it is needed by affected States to make determinations under § 250.34 of this Part.

§ 250.4 Privileged and proprietary data and information to be available to affected States.

(a)(1) At the time of soliciting nominations for the leasing of lands within 3 geographic miles of the seaward boundary of any coastal State, the Director, in coordination with the Director of the Bureau of Land Management, shall provide the Governor of the State with:

(i) An identification and schedule of the areas and regions proposed to be offered for leasing;

(ii) All information on the geographical, geological, and ecological characteristics of the areas and regions proposed to be offered for leasing;

(iii) An estimate of the oil and gas reserves in the areas proposed for leasing; and

(iv) An identification of any field, geological structure, or trap located within 3 miles of the seaward boundary of the State.

(2) The manner and form in which the information described in paragraph (a)(1) of this section shall be transmitted to the State shall be determined on a case-by-case basis in discussions between the Director, the Director of the Bureau of Land Management, and the Governor of the State.

(b) After the receipt of nominations for any area of the OCS within 3 geographic miles of the seaward boundary of any coastal State and tentative tract selection in accordance with the provisions of 43 CFR Parts 3313 and 3314, the Director shall, in consultation with the Governor of the State or a duly authorized agent of the Governor, determine whether any tracts being given further consideration for leasing may contain one or more oil or gas reservoirs underlying both the OCS and lands subject to the jurisdiction of the State.

(c) Knowledge obtained by a State official who receives information or data under (a) and (b) of this section shall be subject to the requirements and limitations of the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), the Act, the regulations contained in this Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), the regulations in 30 CFR Part 251 (Geological and Geophysical Explorations of the Outer Continental Shelf), and the regulations contained in 30 CFR Part 252 (Outer Continental Shelf Oil and Gas Information Program).

§ 250.5 Effect of regulations on provisions of section 6 leases.

(a) As provided in subsection 6(b) of the Act, the regulations in this Part supersede the provisions of any lease which is determined to meet the requirements of subsection 6(a) of the Act, to the extent that they cover the same subject matter, with the following exceptions: the provisions of the lease as to area, rentals, and minerals covered; the royalties payable under the lease (subject to the provisions of paragraphs 6(a)(8) and 6(a)(9) of the Act); and the term of the lease [subject to the provisions of paragraph 6(a)(10) of the Act and, as to sulphur, subject to the provisions of paragraph 6(b)(2) of the Act] shall continue in effect and, in the event of any conflict or inconsistency, shall take precedence over the regulations in this Part.

(b) A lease that meets the requirements of subsection 6(a) of the Act shall also be subject to the mineral leasing regulations applicable to the OCS as well as the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way in the OCS to the extent that those regulations are not contrary to or inconsistent with the provisions of the lease relating to the area covered, the minerals covered, the rentals payable, the royalties payable, and the term of the lease.

Jurisdiction and Functions

§ 250.10 Jurisdiction.

(a) Subject to the supervisory authority of the Secretary, drilling and production operations; handling and measurement of production; determination and collection of rental, royalty, and net profit shares; and, in general, all operations and activities conducted pursuant to a lease by or on behalf of a lessee are subject to the regulations in this Part and are under the jurisdiction of the Director.

(b) In the exercise of that jurisdiction, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this Part, and to require compliance with applicable laws, regulations, lease terms, and OCS Orders so that all operations are conducted in a manner which will protect the natural resources of the OCS. The Director may issue OCS Orders to implement the requirements of the regulations in this Part. The Director may issue other orders, either written or oral, to govern lease operations. Oral orders shall be confirmed in writing as promptly as possible. The Director may issue other orders and field rules to govern the development and method of production of a pool, field, or area. Prior to the issuance of OCS Orders and other orders and field rules, the Director may consult with, and receive comments from, lessees, operators, and other interested parties. Before permitting operations on the leased area, the Director may require evidence that a lease is in good standing, that the lessee is authorized to conduct operations, and that an acceptable bond has been filed.

§ 250.11 Functions.

(a) The Director, in accordance with the regulations in this Part, shall:

(1) Regulate all operations conducted under a lease or permit and shall issue and amend OCS Orders and other orders and field rules as may be

necessary and proper in order to supervise operations and to prevent harm or damage to, or waste of, any natural resource (including any mineral deposits in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(2) Require on all new and, whenever practicable, existing drilling and production operations (including the construction and operation of platforms and pipelines) the use of the best available and safest technologies which the Director determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Director determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

(3) Schedule an onsite inspection, at least once a year, of each facility on the OCS which is subject to any environmental or safety regulations promulgated pursuant to the Act. The inspection shall include all environmental protection equipment and all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents. A lessee shall, on request by the Director, furnish food, quarters, and transportation for Federal representatives to inspect its facilities. Upon request, the lessee will be reimbursed by the United States for the actual costs which it incurs as a result of its providing food, quarters, and transportation for a Federal representative's stay of more than 10 hours.

(4) Conduct periodic onsite inspections without advance notice to the operator of such facility to assure compliance with applicable regulations.

(5) Cooperate with and, when in the Director's judgment it is necessary, consult with or solicit advice from relevant Departments and Agencies of the Federal Government and affected States, executives of affected local governments, and other interested parties.

(b) The Director may prescribe or approve, in writing or orally with subsequent written confirmation, departures from the requirements of OCS Orders and other orders and field rules issued pursuant to paragraph (a) of this section, when such departures are necessary for the proper control of a well, the facilitation of the proper development of a lease, the conservation of natural resources, the protection of life (including fish and other aquatic life) property, or the marine, coastal or human environment.

§ 250.12 Suspension of operations and lease cancellation.

(a)(1)(i) The Director may suspend or temporarily prohibit production or any other operation or activity when the lessee fails to comply with a provision of the Act or any other applicable law, a provision of a lease or permit, a provision of these and other applicable regulations, OCS Orders, or any other written orders or field rules including orders for the filing of reports and well records or logs within the time specified.

(ii) The Director may suspend or temporarily prohibit production or any other operation or activity pursuant to any lease issued or maintained under the Act when the Director determines that there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment.

(iii) The Director may, pursuant to the provisions of subsections 5(a) and 12 (c) and (d) of the Act, suspend or temporarily prohibit production or any other operations or activities when such action is in the interest of national security or defense.

(iv) The Director may suspend or temporarily prohibit production or any other operation or activity to facilitate the preparation of an environmental impact statement or environmental analysis, or for any other purpose necessary for the implementation of the National Environmental Policy Act.

(2) The Director may suspend or temporarily prohibit production or any other operation or activity separately as to oil or gas, or as to any other mineral designated in the suspension order as to all or any portion of the leasehold.

(3) The Director shall issue orders of suspension or temporary prohibition pursuant to this subsection either in writing or orally with subsequent written confirmation.

(b)(1) Upon the request of a lessee, the Director may suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when the Director determines that the suspension or temporary prohibition is in the national interest and will (i) facilitate proper development of a lease, (ii) allow for the construction of, or for the negotiation for the use of, transportation facilities, or (iii) facilitate the installation of equipment the Director determines is necessary for safety or environmental reasons.

(2) The lessee must submit, with a request for a suspension, the reasons for requesting the suspension, a schedule of work leading to the expeditious initiation or restoration of production or any other operation or activity, and any other information the Director may require.

(3) In determining whether a suspension of production or any other operation or activity is in the national interest, the Director shall consider:

(i) All known significant national benefits and national costs;

(ii) Whether environmental problems or other unforeseen conditions necessitate a significant halt in production or any other operation or activity; and

(iii) Whether, during the primary term, the lessee has been prompt and efficient in the exploration of the lease.

(4) A suspension of production or any other operation or activity may be granted under this subsection for periods of time each of which must not exceed 5 years.

(c)(1) When the Director suspends or temporarily prohibits production or any other operation or activity pursuant to subsections (a) or (b) of this section, the term of the lease shall be extended for a period of time equivalent to the period that the suspension or prohibition is in effect. However, no lease shall be extended pursuant to this subsection when the Director's suspension or temporary prohibition is the result of the lessee's or permittee's gross negligence or of a knowing and willful violation of a provision of the Act, of the regulations, or of a lease or permit.

(2) Any suspension may be terminated at any time when the Director determines that the circumstances which justified the granting of the suspension no longer exist. When the Director terminates a suspension prior to the end of the period of time for which the suspension was originally granted, the Director shall specify in the notice of termination the reason(s) for the termination and the effective date for the termination of the suspension.

(3) Any suspension shall terminate automatically upon the commencement of production or any other suspended operation or activity.

(d)(1) When the Director suspends or temporarily prohibits production or any other operation or activity pursuant to paragraph (a)(1)(ii) of this section, the Director may require the lessee to conduct (a) site-specific study or studies to identify and evaluate the cause(s) of the hazard(s) generating the suspension, the potential damage from the hazard(s), and the measures available for mitigating the hazard(s). The content and scope of the study or studies shall be approved or prescribed by the Director. Prior to approval of a study program, the Director may invite

comments and recommendations, on an informal basis, from interested Federal Departments and Agencies, affected States and local governments, and other interested parties. The lessee shall furnish copies and all results of the study or studies to the Director. The cost of the study or studies shall be borne by the lessee unless the Director arranges for the cost of the study or studies to be borne by a party other than the lessee. The Director shall make such results available to intereted parties and to the public.

(2) On the basis of the results of the study or studies conducted in accordance with paragraph (d)(1) of this section and other information available to and identified by the Director, the Director will submit a report to the Secretary. The report shall indicate the damage or threat of damage being avoided and shall recommend mitigating measures, if any, that may successfully alleviate such damage or threat of damage. On the basis of the Director's report and recommendations, and other information or advice the Secretary deems and identifies as relevant, the Secretary shall require the lessee to take appropriate measures to mitigate or avoid the damage or potential damage, which resulted in the suspension or temporary prohibition of production or of any other operation or activity, as a condition for permitting the resumption of exploration, development, or production activities on the lease. The lessee shall submit, when deemed appropriate by the Director, a revised exploration plan or a revised development and production plan in accordance with § 250.34 of this Part. The revised plan shall incorporate the mitigating measures required by the Secretary. In choosing between alternative mitigating measures, the Secretary will balance the cost of the required measures against the reduction or potential reduction in damage or threat of damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment.

(3) If the lessee cannot comply with the conditions established by the Secretary for ending the suspension or temporary prohibition of production or any other operation or activity on the lease, or if the Secretary determines that adequate protection from serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment will not be provided by the mitigating measures, the Secretary shall leave the suspension in effect.

(4) The Secretary may terminate a suspension and cancel a lease in accordance with the provisions of this subsection when:

(i) Continued activity pursuant to the lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or permit in force.

(5) Cancellation of a lease pursuant to this subsection is in the Secretary's discretion, but cannot occur until the operation or activity in question under the lease or permit has been under suspension or temporary prohibition, with due extension of the term of the lease, continuously for a period of 5 years or, upon the request of the lessee, for a lesser period of time. If a lease is cancelled under this section, the lessee shall be entitled to compensation pursuant to the provisions of subsection (g) of this section.

(6) Cancellation of a lease pursuant to this subsection will become effective only after the affected lessee has been given notice and an opportunity for a hearing.

(e) Whenever an exploration plan is disapproved because the Director determines that approval of the activities called for in the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment, and the proposed activity cannot be modified to avoid these dangers, the Secretary may, once the primary lease term has been extended continously for a period of 5 years following the disapproval, or, upon request of the lessee, at an earlier time, terminate the suspension or temporary prohibition and cancel the lease, and the lessee shall be entitled to compensation pursuant to subsection (g) of this section.

(f)(1) Where a development and production plan is submitted before the subsequent approval of a coastal zone management program for an affected State, pursuant to the Coastal Zone Management Act, and the plan is disapproved because the lessee does not receive concurrence by such State pursuant to section 307(c)(3)(B) (i) or (ii) of the Coastal Zone Management Act, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act; or if the Secretary makes findings pursuant to § 250.34–2(g)(2)(iii)(C):

(i) The term of the lease shall be duly extended and, at any time within 5 years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Director shall approve, disapprove, or require modification of the plan in accordance with the provisions of 30 CFR § 250.34–2; and

(ii) Upon expiration of the 5-year period described in paragraph (f)(1)(i) of this section or, at the Secretary's discretion, at an earlier time upon request of the lessee, if the Director has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to compensation pursuant to subsection (g) of this section.

(iii) The Secretary may, at any time within the 5-year period described in paragraph (f)(1)(i) of this section, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been prompt and efficient in pursuing obligations under the lease, and, notwithstanding the provisions of subparagraph (f)(1)(i) of this section, the Secretary shall immediately initiate procedures to cancel the lease under the provisions of subsection 5(c) of the Act, and the lessee shall not be entitled to compensation.

(2) Where a development and production plan is submitted after approval of a State's coastal zone management program pursuant to the Coastal Zone Management Act, and the plan is disapproved because the lessee does not receive concurrence by the State pursuant to section 307(c)(3)(B) (i) or (ii) of the Coastal Zone Management Act, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act, the lessee shall not be entitled to compensation when the lease expires.

(3) Whenever the owner of a lease fails to submit a development and production plan in accordance with 30 CFR 250.34–2, or fails to comply with an approved plan, the lease may be cancelled in accordance with sections 5(c) or (d) of the Act. Cancellation of a lease because of failure to submit a plan

or to comply with an approved plan, including required modifications or revisions, shall not entitle the lessee to any compensation.

(4) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, or of the lease, or of the regulations issued under the Act, and the default continues for a period of 30 days after the mailing of a notice by registered letter to the lease owner, the Secretary may cancel the lease pursuant to subsection 5(c) of the Act, and the lessee shall not be entitled to compensation.

(5) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, of the lease, or of the regulations issued under the Act, the Secretary may cancel the lease pursuant to subsection 5(d) of the Act, and the lessee shall not be entitled to compensation.

(6) Whenever a development and production plan is disapproved because of a failure to demonstrate compliance with the requirements of the Act or other applicable Federal law, including the air quality regulations prescribed by the Secretary pursuant to section 5(a)(8) of the Act, the lessee shall not be entitled to compensation when the lease expires.

(g) Cancellation of a lease under subsections (d) and (e) and subparagraph f(1)(ii) of this section shall entitle the lessee to receive such compensation as the lessee shows the Director as being equal to the lesser of:

(1) The fair value of the cancelled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oilspill, and all other costs reasonably anticipated on the lease; or

(2) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of the lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on this consideration and expenditures from date of payment to date of reimbursement), except that:

(i) With respect to leases issued before enactment of the Act, compensation shall be equal to the amount specified in paragraph (g)(1) of this section; and

(ii) In the case of jointly held leases which are cancelled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for losses from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

§ 250.13 Temporary approvals.

The Director may give temporary oral approvals whenever the regulations in this Part, other than those contained in § 250.34, require a lessee to obtain the Director's approval before commencing an operation or activity. Oral approvals shall be confirmed immediately in the manner otherwise required by the regulations in this Part.

§ 250.15 Drilling and abandonment of wells.

(a) The Director shall require that drilling and any other operation or activity pursuant to a lease be conducted in accordance with a plan prescribed or approved by the Director in accordance with the regulations in this Part. Whenever practicable, the Director shall require the plugging and abandonment of any well which the Director determines is no longer useful.

(b) Upon failure to secure compliance with the requirements of subsection (a) of this section, the Director may perform the work at the expense of the lessee.

§ 250.16 Well potentials and permissible flow.

The lessee shall produce any oil or gas obtained pursuant to an approved development and production plan, at rates consistent with any applicable rule or order.

§ 250.17 Well spacing.

The Director is authorized to approve well spacing programs necessary for the proper development of a lease giving consideration to, among other factors, the following: the location of drilling platforms; the geological and other reservoir characteristics of the field; the number of wells that can be economically drilled; the protection of correlative rights; and minimizing the unreasonable interference with other uses of the OCS.

§ 250.18 Right of use and easement.

(a)(1) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, the Director may grant a lessee, subject to conditions prescribed by the Director, a right of use and easement to construct and maintain platforms, artificial islands, and all installations and other devices which are permanently or temporarily attached to the seabed on the OCS, and which are used for carrying out exploration, development, and production activities, including but not limited to drilling, producing, treating, handling, and storing production, and the housing of personnel engaged not only in operations and activities on the lease on which the platform, artificial island, or installation or other device is situated, but for the conduct of operations on any other lease.

(2) A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee under a lease.

(3) A right of use and easement shall be exercised in a manner which assures protection of the environment through the use of the best available and safest technologies pursuant to subsection 21(b) of the Act.

(4) A right of use and easement, if on an area subject to any lease issued or maintained under the Act, shall be granted only after the holder of the lease has been notified by the applicant and afforded an opportunity to comment on the application.

(b)(1) In addition to the rights and privileges granted to a Federal lessee under any lease issued or maintained under the Act, the Director may grant a lessee, subject to conditions prescribed by the Director, a right of use and easement to construct and maintain pipelines on the OCS which are constructed, owned, and maintained by the lessee, and feed into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed.

(2) Subject to the limitations of section 5(e) of the Act, the Director is authorized to approve a location for the facility described in paragraph (b)(1) of this section.

(3) Any right of use and easement that is granted by the Director for a pipeline across a leased area shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee under the lease.

(4) A right of use and an easement shall be exercised in a manner which assures protection of the environment through the use of the best available and safest technologies pursuant to subsection 21(b) of the Act.

(5) The right of use and easement for a pipeline across an area covered by a lease issued or maintained under the Act shall be granted only after the holder of the lease has been notified by the applicant and afforded an opportunity to comment on the application.

(6) A right of use and easement granted by the Director shall not apply to pipelines which are proposed to be

used for transporting oil, gas, or other production after its custody has been transferred to a purchaser or carrier as provided for in subsection 5(e) of the Act and regulations in 43 CFR Part 3300.

(7) Unless exempted by the Federal Energy Regulatory Commission, any right of use and easement or other grant of authority for a pipeline to be built after September 18, 1978, and used for the transportation of oil or gas on or across the OCS shall require that the pipeline be operated in accordance with the following competitive principles:

(i) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers; and

(ii) Upon the specific request of one or more owner or nonowner shippers who are able to provide a guaranteed level of throughput and on the condition that the shipper or shippers requesting expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may order a subsequent expansion of the throughput capacity of the pipeline, if the commission finds, after a full hearing with due notice thereof to the interested parties, that such expansion is technologically and economically feasible. However, the requirements of this subparagraph shall not apply to any grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

(c) The Director may approve the design, fabrication, and plan of installation of all platforms, artificial islands, and installations, and other devices permanently or temporarily attached to the seabed on the OCS and all pipelines as a condition of the granting of a right of use and easement under subsection (a) and (b) of this Section, or as authorized under any lease issued or maintained under the Act.

(d) Once a right of use and easement has been exercised, the right shall continue, even beyond the termination of any lease on which it may be situated, as long as the Director determines that the right of use and easement is maintained by the holder of the right and serves the purpose specified in the grant. If the grant extends beyond the termination of any lease on which the right of use and easement may be situated, the rights of all subsequent lessees shall be subject to such right of use and easement.

(e) Upon termination by the Director of a right of use and easement, the grantee shall place in condition, remove, or otherwise dispose of all platforms, artificial islands, and all installations and other devices permanently or temporarily attached to the seabed on the OCS, and pipelines, and restore the premises to the satisfaction of the Director. However, a pipeline or other facility may be abandoned in place as long as the Director determines that it does not constitute a hazard to navigation or commercial fishing. The abandonment of a pipeline or other facility is to be performed in accordance with a plan prescribed or approved by the Director.

§ 250.19 Access to platforms.

The Director is authorized to require that lessees maintaining platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed on the OCS which are equipped with helicopter landing sites and refueling facilities, provide the use of those facilities for helicopters employed by the Department of the Interior in the supervision of operations on the OCS. The lessee shall be reimbursed for costs which the Director determines were justifiably incurred in connection with the use of those facilities.

§ 250.21 Reduction of royalty or net profit share.

(a) In order to promote increased production on the lease area through direct, secondary, or tertiary recovery means, the Director may reduce or eliminate any royalty or net profit share on the entire leasehold, or on any deposit, tract, or portion thereof that is segregated for royalty purposes.

(b) An application for relief under subsection (a) of this section must contain: the serial number of the lease; the name of the titleholder of record; a description of the area included in the lease; the number, location, and status of each well that has been drilled; and a tabulated statement for each month, covering a period of not less than 6 months prior to the date of filing the application, of the aggregate amount of minerals subject to royalty or net profit share computed in accordance with the lease and applicable regulations. Every application must also contain a detailed statement of: The cost of operating the entire lease; the income from the sale of any products from the lease; and all other facts tending to show whether the wells can be successfully operated under the royalty or net profit share fixed in the lease. Full information shall be furnished as to whether royalties or payments our to production are paid to anyone other than the United States, the amounts paid, and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of royalty holders to a reduction of all other royalties from the leasehold to an aggregate not in excess of one half the revised Government royalty or net profit share that would result if the request for a reduction were allowed.

(c) An application for relief under subsection (a) of this section shall be filed in triplicate with the Director.

Requirements for Lessees

§ 250.30 Lease provisions, regulations, waste, damage, and safety.

(a) The lessee shall comply with the provisions of applicable laws, regulations, the lease, OCS Orders, and other written or oral orders of the Director. All oral orders shall be effective when issed and will be confirmed in writing as promptly as possible.

(b) The lessee shall conduct operations on a lease in a manner that does not, in the opinion of the Director, cause or threaten to cause waste or threaten or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment, and the lessee shall take all necessary precautions to prevent waste, harm, or damage.

(c) The lessee shall use, on all new drilling and production operations and, whenever practicable, on existing operations, the best available and safest technologies that the Director determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, unless the Director determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

§ 250.31 Designation of operator.

In all cases where operations are not conducted by the owner of record, but are conducted under authority of an unapproved operating agreement, assignment, or other arrangement, a "designation of operator" shall be submitted to the Director, prior to the commencement of operations, in a manner and form approved by the Director. This designation will be accepted as authority for the operator, or the operator's local representative, to act on behalf of the lessee and to fulfill the lessee's obligations under the Act and the regulations in this Part. All changes of address and any termination of the authority of the operator shall be reported immediately, in writing, to the Director. In case of a termination or in the event of a controversy between the lessee and the designated operator, both

the lessee and the operator will be required to protect the interests of the lessor.

§ 250.32 Local agent.

When required by the Director, the lessee shall designate a representative empowered to receive notices and comply with orders of the Director issued pursuant to the regulations in this Part.

§ 250.33 Drilling and producing obligations.

(a) The lessee shall file all plans and drill and produce all wells that the Director may require in order to insure the prompt and efficient exploration for, and development and production of, oil and gas from the lease.

(b) The lessee shall drill and produce the wells the Director determines are necessary to protect the lessor from loss by reason of production on other properties, or, with the consent of the Director, shall pay a sum determined by the Director as adequate to compensate the lessor for the lessee's failure to drill and produce any well. Payment of that sum shall be considered as the equivalent of production in paying quantities for the purpose of extending the lease term.

(c) The lessee shall pay the rental and the amount or value of production determined by the Director as accruing to the lessor as royalty or net profit share.

§ 250.34 Exploration, development, and production plans.

* * * * *

§ 250.35 Effect of drilling or well reworking on lease term.

(a) Drilling or well reworking operations on a leased area, which have been approved pursuant to the regulations in this Part, shall continue the lease in effect so long as the drilling or well reworking operations are conducted no more than 90 days before the expiration of the primary term. A lease continued beyond its primary term by production or by drilling or well reworking operations shall be continued in effect by production or by drilling or well reworking operations which are commenced on or before the 90th day after the date of last production or on or before the 90th day after the date of the completion of the last drilling or well reworking operations. No time lapse in drilling or well reworking activities of greater than 90 days shall be deemed to be prompt and efficient unless operations on the lease have been suspended pursuant to § 250.12 of this Part.

(b) The provisions of this section do not affect the lessee's obligation to obtain the Director's prior approval of a plan of exploration, or a plan of development and production under § 250.34 of this Part, or of a notice of intention to drill or rework a well under § 250.36 of this Part, or of complying with the other provisions of the regulations in this Part.

§ 250.36 Applications for permit to drill, deepen, or plug back.

(a) Applications for permits to drill, deepen, or plug back wells must be filed on Form 9–331C. The Director shall advise the lessee concerning the number of copies of Form 9–331C to be submitted. Written approval must be received from the Director prior to commencing operations.

(b)(1) An application for a permit to drill must include the following: the surface location and projected bottom-hole location of the well(s), in feet, from the lease boundaries; the elevation of the derrick floor; the water depth; the estimated depth to which the well will be drilled; the estimated depths to the top of significant marker formations; the estimated depths at which encounters with water, oil, gas, and mineral deposits are expected; the proposed blowout-prevention and casing programs including the size, weight, grade, and setting depth of casing and the pressure rating of blowout prevention equipment; the estimated quantity of cement that will be used; and all other information specified on Form 9–331C. Information shall also be furnished relative to: plans for drilling other wells from the same platform; plans for coring at specified depths; plans for electrical and other logging operations; and such other information as may be required by the Director.

(2) At least two copies of the application shall be accompanied by a certified plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the well(s) to be drilled and all the wells previously drilled in the vicinity for which information is available.

(c) An application for a permit to deepen or plug back must include the following: the present status of the well, including the production string or last string of casing; the well depth; the present productive zones and productive capability; and all other information specified on Form 9–331C. The application must be accompanied by a justification for and details of the proposed work.

§ 250.37 Marking platforms, structures, and wells.

(a) The lessee shall mark each drilling platform or structure. All Markings shall include the name of the lessee or operator, the name of the area, the block number, and the platform or structure designation. Letters and figures not less than 12 inches in height are to be used and the markings are to be placed on the diagonal corners of the platform or structure.

(b) Each well must be clearly identified by a sign containing the well number and the OCS lease number.

(c) The lessee shall preserve these markings and signs in good repair.

§ 250.38 Well records.

(a) The lessee shall keep at its field headquarters, or at other locations conveniently available to the Director, accurate and complete records for each well and of all well operations, including: Production, drilling, logging, directional well surveys, casing, perforating, safety devices, redrilling, deepening, repairing, cementing, alterations to casing, plugging, and abandoning. The records shall contain: a description of any unusual malfunction, condition, or problem; all the formations penetrated; the content and character of oil, gas, and other mineral deposits and water in each formation; the kind, weight, size, grade, and setting depth of casing; and all other information required by the Director.

(b)(1) Upon request by the Director, the lessee shall immediately transmit copies of the records of any of the well operations specified in paragraph (a) of this section. In any event, the lessee shall, within 30 days after completion of any well, transmit to the Director duplicate copies of the records of all operations on, or attached to, Form 9–330 (*see* section 250.95 of this Part). When operations are suspended, or temporarily prohibited, the lessee shall, within 30 days after the suspension or temporary prohibition or completion of any further operations, transmit to the Director duplicate copies of the records of all operations conducted during the suspension or temporary prohibition on, or attached to, Form 9–330 or Form 9–331 (*see* §§ 250.92 and 250.95 of this Part), as appropriate.

(2) Upon request by the Director, the lessee shall submit paleontological reports identifying microscopic fossils by depth unless washed samples of drill cuttings, normally maintained by the lessee for paleontological determinations, are made available to the Director for inspection.

(3) Upon request by the Director, the lessee shall furnish copies, in a manner

and form prescribed by the Director, of the daily drilling report and a plat showing the location, designation, and status of all wells on the leased lands.

(4) Upon request by the Director, the lessee shall furnish legible, exact copies of service company reports on cementing, perforating, acidizing, analyses of cores, or other similar services.

(c) If the Director determines that circumstances warrant, the lessee shall submit any other reports and records of operations, in the manner and form prescribed by the Director.

§ 250.39 Tests, surveys, and samples.

(a) The lessee shall make adequate tests or surveys, in a manner acceptable to the Director and without cost to the lessor, to determine: the reservoir energy; the presence, quantity, and quality of oil, gas, sulphur, other mineral deposits, or water; the amount and direction of deviation of any well from the vertical; and the formation, casing, tubing, and other pressures.

(b) The lessee shall take formation samples or cores to determine the identity, fluid content, and character of any formation, in accordance with requirements prescribed by the Director in the approval of the notice to drill or redrill any well.

§ 250.40 Directional survey.

(a) An angular deviation and directional survey shall be made from the surface to the total depth of each well.

(b) The Director, at the request of an owner of an adjoining lease, may furnish a copy of the directional survey to the owner of an adjoining lease.

§ 250.41 Control of wells.

(a)(1) The lessee shall take all necessary precautions to keep its wells under control at all times. The lessee shall only utilize personnel who are trained and competent of drill and operate wells, and shall utilize and maintain materials and properly designed pressure fittings and equipment necessary to assure the safety of operating conditions and procedures. Casing, cementing, drilling mud, and blowout prevention programs for well drilling operations shall take into account the depths at which various fluid- or mineral-bearing formations are expected to be penetrated, the formation fracture gradients and pressures expected to be encountered, and other pertinent geologic and engineering information and data about the area.

(2) The lessee shall case and cement all wells with a sufficient number of strings of casing in a manner necessary to: prevent release of fluids from any stratum through the well bore (directly or indirectly) into the sea; prevent communication between separate hydrocarbon-bearing strata (except strata approved for commingling) and between hydrocarbon-and water-bearing strata; protect freshwater strata from contamination; support unconsolidated sediments; and otherwise provide a means of control of the formation pressures and fluids. The lessee shall install casing strong enough to withstand collapse, bursting, tensile and other stresses. The casing shall be cemented in a manner which will anchor and support the casing. Safety factors in the casing program design shall be of sufficient magnitude to provide optimum well control during drilling and to assure safe operations for the life of the well. The lessee shall install structural or drive casing to provide hole stability for the initial drilling operation. A conductor string of casing (the first string run other than any structural or drive casing) must be cemented with a volume of cement sufficient to circulate back to the seafloor; however, if authorized by the Director, cement may be washed out or displaced to a specified depth below the seafloor to facilitate casing removal upon well abandonment. All subsequent strings must be securely cemented.

(3) The lessee shall maintain, readily accessible for use, quantities of drilling mud sufficient to assure well control. The lessee's testing procedures, characteristics, and use of drilling mud and conduct of related drilling procedures shall prevent blowouts or other loss of well control. Mud testing equipment and mud volume measuring devices shall be maintained in an operable condition at all times, and mud tests shall be performed frequently and recorded on the driller's log.

(4) The lessee shall install, use, and test blowout preventers and related well-control equipment in a manner necessary to prevent blowouts. In no event shall the lessee conduct drilling below the conductor string of casing until the installation of at least one remotely controlled blowout preventer and equipment for circulating drilling fluid to the drilling structure or vessel. Blowout preventers and related well-control equipment shall be pressure tested when installed, after each string of casing is cemented and at other times prescribed by the Director. Blowout preventers shall be activated frequently to test for proper functioning. All blowout-preventer tests shall be recorded on the driller's log.

(b) After wells are completed, the lessee shall take all necessary steps to prevent blowouts, and the lessee shall immediately take whatever action is required to bring under control any well over which control has been lost. For wells capable of flowing oil, gas, or formation fluids, the lessee shall install and maintain in operating condition subsurface-safety devices. For all producing wells including wells not capable of flowing oil, gas, or formation fluids, the lessee shall install and maintain surface safety valves with automatic shutdown controls and shall conduct tests or surveys designed to determine the effects of corrosive or erosive substances on well and production equipment. The lessee shall, as prescribed by the Director, periodically test and inspect all devices and equipment, and shall record the results of all tests.

§ 250.42 Treatment of production.

The lessee shall put into marketable condition, if commercially feasible, all products produced from the leased land. In calculating the royalty payment, the lessee may not deduct the costs of treatment.

§ 250.43 Pollution and waste disposal.

(a)(1) The lessee shall not pollute the land or water, harm or damage fish and other aquatic life, or allow extraneous matter to enter and damage any mineral- or water-bearing formation.

(2) The lessee shall dispose of all waste materials in a manner approved by the Director.

(3) All spills or leakage of oil or waste materials shall be recorded by the lessee and shall be reported to the Director. All spills or leakage of oil or waste materials of a size or quantity specified by the appropriate agent of the Federal Government under the pollution-contingency plan shall be reported also by the lessee, without delay, to the agent specified in the plan.

(b)(1) When pollution occurs as a result of operations conducted by or on behalf of the lessee, and the pollution damages or threatens to damage life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment, the control and total removal of the pollution shall be at the expense of the lessee.

(2) Upon failure of the lessee to control and remove the pollution, the Director, in cooperation with other appropriate agencies of Federal, State, and local governments, or in cooperation with the lessee, or both, shall have the right to control and

remove the pollution in accordance with any established pollution-contingency plan for combating oil spills, or by other means, at the expense of the lessee. Such action shall not relieve the lessee of any responsibility provided for in the pollution-contingency plan or otherwise provided by law.

(c) The lessee's liability shall be governed by applicable law, including the Offshore Oil Spill Pollution Fund provisions of Title III of the Act.

§ 250.44 Borehole abandonment.

The lessee shall promptly plug and abandon any borehole on the leased land that the Director determines is no longer useful. However, no well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the Director. Before abandoning a well that has been capable of producing oil or gas in paying quantities, the lessee shall submit to the Director a statement containing the reasons for abandonment and detailed plans for carrying out the necessary work (*see* § 250.92 of this Part). A well may be abandoned only after receipt of written approval by the Director. No well shall be plugged if the plugging operation would jeopardize safe and economic operations of nearby wells. The manner and method of plugging must be approved or prescribed by the Director. Equipment shall be removed, and premises at the site properly conditioned immediately after plugging operations are completed.

Drilling equipment shall not be removed from any suspended drilling operation without taking adequate measures, as approved or prescribed by the Director, to protect life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), and the marine, coastal, or human environment.

§ 250.45 Accidents, fires, and malfunctions.

(a)(1) In the conduct of all its operations, the lessee shall take all steps necessary to prevent accidents and fires. The lessee shall immediately notify the Director of all serious accidents, any death or serious injury, and all fires connected with any activity or operation pursuant to the lease. For the purpose of this section, a serious injury is one resulting in absence from work for four or more hours.

(2) Within 10 days of all serious accidents, the lessee shall submit a written report on any death or serious injury and on all fires connected with any activity or operation pursuant to the lease.

(b) The lessee shall notify the Director of any other unusual condition, problem, or malfunction connected with any activity or operation pursuant to the lease within 24 hours of its occurrence.

§ 250.46 Safe and workmanlike operations.

(a) The lessee shall perform all operations in a safe and workmanlike manner and shall maintain all equipment in a safe condition for the protection of the lease and associated facilities, for the health and safety of all persons, and for the preservation and conservation of property and the environment.

(b) The lessee shall immediately take all necessary precautions to control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

§ 250.47 Sales contracts.

The lessee shall file with the Director, within 30 days after their effective date, a copy of all contracts, including all contract modifications (e.g., amendments and terminations), for the disposal of lease products. Nothing in any such contract shall be construed or accepted as modifying any of the provisions of the lease.

§ 250.49 Royalty, net profits share, and rental payments.

As specified under the provisions of the lease, the lessee shall pay all rental when due, and shall pay in value or deliver in production all royalties and net profit shares in the amounts of value or production determined by the Director to be due. Payments of rentals, royalties, and net profit shares in value shall be by electronic transfer of funds or by check or draft on a solvent bank or by money order drawn to the order of the U.S. Geological Survey. Failure to make timely payment of rental, royalty, or net profit share will result in the collection of the amount due plus interest from the date due until the date of payment. Interest shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days incurred within the period for which interest is due. Such failure may also result in the initiation of enforcement proceedings.

§ 250.50 Unitization, pooling, and drilling agreements. [Reserved]

§ 250.51 Unitization. [Reserved]

§ 250.52 Pooling or drilling agreements.

Pooling or drilling agreements may be made between lessees for the purposes of utilizing a common pipeline or drilling platform to develop adjoining leases. Approval of such an agreement by the Director will be granted in conjunction with a development and production plan approved pursuant to the provisions of § 250.34–2 of this Part.

§ 250.53 Subsurface storage of oil or gas.

(a)(1) The Director may authorize the subsurface storage of oil or gas in the OCS when it can be shown that no undue interference with operations under existing leases will result.

(2) In each case, the authorization will provide for the payment of an adequate storage fee or rental on the stored oil or gas. When stored oil or gas is removed from storage in conjunction with oil or gas not previously produced, a royalty may be charged on the value or amount of stored oil or gas removed from storage in lieu of a fixed storage fee or rental. Any lease of an area used for the storage of oil or gas shall expire during the storage period unless oil or gas not previously produced on the lease is being produced in paying quantities or drilling or well reworking operations approved by the Secretary are underway.

(b) Applications for subsurface storage of oil or gas shall be filed with the Director, in triplicate, and shall include: the ownership of interests in the area involved; the parties involved, including lessees of other mineral interests; the storage fee, rental, or royalty offered to be paid for the right of storage; and all essential information showing the necessity for such storage. The storage agreement, signed by the parties involved, shall be submitted to the Director for approval, together with five copies for retention by the Department after approval.

§ 250.54 Marking of equipment.

Whenever practicable, all materials, equipment, tools, containers, and items used on the OCS are to be properly color-coded, stamped, or labeled with the owner's identification, as approved or prescribed by the Director, prior to actual use. For oil and gas operations, this means that the owner's identification is to be placed upon all materials, cable, equipment, tools, containers, and other objects which could be freed and lost overboard from rigs, platforms, or supply vessels, and which are of sufficient size or are of such a nature that they could be expected to interfere with commercial fishing gear if lost overboard.

§ 250.55 Flaring and venting of natural gas.

The lessee shall not flare or vent natural gas from any well without prior

approval from the Director. Such approval will not be granted unless the Director finds that there is no practicable way to complete production of such gas, or the Director finds that flaring or venting is necessary to alleviate a temporary emergency situation or to conduct authorized testing or workover operations.

§ 250.56 Fishermen's Contingency Fund.

Upon the establishment of an account under the Fishermen's Contingency Fund, pursuant to subsection 402(b) of the Act, for any area of the OCS, any holder of a lease, issued or maintained under the Act, for any tract in the area covered by the account, and any holder of an exploration permit or of an easement or right-of-way for the construction of a pipeline, in the area covered by the account, shall pay an amount specified by the Secretary of Commerce for the purpose of the establishment and maintenance of the account for the area. The Director shall collect the amount specified and deposit it in the Fund to the credit of the appropriate area account.

§ 250.57 Air quality. [Reserved]

Measurement of Production and Computation of Royalties

§ 250.60 Measurement of oil.

The lessee shall measure, record, store, and transfer all oil produced in accordance with practices and procedures approved or prescribed by the Director. The quantity and quality of all oil production shall be determined and reported in accordance with the standard practices, procedures, and specifications generally used by the industry and approved by the Director.

§ 250.61 Measurement of gas.

The lessee shall measure all gas production, including gas vented or flared, in accordance with methods approved by the Director. The measured volumes shall be adjusted to a standard pressure base of 10 ounces above the atmospheric pressure of 14.4 pounds per square inch; to a standard temperature of 60 degrees Fahrenheit; and allow for deviation from Boyle's Law. If gas is being disposed of at a different pressure base, the Director may require that gas volumes be adjusted to conform to this base.

§ 250.63 Quantity basis for substances extracted from gas.

(a) The primary basis for computing the quantity of casinghead or natural gasoline, butane, propane, or other substances extracted from gas is the monthly net output of the plant at which the substances are manufactured. For purposes of this section, "net output" is the quantity of each substance that the plant produces.

(b)(1) When the net output of a plant is derived from the gas obtained from only one lease, the quantity of substances on which computations of royalty and net profit shares for the lease are based is the net output of the plant.

(2) When the net output of a substance from a plant is derived from gas obtained from several leases producing gas of uniform content, the proportion of net output of the substance allocable to each lease as a basis for computing royalty and net profit shares will be determined by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a substance from a plant is derived from gas obtained from several leases producing gas of diverse content, the proportion of net output of the substance allocable to each lease as a basis for computing royalty and net profit shares will be determined by multiplying the amount of gas delivered to the plant from the lease by the substance content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant.

§ 250.64 Value basis for computing royalties.

The value of production shall never be less than the fair market value. The value used in the computation of royalty shall be determined by the Director. In establishing the value, the Director shall consider: (a) The highest price paid for a part or for a majority of like-quality products produced from the field or area; (b) the price received by the lessee; (c) posted prices; (d) regulated prices; and (e) other relevant matters. Under no circumstances shall the value of production be less than the gross proceeds accruing to the lessee from the disposition of the produced substances or less than the value computed on the reasonable unit value established by the Secretary.

§ 250.65 Royalty on oil.

(a) The royalty on crude oil, including condensates separated from gas without the necessity of a manufacturing process, shall be a percentage of the value or amount of the crude oil produced from the leased area. The percentage shall be established by statute, regulation, or the provisions of the lease. No deduction shall be made for actual or theoretical transportation losses.

(b) Royalty is due on all oil removed from a reservoir. The royalty on oil may be based on production as products are moved from the lease. When conditions warrant, the Director may require royalty to be based on actual monthly production, including products remaining on the leased area. Evidence of all shipments shall be filed with the Director within 5 days (or a longer period when approved by the Director) after the oil has been shipped by pipeline or by other means of transportation. That evidence shall be signed by representatives of the lessee and by representatives of the purchaser or the transporter who witnessed the measurement reported. That evidence shall also note determinations of the gravity and temperature of the oil and the percentage of impurities contained in the oil.

§ 250.66 Royalty on unprocessed gas.

Royalty is due on all gas removed from a reservoir. When gas is sold without processing for the recovery of constituent products, the royalty thereon shall be a percentage, established by the terms of the lease, of the value or amount of the gas and constituent products removed from the reservoir. The value of wet gas and entrained liquids may be established by adjusting the value of the gas less entrained liquids using a British thermal unit (Btu) or other appropriate adjustment factor. The value shall not be less than that which would accrue by computing royalty in accordance with subsections 250.67 (a) through (d) of this Part.

§ 250.67 Royalty on processed gas and constituent products.

(a) When gas is processed for the recovery of constituent products, a royalty established by the terms of the lease will accrue on the value or amount of:

(1) All residue gas remaining after processing, and

(2) All natural gasoline, butane, propane, or other substances extracted from the gas. A reasonable allowance, determined by the Director and based upon regional plant practices and actual plant costs and other pertinent factors, may be made for the cost of processing and may be deducted from the royalty payment due on said constituent substances. However, the reasonable allowance shall not exceed two-thirds of the value of the substances extracted unless the Director determines that a greater allowance is in the national interest.

(b) Under no circumstances shall the amount of royalty on the residue gas and extracted substances be less than the amount which the Director determines would be payable if the gas had been sold without processing.

(c) In determining the value of natural gasoline, the volume of such gasoline shall be adjusted to a set standard, by a method approved or prescribed by the Director, when such adjustments are necessary to account for the volumetric differences between natural gasolines of various specifications.

(d) No allowance shall be made for boosting residue gas or other expenses incidental to marketing.

(e) The lessee, with the approval of the Director, may establish a gross value per unit of 1,000 cubic feet of gas on the lease or at the wellhead for the purpose of computing royalty on gas processed for the recovery of constituent substances. When a gross value is so established, it shall be high enough to insure that the royalty due the United States is not less than that which would accrue by computing royalties in accordance with the provisions of (a) through (d) of this section.

§ 250.68 Commingling production.

Subject to such conditions as the Director may prescribe for the measurement and allocation of production, the Director may authorize the lessee to move production from the leased area to a central point for purposes of treating, measuring, and storing. In moving such production, the lessee may commingle the production from different wells, leased areas, pools, and fields which it operates with production from other operators. The central point may be at any convenient place approved or prescribed by the Director.

§ 250.69 Measurement of sulphur.

For the purpose of computing royalty, the measurement of sulphur shall be on such basis and shall conform to such standards as the Director may approve or prescribe.

Investigations

§ 250.70 Reports and investigations of apparent violations.

Any person may report an apparent violation or failure to comply with any provision of the Act, or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation or order issued under the Act. When a report of an apparent violation has been received, or when an apparent violation has been detected by Geological Survey personnel, the matter will be investigated and the party will be advised of the matter under investigation.

§ 250.71 Reports on investigations.

(a) Reports of the results of any investigation conducted by the Geological Survey, or received from any other Agency, which indicate that a violation under the Act may have occurred, must be forwarded to the official of the Geological Survey designated by the Director (referred to in this and subsequent sections as the "Director's designee"). The Director's designee shall review the reports.

(b) If the Director's designee determines that there is insufficient evidence to indicate that a violation probably occurred, the case will be returned to the originating office for further investigation or the case will be closed. The case will be closed when: (1) The Director's designee's review establishes that a violation did not occur; (2) the violator cannot be identified; or (3) although there is sufficient evidence to indicate that a violation occurred, there appears to be little likelihood of discovering additional relevant facts to justify further investigation.

(c) If the Director's designee determines that there is sufficient evidence to indicate that a violation probably occurred, a case file will be prepared and forwarded to a Reviewing Officer for further action.

§ 250.72 Knowing and willful violations.

When the Director's designee determines that there is sufficient evidence to indicate that a knowing and willful violation may have occurred, the Director's designee will prepare a case file and forward it through the office of the Solicitor to the Department of Justice.

Remedies and Penalties

§ 250.80 Remedies and penalties.

§ 250.80-1 Remedies.

(a)(1) The Director shall designate one or more senior employees of the Conservation Division, U.S. Geological Survey, to act as Reviewing Officer(s).

(2) The Reviewing Officer shall have no other responsibility, direct or supervisory, for the investigation or prosecution of cases.

(3) The Reviewing Officer shall decide each case on the basis of the evidence in the case file and shall have no prior connection with the case. The Reviewing Officer will be solely responsible for the decision made in each case.

(4) The Reviewing Officer is authorized to administer oaths and issue subpoenas, to the extent provided by the Act, necessary to conduct a hearing.

(5) The Reviewing Officer is authorized to assess civil penalties and, when appropriate, to recommend the initiation of criminal proceedings.

(b)(1) When a case file is received, the Reviewing Officer shall make a preliminary examination of the material submitted.

(2) If, on the basis of the preliminary examination of the evidence in a case file, the Reviewing Officer determines that there is insufficient evidence or that there is any other reason which would make further action inappropriate, the Reviewing Officer shall return the case to the Director's designee with a written statement indicating the reason for this action. The Director's designee may close the case or cause a further investigation of the alleged violation to be conducted with a view toward resubmittal of the case to the Reviewing Officer.

(3) If, on the basis of the preliminary examination of the case file, the Reviewing Officer confirms that the evidence indicates that a violation may have occurred, the Reviewing Officer shall notify the party, in writing, of:

(i) The alleged violation citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based;

(ii) The general nature of the procedures that will be followed for evaluating the party's responsibility for the alleged violation and for assessing and collecting a penalty should it be determined that the party is responsible for the violation;

(iii) The amount of penalty that appears would be appropriate in the event it is determined that the party is responsible for the alleged violation, based upon the material then available to the Reviewing Officer;

(iv) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant; and

(v) The fact that, subject to the provisions of paragraph (d)(2) of this section, the party has a right to a hearing before the Reviewing Officer prior to any finding of fact regarding the alleged violation.

(4) If, at any time, the Reviewing Officer determines that the addition of another person to the proceedings is necessary or desirable, the Reviewing Officer shall notify and provide the

additional party with the information described in paragraph (b)(3) of this section.

(c) A party has the right to be represented by counsel, qualified to practice before the Department under 43 CFR Part 1, at all stages of the proceeding. After receiving notification that a party is represented by counsel, the Reviewing Officer shall direct all further communications to the counsel.

(d)(1) Within 30 working days after receipt of a notice pursuant to paragraph (b)(3) of this section, the party, or counsel for the party, may: (i) Request a hearing before the Reviewing Officer; (ii) provide any written evidence and arguments in lieu of a hearing; or (iii) pay the amount specified in the notice. A request for a hearing before the Reviewing Officer must be in writing, and must specify the particular issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration.

(2) The right to a hearing before the Reviewing Officer shall be waived if the party does not submit a request for a hearing to the Reviewing Officer within 30 working days after receiving the notice described in paragraph (b)(3) of this section unless the Reviewing Officer grants the party additional time to submit a request for a hearing.

(3) The Reviewing Officer shall promptly schedule all hearings which are requested. The Reviewing Officer shall grant any delays or continuances which the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(4) A party requesting a hearing before a Reviewing Officer may amend the specification of the nonjurisdictional issues in dispute at any time up to 10 working days before the scheduled hearing. Nonjurisdictional issues raised less than 10 working days before the scheduled hearing date may be presented only at the discretion of the Reviewing Officer.

(e) Prior to a hearing, the party or counsel for the party may examine all the written evidence in the case file, except material that would, in a civil proceeding, disclose or lead to the disclosure of the identity of a confidential informant. Other evidence or material, such as blueprints, sound or videotapes, oil samples, and photographs may also be examined in the Reviewing Officer's office. However, the Revewing Officer may provide for examination or testing of the evidence at other locations, if there are adequate safeguards to prevent loss or tampering with the evidence.

(f)(1) In addition to information treated as confidential under (d) of this section, confidential treatment shall be accorded to all or a portion of any document at the request of the person supplying the information if the information is:

(i) Confidential financial information, trade secrets, or other material exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552);

(ii) Information required to be held in confidence by the regulations in this Chapter II or 18 U.S.C. 1905; or

(iii) Information that is otherwise exempt by law from disclosure.

(2) The person desiring confidential treatment for information must submit a written request to the Reviewing Officer stating the reasons justifying nondisclosure. Failure to make a request at the time a document is submitted may result in the document being considered as nonconfidential and subject to release.

(3) Confidential material will not be considered by the Reviewing Officer in reaching a decision unless:

(i) It has been furnished by a party, or

(ii) It has been furnished pursuant to a subpoena.

(g)(1) When a hearing is requested in accordance with (d)(1) of this section, the hearing will be held in the office of the Reviewing Officer, or at some other convenient location selected or approved by the Reviewing Officer.

(2) A party requesting a hearing in accordance with (d)(1) of this section may request that the Director's designee transfer the case to another Reviewing Officer, or that the hearing be held at a location other than the office of the Reviewing Officer. The request must be in writing and state the reasons why the requested action is necessary or desirable. Action on a request for the transfer of a case to a different Reviewing Officer is subject to the discretion of the Director's designee.

(h)(1) The testimony of any witness may be presented either through a personal appearance or through a written statement. The Reviewing Officer, upon request of a party, may assist in obtaining the testimony of a witness by personal appearance. A request for such assistance must be in writing and must state the reasons why a written statement by the witness would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Reviewing Officer determines that the personal appearance of the witness will materially aid in the decision on the case, the Reviewing Officer will seek to obtain the personal appearance of the witness.

(i)(A) The Reviewing Officer is authorized to issue subpoenas requiring the attendance of witnesses at hearings or for the taking of depositions.

(B) Subpoenas will be issued in a manner and format approved by the Director.

(C) The application for a subpoena shall be filed in the office of the Reviewing Officer.

(D) The original subpoena, bearing a certificate of service, shall be filed with the Reviewing Officer.

(E) A witness may be required to attend a hearing or deposition at a place not more than 100 miles from the place of service.

(ii)(A) Witnesses subpoenaed by any party shall be paid the same fees and mileage paid for similar services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose insistence the witness appears.

(B) Any witness who attends a hearing or the taking of a deposition at the request of the party, without having been subpoenaed to do so, shall be entitled to the same mileage and attendance fees paid to a subpoenaed witness. The witness fees and mileage shall be paid by the party at whose insistence the witness appears. The provisions of this paragraph are not applicable to Federal Government employees who are called as witnesses by the Federal Government.

(2) In cases where an individual cannot be required to appear as a witness, the Reviewing Officer may move the hearing to the location of the desired witness, accept a written statement, or accept a stipulation in lieu of testimony.

(i)(1) The Reviewing Officer must conduct a fair and impartial proceeding in which the party is given a full opportunity to be heard.

(i) At the outset of the hearing, the Reviewing Officer shall insure that the party is aware of the nature of the proceedings and of the alleged violation.

(ii) Material in the case file which is pertinent to the issues, shall be presented. The party has the right to respond to or rebut this material. The party may offer any facts, statements, explanation, documents, sworn or unsworn testimony, or other exculpatory items which bear on the issues or which may be relevant to the amount of the penalty to be assessed if the party is found to be guilty of the alleged violation. The Reviewing Officer may require the authentication of any written exhibit or statement.

(iii) After the evidence in the case file has been presented, the party may present argument on the issues in the case. The party may request an opportunity to submit additional written testimony for consideration by the Reviewing Officer. The Reviewing Officer shall allow a reasonable time for submission of additional written testimony and shall specify the date by which it must be received. If the statement is not received within the time prescribed or within the limits of any extension of time granted by the Reviewing Officer, the Reviewing Officer shall render a decision on the basis of the record in the case file.

(iv) At the close of the party's presentation of evidence, the Reviewing Officer shall allow the introduction of rebuttal evidence. The Reviewing Officer shall allow the party an opportunity to respond to any rebuttal evidence that is submitted.

(v) The Reviewing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Reviewing Officer shall give the party an opportunity to show why notice should not be taken. In any case in which such notice is taken, the Reviewing Officer shall place in the record a written statement on the matters to which notice was taken and the basis for taking such notice. The Reviewing Officer's statement shall indicate that the party consented to notice being taken or shall include a summary of the party's objections to notice being taken of a specific matter.

(2) In reviewing evidence, the Reviewing Officer is not bound by strict rules of evidence. In evaluating the evidence presented, the Reviewing Officer shall give due consideration to the reliability and relevance of each item of evidence.

(j)(1) A verbatim transcript of hearings before a Reviewing Officer will not normally be prepared. The Reviewing Officer shall prepare notes on the material and points raised by the party in sufficient detail to permit a full and fair review and resolution of the case, should it be appealed.

(2) A party may, at its own expense, cause a verbatim transcript to be made by a court reporter. If a verbatim transcript is made, and the Reviewing Officer's decision is appealed, the party shall submit two copies of the verbatim transcript with the appeal to the Director's designee. The verbatim transcript will be included in the case record.

(k)(1) The decision called for in subparagraph (j)(1)(iii) of this section shall be issued in writing, and shall include:

(i) The Reviewing Officer's conclusions and the basis for those conclusions; and

(ii) The appropriate rule, order, sanction, relief, or denial thereof.

Any decision to assess a penalty shall be based upon substantial evidence in the record. If the Reviewing Officer finds that there is not substantial evidence in the record establishing that the alleged violation probably occurred, the Reviewing Officer shall dismiss the case and remand it to the Director's designee. A dismissal is without prejudice to the Director's designee's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(2) In assessing a penalty, the Reviewing Officer shall review the record of any prior violations by the party. The Reviewing Officer's decision shall contain a statement advising the party of the right to an administrative appeal to the Director pursuant to Part 290 of this Chapter. The party shall be advised that a failure to submit an appeal within the prescribed time will bar its consideration, and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding. An appeal from any interim ruling of the Reviewing Officer shall be reserved and considered only at the time of and as part of an appeal from the Reviewing Officer's final decision.

(l)(1) Any appeal from the decision of the Reviewing Officer and any supporting argument must be submitted by a party to the Reviewing Officer within 30 days from the date of receipt of the decision. The appellant shall provide copies of the notice of appeal and supporting brief to the Director. The only issues which will be considered on appeal are those issues specified in the notice of appeal which were properly raised before the Reviewing Officer and jurisdictional questions.

(2) The failure to file a notice of appeal within the prescribed time limit shall result in the action of the Reviewing Officer becoming the final action of the U.S. Department of the Interior in the case.

(m)(1) The appeal of a decision of the Reviewing Officer and supporting brief, and any comments which the Reviewing Officer desires to submit regarding the appeal must be forwarded to the Director within 30 working days following receipt of the notice of appeal and any supporting brief. The Reviewing Officer shall have a longer period of time to submit comments regarding an appeal when the appellant requests that the Director grant additional time for submitting supporting arguments. The Reviewing Officer shall provide the appellant with a copy of all comments submitted to the Director.

(2)(i) The Director may affirm, reverse, or modify the Reviewing Officer's decision, or remand the case for new or additional proceedings.

(ii) The Director may increase, remit, mitigate, or suspend, in whole or in part, any penalty assessed by the Reviewing Officer.

(iii) When the action of the Director includes the increase, remission, mitigation, or suspension, in whole or in part, of a penalty assessed by the Reviewing Officer, the appellant and the Reviewing Officer shall be advised of any conditions placed upon that action.

(iv) The Director shall issue a written decision in each case. Copies of the Director's decision are to be provided to the appellant and the Reviewing Officer.

(v) In the absence of an appeal from the Director's decision pursuant to 30 CFR Part 290, the Director's decision on an appeal shall be final.

(n)(1) At any time prior to final Geological Survey action in a civil penalty case, a party may petition to reopen the hearing on the basis of newly discovered evidence.

(2) Petitions to reopen a case must be in writing. Petitions shall describe the newly found evidence and state why the evidence would probably produce a different result favorable to the petitioner. The petitioner must state whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered during the original proceedings. The party must submit the petition to the Reviewing Officer and provide a copy to the Director's designee.

(3) The Director's designee may file comments in opposition to the petition. If the Director's designee files comments, a copy of the comments shall be provided to the petitioner.

(4) The Reviewing Officer will consider a petition to reopen a case unless an appeal has been filed or the time period for filing an appeal has expired and no appeal was filed. In those cases where an appeal has been timely filed, a petition to reopen a case will be considered by the Director.

(5) The Reviewing Officer's decision on a petition to reopen a case will be decided on the basis of the current case record, the contents of the petition, and the comments, if any, submitted by the

Director's designee pursuant to paragraph (n)(3) of this section.

(6) A petition to reopen a case will be granted only when the Reviewing Officer determines that newly found evidence, that would have a direct and material bearing on the issue(s) of the case, is described in the petition and when the petitioner provides a valid explanation as to why the new evidence was not and could not have been produced previously. A decision on a petition to reopen a case shall be rendered in writing.

(7) The denial of a petition to reopen a case shall be final and may not be appealed in an action separate from the appeal of the case pursuant to subsection (m) of this section or Part 290 of this Chapter.

(o)(1) The Director's designee shall collect civil penalties assessed by a Reviewing Officer, the Director, or the Department of the Interior's Board of Land Appeals.

(2) Payment of a civil penalty may be made by check or postal money order payable to the U.S. Geological Survey.

(3) Within 30 calendar days after the issuance of the Reviewing Officer's decision in a case, the party must submit payment of any assessed penalty to the Director's designee. Payment is to be made even though an appeal is pending. Failure to make timely payment will result in the collection of the amount assessed plus interest from the date of assessment until the date of payment. Interest shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for which interest is due. Such failure may also result in the initiation of additional enforcement proceedings, including, if appropriate, cancellation of the lease or permit under § 250.12 of this Part.

§ 250.80-2 Penalties.

(a)(1) Pursuant to subsection 24(b) of the Act, any person who fails to comply with any provision of the Act or any term of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation or order issued under the Act, shall be liable for a civil penalty of not more than $10,000 for each day of continuance of such failure. The Director may assess, collect, and compromise a civil penalty after notice of the failure and the passage of a reasonable period of time to allow for corrective action. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing pursuant to § 250.80 of this Part.

(2)(i) Pursuant to subsection 24(c) of the Act, the penalties set forth in § 250.83(a)(2)(ii) will be assessed on any party, upon conviction, who knowingly and willfully:

(A) Violates any provision of the Act, any term of a lease, license, or permit issued pursuant to the Act, or any regulation or order issued under the authority of the Act designed to protect health, safety, and environment, or to conserve natural resources;

(B) Makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under the Act;

(C) Falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under the Act; or

(D) Reveals any data or information required to be kept confidential by the Act.

(ii) Any person convicted of a violation described in subparagraphs (a)(2)(i) (A), (B), (C), or (D) shall be punished by a fine of not more than $100,000 or by imprisonment of not more than 10 years, or both.

(iii) For each day that a violation described under subparagraph (a)(2)(i)(A) of this section continues, or for each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in subparagraph (a)(2)(i)(C) of this section, there shall be a separate violation.

(3) Whenever a corporation or other entity is subject to prosecution for a violation described under subparagraphs (a)(2)(i) (A), (B), (C), or (D) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subparagraph (a)(2)(ii) of this section.

(4)(i) If a violation of law or regulation is subject to both a civil and a criminal penalty, the Director's designee is authorized to decide whether to institute civil penalty proceedings or to recommend referral of the case through the Office of the Solicitor to the Department of Justice for the institution of an enforcement action in the appropriate Federal Court, or both.

(ii) The Director's designee shall decide, within 30 working days of an apparent violation or within 30 working days of a decision to refile or resubmit a case, whether the apparent violation will be referred through the Office of the Solicitor to the Department of Justice for investigation into whether criminal proceedings should be initiated. When a case is referred through the Office of the Solicitor to the Department of Justice, the Director's designee shall advise the alleged violator of that action and shall warn the alleged violator that, regardless of the outcome of any criminal proceedings, civil penalty proceedings may be initiated.

(6) A decision by the Department of Justice not to institute criminal proceedings in the appropriate Federal Court shall not preclude the Director's designee from initiating or continuing the conduct of civil penalty proceedings in the case.

(7) The remedies and penalties prescribed in this section shall be concurrent and cumulative, and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

§ 250.81 Appeals.

OCS Orders, other orders, or decisions issued under the regulations in this Part may be appealed in accordance with the provisions of Part 290 of this chapter. The filing of an appeal shall not suspend the requirement for compliance with an order or decision.

§ 250.82 Judicial review.

Nothing contained in this Part shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Reports To Be Made by All Lessees (Including Operators)

§ 250.90 General requirements.

Information, required to be submitted pursuant to the regulations in this Part, shall be furnished in the manner and form prescribed in the regulations in this Part or as ordered by the Director. Copies of forms can be obtained from the Director and must be filled out completely and filed punctually with the Director.

§ 250.92 Sundry notices and reports on wells.

(a) All notices of the lessee's intention to fracture, treat, acidize, repair, multiple complete, abandon, change plans, or to engage in similar activities, and all subsequent reports pertaining to such operations shall be submitted on Form 9–331 in accordance with paragraph 250.38(b)(1) of this Part. The Director will advise the lessee concerning the number of copies of Form 9–331 that are to be submitted. Prior to commencing such operations, written

approval must be received from the Director.

(b) Form 9–331 shall contain:

(1) A detailed statement of the proposed work for repairing (other than work incidental to ordinary well operation), acidizing, or stimulating production by other methods, perforating, sidetracking, squeezing with mud or cement, or commencing any operations (other than those covered by § 250.36 of this Part) that will materially change the approved program for drilling a well or will alter the condition of a completed well.

(2) A detailed report of all the work done and the results obtained. The report shall set forth the amount and rate of production of oil, gas, and water before and after the completion of work and shall include a complete statement describing the methods used and giving the dates on which the work was accomplished.

(3) A detailed statement of the proposed work for abandonment of any well. For all wells, the statement shall describe the proposed work (including, by depths, the kind, location, and length of plugs), and plans for mudding, cementing, shooting, testing, and removing casing, and other pertinent information. The statement as to a producible well shall set forth the reasons for abandonment and the amount and date of last production.

(4) A detailed report describing the manner in which the abandonment or plugging work was accomplished, including the nature and quantities of materials used in the plugging and the location and extent, by depths, of casing left in the well, and the volume of mud fluid used. If an attempt was made to cut and pull any casing string, a description of the methods used and results obtained must be included.

(C) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42–R1424).

§ 250.93 Monthly report of operations.

(a) A separate report of operations for each lease must be made on Form 9–152 for each calendar month, beginning with the month in which drilling operations are commenced, and must be filed in duplicate with the Director on or before the 20th day of the succeeding month, unless an extension of time for the filing of the report is granted by the Director. The report must be submitted each month until the lease is terminated or until the Director authorizes discontinuance of the report.

(b) The report on Form 9–152 shall disclose accurately:

(1) All operations conducted on each well during each month;

(2) The status of operations on the last day of the month; and

(3) A general summary of the status of operations on the leased area.

(c) The report shall show for each calendar month:

(1) Each well, listed separately;

(2) The number of days each active well produced, the nature of production (whether oil or gas) and the number of days each input well was used for injection service;

(3) The quantity of oil, condensate, gas, and water produced;

(4) The total depth of each active or suspended well;

(5) The name, character, and depth of each formation drilled during the month, the date each depth was reached, (special attention should be given to the names and depths of important formation changes and the contents of formations), and the dates and results of any tests, such as production or water shutoff;

(6) The amount, grade, and size of any casing run since the last report; and

(7) The date and reason for every shutdown and all other noteworthy information on operations not specifically provided for in the form.

(d) If no runs or sales were made during the calendar month, this must be stated on the report.

(e) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42–R1236).

§ 250.94 Statement of oil and gas runs and royalties.

(a) When required by the Director, a monthly report shall be submitted on Form 9–153, showing: each run of oil; all transfers of gas and other lease products; and the royalty accruing therefrom to the lessor. Form 9–153 shall be submitted on or before the last day of the calendar month which follows the calendar month in which the production is obtained.

(b) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42–R1237).

§ 250.95 Well completion or recompletion report and log.

(a) All reports and logs of well completions or recompletions shall be submitted in duplicate on or attached to Form 9–330 in accordance with paragraph 250.38(b)(1) of this Part. The form shall contain: a complete and accurate log and report of all operations on the well as specified on the form; geologic markers and all important zones of porosity and contents thereof; cored intervals and all drill-stem tests including depth interval tested, cushion used, and the time the tool was open; flowing and shut-in pressures; and recoveries. Duplicate copies of logs compiled for geologic information from core or formation samples shall be filed in addition to the regular log. If not previously furnished, duplicate copies of composites of multiple runs of all well bore surveys, including electric, radioactive, and other logs, temperature surveys, and directional surveys shall be attached. (Such copies are in addition to field prints filed pursuant to § 250.38(b)(3) of this Part.)

(b) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42–R0355).

§ 250.96 Special forms or reports.

When special forms or reports, other than those referred to in the regulations in this Part, are deemed necessary, instructions for the filing of such forms or reports will be given by the Director.

[FR Doc. 79–33235 Filed 10–25–79; 8:45 am]

BILLING CODE 4310–31–M

federal register

Friday
October 26, 1979

Part VIII

Department of the Interior

Fish and Wildlife Service

Endangered Species Determinations for *Arctostaphylos hookeri* ssp. *ravenii* (Raven's manzanita) and *Mirabilis macfarlanei* (MacFarlane's four o'clock)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Determination That Arctostaphylos hookeri ssp. ravenii Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines that *Arctostaphylos hookeri* ssp. *ravenii*, the Raven's manzanita, is an Endangered species. Only a single individual of this plant is known to remain in the wild and it is potentially under threat from horticultural collecting, vandalism, or changes in land use. The present action will afford it the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rule takes effect on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 203/235–2771.

SUPPLEMENTARY INFORMATION:

Background

The Service published a proposal in the June 16, 1976, **Federal Register** advising that sufficient evidence was then on file to support determinations that 1783 plant taxa, including Raven's manzanita (*Arctostaphylos hookeri* D. Don ssp. *ravenii* Wells), were Endangered species as defined by the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). That proposal indicated that each of the included species was threatened with extinction over all or a significant portion of its range by one or more of the factors set forth in section 4(a) of the Act as appropriate grounds for a determination of Endangered or Threatened status; specified the prohibitions which would be applicable if such a determination were made; and solicited comments, suggestions, objections and factual information from all interested persons. A public hearing regarding the proposal was held on July 22, 1976, in El Segundo, California. Notification of the proposal and a solicitation for comments or suggestions were sent on July 1, 1976, to the Governor of California, and other interested parties.

In the June 24, 1977 **Federal Register**, the Service published a final rule (42 FR 32373–32381, codified at 50 CFR 17.61–17.73) detailing regulations to protect Endangered and Threatened plant species. The rule established prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

Summary of Comments and Recommendations

Section 4 (b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any species to the List of Endangered and Threatened Wildlife and Plants.

The State of California's general comments were summarized in the August 11, 1977 **Federal Register** (42 FR 40682–40685). The State made no specific comments concerning Raven's manzanita.

All public comments received during the period from June 16, 1976 to August 1, 1979 were considered. Comments of a general nature relating to this proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17910–17916).

Mr. John P. Swaley, Timberlands Manager for the Western Woodlands division of Masonite Corporation, listed a number of taxa from California, among them *Arctostaphylos hookeri* ssp. *ravenii* which, although they had been proposed for Endangered status, were not treated in standard floristic works for the region. This apparent inconsistency is explained by the fact that the taxon has only been recognized as distinct recently because of its having been confused with *A. franciscana* (itself a rare species now extinct in the wild).

Similarly, Mr. Fred Landenberger, of the California Forest Protective Association, commented that *Arctostaphylos hookeri* ssp. *ravenii* had not been included in the Inventory of Rare and Endangered Vascular Plants of California, published by the California Native Plant Society (CNPS) in 1974.

In response to an inquiry, CNPS has informed the Service that this subspecies is currently under consideration for inclusion in a revised version of the Inventory, and was initially overlooked because it had been published such a short time before the appearance of the original Inventory.

A status report on Raven's manzanita, prepared by CNPS in cooperation with the U.S. Forest Service, was solicited by the Service after the official comment period, and contained information which, together with data available at the time of proposal, was used in preparing this rule. The status report gives: (1) Synonymy and history of scientific name; (2) distribution; (3) description, including differences from close relatives; (4) habitat; (5) endangerment factors; (6) management suggestions; and (7) references. Factual data derived from this report concerning distribution, habitat and endangerment factors are included in the conclusion which follows.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that Raven's manzanita (*Arctostaphylos hookeri* D. Don. ssp. *ravenii* P. V. Wells) is in danger of becoming extinct throughout all of its range due to four of the factors described in Section 4(a) of the Act.

The following review amplifies and substantiates the applicability to this plant of the five factors described in section 4(a) of the Act.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* First described in 1968, this subspecies now occurs as a single plant on the Presidio (U.S. Army), San Francisco County, California. It is believed that Raven's manzanita once occurred at three other locations in San Francisco County and that those populations were destroyed by housing development. This last remaining individual in the wild could be destroyed by a single inadvertent action.

In addition to potential development, competition with nonnative plants poses a serious threat to native plants on the Presidio. Particularly aggressive competitors are Monterey cypress (*Cupressus macrocarpa*), eucalypts or gums (*Eucalyptus* spp.), and ice-plants (*Mesembryanthemum* spp.).

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Native plant gardens in California often include various species of manzanita. An overzealous collector could remove or seriously harm the last wild plant. This subspecies is maintained in at least one local botanic garden which could serve as a source of supply to rare plant fanciers.

3. *Disease or predation*—Not known to affect this species.

4. *The inadequacy of regulatory mechanisms.*—California has legislation to protect native endangered plants and Raven's manzanita is listed as Endangered by the State. However, Federal listing as Endangered will reinforce the protection now available to this plant. Because it grows on land controlled by a U.S. Government agency, section 7 of the Act will be important in assuring its preservation.

5. *Other natural or manmade factors affecting its continued survival.* Members of the genus *Arctostaphylos* are pollinated by large bees (e.g. *Bombus* [Bombidae] and

Anthophora [Anthophoridae]). Populations of native insects in San Francisco have been seriously reduced, and it is important to the recovery of Raven's manzanita that healthy populations of pollinators be maintained in a natural state in the vicinity of this plant.

Effect of the Rulemaking

Section 7(a) of the Act, as amended, provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for interagency cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. The present rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to *Arctostaphylos Hookeri* ssp. *ravenii*. Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered species of plants are found at Section 17.61–17.63 (42 FR 32373–32381).

With respect to this plant, all pertinent prohibitions of Section 9(a)(2) of the Act, as implemented by 50 CFR Part 17.61 would apply. These prohibitions, in general, make it illegal for any person subject to the jurisdiction of the United States to import or export Endangered plants; deliver, receive, carry, transport, or ship them in interstate commerce in the course of a commercial activity; or to sell or offer them for sale in interstate or foreign commerce.

Section 10 of the Act and the regulations referred to above provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Effect Internationally

In addition to the protection provided by the Act, the Service will review this plant to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention or whether it should be considered under other appropriate international agreements.

National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

At the time any such regulation [to determine a species to be Endangered or Threatened] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Arctosaphylos hookeri ssp. *ravenii* is presently known from a single locality and may be reduced in the wild to a single individual. Species of this genus are sometimes taken from the wild as garden subjects. Its extreme vulnerability to vandalism or horticultural collecting could be increased by the notoriety attached to its listing as Endangered. Critical Habitat designation would publicly identify the locality of the last known wild plant of the subspecies and could lead to its destruction. Furthermore, since the Department of the Army has been advised of the plant's location and of that Department's responsibilities under section 7 of the Act, determining Critical Habitat would not provide any additional benefit to this species. Accordingly, the Service is not designating critical habitat for Raven's manzanita in this rule.

The primary authors of this rule are Drs. Paul A. Opler and John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/231–1975).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order, by family, genus, and species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Ericaceae—Health Family:						
Arctostaphylos hookeri ssp. *ravenii*	Raven's manzanita	U.S.A.(CA)	Entire	E	63	N/A

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33146 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Determination that *Mirabilis macfarlanei* is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Mirabilis macfarlanei* (MacFarlane's four o'clock) to be an Endangered species. This species occurs in Idaho and Oregon. This plant is known only from three populations with a total of 20–25 individual plants. Two populations occur on Forest Service land; one occurs on Bureau of Land Management land. One population occurs adjacent to a main hiking trail along the Snake River. Recreational use of this area will increase since the area has been designated a National Recreation Area. Taking would be a serious threat for the continued existence of this plant considering the small number of individual plants; this species does have a very showy pink flower. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended in 1978.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, (703) 235–2771.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94–51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the above mentioned **Federal Register** publication.

Mirabilis macfarlanei was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on the June 16, 1976, proposal was held on July 22, 1976, in El Segundo, California.

In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373–32381, to be codified at 50 CFR Part 17) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibtions under certain circumstances.

The Department has determined that this rule does not meet the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). The comments in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act were summarized in the June 24, 1977, **Federal Register** final prohibitions and permit provisions. The Governors of Idaho and Oregon were notified of the proposed action. The Governors themselves submitted no comments on the proposed action; several departments within the State of Oregon responded to the proposed action with programmatic, not specific, comments. Recently, the Native Plant Society of Oregon recommended that *M. macfarlanei* be listed as an Endangered species without the determination of Critical Habitat.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Mirabilis macfarlanei* is in danger of becoming extinct throughout all or a significant portion of the range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Mirabilis macfarlanei* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat of range.* This plant is known only from three populations with approximately 20–25 individual plants. the Idaho population has an estimated 10 plants covering a 5-10-meter length. One Oregon population has an estimated 15 plants covering an area approximately 30 x 50 meters; the other Oregon population that is next to a hiking trail consists of two plants. This trail is a main recreation trail along the Snake River. There will certainly be increased recreational use of the river trail now that this area has been designated a National Recreation Area.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Collecting can be a serious threat to the continued existence of this species considering the number of known individual plants. Other species of *Mirabilis* are cultivated and prized as garden ornamentals. *M. macfarlanei* is an attractive plant with a very showy pink flower. As if limited distribution and small population size were not enough, the horticultural statement in C. L. Hitchcock's *Vascular Plants of the Pacific Northwest* places the plant in further jeopardy. Hitchcock recommends that the "rather attractive" plants are worth a try in the wild garden. *Vascular Plants of the Pacific Northwest* is the definitive text on flora of the area and is widely read by botanists including commercial plant collectors.

3. *Disease or predation* (including grazing). The effect of grazing on this species is not known. Grazing does occur near the Oregon populations and should be monitored to see if *M. macfarlanei* is being grazed on. At least two species of fungi have been observed on the vegetative parts of the plants in Idaho. A lepidopteran (which may be a species of *Lithiarepteryx*) may also be working on the buds and leaves. Examination of some of the nearly-open flowers reveal ovaries eaten away and other parts missing.

4. *The inadequacy of existing regulatory mechanisms.* Neither Idaho nor Oregon have legislation to protect Endangered or Threatened plants or official State lists of such plants. Forest Service regulations prohibit removing, destroying, or damaging any plant that it classified as a threatened, endangered, rare or unique species, 36 CFR 261.9(b). The Bureau of Land Management does

have authority under the Federal Land Policy and Management Act of 1976 (the BLM Organic Act) to restrict taking of vegetative resources under certain circumstances. Present regulations (43 CFR 6010.2) prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically authorized. These regulations make no specific reference to Threatened or Endangered plants and provide no framework to allow an over-all program for management and protection of native plants. These various regulations, however, may be difficult to enforce. The Endangered Species Act will offer additional protection to this species, especially as other Federal agencies will then be required to use their authorities to protect listed species pursuant to Section 7 of the Act.

5. *Other natural or manmade factors affecting its continued existence.* This species is known from three small populations with a total of 20–25 individual plants. Extensive searches by both professional and amateur botanists over the past six years have not revealed additional plants. It is an attractive garden subject. This species' showiness and accessibility make the few remaining individuals vulnerable to collection and eventual extinction.

Effect of the Rulemaking

Section 7 (a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultations with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species, are found at §§ 17.61–17.63 (42 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by Section 17.61 would apply. With respect to any species or plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, 50 CFR Part 17), also provide for the issuance of permits under certain circumstances to carry out otherwise prohibitive activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, the Service will review the status of this species to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate Appendices to the Convention and whether it should be considered under other appropriate international agreements

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Endangered Species Act Amendment of 1978

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

Mirabilis macfarlanei is threatened by taking and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

Mirabilis macfarlanei was proposed for listing as an Endangered plant on June 16, 1976. Since it has been determined to be imprudent to designate Critical Habitat for this species at this time, and all listing requirements of the Act have been satisfied, the Service now proceeds with the final rulemaking to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 USC 1531–1543).

The primary author of this rule is Mrs. Lorraine Williams, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Nyctaginaceae—Four o'clock Family:						
Mirabilis macfarlanei	MacFarlane's Four o'clock.	U.S.A. (ID, OR)	Entire	E	b4	N/A

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33147 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

federal register

Friday
October 26, 1979

Part IX

Department of the Interior

Fish and Wildlife Service

Endangered Species Determinations for *Echinocereus lloydii* (Lloyd's hedgehog cactus) and *Echinocereus reichenbachii* var. *albertii* (Black lace cactus)

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17

Determination that Echinocereus lloydii is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Echinocereus lloydii* (Lloyd's hedgehog cactus), a native plant of Texas, to be an Endangered species. The range of this species has been decreased by a highway widening project which passed through the species' habitat. Removal of plants by private collectors and commercial suppliers has resulted in a further depletion of natural populations and continues to threaten this species. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief—Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C., 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocereus lloydii (Lloyd's hedgehog cactus) occurs in one Texas county. The entire occupied historical and present range of this cactus is approximately eight square miles. The area in which this species occurs is primarily privately owned ranch lands except for one highway right-of-way. *Echinocereus lloydii* is a columnar cactus which reaches twelve inches in height and four and one-half inches in diameter. The flowers are scarlet to coral pink and the fruits are greenish-orange when ripe. This species' continued existence is in danger and this rule will extend to it the protection provided by the Endangered Species Act of 1973, as amended. The following paragraphs summarize the actions leading to this final rule and the factors which are currently threatening this cactus.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned **Federal Register** publication.

Echinocereus lloydii was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. Four general hearings were held in July and August 1976 on the June 16, 1976 proposal: Washington, D.C.; Honolulu, Hawaii; El Segundo, California; and Kansas City, Missouri. A fifth public hearing was held on July 9, 1979, in Austin, Texas for seven Texas cacti, including *Echinocereus lloydii*, and one fish.

In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373-32381, codified at 50 CFR 17) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this rule neither meets the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) nor requires a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments had addressed the provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final prohibitions and permit provisions. No comments dealing specifically with *Echinocereus lloydii* were received during these official comment periods. The Governor of Texas was notified of the proposed action, but the governor submitted no comments dealing specifically with *Echinocereus lloydii*. The Texas Forest Service commented on the proposed Texas trees and requested more time for comments beyond the August 16 comment period. The Service has continued to solicit comments since the publication of the proposal in 1976.

On July 9, 1979, the Service held a second public hearing in Austin, Texas and again solicited comments on seven Texas cacti and one fish. Dr. Del Weniger, a botanist, who the Service contracted to prepare status information on Texas cacti commented concerning the current status of *Echinocereus lloydii*. He noted that this species is highly Endangered. The El Paso Cactus and Rock Club submitted a written comment that they favored the proposed action. No other comments dealt specifically with *Echinocereus lloydii*.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocereus lloydii* Brittain and Rose (Lloyd's hedgehog cactus; synonyms: *Echinocereus roetteri* var. *lloydii* Backeberg) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Echinocereus lloydii* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, this cactus was known from a small area (approximately 8 square miles). This is the only area known today. A swath through this population was eliminated and many cacti destroyed by a highway construction project which is now complete. Botanists have noted a dramatic and significant decrease in the number of individuals at this site over the past 15 years, primarily due to the highway construction and subsequent access which was provided to collectors.

Echinocereus lloydii has also been reported as occurring in New Mexico (several individuals at two or three scattered locations). Based on current biological opinion these reports appear erroneous or at best the identity of the New Mexico plants is questionable. Until further studies are completed, the range should only include Texas.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* As with many other cacti, this species is in world-wide demand by collectors of rare cacti. Removal of plants from the wild has occurred and has resulted in the depletion of natural populations. Following construction of the highway through the population almost all the plants were removed from their natural habitat. This is the primary threat to this species since no further construction projects are now planned for the area. Over-collection is certainly an ongoing threat to this cactus.

3. *Disease or predation* (including grazing). Cattle grazing could adversely affect this species by trampling, especially young plants. At present, light grazing does not seem to affect the species, however, if this were intensified it could threaten the continued existence of this species.

4. *The inadequacy of existing regulatory mechanisms.* Texas has no state laws protecting Endangered and Threatened plants. All native cacti are on Appendix II of the convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention regulates export of cacti, but does not regulate interstate or intrastate trade in this cactus or habitat destruction. No other Federal protective laws currently apply specifically to this species. The Endangered Species Act will now offer additional protection for the cactus.

5. *Other natural or manmade factors affecting its continued existence.* Restriction to a specialized and localized soil type, and the low total population level with a resultant restricted gene pool are factors which tend to intensify the adverse effects of threats to the plants and their habitat.

Effect of the rulemaking

Section 7(a) of the Act, as amended in 1978, will affect Federal agencies as follows:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with, and with the assistance of, the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with, and with the assistance of, the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires Federal Agencies to satisfy these statutory and regulatory obligations with respect to this species. However, this cactus is presently known only from privately owned lands.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species, are found at §§ 17.61–17.63 (42 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by § 17.61, would apply. With respect to any species or plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, to be codified at 50 CFR Part 17), also provides for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of this plant. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

Echinocereus lloydii is threatened by taking (see discussion under factors 2 and 4 in the Conclusion section of this rule) and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

The Service now proceeds with the final rulemaking to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531–1543).

The primary author of this rule is Ms. E. La Verne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975). Status information for this species was compiled by Dr. Del Weniger (Our Lady of the Lake Univ., San Antonio, Texas).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and Threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
Echinocereus lloydii	Lloyd's hedgehog cactus	U.S.A.—TX	Entire	E		NA

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33149 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Determination that Echinocereus reichenbachii var. albertii is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Echinocereus reichenbachii* (Terscheck) Haage f. var. *albertii* L. Benson (Black lace cactus), a native plant of Texas, to be an Endangered species. Known populations of this cactus have been reduced fifty percent (from six sites to three) by brush clearing for range improvement programs. Remaining populations are seriously threatened by further brush clearing of the brush communities in the South Texas Coastal Bend.

Another threat to this cactus is over-collecting. This cactus is in world-wide demand by collectors of rare cacti, especially for show specimens. Past commercial and private exploitation has caused a serious decline in its natural population level so that not more than 4,000 plants remain in the wild. This determination that *Echinocereus reichenbachii* var. *albertii* is an Endangered species implements the protection provided by the Endangered Species Act as well as mechanisms to assist in management and recovery of surviving populations.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. John Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocereus reichenbachii var. *albertii* is an endemic member of the Gulf Coast Plain brush community of the South Texas Coastal Bend. It is found on the ecotone between the Gulf coastal plain and the more rolling interior mesquite-chapparal country. It is highly salt tolerant. This cactus is presently known from only three sites, one in each of the following three counties: Refugio, Kleberg and Jim Wells. The combined area of all sites for this taxon is about seven hectares. Not more than 4,000 plants are known to remain in the wild.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned **Federal Register** publication.

Echinocereus reichenbachii var. *albertii* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. Public hearings on the June 16, 1976, proposal were held on July 22, 1976, in El Segundo, California and on July 28, 1976, in Kansas City, Missouri. Another public hearing was held on July 9, 1979, in Austin, Texas for the seven Texas cacti proposed as Endangered species, including *Echinocereus reichenbachii* var. *albertii*.

In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373-32381, codified at 50 CFR) detailing the permit regulations to protect Endangered and Threatened plant species. These rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis, under Executive Order 12044 and 43 CFR Part 14.

SUMMARY OF RECOMMENDATIONS: In keeping with the intent of section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received are here published in the **Federal Register** prior to adding this species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments had addressed the general problems of cacti conservation. Additionally, many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, final prohibitions and permit provisions (42 FR 32374-32381).

No comments dealing specifically with *Echinocereus reichenbachii* var. *albertii* were received during these official comment periods. The Governor of Texas was notified of this proposed action. The Governor submitted no comments on the proposed action, nor did the State Conservation Agency. Botanists have submitted information on this species since the close of the official comment period.

On July 9, 1979, a public hearing was held in Austin, Texas, and the comment period was officially reopened (July 2 through July 23, 1979). The Governor of Texas was notified of the proposal to list *Echinocereus reichenbachii* var. *albertii* as an Endangered species. The Governor submitted no comments on the proposed action.

One written comment specific to *Echinocereus reichenbachii* var. *albertii* was received in the July, 1979, comment period. The El Paso Cactus and Rock Club favored listing this species as Endangered.

At the July 9, 1979, public hearing in Austin, Texas, Del Weniger, Chairman of the Biology Department at Our Lady of the Lake University in San Antonio, commented on the natural history and distribution of *Echinocereus reichenbachii* var. *albertii*. He recommended it be final-listed as Endangered because "it is very limited and endangered from brush clearing." He detailed these threats to the species from habitat destruction and collecting.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocereus reichenbachii* (Terscheck) Haage f. var. *albertii* L. Benson (Black lace cactus; synonyms: *Echinocereus melanocentrus* Lowry) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Echinocereus reichenbachii* var. *albertii* are as follows:

(1) *The present or threatened destruction, modification or curtailment of its habitat or range.* Historically, this cactus occurred in six scattered localities on flat Coastal plains in dense brush of east central Jim Wells County, northern Kleberg County, and southern Refugio County, Texas. Brush clearing and collecting have resulted in the loss of habitat for this cactus and a reduction in its range to only three remaining known locations, one in each county. One of these sites in Jim Wells County has already been reduced by brush clearing. These remaining sites are privately owned and are parts of large ranching operations. Habitat destruction as a result of brush control and range improvement programs is an immediate and serious threat to this cactus.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* This species is a greatly desired show plant and collectors' item. Entire plants are collected by cactus dealers and amateur growers. Plants from one of the two originally known populations in Jim Wells County were taken years ago for commercial trade. No sign of that population has been reported since that time; it was apparently totaly extirpated by taking. Those few botanists knowing the whereabouts of the other site have been very careful not to reveal its exact location. This secrecy accounts for its continued existence in the face of this taking threat.

(3) *Disease or predation* (including grazing). This does not seem to be a factor threatening this cactus.

(4) *The inadequacy of existing regulatory mechanisms.* The State of Texas provides no protection for this cactus. The Endangered Species Act would offer the first protection for it.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the taxon, and, therefore, does not regulate internal trade in the cactus or habitat destruction. No other Federal protective laws currently apply to this taxon. The Endangered Species Act of 1973, as amended, will now offer additional protection for the taxon.

(5) *Other natural or man-made factors affecting its continued existence.* Restriction to a specialized and localized ecotonal plant community with a low total population level consisting of small, scattered and disjunct populations and a resultant restricted gene pool are factors which tend to intensify the adverse effects of threats to this plant and its habitat.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 (a) of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species are found at Section 17.61–17.63 (43 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by Section 17.61 would apply. With respect to any species of plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381), codified in 50 CFR Part 17, also provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export of the taxon. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Endangered Species Act Amendments of 1978

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat

of such species which is then considered to be Critical Habitat.

Echinocereus reichenbachii var. *albertii* is threatened by taking and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable and therefore it would not be prudent to determine Critical Habitat.

Echinocereus reichenbachii var. *albertii* was proposed for listing as an Endangered plant on June 16, 1976. Since it has been determined to be imprudent to designate Critical Habitat for this species at this time, and all listing requirements of the Act have been satisfied, the Service now proceeds with the final rulemaking to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 USC § 1531–1543).

The primary author of this rule is Ms. Rosemary Carey, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975). Status information for this species was compiled by Del Weniger, Chairman, Biology Department, Our Lady of the Lake University, San Antonio, Texas, and author of *Cacti of the Southwest.*

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Echinocereus reichenbachii var. *albertii*	Black lace cactus	U.S.A. (TX)	Entire	E	65	NA

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33150 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

federal register

Friday
October 26, 1979

Part X

Department of the Interior

Fish and Wildlife Service

Endangered Species Determinations for *Pediocactus peeblesianus* var. *peeblesianus* (Peebles Navajo Cactus), *Echinocereus kuenzleri* (Kuenzler Hedgehog Cactus), and *Echinocactus horizonthalonius* var. *nicholii* (Nichols Turks Head Cactus)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Determination That Pediocactus peeblesianus var. peeblesianus Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Pediocactus peeblesianus* var. *peeblesianus* (Peebles Navajo cactus), a native plant of Arizona, to be an Endangered species. Gravel extraction, highway construction operations, and cattle grazing have led to degradation and loss of the plants' restricted habitat. The plants are in demand by cactus collectors, and removal by commercial suppliers and private collectors has caused a decline in the natural population. This determination will extend to this cactus the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant taxa to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered by the Smithsonian Institution to be endangered, threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within, as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plants was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned **Federal Register** publication.

Pediocactus peeblesianus var. *peeblesianus* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on this proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 11, 1979, in Phoenix, Arizona for five Arizona cacti proposed as Endangered species, including this *Pediocactus*. In the June 24, 1977, **Federal Register**, the Service published a final rule (42 FR 32373-32381, codified at 50 CFR Part 17) detailing the permit regulations to protect Endangered and Threatened plant species. The rule established prohibitions and permit procedures to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this listing does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

In keeping with the general content of Section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received is published in the **Federal Register** prior to adding any plant species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments had addressed the general problems of conservation of cacti.

Additionally, many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Sections 9(a)(2) and 10 of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final rule (42 FR 32373-32381) on plant trade prohibitions and permit provisions.

With the July 2, 1979, **Federal Register** notice (44 FR 38611) for the second public hearing on certain proposed southwestern cacti, comments on the taxon were again solicited, with an official comment period of July 2 through July 23, 1979. The Governor of Arizona was notified of the proposal to list *Pediocactus peeblesianus* var. *peeblesianus* as an Endangered species. Although the Governor himself submitted no comment on the proposed action, the Arizona Commission of Agriculture and Horticulture reported that the cactus is already under State law, and concurs that it be listed as an Endangered species.

Six other written comments were received concerning this cactus. The Arizona State Office of the Bureau of Land Management concurs that the cactus be listed as Endangered. The Southwest Region Office of the Bureau of Reclamation indicated concern that there was a lack of supporting data for the listing, and a lack of detailed information on Critical Habitat for the cactus. Extensive information on the cactus is on file and available in the Service's Albuquerque Regional Office and Washington Office of Endangered Species; it is not prudent to determine Critical Habitat for the cactus because it would increase threats to it, as explained further below. Four letters or statements from botanists were received; all strongly supported listing this *Pediocactus* as an Endangered species. In addition, the Service has received a detailed contracted status report from the Museum of Northern Arizona and a provisional U.S. Forest Service status report concluding that the taxon is Endangered.

At the July 11, 1979, public hearing in Phoenix, Arizona, the listing of this cactus as an Endangered species was supported by six statements, from the Arizona Commission of Agriculture and Horticulture, the Central Arizona Cactus and Succulent Society, and professional botanists employed in academia and governments; none opposed the listing. One statement also indicated the difficulty encountered in enforcing existing prohibitions of cacti, such as those constraints on collecting cacti under State law, and expressed hope that enforcement would increase through provisions, of the Endangered Species Act, including possibilities through Federal/State plant cooperative agreements.

In this regard, Section 3(15) of the Act has placed the responsibility for enforcement of the trade provisions which pertain to import and export with the Secretary of Agriculture, and this responsibility has been delegated to their Animal and Plant Health Inspection Service. Interstate trade enforcement is the responsibility of the

U.S. Fish and Wildlife Service, Division of Law Enforcement. Permits for activities allowed through Section 10 of the Act and the regulations of June 24, 1977 (42 FR 32373–32381), are the responsibility of the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240, 703/235–1903.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Pediocactus peeblesianus* (Croizat) L. Benson var. *peeblesianus* (Peebles Navajo cactus; synonyms: *Navajoa peeblesiana, Toumeya peeblesiana, Echinocactus peeblesianus, Utahia peeblesiana*) is in danger of becoming extinct throughout its limited range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Pediocactus peeblesianus* var. *peeblesianus* are as follows:

(1) *The present or threatened destruction, modification, or curtailment of its habitat or range.* This cactus is known from only a few locations in Navajo County, Arizona, from near Joseph City to the Marcou Mesa region northwest of Holbrook. An unknown proportion of the original habitat of this taxon, perhaps 10–25 per cent, has been destroyed through gravel pit operations on the private lands on which it occurs, and the recent construction of Interstate 40 around Holbrook, Arizona. There are several gravel pits near the habitat; one of the gravel pit operations within 1/5 km of the known distribution of the plants is stripping much of the area. Rock collecting also occurs in the area, with the resulting trampling of plants and disturbance of habitat. The total area in which this substrate-restricted, narrow endemic could potentially occur is estimated to be seven square km; habitat on which it occurs within that area is even more restricted, so it is quite susceptible to unplanned habitat change.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* This taxon is in world-wide demand by collectors of rare cacti, and removal of plants from native habitats by both private collectors and commercial suppliers occurs.

(3) *Disease or predation* (including grazing). Cattle grazing, adversely affecting the plants by trampling, especially during wet seasons of the year when the ground is muddy and the plants are emergent, is a definite potential threat on the portions of the range which are Bureau of Land Management and State of Arizona administered, and to a lesser extent a potential threat on the privately owned parts of the range of the taxon.

(4) *The inadequacy of existing regulatory mechanisms.* This species is offered protection under Arizona law, A. R. S. Chapter 7, Article 1, Section 3–901, specifically prohibiting collection of *Pediocactus peeblesianus* (listed as *Toumeya peeblesiana)* as well as all other members of the Cactaceae (Cactus family), except by permit. All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the taxon, and therefore does not regulate internal trade in the cactus, or habitat destruction.

Although Bureau of Land Management regulations prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or authorized (43 CFR 6010.2), the prohibitions are difficult to enforce. The Endangered Species Act offers additional protection for the cactus as indicated in part below, which will reinforce the Bureau's regulations.

(5) *Other natural or man-made factors affecting its continued existence.* Restriction to a very specialized and localized soil type in a small geographical area, restriction to flat areas or gentle slopes in an area which is rather hilly, and a very low total population level (a few hundred to 1,000 plants in the wild) with a resultant restricted gene pool, are all factors which tend to intensify threats to the plants or their habitat.

Effects of the Rulemaking

Section 7(a) of the Act, as amended, provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, ensure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this taxon. New rules implementing the 1978 amendments to Section 7 of the Act are being prepared now by the Service.

Endangered and Threatened species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all such species. The principal regulations which pertain to Endangered plant species are found at Sections 17.61–17.63 (42 FR 32378–32380) and are summarized below.

All provisions of Section 9(a)(2) of the Act, as implemented by Section 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, or to deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale this taxon in interstate of foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381), and codified in 50 CFR Part 17, provide for the issuance of permits, under certain circumstances, to carry out otherwise prohibited activities involving Endangered plants, such as trade in specimens of cultivated origin.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export. The Service will review *Pediocactus peeblesianus* var. *peeblesianus* to determine whether it should be considered under the Convention on Native Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this

determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Pediocactus peeblesianus var. *peeblesianus* has already been reduced in numbers and is threatened by taking, an activity not directly prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this taxon more vulnerable to further taking and, therefore, the Service determines that it would not be prudent to determine Critical Habitat.

Pediocactus peeblesianus var. *peeblesianus* was proposed on June 16, 1976 (41 FR 24536), and since Critical Habitat is not being determined for this taxon, the Service is proceeding at this time with a final rule to determine this species to be Endangered pursuant to the Endangered Species Act of 1973, as amended. This rule is issued under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884).

The primary author of this rule is Dr. Bruce MacBryde, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975). Dr. Arthur M. Phillips, III, Dr. Barbara G. Phillips, and Ms. Elaine M. Peterson, Museum of Northern Arizona, compiled the status report and other provisional documents for this taxon.

Regulation Promulgation

Accordingly, Section 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Add in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
Pediocactus peeblesianus var. *peeblesianus*	Peebles Navajo cactus.	U.S.A. (AZ)	Entire	E	67	NA

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33151 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

---

50 CFR Part

Determination that Echinocereus Kuenzleri Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Echinocereus kuenzleri* (Kuenzler hedgehog cactus), a native plant of New Mexico, to be an Endangered species. The plants are in demand by cactus collectors, and removal by commercial suppliers and private collectors has caused near extinction of the natural populations. Much of the original habitat was destroyed by road improvement, and grazing and real estate development are also threats. Less than 200 individuals are known in nature, although the plant is available in cultivation. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235–2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocereus kuenzleri is known from only two populations at the eastern edge of the Sacramento Mountains, in the Central Highlands of New Mexico. Most of the original population, discovered in 1961 near Elk, was destroyed with road building. Less than 200 individuals remain in the wild. These are still sought by collectors, despite the fact that the plant is horticulturally propagated and available in cultivation. Grazing and real estate development are also current threats. The two populations are found in Otero and immediately adjacent Chaves Counties, and in Lincoln County north of Elk.

Section 12 of the Endangered Species Act of 1973 required the Smithsonian Institution to prepare a report on plants which might qualify for listing under the Act. The Secretary of the Smithsonian Institution, in response to Section 12, presented his report on plant taxa to Congress on January 9, 1975. This report, designated as House Document No. 94–51, contained lists of over 3,100 U.S. vascular plants considered by the Smithsonian Institution to be endangered, threatened or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of this report as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within, as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant taxa to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plants was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the above mentioned **Federal Register** publication.

This cactus in its New Mexico range was included in the July 1, 1975, notice of review as *E. hempelii*, with an indication that the taxonomy was in question. The species in its New Mexico and Mexico ranges was proposed as Endangered in the June 16, 1976, proposed rule, again under the name *E. hempelii*. Also in 1976, *Echinocereus kuenzleri* was scientifically described as a new species for the New Mexico population of what had previously been called *E. hempelii*. The true *E. hempelii*, as recently reinterpreted, is known only from a few locations in Chihuahua. Since all New Mexico populations of

what had been called *E. hempelii* are now known as *E. kuenzleri*, we are adopting the latter name in this final rule. Kuenzler hedgehog cactus has also been called *E. fendleri* var. *kuenzleri*, but this name has not yet been officially published in accord with the International Code of Botanical Nomenclature. A public hearing on the June 16, 1976, proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 12, 1979, in Albuquerque, New Mexico for five New Mexico cacti proposed as Endangered species, including this *Echinocereus*. The notice for that public hearing (44 FR 38611) used the now correct name *E. kuenzleri*, and indicated that the cactus had been called *E. hempelii* previously.

In the June 24, 1977, **Federal Register**, the Service published a final rule (42 FR 32373–32381, codified at 50 CFR Part 17) detailing the permit regulations to protect Endangered and Threatened plant species. The rule established prohibitions and permit procedures to grant exception to the prohibitions under certain circumstances.

The Department has determined that this listing rule does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

In keeping with the general intent of Section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received is published in the **Federal Register** prior to adding any plant species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). Some of these comments had addressed the general problems of conservation of cacti.

Additionally, many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Sections 9(a)(2) and 10 of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final rule (42 FR 32373–32381) on plant trade prohibitions and permit provisions. Several persons at the recent public hearing in New Mexico indicated lack of familiarity with these prohibitions and permit provisions. Requests for copies of these final trade regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 703/235–1903.

With the July 2, 1979, **Federal Register** notice (44 FR 38611) for the second public hearing on certain proposed southwestern cacti, comments on the species were again solicited, with an official comment period of July 2 through July 23, 1979. The Governor of New Mexico was notified of the proposal to list *Echinocereus kuenzleri* as an Endangered species. Although the Governor himself submitted no comment on the proposed action, the New Mexico Natural Resources Department recommends the species be listed as Endangered, without Critical Habitat. They indicated collectors and real estate development as threats, and suggest that a reintroduction program may be necessary.

The New Mexico Department of Agriculture briefly reported on the survival status of the cactus, and also indicated specific areas for the species should not be designated. It indicated that before listing the cactus as Endangered, the possible inadequacy of the laws and their implementation should be considered, and that listing might increase threats to the species. The Service is aware that listing under the Act might be harmful; however, in balance, it considers that providing the provisions of the Act to this species is more likely to prove beneficial than allowing continued inadequate management for the cactus.

Seven other written comments were received concerning this species. The U.S. Forest Service, Region 3, recommend the cactus be listed as Endangered. The Southwest Region Office of the Bureau of Reclamation indicated concern that there was a lack of supporting data for the listing, and a lack of detailed information on Critical Habitat for the cactus. Extensive information on the cactus is on file and available in the Service's Albuquerque Regional Office and Washington Office of Endangered Species; it is not prudent to determine Critical Habitat for the cactus because it would increase threats to it, as explained further below. Three professional botanists and horticulturists comment that extinction is highly likely because of collectors and that the species should be listed as Endangered. In addition, the Service has received contracted status information indicating the species appears very near extinction, and two private citizens familiar with the species have verbally reported to the Service's Albuquerque Regional Office that it is in severe danger from over-collecting and needs maximum protection soon. The Conservation Committee of the Cactus and Succulent Society of America endorses the listing as an Endangered species. All of these comments used the name *E. kuenzleri;* two indicated it is definitely part of the *E. fendleri* complex of taxa, as is reflected in the as yet unofficial name *E. fendleri* var. *kuenzleri*. With regard to the justification that it is not prudent to determine Critical Habitat for the species, one commented:

> If a [collected] plant is to have its [exact] whereabouts in the **Federal Register**, there may as well be a copy of its death notice too.

At the July 12, 1979, public hearing in Albuquerque, New Mexico, three persons knowledgeable on New Mexico cacti and this species expressed support for listing it as Endangered; none opposed the listing.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocereus kuenzleri* Castetter, Pierce et Schwerin (Kuenzler hedgehog cactus; synonyms: *Echinocereus hempelii* of authors, not of Fobe in 1897, and *"E. pseudohemplii"* (sic) of some nursery catalogs) is in danger of extinction throughout its limited range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Echinocereus kunzleri* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* This species is known from only two populations in Otero, Chaves and Lincoln Counties in the Central Highlands of New Mexico. The plants are found in pinyon-juniper woodland on the east side of the Sacramento Mountains, in the vicinity of Elk and 50 miles to the north. Most of the original population known since 1961 was destroyed during road improvements, and road maintenance remains a threat. Real estate development is also a problem for this species in the area near Elk. Some populations are located on Lincoln National Forest.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This species has been collected so heavily that some have thought it extinct in the wild. While some plants have been taken for private collections, other may have been offered for sale under the unofficial nursery name "*E. pseudohemplii.*" The fact that this cactus has been maintained in several private collections in this country and abroad indicates that a readily available cultivated source could be developed, which would reduce collecting pressures on those in the wild. Less than two hundred wild individuals are now known, with collecting still continuing.

3. *Disease or predation* (including grazing). Cattle grazing appears to be damaging the species and its habitat, since the cactus is not found where the surface of the soil is disrupted, and some plants are probably trampled.

4. *The inadequacy of existing regulatory mechanisms.* New Mexico State Law, Chapter 76, Article 5, Section 21, requires an application to sell collected wild plants, and designation of the wild source area. Article 8 of that Law, Section 1–4, affords limited protection within 400 yards of any highway to all plants (except noxious weeds), and mentions that all species of *Echinocereus* are among the protected plants. The protection includes limited prohibitions against destruction, mutilation or removal of living plants (except seeds) on State or private land, along a highway. Some of the existing plants may be within 400 yards along the highway or other roads in the areas where it occurs.

U.S Forest Service regulations (42 FR 2956–2962) prohibit removing, destroying or damaging any plant that is classified as a Threatened, Endangered, rare, or unique species. However, the prohibitions are difficult to enforce, and as yet do not address this cactus directly.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the cactus and, therefore, does not regulate interstate or intrastate trade in the cactus, or habitat destruction. The Endangered Species Act will now offer additional protection for the species.

5. *Other natural or manmade factors affecting its continued existence.* This cactus is apparently restricted to rock outcrops of a particular kind in the area, and to surfaces that receive little natural distrubance. Ants take its seeds and may help to disperse the species.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species. New rules implementing the 1978 Amendments to Section 7 of the Act are being prepared now by the Service.

Endangered and Threatened species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all such species. The principal regulations which pertain to Endangered plant species are found at §§ 17.61–17.63 (42 FR 32378–32380). Section 9(a)(2) of the Act, as implemented by Section 17.61, will apply. With respect to any species of plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, 50 CFR Part 17), provide for the issuance of permits, under certain circumstances, to carry out otherwise prohibited activities involving Endangered plants, such as trade in specimens of cultivated origin.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export of this plant. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Echinocereus kuenzleri has been and is threatened by taking, and the taking of plants is not directly prohibited by the Endangered Species Act of 1973. The State of New Mexico and the U.S. Forest Service have not been able to adequately enforce their general prohibitions on removal of plants. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

Echinocereus kuenzleri was proposed for listing as an Endangered species on June 16, 1976 (41 FR 29536). Since it has been determined not to be prudent to designate Critical Habitat for this species at this time, the Service now proceeds with the final rule to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 USC 1531–1543; 87 Stat. 884, 92 Stat. 3751).

The primary author of this rule is Dr. Bruce MacBryde, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-1975).

Regulation Promulgation

Accordingly, Section 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Add in alphabetical order by family, genus, species, the following plant:

§ 17.12 **Endangered and Threatened plants.**

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
Echinocereus kuenzleri	Kuenzler hedgehog cactus	U.S.A. (NM)	Entire	E	66	N/A

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33152 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Determination That Echinocactus horizonthalonius var. nicholii Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines that *Echinocactus horizonthalonius* var. *nicholii* (Nichols Turks head cactus), a native plant of Arizona, is an Endangered species. Habitat destruction through mining, off-road vehicles, and increasing urban development threatens the continued existence of this species. Removal of plants by collectors has caused a depletion of natural populations. This action will extend to this plant the protection provided by the Endangered Species Act 1973, as amended.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief—Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocactus horizonthalonius var. *nicholii* (Nichols Turks head cactus) occurs in two adjacent Arizona counties. This cactus' entire range only occupies approximately 20 square kilometers of the Sonoran Desert. Within this range the cactus occurs in low densities and is limited to a specific soil type. The total number of individuals has been estimated to be less than 500. *Echinocactus horizonthalonius* var. *nicholii* is a blue-green to yellowish-green cactus with a single columnar stem that reaches 1½ feet in height and 8 inches in diameter. This cactus has pink flowers and fruits which are covered with woolly white hairs. This cactus' continued existence is threatened and this rule will extend to it the protection provided by the ESA of 1973 as amended. The following paragraphs summarize the actions leading up to this final rule and the factors which cause this species to be Endangered.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be endangered, threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned **Federal Register** publication.

Echinocactus horizonthalonius var. *nicholii* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on the June 16, 1976 proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 11, 1979, in Phoenix, Arizona for five Arizona cacti proposed as Endangered, including *Echinocactus horizonthalonius* var. *nicholii*.

In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373-32381, codified at 50 CFR) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this rule does not meet the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976 were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments addressed the general problems of cacti conservation. Additionally many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final rule (43 FR 17909-17916) on plant prohibitions and permit provisions. One comment dealing specifically with *Echinocactus horizonthalonius* var. *nicholii* was received from the Arizona Department