

September 13, 2000

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION ON ITS OWN MOTION TO AMEND THE "SPECIAL RULES FOR APPLICATION OF WELLHEAD PRICE CEILING CATEGORY DETERMINATIONS", AS PROMULGATED BY DIVISION ORDER NO. R-5878, AS AMEDNED.**

Case 12562

**APPLICATION**

The New Mexico Oil Conservation Division ("Division"), on its own motion, applies for an order amending the "*Special Rules for Application of Wellhead Price Ceiling Category Determinations*," as set forth in Division Order No. R-5878, as amended. In support thereof, the Division states:

(1) The Division is the jurisdictional agency, defined under 18 CFR Part 270 Section 270.401 (c), as having the regulatory authority or jurisdiction for producing gas wells located on State and fee lands in the state of New Mexico.

(2) The Federal Energy Regulatory Commission of the United States Department of Energy ("FERC") issued a Final Rule (Order 616) on July 14, 2000, in Docket No. RM00-6-000 (see copy attached) reinstating wellhead determination procedures under the Natural Gas Policy Act of 1978 ("NGPA"). The rule reinstates the procedures for Section 107 gas that qualifies for a tax credit under Section 29 of the Internal Revenue Code.

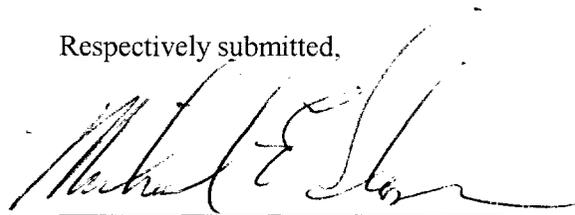
(3) These regulations, which take effect on September 25, 2000, reinstate the determination procedures for coal seam gas, Devonian shale gas, and tight formation gas produced through recompletions commenced after 1992 in wells drilled after 1980 and before 1993, or through wells commenced after 1980 and before 1993.

(4) On November 9, 1978 the 95<sup>th</sup> Congress of the United States passed the Natural Gas Policy Act of 1978, P.L. 95-621. 92 Stat. 3350, that took effect on December 1, 1978. In accordance with the Federal Energy Regulatory Commission's rules, the Division issued Emergency Order E-33 on December 1, 1978, which order adopted forms C-132 and C-132-A and the "*Special Rules for Application of Wellhead Price Ceiling Category Determinations.*" Since Order E-33 expired on December 16, 1978, the Division made its rules and forms permanent by Order No. R-5878, issued in Case No. 6394 on December 14, 1978.

(5) By Orders No. R-5878-A, R-5878-B, and R-5878-B (1) through (4) the Division has amended its wellhead determination rules and forms in order to keep their status up-to-date and make them compatible with such amendments initiated by FERC from time to time and/or to comply with the laws of New Mexico.

WHEREFORE, the Division, at this time, seeks to amend its wellhead determination rules and forms in order to streamline the current rules by deleting all of the unnecessary and antiquated requirements that are no longer applicable under FERC rules. Further, under the current FERC requirements the Division seeks to amend its rules for: (i) occluded natural gas produced from coal seams; and (ii) tight formation gas. Also, new forms C-132 (TF) and C-132 (CS) should be adopted that are more informative for the applicant, easier to understand, and incorporates the proper oath statements for either 107 category, which will serve to ease the administrative burden placed on the applicant filling such application(s).

Respectively submitted,

A handwritten signature in black ink, appearing to read "Michael E. Stogner", written over a horizontal line.

Michael E. Stogner, Chief Hearing Officer/Engineer  
New Mexico Oil Conservation Division  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

13 CFR Parts 270, 375 and 381

[Docket No. RM00-6-000; Order No. 616]

Well Category Determinations

Issued July 14, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

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SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its **regulations** to reinstate provisions for well category determinations for certain categories of high-cost gas under NGPA section 107. An NGPA determination will enable such gas to be eligible for a tax credit under Section 29 of the Internal Revenue Code (Section 29 tax credit). The final Rule extends the provisions to all wells, and tight formation areas that could qualify for the Section 29 tax credit.

EFFECTIVE DATE: This rule is effective September 25, 2000.

FOR FURTHER INFORMATION CONTACT:

Marilyn Rand (Technical Information), Office of Pipeline Regulation,  
888 First Street, NE., Washington, DC 20426, (202) 208-0444.

Jacob Silverman (Advisory Attorney), Office of the General Counsel, 888  
First Street, NE., Washington, D.C. 20426, (202) 208-2078.

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey,  
Linda Breathitt, and Curt Hebert, Jr.

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Order No. 616, Final Rule, issued July 14, 2000.

I Introduction

The Federal Energy Regulatory Commission (Commission) is amending its **regulations** to reinstate provisions for making well category determinations under section 503 of the Natural Gas Policy Act of 1978 (NGPA). In a Notice of Proposed Rulemaking (NPR) issued on January 27, 2000, the Commission proposed to reinstate well determination procedures for certain categories of high-cost gas under NGPA section 107. An NGPA determination will enable such gas to be eligible for a tax credit under Section 29 of the Internal Revenue Code (Section 29 tax credit). The NPR specifically proposed to limit the availability of the reinstated procedures to determinations on post-January 1, 1993 recompletions in wells drilled after December 31, 1979, but before

January 1, 1993. The Commission also did not propose any **regulations** that would allow a jurisdictional agency to designate new tight formations. The Final Rule extends the provisions to all wells spudded before January 1, 1993, and recompletions both before and after that date that could qualify for the Section 29 tax credit, and provides for the designation of new tight formations.

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\1\ 65 FR 6048 (Feb. 8, 2000), **FERC** Stats.& Regs., Proposed **Regulations** para. 32,549 (Jan. 27, 2000).

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## II. Background

Section 29 of the Internal Revenue Code, as amended by the Revenue Reconciliation Act of 1990, allows taxpayers to claim a tax credit for certain qualified fuels which (1) are produced from wells drilled after December 31, 1979, and before January 1, 1993,\2\ and (2) are sold before January 1, 2003. The qualified fuels include high cost gas as defined in NGPA section 107 (c)(2)-(4) (gas produced from geopressured brine, coal seams and Devonian shale), as well as some gas the Commission defined as tight formation gas pursuant to NGPA section 107(c)(5).

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\2\ For purposes of the tax credit, the initial drilling had to be started after January 1, 1980, and this date was never changed. Thus, this starting date is assumed throughout.

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Section 29(c)(2)(A) of the Internal Revenue Code also provides that the determination whether gas falls into a category qualifying for the tax credit "shall be made in accordance with section 503 of the (NGPA)." NGPA section 503 set forth the procedures used for determining whether gas qualified for the various categories of gas entitled to the higher ceiling prices established by the NGPA as incentives for increased production. These included section 107(c) "high-cost natural gas." Under NGPA section 503, the agency having regulatory jurisdiction with respect to the production of the natural gas in question (the jurisdictional agency) \3\ made the initial determination, and submitted it to the Commission. The Commission could either affirm, reverse, remand, make a preliminary finding on, or simply take no action, regarding the agency's determination. If the Commission took no action within 45 days after receipt of the agency's determination, that determination became final. Judicial review was available under section 503 only if the Commission remanded or reversed the determination.

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\3\ That agency may be either a State or Federal agency.

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The Wellhead Decontrol Act of 1989 (Decontrol Act) \4\ decontrolled all wellhead sales of natural gas by January 1, 1993, and repealed NGPA section 503 as of that date. After decontrol, the Commission's policy was not to accept determinations for any post-January 1, 1993 drilling activity. The Commission, however, continued to process well category determinations it received from jurisdictional agencies through April 30, 1994, for wells spudded before January 1, 1993, and pre-January 1, 1993 recompletions. The Commission explained that the reason for continuing to review those agency determinations for a transition period, was that, while NGPA section 107 well category determinations no longer had any price consequence, they were necessary to obtain the Section 29 tax credit.

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\4\ Pub. L. 101-60; 103 Stat. 157 (1989).

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As discussed above, section 29 of the Code provides that, in order to qualify for the tax credit, gas must be produced from a well drilled before January 1, 1993, the same date the last remaining NGPA ceiling prices were eliminated and NGPA section 503 was repealed. When the Commission decided not to process well determination requests for wells recompleted after December 31, 1992, it was assumed that the tax credit would not be available with respect to any drilling activity after that date, and therefore there was no need to continue the well category determination procedures to enable producers to qualify for the tax credit for such drilling activity. However, on August 16, 1993, the Internal Revenue Service (IRS), which administers the Section 29 tax credit, issued Revenue Ruling 93-54, \5\ clarifying the provision of section 29 that states that gas must be produced from a well drilled before January 1, 1993. The IRS held that, while the initial drilling of a well had to have been performed before January 1, 1993, tax credits are available for non-conventional fuels produced through a post-January 1, 1993 recompletion in the well, as long as the recompletion does not involve additional drilling to deepen or extend the well.

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\5\ 1993-2 CB.3 (1993).

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After the IRS Revenue Ruling 93-54, the Commission received jurisdictional agency determinations for recompletions commenced after January 1, 1993. However, the Commission refused to process them since it appeared that the IRS would permit the Section 29 credit for such recompletions without any Commission action. On July 29, 1994, the Commission issued Order No. 567, \6\ which deleted **regulations** that were no longer required due to the decontrol of wellhead sales of natural gas, including **regulations** which set forth eligibility requirements, filing requirements, and the procedures for making well determinations under section 503 of the NGPA.

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\6\ Removal of Outdated **Regulations** Pertaining to the Sales of Natural Gas Production, 59 FR 40240, **FERC** Stats. & Regs., **Regulations** Preambles 1991-1996 para. 30,999 (1994), Order on Rehearing, 69 **FERC** Paras. 61,055 and 61,042 (1994). A petition to review the deletion of other provisions in these **regulations** was denied by the Court of Appeals in Hadson Gas System, Inc. v. **FERC**, 75 F.3d 680 (D.C. Cir. 1996).

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Thus matters stood from 1994 until the True Oil decision changed the legal landscape. In 1999 the United States Court of Appeals for the Tenth Circuit held in True Oil Co. v. Commissioner of Internal Revenue \7\ (True Oil) that, in order to obtain the section 29 tax credit, there must be a formal determination under the procedures provided by NGPA section 503 that the gas is high cost gas.

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\7\ 170 F.3d 1294 (10th Cir. 1999).

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A The NOPR

In the NOPR the Commission proposed to accept jurisdictional agency

determinations for those post-January 1, 1993 recompletions which satisfy the IRS' definition under Revenue Ruling 93-54, including that the recompletion does not involve additional drilling to deepen or extend the well. For this purpose, the Commission proposed to reinstate **regulations** necessary to (1) Define the categories of high cost gas eligible for the tax credit and (2) provide procedures for jurisdictional agencies to file their determinations and the Commission to review those determinations.

The Commission proposed not to accept determinations from jurisdictional agencies with respect to either initial completions in wells

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spudded before January 1, 1993, or any pre-1993 recompletions. Thus, the well category determination procedures the Commission proposed to reinstate in Sec. 270.201 would be limited to recompletions commenced after January 1, 1993, in wells initially drilled after December 31, 1979, but before January 1, 1993. This reflected the Commission's decision to limit the determination process to correct the situation caused by the True Oil decision, but parties were invited to comment on this matter. The Commission proposed to accept determinations for recompletions in tight formations, coal seams, and Devonian Shale.\8\ The Commission also proposed only to accept jurisdictional agency determinations for qualifying recompletions in already designated tight formations, and would not allow a jurisdictional agency to designate additional tight formations. The NOPR stated that the Commission must rely upon the jurisdictional agencies to develop the full record in these proceedings, and the Commission would limit its role to reviewing initial determinations made by the jurisdictional agencies. Accordingly, the Commission requested comments from the jurisdictional agencies whether they will make initial determinations under NGPA section 503, if the proposed rule is adopted.

\8\ The NOPR stated that it did not include a definition for gas produced from geopressured brine since past experience has shown that there is no gas likely to qualify for this category given the Commission's definition of geopressured brine and the current state of technology. The NOPR requested comments on this matter, but none was filed.

In summary, the Commission proposed to reinstate those portions of its prior **regulations**, with appropriate modifications, that are necessary to allow producers to obtain well category determinations solely for tax credit purposes. In general, the proposed **regulations** retain the definitions, the filing and notice requirements, and the review procedures that the Commission promulgated prior to the termination of the **regulations** due to the Decontrol Act.\9\

\9\ The substantive rulings that the Commission made previously concerning well determinations and the qualification under these NGPA section 107 category would also continue to govern.

## B The Comments

The Commission received comments from over 40 parties, as set forth in the Appendix, including comments by the United States Department of Energy (DOE), fourteen state jurisdictional agencies,\10\ and the United States Department of the Interior, Bureau of Land Management (BLM). All commentors, without exception, support the reinstatement of

the NGPA procedures. Most of the commentors, including DOE and the jurisdictional agencies, urge the Commission to extend the determination procedures to all wells spudded before January 1, 1993, and pre-1993 recompletions so that all gas eligible for a tax credit may receive a determination. In addition, several commentors, assert that the Commission should allow jurisdictional agencies to designate new tight formation areas.

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\10\ The jurisdictional agencies were from the following states: Alabama, Colorado, Kansas, Kentucky, Louisiana, Michigan, New Mexico, New York, Ohio, Oklahoma, Texas, Virginia, West Virginia, and Wyoming.

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In response to the NOPR's question, the jurisdictional agencies filing comments stated they would make the initial determinations.\11\ Several jurisdictional agencies that previously made NGPA section 107 determinations did not file comments.\12\ In its comments, BLM stated that it does not have the staffing and budgetary resources to assume the additional workload that would result if the Commission extends the procedures to all eligible wells and permits jurisdictional agencies to designate new tight formations. Some commentors urged the Commission to adopt revised procedures to ease the burden of implementing the reinstated review process.

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\11\ Michigan simply stated it is willing to make the necessary determinations on post-January 1, 1993 recompletions.

\12\ Those not filing comments were Arkansas, California, Illinois, Indiana, Mississippi, Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, Tennessee, and Utah.

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### III. Discussion

In this final rule, the Commission is reinstating its well determination review procedures in order to allow producers to obtain the Section 29 tax credit. This is consistent with Congress' desire to encourage, enhance, and expand the United States' natural gas supply base by allowing legitimately qualified producers to receive a tax credit associated with developing and producing gas from formations and wells that otherwise might not have been available to supply consumers. In the NOPR, the Commission explained the legal authority for reinstating the well determination review procedures to allow producers to obtain the Section 29 tax credit despite the repeal of NGPA section 503 by the Wellhead Decontrol Act. This authority has not been questioned by any commentor, and all commentors support reinstatement of the well determination review procedures. However, the extent of the review process was subject to extensive comment, which the Commission will now address.

1. Should the review process be limited to post-January 1, 1993 recompletions?

In the NOPR the Commission proposed not to accept determinations with respect to either initial completions in wells spudded before January 1, 1993, or any pre-1993 recompletions. The Commission stated that in Order No. 539, the Commission established deadlines for filing applications involving wells that were spudded and/or recompleted prior to January 1, 1993, and the time has long passed when those applications should have been filed. Also, the NOPR stated that in a petition filed by a number of producers requesting the Commission to reinstate the NGPA section 503 well category procedures, the producers

had not requested that the Commission accept determinations with regard to wells spudded or recompleted before January 1, 1993.

In their comments, parties have urged that the proposal not be so limited. The commentors maintain that the reasons stated in the NOPR do not present a valid basis for limiting the review process to post-January 1, 1993 recompletions. They assert that the fact that the deadline set by the Commission for submitting determinations for pre-January 1, 1993 drilling activity has passed should not bar producers from seeking to obtain the tax credit. Moreover, they argue that there are many reasons why the Commission's April 1994 deadline for jurisdictional agencies to file determinations with respect to pre-January 1, 1993 drilling activity may not have been met.

Commentors state that the Order No. 539 deadlines were imposed because the Commission assumed that the Section 29 tax credit would not be available for wells originally drilled before January 1, 1993, that were recompleted after that date. Thus, the Commission had concluded that it needed to go out of the business of making well determinations by a time certain. Moreover, it was assumed that the fact that the Commission would not process well determinations did not mean that the Section 29 tax credit could not be obtained by the producer. Commentors assert that those reasons for the April 30, 1994 deadline are no longer valid because the IRS in Revenue Ruling 93-54 allowed certain

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recompletions performed after January 1, 1993, to qualify for the tax credit, and True Oil requires the NGPA section 503 procedures to be followed to obtain the tax credit.

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 \13\ **FERC** Stats & Regs., **Regulations** Preamble 1991-1996 para. 3), 940 n.41 at 30, 488.  
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Commentors also assert that there were a number of reasons producers did not meet the April 30, 1994 deadline established in the Order No. 539 series. They contend that there was some question at the time as to what the consequences were of not meeting the Commission's deadline. This was especially true after the IRS issued Revenue Ruling 93-54, which permitted the tax credit for post-January 1, 1993 recompletions. In addition, as DOE explained, there was a large amount of drilling activity which occurred prior to the close of the drilling window on December 31, 1992. This inevitably led to some oversights on the part of producers, or it simply made the deadline impossible to meet. In addition, subsequent purchasers of pre-1993 wells may not have been aware of the filing deadlines imposed by the Commission in Order No. 539.

We explained in the NOPR, and no one has contested, that the Commission has continuing authority to process NGPA section 503 determinations to allow producers to qualify for the Section 29 tax credit. In light of this authority, the Commission finds merit in commentors' request that the Commission reinstate the NGPA section 503 well category determination procedure for most pre-January 1, 1993 drilling activity, as well as post-January 1, 1993 recompletions, where necessary to allow a producer to qualify for the Section 29 tax credit. We will not reinstate the NGPA section 503 well category determination procedure for pre-January 1, 1980 completions because the gas produced from such completions is not eligible for the Section 29 tax credit.

The Commission did not impose any deadline on filing requests for determinations, nor a deadline for submitting the determinations by the jurisdictional agency, until the decontrol of wellhead sales. The Commission then set deadlines only as a means of implementing the complete termination of the well category determination program. Now

that the Commission is reinstating that program so that producers can obtain the Section 29 tax credit, there is no basis to decline to process well category determination for pre-January 1, 1993 drilling activity while processing determinations for post-January 1, 1993 recompletion drilling activity. Section 29 allows a credit if the producer obtains the section 503 determination. The Commission has the authority to make the section 503 determination. Therefore, the Commission concludes it should process determinations for any well that could qualify for a Section 29 tax credit, regardless of when the drilling activity occurred, as long as it meets the requirements of section 29 of the Code. We will not reinstate the NGPA section 503 well category determination procedure for pre-January 1, 1980 completions because the gas produced from such completions is not eligible for the Section 29 tax credit.

Accordingly, except for gas produced from a pre-January 1, 1980 completion, the Commission will modify the proposed rule, and will apply the section 503 review process to wells drilled and spudded, and recompletions commenced prior to December 31, 1992, as well as to post-January 1, 1993 recompletions.\14\  
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\14\ We note that a new determination will not be required for some recompletions involving Devonian shale gas if there is a prior determination covering the entire gross Devonian age stratigraphic interval penetrated by the wellbore. The Commission will view all natural gas produced from a well to have been previously qualified as Devonian shale production if: (1) The well previously received an affirmative Devonian shale determination that was not reversed or remanded by the Commission; and (2) that determination was based on a gamma ray index test for non-shale footage that spans the entire gross Devonian age stratigraphic interval. In such cases, the Commission sees no reason to re-affirm what has already been established, i.e., that any gas produced from the gross Devonian age stratigraphic interval penetrated by such well qualifies as natural gas produced from Devonian shale within the meaning of section 107(c)(4) of the NGPA.  
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## 2 Should The Designation of New Tight Formation Areas be Permitted?

Before a specific well can obtain a tight formation determination, a portion of the formation into which the well is, or will be completed, must be designated as a tight formation by a jurisdictional agency, which determination is also subject to Commission review. After a field is designated as a tight formation, applications with respect to completions in specific wells in the designated tight formation can be filed.\15\  
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\15\ The Commission originally designated tight formation areas by rule making and listed approved tight formations in Sec. 271.703 of the Commission's **regulations**, but after the decision in Williston Basin Interstate Pipeline Co. v. **FERC**, 816 F.2d 816 (D.C. Cir. 1987), the Commission followed the procedures under NGPA section 503.  
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In the NOPR, the Commission stated that the Commission was not proposing any **regulations** that would allow a jurisdictional agency to designate additional tight formations. The Commission explained that to permit the designation of additional tight formations would require the Commission to review extensive geologic data, which could place an undue burden on the Commission.\16\ In addition, the Commission noted that it appeared likely that most producing formations that qualify as

tight formations have already been designated as such.

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\16\ **FERC** Stats. & Regs. Proposed **Regulations** para. 32,549 at 33,897.

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A number of commentors, including two jurisdictional agencies, urge that the Commission should permit the designation of additional tight formation areas. They assert that the reasons stated in the NOPR for not doing so, do not justify denying the tax credit that producers would be entitled to from production in these areas.

Commentors argue that, contrary to the contention that most tight formation areas have already been designated, there are numerous additional tight formation areas that could qualify for the tax credit. Specifically, Texas makes reference to proceedings in the State of Texas that resulted in 357 additional tight formation designations covering thousands of acres.

Commentors also assert that the concern about placing an undue burden on the Commission does not justify denying producers the ability to obtain the tax credit that Congress provided for. Moreover, new and revised procedures could be adopted by the Commission to lessen the expected workload from the new filings.

For the same reasons we have concluded to allow the review process for wells drilled and spudded, and recompletions commenced prior to December 31, 1992, as well as to the post-January 1, 1993 recompletions, we will also permit the designation of new tight formations. As explained above, the Commission has been authorized to carry out the NGPA section 503 well category determination procedure so producers can obtain the section 29 tax credit for qualifying gas. Permitting the designation of new tight formations is consistent with, and furthers Congress' purpose in establishing the Section 29 tax credit to encourage domestic natural gas production.

On balance, the Commission concludes that it should permit the designation of new tight formations. Therefore, the **regulations** are being amended to include procedures for designating new tight formations and the information required to support such designation. In his comments, BLM stated that permitting the designation of new tight formations would result in ``a substantial administrative burden'' to it.

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The Commission will address this, and other procedural matters in the next section.

### 3 Procedural Matters

Commission staff, by letter, notified all jurisdictional agencies that previously made determinations for gas that qualified for Section 29 tax credits of the NOPR, and requested them to advise the Commission as to whether they would be willing to make determinations again. The fourteen jurisdictional agencies that filed comments, responded that they would make the determinations. Several other jurisdictional agencies that previously made Section 107 determinations did not respond to staff's letter. However, this will not preclude them from submitting determinations when this rule becomes effective.

In addition, BLM indicated it would not have appropriate staff resources to make determinations if the determination procedures were expanded to include all wells and new tight formation areas. BLM suggests that the Commission could provide resources since the Commission proposes to collect a fee, or the industry could fund a position in BLM's office. BLM, also has proposed that the section 503 procedures ``be radically streamlined to minimize the technical review

process and jurisdictional agency involvement,' and seems to suggest that the Commission use BLM's Automated Fluid Minerals Support System to make the determinations.

The NOPR stated that NGPA section 503 requires the jurisdictional agencies to make an initial well category determination, unless, as permitted by section 503(c)(2), the Commission enters into an agreement with a State or Federal agency under which the Commission would make the determinations that would otherwise be made by that agency. The NOPR stated that the Commission intended not to exercise its discretion to enter into any such agreement \17\ because the Commission's role in the producing area has virtually been eliminated, and consequently the Commission's resources in this area have been substantially reduced.

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 \17\ **FERC Statutes & Regulations, Proposed Regulations** para. 32,549 at 33,897.  
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In its comments, Equitable Production Company (Equitable) asserts that the Commission does not have the discretion to determine that it will not make determinations if the jurisdictional agencies decline to do so. The Commission disagrees, because NGPA section 503(c)(2) permits waiver of the jurisdictional agency's authority to make the initial determination only if the Commission agrees to enter into a written agreement with the jurisdictional agency wherein the Commission agrees to make the initial determination.\18\ Since the NGPA makes Commission performance of initial determinations contingent on the Commission's agreement to do so, the Commission clearly has the discretion to refuse to agree. Given its limited resources in this area, the Commission cannot undertake to perform the initial review of producer applications of well category determinations, and must rely on the jurisdictional agencies to perform this function. Accordingly, the Commission concludes that it will not accept applications for determinations from producers if the applicable jurisdictional agency has not agreed to make determinations.\19\ As to the BLM's concerns, BLM may wish to consider entering into an agreement with the applicable state jurisdictional agencies that would provide that the state jurisdictional agency will be responsible for determinations involving Federal lands in that state. The previous **regulations** provided for this, and the NOPR proposed to reinstate this provision. Further, the filing fee under the Commission's **regulations** does not preclude BLM from collecting a separate fee to recover its costs of processing the well determination applications.

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 \18\ The Joint Explanatory Statement of the Committee on Conference explained that waiver under section 503 (c)(2) will take place only 'if the Commission agrees' to make the determination. I **FERC** Stats. & Regs. para. 3101 at 3142.

\19\ The Commission did not enter into any such waiver agreement when the prior **regulations** were in effect.  
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The Commission has reviewed the coal seam, Devonian shale, and tight formation gas well certification requirements of the State of Texas Severance Tax Incentive for High Cost Gas program, as set forth under Secs. 3.101(e)(3), (4), and (5) of Railroad Commission Statewide Rule 101. We find those filing requirements provide virtually the same documentation and evidentiary support for those certifications that we are requiring for a coal seam gas, Devonian shale, or tight formation gas determination under the NGPA. Accordingly, Texas may utilize the documents and information filed pursuant to Railroad Commission Rule 101 to satisfy the corresponding filing requirements for a well category determination under the NGPA. However, all applicants whose

applications for determinations rely upon such documents and information must provide Texas with appropriate oath statements and Form 121 required under the NGPA **regulations**. Texas, in turn, must include this material with the notice of determination that Texas files with the Commission.

Texas and the Producer Coalition propose significant procedural changes in the review of new tight formations. Texas notes that it has approved 357 tight formation designations since 1993 under its "State of Texas Severance Tax Incentive for High Cost Gas program" (under RRC Statewide Rule 101). In contrast, 172 tight formation designations in Texas were approved before 1993 under the NGPA procedures. Texas asserts the Commission should accept these area designations because the requirements under RRC Statewide Rule 101 are equivalent to the Commission's requirements for tight formations. Texas also asserts the Commission should accept any determinations it makes in the future under its Rule 101. The Producer Coalition urges the Commission to allow jurisdictional agencies to designate additional tight formations without Commission review.

In order to qualify as a tight formation, a formation must meet guidelines for permeability and stabilized flow ratio. The Commission clarified these guidelines in Order No. 539. The Commission understands that in designating tight formations, Texas uses the geometric mean or median values to satisfy the 0.1 millidarcy (md) in-situ permeability and maximum allowable pre-stimulation stabilized flow rate requirements under Texas' program. This conflicts with the Commission's use of the arithmetic mean to determine if formations meet the Order No. 539 guidelines for permeability and stabilized flow rates. The Commission found that using median or geometric mean averaging hides "sweet spots" which allows areas that do not meet the qualifications to be designated as tight formations. Accordingly, the Commission rejects Texas' proposal that the Commission accept Texas' designation of new tight formations under RRC Statewide Rule 101.

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 \20\ FERC Stats.& Regs., Regulations Preambles 1991-1996 para. 3),940 (1992).  
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The Commission also rejects the Producer Coalition's suggestion that the Commission accept all tight formation designations by jurisdictional agencies without any Commission review. Therefore, the previously existing review process will be reinstated.

Vastar Resources, Inc. (Vastar) a large independent oil and natural gas company, like most commentors,

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requests the Commission to broaden the scope of the reinstated well determination process to include any and all wells that otherwise qualify for the section 29 tax credit, regardless of circumstances. However, its request goes beyond what other commentors have requested.

First, it requests that a post-1992 replacement well should be included within the scope of the reinstated determination process. By replacement well, Vastar refers to the situation where a qualified section 29 well stops producing for mechanical reasons and cannot be economically sidetracked, and the producer may be able to drill a replacement well. On its face, the request is contrary to the statutory requirement that the well must be drilled or spudded before December 31, 1992. The Commission is unaware of any I.R.S. ruling that such a "replacement" well could receive the Section 29 tax credit. Thus, the "replacement" well does not present the same situation as a post-December 31, 1992 recompletion since the IRS has ruled on recompletions in Revenue Ruling 93-54. Vastar also requests the Commission to include wells drilled prior to 1993 where production did not begin prior to

January 1, 1993. However, since the final rule expands the eligible class to all wells that could qualify for the Section 29 tax credit there is no need to make a special provision for this type of well.

Finally, as we stated in the NOPR, since the Section 29 tax credit is now scheduled to end on December 31, 2002, the reinstatement of the well determination review procedures will remain effective until the later of June 30, 2003, or six months after the tax credit is no longer available for production from any well should Congress further extend the tax credit.

IV. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement. Since the final rule reinstates **regulations** that were previously in effect, and does not substantially change the effect of the underlying legislation or the **regulations** being revised, it falls under the exclusion in para. 380.4 (a)(2)(ii) of the Commission's **regulations**. In the NOPR, the Commission expressed this view, and none of the comments questioned this position. Accordingly, no environmental consideration is necessary.

18 CFR 380.4(a)(2)(ii).

V. Information Collection Statement

The Office of Management and Budget's (OMB) **regulations** in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

The collections of information related to the subject of this final rule fall under **FERC** Form No. 121, Applications for Maximum Lawful Price under the Natural Gas Policy Act of 1978 (OMB Control No. 1902-0038) and **FERC-568** Well Category Determinations (OMB Control No. 1902-0012). Under this Final Rule, the overall burden of filing will be increased as the Commission is expanding the number of wells that will be eligible for the Section 29 tax credit. Therefore, the Commission is revising its initial burden estimates as stated in the NOPR on the number of applications it anticipates it will receive from 1800 to 2400. The Section 29 tax credit is scheduled to expire on December 31, 2002.

The burden estimates for complying with this final rule are as follows:

Data collection	No. of respondents	No. c respons
<b>FERC</b> Form 121.....	2400	
<b>FERC-568</b> .....	2400	

The total annual hours for collection (including recordkeeping) is estimated to be: 15,024 hours.

The average annualized cost for all respondents is projected to be the following:

Data collection	Annualized capital/start-up costs	Annualiz (operat mainte
FERC Form 121.....	\$32,176	
FERC-568.....	773,522	

The total annualized costs for collection is estimated to be: \$805,698.  
Cost per respondent = (Form 121, \$13.41), (FERC-568, \$ 322.00).

The Commission received forty four comments on the proposed rule, but none on its reporting burden or cost estimates. The Commission's responses to the comments are being addressed elsewhere in this rule. Further, we note that, as required under OMB's **regulations**, the Commission submitted the NOPR for OMB review. OMB took no action on the NOPR. However, in response, OMB stated that the Commission should resubmit its information collection request when it takes final action.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 838 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, CI-1, Phone: (202) 208-1415, fax: (202) 208-2425, e-mail [mike.miller@ferc.fed.us](mailto:mike.miller@ferc.fed.us)] or send comments to the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission]. The Desk Officer can be reached at (202) 395-3087, fax: 395-7285.

#### VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have

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a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration ``to small entities that would be directly regulated'' by proposed rules. *Id.* at 342. The court further concluded that ``the relevant `economic impact' was the impact of compliance with the proposed rule on regulated small entities.'' *Id.* at 342.

The final rule reinstates **regulations** that were previously in effect, and would enable entities to obtain Internal Revenue Code Section 29 tax credits. The Commission certifies that this proposed rule will not have a significant adverse economic impact upon a substantial number of small entities.

#### VII. Effective Date

These **regulations** become effective September 25, 2000. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is a ``major rule'' as defined in Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.\22\ The Commission will submit the rule to both houses of Congress and the Comptroller General prior to its publication in the Federal Register.

\22\ 5 U.S.C. 804(2).

## VIII. Document Availability

In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through **FERC's** Home Page (<http://www.ferc.fed.us>) and in **FERC's** Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From **FERC's** Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

--CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

--CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

--RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from **FERC's** Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208-2222 (E-Mail to [WebMaster@ferc.fed.us](mailto:WebMaster@ferc.fed.us)) or the Public Reference at (202) 208-1371 (E-Mail to [public.reference@ferc.fed.us](mailto:public.reference@ferc.fed.us)).

During normal business hours, documents can also be viewed and/or printed in **FERC's** Public Reference Room, where RIMS, CIPS, and the **FERC** Website are available. User assistance is also available.

## List of Subjects

## 18 CFR. Part 270

Natural gas, Price controls, Record and recordkeeping requirements.

## 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

## 18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.  
By the Commission.

Linwood A. Watson, Jr.,  
Acting Secretary.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, of the Code of Federal **Regulations**, as follows:

1. The heading of Subchapter H is revised and part 270 is added to read as follows:

Subchapter H--Procedures Governing Determinations for Tax Credit Purposes

PART 270--DETERMINATION PROCEDURES

Subpart A--General Definitions  
Sec.

270.101 General definitions  
 Subpart B--Determinations by Jurisdictional Agencies  
 270.201 Applicability  
 270.202 Definition of determination  
 270.203 Determinations by jurisdictional agencies  
 270.204 Notice to the Commission  
 Subpart C--Requirements for Filing with Jurisdictional Agencies  
 270.301 General requirements  
 270.302 Occluded natural gas produced from coal seams  
 270.303 Natural gas produced from Devonian shale  
 270.304 Tight formation gas  
 270.305 Determination of tight formation areas  
 270.306 Devonian shale wells in Michigan  
 Subpart D--Identification of State and Federal Jurisdictional Agencies  
 270.401 Jurisdictional agency  
 Subpart E--Commission Review of Jurisdictional Agency Determinations  
 270.501 Publication of notice from jurisdictional agency  
 270.502 Commission review of final determinations  
 270.503 Protests to the Commission  
 270.504 Contents of protests to the Commission  
 270.505 Procedure for reopening determinations  
 270.506 Confidentiality

Authority: 15 U.S.C. 717-717w, 3301 et. seq.; 42 U.S.C. 7101 et seq.; EO 12009, 3 CFR 1978 Comp., p. 142.

#### Subpart A--General Definitions

Sec. 270.101 General definitions.

(a) NGPA definitions. Terms defined in the Natural Gas Policy Act of 1978 (NGPA) will have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

(b) Subchapter H definitions. For purposes of this part:

(1) NGPA means the Natural Gas Policy Act of 1978.

(2) Surface location means the point on the Earth's surface from which drilling of a well is commenced except that in the case of a well drilled in permanent surface waters, "the Earth's surface" means the mean elevation of the surface of the water.

(3) Jurisdictional agency means the state or federal agency identified in Sec. 270.401.

(4) Tight formation gas means natural gas that a jurisdictional agency has determined to be produced from a designated tight formation.

(5) Designated tight formation means the portion of a natural gas bearing formation that was:

(i) Designated as a tight formation by the Commission, pursuant to section 501 of the NGPA, or

(ii) Determined to be a tight formation pursuant to section 503 of the NGPA.

(6) Occluded natural gas produced from coal seams means naturally occurring natural gas released from entrapment from the fractures, pores and bedding planes of coal seams.

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(7) Natural gas produced from Devonian shale means natural gas produced from fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period.

(8) Shales deposited during the Paleozoic Devonian Period can be defined as either:

(i) The gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or

greater; or

(ii) One continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater (but if the interval selected is more than 200 feet thick, the bottom and top 100 foot portions must meet the five percent test independently).

(9) Gamma ray index means when measuring the Devonian age stratigraphic interval, the gamma ray index at any point is to be calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

(10) Mcf means one thousand cubic feet of natural gas at 60 degrees Fahrenheit under a pressure equivalent to that of 30.00 inches of mercury at 32 degrees Fahrenheit, under standard gravitational force (980.665 centimeters per second squared).

(11) Data well means a well for which permeability and/or pre-stimulation production rate data are available for a pay section in the formation for which a tight formation designation is being sought.

#### Subpart B--Determinations by Jurisdictional Agencies

##### Sec. 270.201 Applicability.

(a) This part applies to determinations of jurisdictional agencies for tight formation gas, occluded natural gas produced from coal seams, and natural gas produced from Devonian shale that is produced through:

(1) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(2) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(3) A recompletion commenced after December 31, 1979, but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980.

(b) This part also applies to determinations of jurisdictional agencies that designate a formation, or portion thereof, as a tight formation.

##### Sec. 270.202 Definition of determination.

For purposes of this subpart, a determination has been made by a jurisdictional agency when such determination is administratively final before such agency.

##### Sec. 270.203 Determinations by jurisdictional agencies.

A jurisdictional agency must make determinations to which this part applies in accordance with procedures applicable to it under the law of its jurisdiction for making such determinations or for making comparable determinations.

##### Sec. 270.204 Notice to the Commission.

Within 15 days after making a determination under this part, the jurisdictional agency must give written notice of the determination to the Commission. The notice must include the following:

(a) A list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written

comments (whether or not such persons participated in the proceeding);

(b) A statement indicating whether the matter was opposed before the jurisdictional agency;

(c) A copy of the application together with a copy or description of all other materials upon which the jurisdictional agency relied in the course of making the determination, together with any information which may be inconsistent with the determination.

(d) An explanatory statement, including appropriate factual findings and references, which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

#### Subpart C--Requirements for Filings With Jurisdictional Agencies

##### Sec. 270.301 General requirements.

(a) An application for determination may be filed with the jurisdictional agency and signed by any person the jurisdictional agency designates as eligible to make filings with respect to the well for which the application is made.

(b) The documents required by this subpart are the minimum required in support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

(c) Each applicant must pay the fee prescribed in Sec. 381.401 of this chapter. The applicant will be billed annually by the Commission for each jurisdictional agency determination received by the Commission. The applicant must submit the fee, or petition for waiver pursuant to Sec. 381.106 of this chapter, within 30 days following the billing date.

##### Sec. 270.302 Occluded natural gas produced from coal seams.

A person seeking a determination that natural gas is occluded natural gas produced from coal seams must file an application with the jurisdictional agency which contains the following items:

(a) **FERC** Form No. 121;

(b) All well completion reports.

(c) A radioactivity, electric or other log which will define the coal seams.

(d) Evidence to establish that the natural gas was produced from a coal seam;

(e) A statement by the applicant, under oath, that gas is produced from a coal seam through:

(1)(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980; and

(2) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

##### Sec. 270.303 Natural gas produced from Devonian shale.

A person seeking a determination that natural gas is produced from Devonian shale shall file an application with the jurisdictional agency which contains the following items:

- (a) **FERC** Form No. 121;
- (b) All well completion reports;
- (c) A gamma ray log with superimposed indications of the shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section designated pursuant to Sec. 270.101(b)(8);
- (d) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and
- (e) A sworn statement:
  - (1) Calculating the percentage of footage of the producing interval which

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is not Devonian shale as indicated by a Gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the stratigraphic section selected is equal to or less than 5 percent of the Devonian stratigraphic age interval designated pursuant to Sec. 270.101(b)(7);

(3) Attesting that the natural gas is being produced from Devonian shale through:

(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980; and

(4) Attesting that the applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

#### Sec. 270.304 Tight formation gas.

A person seeking a determination that natural gas is tight formation gas must file with the jurisdictional agency an application which contains the following items:

(a) **FERC** Form No. 121;

(b) All well completion reports;

(c) A map that identifies the surface location of the well and the completion location in the well in the designated tight formation, along with the geographic boundaries of the designated tight formation, or a location plat identifying the surface location of the well and the completion location in the designated tight formation, along with a list of the tract (or tracts) of land that comprise the designated tight formation;

(d) A complete copy of the well log, including the log heading identifying the designated tight formation stratigraphically; and

(e) A statement by the applicant, under oath, that:

(1) The natural gas is being produced from a designated tight formation through:

(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(iii) Through a recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980; and

(2) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

Sec. 270.305 Determination of tight formation areas.

(a) General requirement. A jurisdictional agency determination designating a portion of a formation as a tight formation must be made in the form and manner prescribed in this subpart.

(b) Guidelines for designating tight formations. A jurisdictional agency determination designating a portion of a formation as a tight formation must be made in accordance with the following guidelines:

(1) Within the geographic boundaries of the portion of the formation being recommended for tight formation designation, the estimated in situ gas permeability, throughout the pay section, is expected to be 0.1 millidarcy (md) or less. The expected in situ permeability is to be determined through an arithmetic mean averaging of the known permeabilities obtained from the wells that penetrate, and have a pay section in, such portion of such formation.

(2) Within the geographic boundaries of the portion of the formation being recommended for tight formation designation, the stabilized production rate of natural gas, against atmospheric pressure, of wells completed for production in such portion of such formation, without stimulation, is not expected to exceed the production rate determined in accordance with the table in this paragraph (b)(2). Such expected stabilized, pre-stimulation production rate is to be determined through an arithmetic mean averaging of the known stabilized, pre-stimulation production rates obtained from the wells that penetrate, and have a pay section in, such portion of such formation.

If the average depth to the top of the formation (in feet)	but does not exceed--	The maximum allowable production rate of natural gas (in Mcf per day) may not exceed--
0.....	1,000	44
1,000.....	1,500	51
1,500.....	2,000	59
2,000.....	2,500	68
2,500.....	3,000	79
3,000.....	3,500	91
3,500.....	4,000	105
4,000.....	4,500	122
4,500.....	5,000	141
5,000.....	5,500	163
5,500.....	6,000	188
6,000.....	6,500	217
6,500.....	7,000	251
7,000.....	7,500	290
7,500.....	8,000	336
8,000.....	8,500	388
8,500.....	9,000	449
9,000.....	9,500	519
9,500.....	10,000	600
10,000.....	10,500	693
10,500.....	11,000	802
11,000.....	11,500	927
11,500.....	12,000	1,071
12,000.....	12,500	1,238

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12,500.....	13,000	1,432
13,000.....	13,500	1,655
13,500.....	14,000	1,913
14,000.....	14,500	2,212
14,500.....	15,000	2,557

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(c) Notice to the Commission. Any jurisdictional agency making a determination that a formation, or portion thereof, qualifies as a tight formation will provide timely notice, in writing, of such determination, to the Commission. Such notice shall include the following to substantiate the jurisdictional agency's findings:

(1) Geological and geographical descriptions of the formation, or portion thereof, which is determined to qualify as a tight formation; and (2)

Geological and engineering data to support the determination, including (but not limited to):

(i) A map of the area for which a tight formation determination is being sought that clearly locates and identifies all data wells and all dry holes that penetrate the subject formation and all wells that are currently producing from the subject formation.

(ii) A well-by-well table of each in situ permeability value (in millidarcies), pre-stimulation stabilized production rate (in Mcf per day), and depth to the top of the formation (in feet) for each well, and the arithmetic mean of each set of data.

(iii) For any data that the jurisdictional agency excludes from the above calculations, a statement explaining why the data was excluded.

(iv) The underlying well test, well logs, cross-sections, or other data sources, and all calculations performed to derive the formation tops, permeability values, and pre-stimulation stabilized production rates shown in the well-by-well table.

(v) Any other information that the jurisdictional agency deems relevant and/or that the jurisdictional agency relied upon in making its determination.

#### Sec. 270.306 Devonian shale wells in Michigan.

A person seeking a determination that natural gas is being produced from the Devonian Age Antrim shale in Michigan shall file an application that contains the following items:

(a) **FERC** Form No. 121;

(b) All well completion reports;

(c) A gamma ray log from the closest available well bore (producing or dry hole) that is within a one mile radius of the well for which a determination is sought, with superimposed indications of:

(1) The shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section penetrated by the well bore; and

(2) The boundary between the Antrim shale and the overlying formation (Berea Sandstone, Ellsworth, Bedford, or Sunbury shales, or their equivalents);

(d) A location plat showing the well for which the determination is sought and the well for which a gamma ray log has been filed;

(e) A mud log from the well for which the determination is sought, with a detailed description of samples taken from 10-foot, or less, intervals through-out the Devonian age stratigraphic section penetrated by the well bore;

(f) A driller's log, or similar report, from the well for which the determination is sought, indicating the general characteristics of the strata penetrated and the corresponding depths at which they are

encountered throughout the Devonian age stratigraphic section penetrated by the well bore;

(g) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(h) A sworn statement:

(1) Calculating the percentage of footage of the producing interval (or the Antrim Shale in the event the well is a dry hole) in the well for which a gamma ray log was submitted which is not Devonian shall as indicated by a gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the Devonian age stratigraphic section penetrated by the well bore for which the submitted gamma ray log is equal to or less than 5 percent;

(3) Attesting that the natural gas is being produced from the Devonian Age Antrim shale through:

(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980 and

(4) Attesting the applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

Subpart D--Identification of State and Federal Jurisdictional Agencies

Sec. 270.401 Jurisdictional agency.

(a) Definition. With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), "jurisdictional agency" means the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas.

(b) The jurisdictional agency for wells located on Federal lands in each state are:

(1) Alabama--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(2)(i) Alaska, Anchorage Field Office--Assistant District Manager for Mineral Resources, Bureau of Land Management, 6831 Abbott Loop Road, Anchorage, AK 99507.

(ii) Alaska, Northern Field Office--Assistant District Manager for Mineral Resources, Bureau of Land Management, 1150 University Avenue, Fairbanks, AK 99709.

(3)(i) Arizona, except for the Navaho and Hopi Indian Reservations--Deputy State Director for Mineral Resources, Bureau of Land Management, PO Box 555, Phoenix, AZ 85000-0555.

(ii) Arizona, Navaho and Hopi Indian Reservations--District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(4) Arkansas--Chief, Branch of Resources, Planning & Protection,

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Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(5) California, except Naval Petroleum Reserve No. 1 (Elk Hills) and No. 2 (Buena Vista)--Chief, Branch of Fluid and Solid Minerals,

Bureau of Land Management, Division of Mineral Resources (C-920), 2800 Cottage Way, Suite W-1834, Sacramento, CA 95825.

(6) Colorado--Deputy State Director for Resource Services, Bureau of Land Management, Colorado State Office (CO-930), 2850 Youngfield Street, Lakewood, CO 80215.

(7) Florida and Georgia--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(8) Idaho--Deputy State Director Resources and Science, Bureau of Land Management, Idaho State Office (931), 1387 Vinnell Way, Boise, ID 83709.

(9) Illinois, Indiana, and Iowa--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(10) Kansas--Deputy State Director for Resource Services, Bureau of Land Management, Colorado State Office (CO-931), 2850 Youngfield Street, Lakewood, CO 80215.

(11) Kentucky, Louisiana, Maryland, Michigan, Mississippi, and Missouri--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(12) Montana--Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources, PO Box 36800, Billings, MT 59107.

(13) Nebraska--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(14) Nevada--State Director, Bureau of Land Management, Nevada State Office (NV-92000), PO Box 12000, Reno, NV 89520.

(15)(i) New Mexico, Northern New Mexico--Field Office Manager, Bureau of Land Management, Albuquerque Field Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(ii) New Mexico, Southern New Mexico--Field Office Manager, Bureau of Land Management, Roswell Field Office (NGPA), 2909 West Second Street, Roswell, NM 88201.

(16) New York and North Carolina--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(17) North Dakota--Chief, Branch of Fluid Minerals, Bureau of Land Management, Division of Mineral Resources, PO Box 36800, Billings, MT 59107.

(18) Ohio--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(19)(i) Oklahoma, except the Osage Reservation--Field Office Manager, Bureau of Land Management, Tulsa Field Office (NGPA), 7906 East 33rd Street, Suite 101, Tulsa, OK 74145.

(ii) Oklahoma, the Osage Reservation only--Superintendent, Osage Indian Agency, Bureau of Indian Affairs, U. S. Department of the Interior, Pawhuska, OK 74056.

(20) Oregon--Deputy State Director, Planning, Use, and Protection, Bureau of Land Management, Oregon State Office, PO Box 2965, Portland, OR 97208.

(21) Pennsylvania and South Carolina--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(22) South Dakota--Chief, Branch of Fluid Minerals, Bureau of Land Management, Division of Mineral Resources, PO Box 36800 Billings, MT 59107.

(23) Tennessee--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(24) (i) Texas, east of the 100th Meridian--Field Office Manager, Bureau of Land Management, Tulsa Field Office (NGPA), 7906 East 33rd

Street, Suite 101, Tulsa, OK 74145.

(ii) Texas, west of the 100th Meridian--Field Office Manager, Bureau of Land Management, Roswell Field Office (NGPA), 2909 West Second Street, Roswell, NM 88201.

(25) (i) Utah, except for the Navajo and Hopi Indian Reservations--Deputy State Director for Natural Resources, Bureau of Land Management, Utah State Office (U-930), 324 South State Street, Suite 301, Salt Lake City, UT 84111.

(ii) Utah, the Navajo and Hopi Indian Reservations only--Field Office Manager, Bureau of Land Management, Albuquerque Field Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(26) Virginia--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(27) Washington--Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, PO Box 2965, Portland, OR 97208.

(28) West Virginia--Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(29) (i) Wyoming, excluding Naval Petroleum Reserve No. 3 (Teapot Dome) Casper Field Office--Field Office Manager, Bureau of Land Management, 1701 East E Street, Casper, WY 82601.

(ii) Rawlins Field Office--Field Office Manager, Bureau of Land Management, PO Box 2407, Rawlins, WY 82301.

(iii) Rock Springs Field Office--Field Office Manager, Bureau of Land Management, 280 Highway 191 North, Rock Springs, WY 82901.

(iv) Worland Field Office--Field Office Manager, Bureau of Land Management, PO Box 119, Worland, WY 82401.

(c) The jurisdictional agency for wells located on Other lands in each state are:

(1) Alabama--State Oil and Gas Board, 420 Hackberry Lane, P O Box 869999, Tuscaloosa, AL 35486-9780.

(2) Alaska--Department of Natural Resources, Oil & Gas Division, 550 West 7th Avenue, Anchorage, AK 99501.

(3) Arizona--Oil and Gas Conservation Commission, 416 West Congress Street, Suite 100, Tucson, AZ 85701

(4) Arkansas--Oil & Gas Commission, PO Box 1472, El Dorado, AR 71730-1472.

(5) California--Department of Conservation, Division of Oil & Gas, 801 K Street, MS24-01, Sacramento, CA 95814.

(6) Colorado--Oil & Gas Conservation Commission, 1120 Lincoln, Suite 801, Denver, CO 80203.

(7) Florida--Administrator Oil and Gas, Bureau of Geology, Department of Natural Resources, 903 West Tennessee Street, Tallahassee, FL 32304.

(8) Georgia--Department of Natural Resources, Geologic & Water Resources Division, 19 Martin Luther King Drive, SW, Atlanta, GA 30334.

(9) Idaho--Idaho Public Utilities Commission, Statehouse Mail, Boise, ID 83720.

(10) Illinois--Department of Natural Resources, Oil & Gas Division, 524 South 2nd Street, Springfield, IL 62701.

(11) Indiana--Department of Natural Resources, Oil & Gas Division, 402 West Washington Street, Room 256 Indianapolis, IN 46204.

(12) Kansas--Kansas Corporation Commission, Finney State Office

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Building, 130 South Market, Room 2078, Wichita, KS 67202-3802.

(13) Kentucky--Public Service Commission, 211 Sower Blvd., PO Box 6615, Frankfort, KY 40602-0615.

(14) Louisiana--Department of Natural Resources, Office of Conservation, PO Box 94275, Baton Rouge, LA 70804.

(15) Maryland--Department of Natural Resources, Tawes State Office

Building., Annapolis, MD 21404.

(16) Michigan--Department of Environmental Quality, Geological Survey Division, Hollister Building, PO Box 30473, Lansing MI 48909.

(17) Mississippi--State Oil & Gas Board, 500 Graymont Avenue, Suite E. Jackson, MS 39202.

(18) Missouri--Department of Natural Resources Geology and Survey Division, PO Box 250, 111 Fairgrounds Road, Rolla, MO 65402.

(19) Montana--Department of Natural Resources and Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, MT 59102.

(20) Nebraska--Oil & Gas Conservation Commission, Box 399, Sidney, NE 69162.

(21) Nevada--Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.

(22) New Mexico--Department of Energy and Minerals and Natural Resources, Oil Conservation Division, 2040 S. Pacheco Street, Santa Fe, N4 87505.

(23) New York--New York State Department of Environmental Conservation, Division of Mineral Resources, Bureau of Oil and Gas Regulation, 50 Wolf Road, Albany, NY 12233-6500.

(24) North Carolina--Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, NC 27611.

(25) North Dakota--Industrial Commission, State Capitol, 600 East Boulevard Avenue, Department 405, Bismarck, ND 58505.

(26) Ohio--Department of Natural Resources, Division of Oil and Gas 4383 Fountain Square Drive, Columbus, OH 43224-1362.

(27) Oklahoma---Corporation Commission, 300 Jim Thorpe Building, PO Box 52000-2000, Oklahoma City, OK 73152-2000.

(28) Oregon--Department of Geology & Mineral Industries, 800 N.E. Oregon Street, #28 Portland, OR 972332.

(29) Pennsylvania `` Department of Conservation and Natural Resources, PO Box 8767, Harrisburg, PA 17105-8767.

(30) South Carolina--South Carolina Public Service Commission, PO Drawer 11649, Columbia, SC 29211.

(31) South Dakota--Oil and Gas Supervisor, Department of Environment and Natural Resources, 2050 West Main, Suite 1, Rapid City, SD 57702.

(32) Tennessee--Office of Conservation, Division of Geology, 401 Church Street, Nashville, TN 37243.

(33) Texas--Railroad Commission Oil and Gas Division, 1701 North Congress Avenue, PO Box 12967, Austin, TX 78711-2967.

(34) Utah---Department of Natural Resources, Division of Oil, Gas and Mining, PO Box 145801 West North Temple, Suite 1210, Salt Lake City, UT 84114-5801.

(35) Virginia--Department of Mines, Minerals & Energy, Division of Gas and Oil, PO Box 1416, Abingdon, VA 24210.

(36) Washington--Department of Natural Resources, Geology and Earth Resources Division, PO Box 47001, Olympia, WA 98504.

(37) West Virginia---Division of Environmental Protection, Office of Oil and Gas, #10 McJunkin Road, Nitro, WV 25143-2506.

(d) Federal lands. For purposes of this section, Federal lands means:

(1) All lands leased under:

(i) The Mineral Lands Leasing Act, as amended, 30 U.S.C. 181 et seq.; and

(ii) The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351 et seq.; and

(2) All Indian lands which are under the supervision of the United States Geological Survey or any successor federal agency (30 CFR part 221); and

(3) All Indian lands which are under the supervision of the Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior.

(e) Divided-interest leases. Unless an agreement under this

Building., Annapolis, MD 21404.

(16) Michigan--Department of Environmental Quality, Geological Survey Division, Hollister Building, PO Box 30473, Lansing MI 48909.

(17) Mississippi--State Oil & Gas Board, 500 Graymont Avenue, Suite E, Jackson, MS 39202.

(18) Missouri--Department of Natural Resources Geology and Survey Division, PO Box 250, 111 Fairgrounds Road, Rolla, MO 65402.

(19) Montana--Department of Natural Resources and Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, MT 59102.

(20) Nebraska--Oil & Gas Conservation Commission, Box 399, Sidney, NE 69162.

(21) Nevada--Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.

(22) New Mexico--Department of Energy and Minerals and Natural Resources, Oil Conservation Division, 2040 S. Pacheco Street, Santa Fe, NM 87505.

(23) New York--New York State Department of Environmental Conservation, Division of Mineral Resources, Bureau of Oil and Gas Regulation, 50 Wolf Road, Albany, NY 12233-6500.

(24) North Carolina--Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, NC 27611.

(25) North Dakota--Industrial Commission, State Capitol, 600 East Boulevard Avenue, Department 405, Bismarck, ND 58505.

(26) Ohio--Department of Natural Resources, Division of Oil and Gas 4383 Fountain Square Drive, Columbus, OH 43224-1362.

(27) Oklahoma---Corporation Commission, 300 Jim Thorpe Building, PO Box 52000-2000, Oklahoma City, OK 73152-2000.

(28) Oregon--Department of Geology & Mineral Industries, 800 N.E. Oregon Street, #28 Portland, OR 972332.

(29) Pennsylvania `` Department of Conservation and Natural Resources, PO Box 8767, Harrisburg, PA 17105-8767.

(30) South Carolina--South Carolina Public Service Commission, PO Drawer 11649, Columbia, SC 29211.

(31) South Dakota--Oil and Gas Supervisor, Department of Environment and Natural Resources, 2050 West Main, Suite 1, Rapid City, SD 57702.

(32) Tennessee--Office of Conservation, Division of Geology, 401 Church Street, Nashville, TN 37243.

(33) Texas--Railroad Commission Oil and Gas Division, 1701 North Congress Avenue, PO Box 12967, Austin, TX 78711-2967.

(34) Utah---Department of Natural Resources, Division of Oil, Gas and Mining, PO Box 145801 West North Temple, Suite 1210, Salt Lake City, UT 84114-5801.

(35) Virginia--Department of Mines, Minerals & Energy, Division of Gas and Oil, PO Box 1416, Abingdon, VA 24210.

(36) Washington--Department of Natural Resources, Geology and Earth Resources Division, PO Box 47001, Olympia, WA 98504.

(37) West Virginia---Division of Environmental Protection, Office of Oil and Gas, #10 McJunkin Road, Nitro, WV 25143-2506.

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(ii) The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351 et seq.; and

(2) All Indian lands which are under the supervision of the United States Geological Survey or any successor federal agency (30 CFR part 221); and

(3) All Indian lands which are under the supervision of the Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior.

(e) Divided-interest leases. Unless an agreement under this

paragraph provides otherwise, where a well is located on a divided-interest lease involving Federal (or Indian) and private (or State) ownership:

(1) The Federal jurisdictional agency will make the determination where the majority lease interest is Federal (or Indian);

(2) The State jurisdictional agency will make the determination where the majority lease interest is private (or State); and

(3) The State jurisdictional agency will make the determination where the lease is divided equally.

(f) Drilling units. Unless an agreement under paragraph (e) of this section provides otherwise, where a drilling unit is drained by two or more wells, the Federal jurisdictional agency will make the determination if the completion location of the well in question is located on a Federal (or Indian) lease, and the State jurisdictional agency will make the determination if the completion location of the well in question is located on a private (or State) lease.

(g) Agreements. If a jurisdictional agency that has jurisdiction over Federal lands enters into an agreement with a jurisdictional agency that has jurisdiction over State lands that either authorizes the State jurisdictional agency to make determinations for wells located on Federal lands or the Federal agency to make determinations for wells located on State lands, such agreement shall be filed with the Commission. Upon the filing of such an agreement, the agency so authorized will be considered to be the jurisdictional agency for wells on the lands subject to the agreement.

#### Subpart E--Commission Review of Jurisdictional Agency Determinations

##### Sec. 270.501 Publication of notice from jurisdictional agency.

(a) Upon receipt of a notice of determination by a jurisdictional agency under Sec. 270.204, the Commission will send an acknowledgment to the applicant and will post acknowledgment in the Commission's Public Reference Room and on the Commission's web site. Another source of the information is the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

(b) The acknowledgment will contain the following:

(1) The date on which the jurisdictional agency notice was received;

(2) Certain information contained in **FERC** Form No. 121;

(3) A statement that the application and a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent the material is treated as confidential under Sec. 270.506, at the offices of the Commission; and

(4) A statement that persons objecting to the final determination may, in accordance with this subpart, file a protest with the Commission within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to this section.

##### Sec. 270.502 Commission review of final determinations.

(a) Review by Commission. Except as provided in paragraphs (b), (c) and (d)

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of this section, a determination submitted to the Commission by a jurisdictional agency will become final 45 days after the date on which the Commission received notice of the determination, unless within the

45 day period, the Commission:

(1) Makes a preliminary finding that:

(i) The determination is not supported by substantial evidence in the record on which the determination was made; or  
 (ii) The determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

(2) Issues written notice of such preliminary finding, including the reasons therefor. Copies of the written notice will be sent to the jurisdictional agency that made the determination, to the persons identified in the notice under Sec. 270.204 of such determination, and to any persons who have filed a protest.

(b) Incomplete notice. Notwithstanding the provisions of paragraph (a) of this section, the 45-day period for Commission review of a determination will not begin if:

(1) The notice forwarded to the Commission pursuant to Sec. 270.204 does not contain all the material specified therein; and

(2) The Commission notifies the jurisdictional agency, within 45 days after the date on which the Commission receives notice of the determination, that the notice is incomplete.

(c) Withdrawal of notice. (1) The jurisdictional agency may withdraw a notice of determination by giving notice as specified in paragraph (c)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraph (a) or (g)(4) of this section. Such notice must include the jurisdictional agency's reasons for the withdrawal.

(2) Withdrawal of a notice of determination will take effect at such time as the jurisdictional agency has notified the Commission, and the parties to the proceeding before the agency, of such withdrawal.

(3) Withdrawal of a notice of determination shall nullify such notice of determination.

(d) Withdrawal of application. (1) An applicant may withdraw an application for a determination which is before the Commission by giving notice as specified in paragraph (d)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraph (a) or (g)(4) of this section.

(2) Withdrawal of an application will take effect at such time as the applicant has notified the Commission and the jurisdictional agency.

(3) Withdrawal of an application will nullify such application and the notice of determination on such application.

(e) Public notice. The Commission will publish notice of the preliminary finding in the Federal Register and will post the notice in its Public Reference Room. The notice will set forth the reasons for the preliminary finding.

(f) Procedures following notice of preliminary finding. Any state or federal agency or any person may submit, within 30 days after issuance of the preliminary finding, written comments, and request an informal conference with the Commission staff. Any jurisdictional agency, any state agency and any person receiving notice under paragraph (a)(2) of this section may request an informal conference with the Commission staff. All timely requests for conferences will be granted. Notice of, and permission to attend, such conferences will be given to persons identified in paragraph (a)(2) of this section and to state or federal agencies or persons who submitted comments under this paragraph.

(g) Final orders. (1) In any case in which a protest was filed with the Commission and a preliminary finding was issued, the Commission will issue a final order within 120 days after issuance of the

preliminary finding.

(2) In any case in which no protest was filed with the Commission and a preliminary finding was issued, the Commission may issue a final order within 120 days after issuance of the preliminary finding.

(3) A final order issued under paragraph (g)(1) or (g)(2) of this section will either affirm, reverse, or remand the determination of the jurisdictional agency. Such order will state the specific basis for the Commission's action. Notice of the issuance of such order will be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency, and to participants in the proceeding before the Commission under paragraph (d) of this section and under Sec. 270.503.

(4) In the event that the Commission fails to issue a final order within 120 days after issuance of the preliminary finding, the determination of the jurisdictional agency shall become final.

#### Sec. 270.503 Protests to the Commission.

(a) Who may file. Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to Sec. 270.204.

(b) Grounds. Protests may be based only on the grounds the final determination is:

(1) Not supported by substantial evidence;

(2) Not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the determination was made;

(3) Not consistent with information submitted with the protests for inclusion in the public records of the Commission, which information was not part of the record on which the determination was made; or

(4) Not based on an application which complied with the filing requirements set forth in this part.

#### Sec. 270.504 Contents of protests to the Commission.

Each protest must include:

(a) An identification of the determination protested;

(b) The name and address of the person filing the protest;

(c) A statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for the nonparticipation;

(d) A statement of the effect the determination will have on the protestor;

(e) A statement of the precise grounds under Sec. 270.503(f) for the protest, and all supporting documents or references to any information relied on which is in the record on which the determination is based or is in or to be inserted in the public files of the Commission; and

(f) A statement that the protestor has served, in accordance with Sec. 385.2010 of this chapter, a copy of the protest together with all supporting documents on the jurisdictional agency and all persons listed in the notice of determination filed pursuant to Sec. 270.204.

#### Sec. 270.505 Procedure for reopening determinations.

(a) Grounds. At any time subsequent to the time a determination becomes final pursuant to this subpart, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

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(1) In making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) There was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) Contents of petition. A petition to reopen the determination proceedings must contain the following information, under oath:

(1) The name and address of the person filing the petition;

(2) The interest of the petitioner in the outcome of the determination proceeding;

(3) The statement of material fact that is alleged to be untrue or omitted;

(4) A statement explaining why the outcome of the determination proceeding would have been different had the statement or omission not occurred; and

(5) Copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the Commission.

(c) Procedures after reopening. In the event the Commission reopens a determination pursuant to this section it will:

(1) Give notice to the jurisdictional agency and all persons who participated before both that agency and the Commission in the proceedings resulting in the determination in question;

(2) Permit the jurisdictional agency and other persons receiving notice pursuant to paragraph (c)(1) of this section to submit whatever documentary evidence such agency or persons deem relevant; and

(3) Take such other action or hold or cause to be held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) Final order of Commission. Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it will vacate the determination.

#### Sec. 270.506 Confidentiality.

(a) Except as provided in paragraph (b) of this section, the Commission will accord confidential protection to, and not disclose to the public, any information submitted by a jurisdictional agency under Sec. 270.204, if:

(1) The jurisdictional agency, on its own motion or on request of the applicant, afforded such information confidential treatment before the jurisdictional agency; and

(2) The agency order or the applicant's request stated grounds for confidential treatment which fall within one of the exemptions described in paragraphs (1) through (9) of 5 U.S.C. 552(b).

(b) Upon receipt of a request for disclosure of information treated as confidential under paragraph (a) of this section, the Commission will determine in accordance with 5 U.S.C. 552 whether the information is exempt. 5 U.S.C. 552(b). If it determines the information is not exempt, the information will be made public. If it determines the information is exempt, the Commission will not make it public unless determines that its conduct of the proceeding to review the jurisdictional agency determination requires making such information available to the public or to particular parties, subject to conditions (including a protective order) as the Commission may prescribe. Before making any information public under this paragraph, the Commission will

provide at least 5 days notice to the person who submitted the information.

PART 375--THE COMMISSION

2. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352.

3. In Sec. 375.307, paragraph (p) is added to read as follows:

Sec. 375.307 Delegation to the Director of the Office of Markets, Tariffs, and Rates

\* \* \* \* \*

(p) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice of a determination pursuant to Sec. 270.502(b) of this chapter that the notice is incomplete under Sec. 270.204 of this chapter.

(2) Issue preliminary findings under Sec. 270.502(a)(1) of this chapter.

PART 381--FEES

Subpart D--Fees Applicable to the Natural Gas Policy Act of 1978

4. The authority citation for part 381 continues to read as follows:

Authority: 15 U.S.C. 717-717w; 16 U.S.C. 791-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

5. Section 381.401 is added to read as follows:

Sec. 381.401 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is \$115. The fee must be submitted in accordance with subpart A of this part and Sec. 270.301(c) of this chapter.

Note: The form and appendix that follow will not appear in the code of federal **regulations**.

Federal Energy Regulatory Commission  
Washington D.C.

**FERC** Form-121

(1/2000)

Form Approved

OMB No. 1902-0038

(Expires )

## Application for determination

## General Instructions

1. Purpose: This form is to be used to provide basic data on each application for a well category determination that is filed with a Jurisdictional Agency to qualify the natural gas produced from such well as (a) occluded natural gas produced from coal seams, under section 107(c)(3) of the Natural Gas Policy Act of 1978 [15 U.S.C. 3301] (NGPA), (b) natural gas produced from Devonian shale, under section 107(c)(4) of the NGPA, or (c) natural gas produced from a designated tight formation, under section 107(c)(5) of the NGPA, in order to substantiate the eligibility of such natural gas for a tax credit under Section 29 of the Internal Revenue Code. The Commission will use this data, together with the other information contained in the Jurisdictional Agency's notice of determination, to evaluate whether substantial evidence exists to support the determination.

2. Who must submit: Anyone who files an application with a Jurisdictional Agency identified under Section 270.401 of the Commission's **Regulations** for a well category determination.

3. What and where to submit: The original of this form, and all of the information required by Section 270.302, 270.303, 270.304, or 270.306 of the Commission's **Regulations** must be filed with the Jurisdictional Agency. The Jurisdictional Agency making a determination must file the original of this form, with all of the other information required under the applicable Commission **Regulations**, with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426. Applicants should retain one copy of each completed form for their files for 4 years.

4. These are mandatory filing requirements.

5. The data on this form are not considered confidential and will not be treated as such.

6. Where to send comments on the public reporting burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering

[ Page 45873]]

and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 (Attention: Mr. Michael Miller, CI-1) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). Persons subject to providing this information will not be penalized for failing to respond to these collections of information unless the collection of information displays a valid OMB control number.

A. THE NGPA WELL CATEGORY DETERMINATION IS BEING SOUGHT FOR A WELL PRODUCING:

- A1  occluded natural gas from coal seams.
- A2  natural gas from Devonian shale.
- A3  natural gas from a designated tight formation.

B. FOR ALL APPLICATIONS FOR DETERMINATION PROVIDE THE FOLLOWING:

1. Well Name and No.\\*\-----
2. Completed in (Name of Reservoir)\\*\-----
3. Field\\*\-----
4. County\\*\-----
5. State\\*\-----
6. API Well No. (14 digits maximum. If not assigned, leave blank.)
9. Measured Depth of the Completed Interval (in feet)  
TOP  
BASE

C. APPLICANT'S MAILING ADDRESS AND THE IDENTITY OF THE PERSON WHO IS RESPONSIBLE FOR APPLICATION:

1. Applicant's Name\\*\-----
2. Street\\*\-----
3. City\\*\-----
4. State\\*\-----
5. Zip Code-----
- 6 Name of Person Responsible\\*\-----
- 7 Title of Such Person\\*\-----
- 8 Signature-----  
and Phone No. ( ) -  
\\*\Signifies that line entry may contain up to 35 letters and/or numbers.

Appendix--List of Commentors

Alabama State Oil & Gas Board  
The American Gas Association  
American Petroleum Institute  
Burlington Resources Inc.  
Calumet Oil  
Coalbed Methane Association of Alabama  
Colorado Oil and Gas Conservation Commission  
Colorado Oil & Gas Association  
Columbia Natural Resources  
Cross Timbers Oil Company  
United States Department of Energy  
United States Department of Interior, Bureau of Land Management  
Domestic Petroleum Council  
Dominion Resources Inc.  
Equitable Production Company  
H<sub>2</sub> Resources, Inc.  
Independent Oil and Gas Association  
Independent Oil & Gas Association of New York  
Independent Oil & Gas Association of Pennsylvania  
Independent Oil & Gas Association of West Virginia  
Independent Petroleum Association of America and Natural Gas Supply  
Association  
Interstate Oil & Gas Compact Commission  
Kansas Corporation Commission  
Kentucky Public Service Commission  
Louisiana Department of Natural Resources Office of Conservation  
Marathon Oil Company  
State of Michigan Department of Environmental Quality  
New Mexico Oil & Gas Association  
Non-Conventional Energy Inc.  
New York State Department of Environmental Conservation  
Northwest Fuel Development Inc  
Ohio Department of Natural Resource  
Oklahoma Corporation Commission  
Producer Coalition  
Railroad Commission of Texas  
Texas Independent Producers & Royalty Owners

Union Pacific Resources  
Vastar Resources, Inc  
Virginia Department of Mines, Minerals & Energy  
Virginia Oil & Gas Association  
West Virginia Division of Environmental Protection  
Williams Production Co.  
[FR Doc. 00-18498 Filed 7-25-00; 8:45 am]  
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