credit will be amended on a quarterly basis to reflect the Commonwealth of Puerto Rico's retention of 25 percent of the value of those nonfraud claims which did not result from error on the part of the State agency and 50 percent of the value of fraud claims collected, as well as full retention by FNS of all administrative error overissuance recoveries.

(b) The Commonwealth of Puerto Rico shall submit monthly a Form FNS–209, Status of Claims Against Households, to detail its activities relating to claims against households. This report is due no later than 30 days after the end of each calendar month in which the Commonwealth of Puerto Rico undertakes claims-related activities. In addition to reporting the amount of funds recovered from fraud claims each month on Form FNS–209, the Commonwealth of Puerto Rico shall also report these amounts on other letter of credit documents as required. In accounting for fraud claims collections, the Commonwealth of Puerto Rico shall include cash repayments and the value of allotments recovered or offset against restoration of lost benefits. However, the value of allotments reduced during periods of disqualification shall not be considered recovered allotments and shall not be used to offset a fraud claim. In addition, the Commonwealth of Puerto Rico shall establish controls to ensure that officials responsible for fraud determinations will not benefit from the Commonwealth of Puerto Rico's share of recoveries.

(c) In cases where FNS has billed the Commonwealth of Puerto Rico for negligence, any amounts collected from households for which overissuances were caused by the Commonwealth of Puerto Rico's negligence will be credited by FNS. When submitting these payments, Puerto Rico shall include a note in the remarks section of the FNS–209 which shows the amount that should be credited against the Commonwealth of Puerto Rico's bill.

(91 Stat. (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Program, No. 10.551, Food Stamps)

Dated: April 7, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-10087 Filed 4-18-83; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. 247]

Food Stamp Program; Disclosure of Information and Noncompliance with Other Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rule contains proposed regulations based on provisions of the Food Stamp and Commodity Distribution Amendments of 1981 and the Food Stamp Act Amendments of 1982 relating to the disclosure of information and noncompliance with other programs. The proposal would provide for disclosure of casefile information to the Comptroller General, law enforcement officials, and persons responsible for administering other Federal assistance programs and federally assisted State assistance programs. In addition, this rulemaking would prohibit State agencies from increasing the benefits to households which have decreased income resulting from penalties imposed for intentional failure to comply with the requirements of another means-tested program. These changes would provide those persons responsible for administering or enforcing the requirements of the Food Stamp Program and other means-tested programs additional mechanisms for detecting recipients who have incorrectly reported their household's circumstances and taking appropriate action to ensure program integrity.

DATE: Comments on this proposed rulemaking must be received on or before June 20, 1983 to be assured of consideration.

ADDRESS: Comments should be submitted to Judith M. Seymour, Acting Supervisor, Eligibility and Certification Section, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Ms. Seymour at the above address or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been classified "not major." The proposed rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this proposed rule would not affect the business community, it would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The proposed rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that the proposal would not have a significant impact on a substantial number of small entities. The proposal would implement those provisions of the Food Stamp and Commodity Distribution Amendments of 1981 and the Food Stamp Act Amendments of 1982 relating to the disclosure of information and noncompliance with other programs. State and local welfare agencies will be affected to the extent that they administer the Program. Those most affected will be individuals participating in the Program who are suspected of having provided incorrect information to obtain benefits under another means-tested program or who have experienced decreases in income as result of penalties imposed under other such means-tested programs.

Paperwork Reduction Act

This regulation does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97-98, enacted on December 22, 1981) contained a provision (Section 1319) which states that State plans of operation shall provide for access to applicant and recipient records by the Comptroller General of the United States for audit and examination purposes, and by local, State of Federal law enforcement officials for the purpose of investigating possible violations of the Food Stamp Act and regulations. This proposed rulemaking would incorporate this provision of the Food Stamp and Commodity Distribution Amendments of 1981 into the federal regulations.

The Food Stamp Act Amendments of 1982 (Pub. L. 97-253, enacted on September 8, 1982) contained a provision (Section 169) stating that State plans of operation shall provide for access to information included in food stamp applications by administrators of other Federal assistance programs and federally assisted State assistance programs. This proposed rule would also incorporate into Federal Regulations this provision of the 1982 Amendments. For purposes of clarity, this proposed rule identifies such programs as means-tested programs.

In addition, the 1982 Amendments contained a provision (Section 164) which prohibits any increase in food stamp benefits to households on which penalties, resulting in decreases in income, have been imposed for *intentional failure to comply* with Federal, State or local welfare laws. This provision of the 1982 Amendments would also be implemented through this proposed rulemaking, thereby ensuring that the Food Stamp program does not mitigate the penalties imposed by other programs in which food stamp recipients also participate.

Disclosure of Information

Current Food Stamp Program regulations limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the Food Stamp Act or regulations, the Food Distribution Program, other federally aided, means-tested assistance programs such as Aid to Families with Dependent Children (AFDC), Medicaid, Supplemental Security Income (SSI), and General Assistance (GA) programs subject to the joint processing requirements. The regulation also permits the sharing of Food Stamp Program participation lists with the Food Distribution Program.

In implementing the 1982 amendment permitting the disclosure of information to officials administering or enforcing Federal assistance programs or federally assisted State programs, the Department is proposing deletion from the regulation of the reference to specific programs and insertion of the broader statutory language.

Congress included the provision in the Food Stamp and Commodity Distribution Amendments of 1981 which states that the State plans of operation shall provide to the Comptroller General access to Food Stamp Program records containing data on individual program recipients to clarify that it never meant to deny GAO access to such records. (Vol. 127 Cong. Rec. H7612 (daily ed. October 22, 1881) (remarks of Rep. Wampler)). In order to clarify that local, State, and Federal law enforcement officials are considered to be directly connected with the enforcement of the Food Stamp Program when conducting investigations of alleged Program violations, language was included in the 1981 Amendments stating that State plans of operation shall provide for access to applicant information by such officials. The proposed rule would, therefore, add language to the current regulations to clarify the access authority of the Comptroller General and local, State and Federal law enforcement officials. (See 7 CFR 272.1(c)).

Noncompliance with Other Programs

Pursuant to the 1977 Food Stamp Act, as amended, current Food Stamp Program regulations allow for an increase in food stamp benefits whenever a household has its income reduced for any reason. Consequently, when a welfare program penalizes a food stamp recipient household by imposing a reduction in cash benefits for intentional failure to comply with its requirements, food stamp benefits *increase* because the household has less countable income. Congressional action taken in the 1982 Food Stamp Amendments (Section 164) prohibits such an increase.

Legislative history states "Substantial testimony before the Committee has indicated that the food stamp program should reinforce, not mitigate, the penalties imposed by the other programs that food stamp recipients also participate in, and the Committee's amendment would do so". (S. Rep. No. 97-504, 97th Cong. 2nd Sess. 144(1982)). A portion of testimony stated that no household should benefit in one program from receiving benefits fraudulently in another. Further testimony suggested that the money owed because of a fraud situation is really a debt that the recipient owes, and should be treated like any other debt, and therefore the full amount to which the recipient is entitled to before the reduction should be counted as income.

When drafting this proposed rulemaking the Department considered defining "intentional failure to comply". The Department is not proposing to further define intentional failure to comply beyond the language in the statute. Instead, when another program has determined that a recipient action is an intentional failure to comply, the Food Stamp Program will accept that determination. The Department also considered which programs would be identifies as "Federal, State or local welfare programs." The Department considers these programs to be any that are means-tested and in which public funds are used to pay for the benefits. Such programs would include SSI, AFDC, GA, and other means-tested assistance programs under other titles. The Department does not believe that the statutory language contemplates application of this provision to non-means-tested programs, such as Social Security, Railroad Retirement, Veterans' Benefits, etc.

This proposed rule would require that each State agency take appropriate action to ensure that food stamp benefits do not increase as a result of such noncompliance. Even if a recipient's benefit level in another program is reduced to zero as a result of recoupment because of intentional failure to comply with that program's rules, food stamp benefits will not be increased. Following is an example of how to handle such benefit reductions in means-tested programs. If an AFDC recipient has intentionally underreported his or her income, the AFDC benefit is first reduced to reflect the corrected income and then further reduced by the recoupment amount. In this instance, the food stamp calculations would reflect the initial, reduced amount *before* recoupment. The Department believes that each State agency can best decide how to ensure that food stamp benefits do not increase in such situations and, consequently, the proposed rule does not specify the procedures to be followed.

Implementation

State agencies would begin implementing the portions of this rule regarding the disclosure of information and regarding noncompliance with other programs no later than the first day of the month 30 days following publication of the final rule. In the instance of noncompliance, State agencies would take appropriate action as instances arise. There is no requirement that a casefile search should be done upon implementation, but State agencies may take such action if they wish.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, it is proposed that 7 CFR Parts 272 and 273 be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, paragraph (c)(1) is revised and a new subparagraph (62) added to paragraph (g). The revisions and additions read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program, shall be restricted to the following persons:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, or federally assisted State programs which provide assistance, on a means-tested basis, to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit and examination authorized by any other provision of law; and

(iii) Local, State or Federal law enforcement officials, upon their request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations.

* * * * *

(g) *Implementation.* * * *

(62) *Amendment 247.* State agencies would implement the provisions relative to disclosure of information and noncompliance with other programs no later than the first day of the month 30 days following publication.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.10, a new subparagraph (vi) is added to paragraph (e)(2) to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit levels—(1) Net Monthly Income.* * *

(2) *Eligibility and benefits:* * * *

(vi) For households whose income has been reduced aa a result of noncompliance with other program requirements, income calculation shall take into account specific procedures in § 273.11(j).

* * * * *

3. In § 273.11, a new paragraph (j) would be added to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(j) *Households with a decrease in income due to failure to comply.* The State agency shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in income has been imposed for intentional failure to comply with a Federal, State, or local welfare program which is means-tested and distributes publicly funded benefits. The procedures for determining food stamp benefits when there is such a decrease in income are as follows:

(1) When a recipient's benefits under a Federal, State, or local means-tested program (such as but not limited to SSI, AFDC, GA) are decreased due to intentional noncompliance, the State agency shall identify that portion of the decrease which is a penalty for intentional noncompliance.

(2) The State agency shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been deducted from the recipient's income.

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: April 11, 1983.

John H. Stokes, III,

Acting Administrator.

[FR Doc. 83-10068 Filed 4-18-83; 8:45 am]

BILLING CODE 3410-30-M

federal register

Tuesday
April 19, 1983

Part IV

Department of the Interior

Fish and Wildlife Service

Geological and Geophysical Exploration of the Coastal Plain, Arctic National Wildlife Refuge, Alaska; Final Rule

Record of Decision for Oil and Gas Exploration Within the Coastal Plain of the Arctic National Wildlife Refuge, Alaska; Rule-Related Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 37

Geological and Geophysical Exploration of the Coastal Plain, Arctic National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking establishes guidelines governing the carrying out of exploratory activities on the coastal plain of the Arctic National Wildlife Refuge. The promulgation of guidelines by regulation is required by subsection 1002(d)(1) of the Alaska National Interest Lands Conservation Act (ANILCA). These guidelines are based on the results of the continuing baseline study required by subsection 1002(c) and other information available to the Department of the Interior. They prescribe how to obtain approval to conduct exploratory activities and limitations on the ways in which such activities may be conducted. The purpose of such exploration is to obtain data and information about the oil and gas production potential of the coastal plain, which will be used in preparing a report to Congress. The report will contain, among other things, a recommendation on the desirability of further oil and gas exploration, development, and production in the area and an evaluation of their adverse effects on the refuge's fish and wildlife, their habitats, and other resources.

EFFECTIVE DATE: April 19, 1983.

ADDRESS: Those wishing to comment may mail their comments to: Robert A. Jantzen, Director, U.S. Fish and Wildlife Service, Attention: Associate Director for Wildlife Resources, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. James Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202) 343–4311.

SUPPLEMENTARY INFORMATION: These regulations were prepared by a Task Force headed by David McGillivary, Ecological Services, Region 7, U.S. Fish and Wildlife Service and Wilma Zellhoefer, Fish and Wildlife Biologist, Arctic National Wildlife Refuge, U.S. Fish and Wildlife Service.

Proposed rulemaking was published at 47 **Federal Register** 41060–41074 on September 16, 1982, and comments were invited for 45 days through November 1, 1982. Over 500 written comments were received from 71 sources including individuals, industry, conservation groups, academia, and Federal, State, and local government agencies, and Members of Congress. The U.S. Fish and Wildlife Service (Service) conducted two public hearings in Alaska to receive comments on the proposed regulations and accompanying draft Environmental Impact Statement (EIS). At these hearings, 13 people provided formal testimony on October 7, 1982 in Anchorage and 16 people provided formal testimony on October 12, 1982 in Kaktovik, where several others also participated in a general discussion.

The Service appreciates the interest shown in these guidelines. In very broad terms, commenters expressed two divergent points of view. Some thought that the guidelines are unnecessarily burdensome or restrictive, and some thought that they do not provide an adequate level of protection for refuge resources and values.

The following discussion summarizes the comments, suggestions and actions taken and presents itself in a section-by-section analysis of the final guidelines.

§ 37.1 Purpose. Amongst the few commentors specifically commenting on this section, there was a difference of opinion on whether the proposed rule correctly stated the purpose of the § 1002 program. While one commenter said that it accurately reflected congressional intent, another suggested that the § 1002 program is intended to have the dual goals of data collection and resource protection and that the proposed § 37.1 incorrectly subordinated the objective of avoiding significant harm to the objective of obtaining the best possible data. The Service disagrees with the latter view. Section 1002's purpose is to facilitate the controlled collection of data and information to be used by the Executive and Legislative Branches in deciding whether further exploration through stratigraphic test wells, development, and production of oil and gas within the coastal plain should be permitted, and if so whether any additional legal authorities are necessary to minimize or avoid adverse effects therefrom on the refuge's resources. While the guidelines fix ascertainment of the best possible data and information concerning oil and gas within the coastal plain as the goal of the § 1002 program in order to foster sound decisionmaking, implementation of this goal is not without constraint. The "no significant adverse effect" standard of § 1002(d)(1) is a limitation on the manner in which data collection activities may be authorized and carried out, which would not be necessary in the absence of data collection. The goal of conserving the refuge's resources is instead reflected in § 303(2) of ANILCA, 94 Stat. 2389 and 2390, 16 U.S.C. 668dd note, redesignating the refuge as a unit of the National Wildlife Refuge System (NWRS), and § 304(a) of ANILCA, 94 Stat. 2393, affirming application, except to the extent limited by ANILCA, of the laws governing administration of the NWRS to it. Nonetheless, without changing its intent, the Service has adopted this commenter's suggestion for changing and combining the third and fourth sentences of § 37.1 because the suggested language is simpler. Section 37.1 now states that the goal of the § 1002 program is to ascertain the best possible data and information without significantly adversely affecting the wildlife, its habitat, or the environment and without unnecessary duplication of exploratory activities. A few commenters criticized the rule as flawed for failing to state that the purpose of these guidelines is to provide maximum protection for the coastal plain's resources. This issue is discussed in the summary of comments on § 37.11.

Relying on § 1002(a) which says that the purpose of § 1002 is to "authorize" exploratory activity within the coastal plain, a few commenters criticized the second sentence of § 27.1 which says that § 1002 mandates an oil and gas exploration program. This statement is based on § 1002(d)(1) which directs the Secretary of the Interior to establish a regulatory framework for governing exploratory activities that are carried out on the coastal plain and § 1002(e)(2) which requires the Secretary to approve all exploration plans found to be consistent with the regulations. The Service realizes that no one, including the United States Geological Survey (GS), is required to submit an exploration plan and that it is possible that no exploration will be carried out.

A few commenters construed these guidelines as establishing a pre-leasing program. The Service disagrees with this construction. By their nature, the guidelines must focus on exploration, but § 37.4 is a disclaimer to the notion that authorization to conduct exploration confers in any manner a right to any discovered oil or gas, which includes any preferential leasing right.

Section 37.2 Definitions. Sixteen commenters made various comments on several of the definitions included in the proposed rule. Their remarks, plus the Service's changes in § 37.2, are summarized below.

Section 37.2(a) "Act." This definition was modified to reflect the amendment of section 1002 which was enacted on December 30, 1982 by section 110 of Pub.

L. 97–394, 96 Stat. 1982. This amendment added the following proviso to section 1002(e)(2)(C):

> And *Provided*, That the Secretary shall prohibit by regulation any person who obtains access to such data and information from the Secretary or from any person other than a permittee from participation in any lease sale which includes the areas from which the information was obtained and from any commercial use of the information. The Secretary shall require that any permittee shall make available such data to any person at fair cost.

The Service plans to implement this proviso on an interim basis through the adoption of §§ 37.4(b), 37.22(d)(3), 37.53(g) and 37.54(d). These interim final rules have been adopted without the benefit of public review and comment. They have been adopted to avoid the hiatus that would otherwise occur if the disqualifications against participation in future lease sales, the prohibition against commercial use of data and information obtained from the Secretary, and the requirement that permittees make raw data and information available to any person at fair cost, which are required to be implemented by regulation, were not implemented at the time these guidelines go into effect. The Service does, however, invite any person who is interested in commenting on §§ 37.4(b), 37.22(d)(3), 37.53(g) and 37.54(d) to submit written comments to Robert A. Jantzen, Director, U.S. Fish and Wildlife Service, Attention: Associate Director for Wildlife Resources, Department of the Interior, Washington, D.C. 20240 by June 3, 1983. Commenters may also offer their own suggestions for implementing section 110 of Pub. L. 97–394, as well as any amendments to the remainder of 50 CFR Part 37 that they feel are needed because of section 110.

Section 37.2(b) "Adequate protective cover." The definition of adequate protective cover drew several comments. Most commenters recommended that a specific physical standard be established for the minimum depths of snow and frost which would be considered adequate cover. The Service disagrees with this approach. Adequate protective cover is a concept which varies according to the substrate to be protected and the method of access used. For example, a rubber-tired Rolligon would have relatively less effect than a six-unit cat-train when travelling over tussock tundra with six inches of snow cover. Conversely, a D–9 Caterpillar tractor may cause no disturbance when travelling over a frozen mudflat with no snow cover, while potentially causing significant disturbance to an area of high microrelief cover by an average of six inches of snow. Because of the great variety in topography in the coastal plain, and the large number of different vehicles which may be used in the exploration program, the Service believes that a performance-based standard is a more effective safeguard than an operational standard and is, therefore, retaining the definition proposed.

The application of this standard will require to some degree the exercise of personal judgment, as two commenters noted. However, the permittee's compliance with this standard will be enforced by professionally trained and experienced Field Monitors who will be exercising their professional judgment as to whether the standard is being met under specific field conditions.

Section 37.2(e) Cultural resource. One commenter felt that this definition was too narrow and should be broadened to include contemporary Native culture. The Service disagrees. This provision is consonant with §§ 106 and 110 of the National Historic Preservation Act (NHPA), as amended, 16 U.S.C. 470f and 470h–2, its implementing regulations, 36 CFR Parts 60 and 800, and Executive Order 11593, 36 FR 8921 (May 13, 1971), 16 U.S.C. 470 note, concerning the protection of historic and cultural properties. This definition encompasses sites, structures, and objects significant in American history, including Native history and pre-history, but it properly does not cover resources of strictly contemporary Native cultural value, such as some recent sacred sites and cemeteries. Such contemporary cultural values are covered under other authorities and procedures, *e.g.*, the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, the American Indian Religious Freedom Act, 42 U.S.C. 1996, and Title VIII of ANILCA, 16 U.S.C. 3112–3126, concerning subsistence. For more information, see also the discussions of §§ 37.22 and 37.32 below.

Section 37.2(i) "Exploratory activities." One commenter criticized the proposed definition for encompassing all geophysical activities.

Although the Service recognizes that its regulatory definition is broader than the definition found in Section 1002(b)(2), which defines "exploratory activity" to mean surface geological exploration or seismic exploration, or both, for oil and gas within the coastal plain, it believes that the rule is not inconsistent with the statute. As suggested in the preamble to the proposed regulations, the Service wishes to enable a permittee to design an integrated exploration plan using phased exploratory methods, whereby reconnaissance-level data obtained by geophysical exploration methods other than seismic exploration, such as aerogravimetric and aeromagnetic surveys, can be used, should a permittee wish to do so, to help focus its attention on those areas where detailed seismic exploration may be warranted. In order to be approved, a permittee's exploration plan must be found to be consistent with the Service's guidelines. Therefore, so that an exploration plan involving geophysical survey methods other than seismic exploration could be approved, the Service has adopted a definition of exploratory activities which covers other geophysical exploration methods, in addition to seismic exploration. If, instead, the Service adopted *verbatim* the statutory definition, it and the interested applicants could run the risk that the omission from its guidelines of other geophysical methods could be construed to preclude their authorization and use.

Two commenters criticized the proposed rule for encompassing aerial exploration. As noted in the EIS, surface geological survey parties are often transported by helicopter. The possibilities of conducting seismic exploration by use of a helicopter-transported conventional survey technique (subsurface explosives) or of a helicopter-transported air-shot operation (surface explosives) are also discussed in the EIS. The proposed rule was drafted to include aerial exploration because of the use of helicopters in carrying out these exploratory activities and conventional aerogravimetric surveys. However, these types of activities typically involve surface landings in the area being explored, as do conventional aerogravimetric surveys.

The final rule has been modified to clarify the Service's intent. It covers surface geological exploration, by which the Service means to include even those geological survey parties that are transported from place to place within the coastal plain by helicopters or fixed-wing aircraft; seismic exploration, by which the Service means to include seismic surveys conducted by use of helicopters or fixed-wing aircraft, as well as by other means; and any other type of geophysical exploration of the coastal plain which involves or is a component of an exploration program for the coastal plain which involves surface use of refuge lands. By this definition the Service does not intend to regulate fully airborne surveys, *i.e.*, surveys which are conducted by traversing the navigable airspace and without the benefit of any surface use of

refuge lands, that are separate and not a part of any exploration plan involving surface use of refuge lands, even though their purpose is to gather data about the oil and gas potential of the coastal plain.

Section 37.2(j) "Harass." Four commenters recommended rewriting this rule so as to broaden it to include such terms as "pursue", "hunt", "drive", etc. In an effort to bring this rule into closer conformity with other federal law and to clarify its intent, the Service has rewritten the rule. One commenter felt that the rule is overly broad in that omissions are included. The Service disagrees.

Section 37.2(k) "Hazardous substances." The single commenter addressing this definition asserted that the rule is too broad. It was recommended that the definition be made more specific and more consistent with existing law. As the commenter noted, there are many existing federal statutes and regulations which control the items mentioned in the definition. However, those laws are intended to regulate certain classes of materials, while this rule is intended to regulate the use of a broad spectrum of materials in a localized area. Accordingly, the Service believes the definition is useful. Minor changes have been made in the definition by deleting the reference to shot wire and transferring it to the "waste" definition § 37.2(z) and by inserting "significant" after the word "cause."

Section 37.2(n) "Plan of operation." One commenter complained that no reason was articulated as to why operation plans must be limited to 12 months duration. A number of changes in the rules on operation plans have been made, which are discussed below. They are limited in duration because they are intended to correlate generally with the permittee's field seasons.

Section 37.2(o) "Processed, analyzed and interpreted data or information." Three commenters recommended that the proposed rule be modified by the addition of a sentence describing the term "processing" as including analog to digital conversion, selective filtration, 'weathering', differential modification or amplification, and signal summing or stacking. This recommendation was made to ensure that seismic field tapes would be treated as processed data rather than raw data and information, and, therefore, would be exempt from public disclosure for a number of years in accordance with § 37.54. One of these commenters added that all geophysical data, which the permittee develops only after a considerable financial investment and by virtue of its technical expertise, should be considered as processed data and, therefore, not subject to immediate public release. Another commenter recommended that the rule be modified to include any processing accomplished by programmed, second-stage electronic equipment installed in the field recording equipment. One commenter recommended that the rule be rewritten to cover any data and information collected under a permit and subsequently changed so as to facilitate interpretation.

The Service has not made any changes in the rule based on these comments because of the intervening amendment of Section 1002(e)(2)(C) by Section 110 of Pub. L. 97–394, quoted above. The Service considers the commenter's concerns about the harm that could be done to the competitive positions of permittees should their seismic tapes be made available to the public and their competitors as raw data and the consequent disincentive that the Service's disclosure provisions provided to participation in the exploration program to have been mooted by the passage of Section 110. Section 110 should restore the economic incentive needed by industry to participate in exploration of the coastal plain. According to its legislative history, the purpose of Section 110 is to put all commercial interests on an equal footing by denying any company that gets data and information from the Department or from any party other than a permittee from participating in a subsequent lease sale of the land to which such data and information pertain. H.R. Rep. No. 978, 97th Cong., 2d Sess. 27 (Dec. 17, 1982).

Section 37.2(p) "Raw data and information." One commenter recommended that this rule be reworded so that seismic field tapes would not be included as original recordings in electronic form obtained during field operations. Another commenter stated that the differentiation made in the proposed rules between raw and processed, analyzed and interpreted data was too artificial to justify the difference in their availability and recommended that the definition of raw data be more limited. A few commenters recommended that raw data be defined as all data except processed, analyzed or interpreted data. These changes have not been made for the reason stated above and because of Section 110, according to the legislative history, is also to preserve the right of public access to raw data and information for the purpose of full public discussion and debate on whether the refuge should be opened to leasing in the future. H.R. Rep. No. 97–978, above, at 28. One commenter stated that the raw data should include seismic record sections and therefore wanted § 37.53(d) modified to cover interpretations of seismic record sections. The Service does not agree since seismic record sections are created from the processing of seismic tapes.

Section 37.2(bb) "Year." One commenter stated that there is no reason to tie the definition of year to the government's fiscal year rather than the calendar year. The need for this definition has been eliminated by referring to the fiscal year in § 37.24. By requiring permittees to submit their plans of operation on a fiscal-year basis, § 37.24 enables them to avoid the necessity of submitting two plans of operation for each winter field season. Whenever used elsewhere in the regulations, the term "year" means calendar year.

Section 37.3 Other applicable laws. One commenter suggested that the phrase "the requirements of which are not inconsistent with this part" be deleted from § 37.3(a) on the basis that a federal regulation cannot overrule a federal statute. The commenter misconstrued the rule. This phrase is only intended to apply to state and local laws. The words "and local" have been added to § 37.3(a).

One commenter characterized the proposed §§ 37.3(b) and (c) as passive and charged the Service with the duty of acting to resolve permit conflicts among federal, state, and local governments. Since permittees, not the Service, conduct exploratory activities, it is appropriate that permittees obtain any additional authorizations that may be needed.

But, also in an effort to assist applicants in avoiding conflicts, the preamble to the proposed regulations encouraged any applicant submitting an exploration plan covering activities which would affect land and water uses in Alaska's coastal zone to consult with the State of Alaska's Division of Policy Development and Planning early in its planning effort so that in the submission of its exploration plan to the Service the applicant can satisfy the certification requirement of § 307(c)(3)(A) of the Coastal Zone Management Act, 86 Stat. 1285, as amended, 16 U.S.C. 1456(c)(3)(A), to the extent that it applies to the applicant's proposed activities. The North Slope Borough (NSB), in commenting on the proposed guidelines, requested the Service to point out the importance of similar consultation with it. The NSB was not mentioned in the preamble to the proposed guidelines because its coastal zone management program was not then

in effect. It has informed the Service that it expects its coastal management program to be completed in 1983. Therefore, applicants are also encouraged to consult with the NSB if their planned activities would affect land and water uses in the coastal zone covered by the NSB's management program.

Two commenters stated that § 37.3(c) should refer to the need to obtain the concurrence of native allotment holders for use of their lands. By virtue of the Act of May 17, 1906, 34 Stat. 197, as amended, and Section 1 of the Act of March 8, 1922, 42 Stat. 415, as amended, 43 U.S.C. 270–11, native allotments were made subject to a reservation to the United States of the oil and gas contained therein and of the right to prospect therefor. Because of this reservation, the Service has decided not to adopt this suggestion for the holders of approved Native allotments. The Service has added, instead, a new § 37.23(b), requiring the Regional Director to consult with the approved native allotment holder for the purpose of developing mitigating permit conditions before issuing a special use permit for exploration involving the use of its lands. In addition, § 37.32(e) provides an added measure of protection by authorizing the Regional Director to designate allotted lands, as well as Kaktovik Inupiat Corporation lands, as special areas in which exploratory activities may be restricted.

As to the Kaktovik Inupiat Corporation's lands, the proposed § 37.3(c) is intended only to apply to those lands which are within the coastal plain. By virtue of the map referred to in section 1002(b)(1), lands in which the surface estate has already been conveyed to the Kaktovik Inupiat Corporation pursuant to sections 12 and 14 of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 701 and 702, as amended, 43 U.S.C. 1611 and 1613, are excluded from the coastal plain and, therefore, a permit issued pursuant to § 1002 cannot authorize exploration of those lands. As those lands are within the exterior boundaries of the refuge, they continue, by virtue of section 22(g) of ANCSA, 85 Stat. 713, 43 U.S.C. 1621(g), to be subject to other applicable refuge laws and regulations notwithstanding section 103(c) of ANILCA, 94 Stat. 2377, 16 U.S.C. 3103(c), 126 Cong. Rec. H11113 (daily ed. November 21, 1980). Anyone wishing to explore for oil and gas within this excluded area, which was not intended to be covered by the proposed § 37.3(c), should file a separate application for doing so at the time of filing to explore the section 1002 area.

There are six sections of selected Corporation lands within the coastal plain. Because under ANSCA the Corporation can acquire only the surface estate and because the section 1002 program involves exploration of the subsurface estate of a congressionally defined area, which is presently owned by the United States, the Service has decided not to adopt, as a matter of policy, the requirement for obtaining the Corporation's concurrence in the final rule. Therefore, § 37.3(c) has been eliminated. But, the Corporation is covered by §§ 37.23(b) and 37.32(e), which are discussed above.

Section 37.4 Disclaimer and Disqualification. The heading of this section was changed to reflect the addition of § 37.4(b), which implements the first two prohibitions required by § 110 of Pub. L. 97–394. Public comments are invited on § 37.4(b). See the discussion under § 37.2(a) above.

Section 37.11 General standards for exploratory activities. Paragraph 37.11(a) prohibits the conduct of exploratory activities without a special use permit. Although concurring with the use of a special use permit as the final authorizing instrument, one commenter recommended that approval of an exploration plan, rather than issuance of a permit, be the vehicle for the imposition of operational stipulations. This recommendation was based on the absence in the guidelines of a separate, structured opportunity for public review and comment on the terms and conditions of a permit.

The Service views the exploration plan as the applicant's proposal for conducting exploratory activities in a manner consistent with the guidelines. In the process of approving an exploration plan, the Regional Director may require, as a condition of approval, modifications in the plan, such as exploration in assigned areas, joint exploration, or other changes, which will have the effect of limiting operations. However, the Service regards the permit as an additional safeguard necessary to impose detailed or site-specific stipulations. As more information and new situations arise, § 37.31(a) authorizes the Service to impose additional stipulations. These provisions are necessary to enable the Service to supervise adequately exploratory activities. The Service feels that the opportunity afforded the public to review and comment on the exploration plan will be sufficient for the public to identify those aspects of an applicant's proposed operations of concern to the public and to recommend the manner by which they should be controlled or disallowed. Accordingly, no change in the guidelines has been made on the basis of this recommendation.

As was explained in the preamble to the proposed guidelines, the general standards governing the conduct of exploratory activities are stated in § 37.11 and amplified by the environmental protection provisions of Subpart D. The prohibition in § 37.11(d) against the drilling of exploratory wells is not intended to prevent drilling operations necessary for placing explosive charges, where authorized pursuant to an approved exploration plan and special use permit, for seismic exploration.

A number of commenters criticized the Service for reiterating in § 37.11(b)(1) the standard found in section 1002(d)(1) that exploratory activities shall be conducted so that they "do not significantly adversely affect" the refuge's fish and wildlife, their habitats or the environment. They deemed the guidelines as a whole to be deficient in satisfying the level of protection that they construed Congress to intend by this standard.

This criticism has essentially two aspects. One, some commenters felt that the guidelines apply the wrong standard or misapply the statutory standard so as to provide an inadequate degree of protection against the environmental impacts of exploration. Two, a few commenters felt that "significant adverse effect" should be explicitly defined because the standard is otherwise too vague and discretionary.

Those commenters who felt that the guidelines incorrectly apply the "no significant adverse effect" standard argued that Congress intended to authorize the Service to permit only those exploratory methods and techniques that would result in the least damage or assure the maximum protection of the refuge's resources. Their views were summarized by one commenter who suggested that the statutory standard encompasses both a technology-based standard of least damaging technology and a performance-based standard of maximum resource protection. As a corollary, these commenters often thought that the Service should impose a specific exploratory method and/or technique on permittees, usually either by prohibiting access to the coastal plain by surface vehicles (i.e., by cat trains) or by requiring or giving preference to seismic surveys to be conducted by helicopter during the

winter. Expressing the contrary view, an oil company stated that to choose between helicopter-transported seismic surveys and seismic work done by ground vehicle on the basis of apparent environmental compatibility addresses only half of the Service's responsibility and may not produce adequate data quality to evaluate the coastal plain's oil and gas potential. Noting its own experience and record using the heliportable technique in the Kenai Moose Range and the vibration technique on the North Slope, it asserted that seismic exploration can be done with minimum damage to the wildlife and its habitat. For these reasons, it requested the Service to give operators the option of selecting the most appropriate technique.

The Service believes that the meaning of section 1002 must, in the first instance, be sought in the language in which it is itself framed and that the words of Congress, as expressed in section 1002, are themselves the most reliable source from which to ascertain legislative intent. Subsection 1002(a) states that it is the purpose of the statute to authorize exploratory activity within the coastal plain in a manner that "avoids significant adverse effects" on the fish and wildlife and other resources. Subsection 1002(d)(1) states that the guidelines shall include such prohibitions, restrictions, and conditions on carrying out exploratory activities as the Secretary deems necessary or appropriate to ensure that exploratory activities "do not significantly adversely affect" the fish and wildlife, their habitats, or the environment. Subsection 1002(f) states that, whenever the Secretary determines that continuation of further activities will "significantly adversely affect" fish or wildlife, their habitat, or the environment, he may suspend them.

Thus, it is clear from the plain language of Section 1002 that the protection standard adopted by Congress is based on the impact to the resource and not on the technology to be used in carrying out exploration. Furthermore, the statute does not prohibit all adverse impacts or require the least possible amount of adverse impact. Instead, the statute only precludes the Service from authorizing permittees from conducting those exploratory activities that would result in adverse environmental impacts of such consequence as to be significant. Had the congress intended otherwise, it could have easily deleted the word "significantly" or used the phrase "maximum protection", "best available technology", or "least damaging technology" as the standard of protection to be afforded to the refuge's resources. Examination of other environmental legislation demonstrates that when Congress intends to mandate any kind of technology standard, a technology-based standard of least damaging technology, or a performance-based standard of maximum resource protection, it is fully capable of drafting the express statutory language needed to do so. Compare Section 1002 of ANILCA with the Clean Air Act, as amended, 42 U.S.C. 7411(a)(1)(C), 7475(a)(4), and 7503(2), the National Emission Standards Act, 42 U.S.C. 7521(a)(3)(A)(iii), and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1311(b)(1)(A)(i) and (2)(A)(i) and 1316(a)(1). But as Congress did not use such or similar language in writing Section 1002, the Service believes that its guidelines correctly reflect the standard and level of environmental protection congressionally intended.

Not only does the Service's interpretation give separate meaning each to "significantly" and "adversely", it also makes sense in light of the other provisions of Section 1002. It is clear from Section 1002(e) that Congress intended the needed oil and gas data and information to be obtained with the aid of the private sector. Two Members of Congress noted in their comments on the proposed guidelines that "Congress has recognized that the private sector has historically done a better job of collecting geophysical and seismic data compared to any governmental agency—the private sector is simply better equipped to do the work and, thus, the data is more useful." Also, by labeling the Service's regulations as "guidelines" in Section 1002(d)(1), Congress itself has suggested that they should leave some discretion as to which particular exploratory methods and techniques are to be permitted, as long as they do not cause significant adverse effects.

For these reasons and because the baseline study and EIS required by Section 1002(c) and (d)(2) do not demonstrate the need to eliminate all surface access or to restrict seismic exploration to helicopter-transported seismic surveys conducted during the winter in order to protect the refuge's resources from significant adverse effects, the Service chooses not to adopt such limitations. this decision is also based on the Service's doubt about the technical feasibility and data-gathering efficacy of either suggested approach. One commenter urged the Service to stress the need for quality exploration programs which will give the highest level of environmental protection. As was stated in the preamble to the draft guidelines, the Service encourages applicants to design plans that will maximize resource protection consistenty with the data gathering objective stated in § 37.1.

As noted above, a few commenters wanted "significant adverse effect" to be defined. One commenter asserted that the failure to do so constitutes an abdication of administrative responsibility and leaves the final determination of avoidance of significant harm to the permittee. The Service disagrees with these comments. The guidelines do contain prohibitions, restrictions, and conditions, such as, for example, those dealing with the operation of ground vehicles, the use of explosives, the harassment of wildlife, and the disposal of waste, which are in the Service's judgment necessary and appropriate to prevent significant adverse effects or to mitigate the significance of adverse effects. The Service feels that to go beyond these limitations by expressly defining "significant adverse effect" in both infeasible and undesirable. Within the framework of present knowledge, it is not possible to define what could constitute a "significant adverse effect" for every aspect of the coastal plain's ecosystem that requires protection. Past experience has also shown that a blanket rule is sometimes counterproductive to environmental protection, as well as developmental interests.

The Service's approach reflects the proper mix of rule and discretion so as to permit administrative discretion to be, where feasible, fairly predictable and yet to be tailored to the unique facts and circumstances of concrete situations as they arise. The absence of a statutory definition for the phrase "significantly adversely affect" suggests a similar congressional recognition of the wisdom of and necessity for implementing this standard through the application of professional judgment to the facts of each case. This realism in no way means that the Service is yielding its supervisory responsibilities to its permittees.

Subparagraph 37.11(b)(2) provides that a permittee's exploratory activities shall not be unnecessarily duplicative or unnecessarily duplicate the exploratory activities of another permittee. Several commenters criticized the guidelines' lack of a definition for "unnecessary duplication." Avoidance of unnecessary duplication is not an independent goal of the section 1002 program, but rather one aspect of the requirement to avoid

significant adverse effects on the fish and wildlife, their habitats and the environment. At least one commenter failed to recognize that section 1002(d)(1)(D) proscribes only unnecessary duplication, as distinguished from necessary duplication or replication. This distinction is underscored by § 37.11(c), which allows the Regional Director to permit reexamination of an area if he deems it necessary to correct data deficiencies or to refine or improve data or information already gathered. One commenter expressed concern about the Regional Director's qualification to make such a judgment. In technical and operational matters such as this, the Regional Director plans to obtain the technical advice and recommendations of GS and/or the Bureau of Land Management (BLM), as well as that of the Fish and Wildlife Service, pursuant to a tripartite agreement to be worked out between these agencies.

Two commenters mentioned the need to conduct field experimentation because the effectiveness of different seismic methods and techniques varies from area to area. The Service feels that §§ 37.11(c) and 37.21(d)(6) accommodate this need.

One commenter urged the Service to insist on a group exploration plan that allows for a one-time-only survey over the minimum land surface necessary to provide the desired data. Preferring to see the kind and number of exploration plans submitted for approval, the Service chooses not to require by regulation group participation or to limit exploration of any area to a single survey. However, § 37.13 authorizes the Regional Director to require group participation and § 37.22(a) authorizes him to assign areas or require joint exploration in order to avoid unnecessary duplication. Two industry representatives, noting the expense of conducting seismic exploration in remote areas like the refuge, stated that it is unlikely that any company or group of companies would squander financial resources on data gathering activities that serve no useful purpose. The State of Alaska suggested that for this reason the actual difficulty in dealing with unnecessary duplication is not likely to be great. The Service, too, expects no more than a few exploration plans to be submitted for approval. Consequently, the Service agrees with the State's suggestion to deal with this issue not on a theoretical level, but on the practical level during plan evaluation. Therefore, the Service has not adopted by regulation any of the various suggestions made on what does and does not constitute unnecessary duplication.

Three commenters asked whether the Regional Director will use data that are now or become available to him to eliminate portions of the coastal plain from unnecessary duplication. This question presumes that all geological and geophysical data are of like or equal value in assessing the oil and gas potential of the coastal plain. As explained in the EIS, the value of such data differs considerably according to the exploration method used. The data obtained in the past have already been used to delineate that area of the refuge most prospective for oil and gas and, therefore, worthy of further study through seismic exploration. Accordingly, the Regional Director will not use existing geological and geophysical data to reduce further the area within the coastal plain available for exploration. The guidelines do not require a permittee to use any specific data to restrict the scope of its activities. Rather, § 37.21(d)(6) puts the burden on an applicant to design an integrated exploration plan which avoids unnecessary duplication in its exploratory activities.

Two commenters suggested that due to the confidentiality of seismic work, one permittee will have difficulty anticipating whether its activities will unnecessarily duplicate or unreasonably interfere with another permittee's activities. This concern seems overstated as exploration plans will be public documents. In addition, by virtue of § 37.22(a), the Regional Director shares the burden of applying the standards in § 37.11(b) to his decisionmaking, and, by virtue of §§ 37.31(a), 37.43, and 37.44, he has the power to remedy their abuse.

Section 37.12 Responsibilities of permittee. Two comments criticized the directive in § 37.12(a) that the permittee shall comply with all reasonable stipulations, demands and orders issued by the Regional Director. They felt that inclusion of the modifier "reasonable" would weaken compliance during field operations. One comment stated that this directive confused the need for orders to be reasonable with the time and forum for challenging their reasonableness (i.e., the appellate process). The Service does not expect this result because failure to comply with the Regional Director's order can lead to a costly suspension or even a costlier revocation of a permit. Given that reasonableness is a requirement of administrative law, the Service sees no harm in reiterating its intention to be reasonable, while at the same time satisfying its statutory duties. Language has been added to § 37.12(a) to clarify a permittee's accountability for the compliance of its employees, officials, contractors, subcontractors and agents.

Paragraph 37.12(b) has been modified to require the information concerning the identities of the permittee's general and field representatives and their alternates and the procedures for contacting them, which was to be included in the permittee's exploration plan under the proposed § 37.21(d)(2), to be submitted at the same time the permittee's first plan of operation is submitted. This change was made because the Service realizes that a permittee may not know who its field representative will be at the time its exploration plan is submitted.

Paragraph 37.12(c) allows field operations to be conducted by a permittee's designee, provided the designee is approved by the Regional Director. One company objected to this approval requirement on the grounds that selection of a designee ought to be the prerogative of the company risking its investment and that it is unnecessary since such designation does not relieve the permittee of its permit obligations. The Service disagrees with this comment. The government has a valid interest in a designee's capacity to perform the authorized field activities and its history for responsible compliance with permit terms. This same commenter was unclear as to whether a designee could be an individual or a company. While it could be either, in most instances it will probably be a company; it is the entity responsible to the permittee for carrying out its field operations.

Two commenters suggested that a provision be added to § 37.12(c) to avoid undue delay in acting on a permittee's designation of a designee. One commenter suggested a period of 10 working days and the other suggested no more than 30 days. The Service has adopted the latter suggestion. A new sentence has been added to § 37.12(c) to require the Regional Director to act within 30 days following the receipt of such information from the permittee and designee as he may require to approve or disapprove the designation. On its own initiative, the Service also increased the notice required in § 37.12(c) to 10 working days.

Paragraph 37.12(d) has been clarified by the addition of language indicating that the Service wants to be informed of persons who actually participate as group participants to an exploration plan or who otherwise share in the resulting data and information. This

information has become particularly important to the Department in light of section 110 of Pub. L. 97–394.

One commenter suggested insertion of "reasonable" between "all" and "precautions" in § 37.12(e). This suggestion has been adopted.

Section 37.13 Group participation. Although a number of commenters supported the concept of group participation, they felt that rules dealing with the structure of and process for establishing such a business arrangement were unnecessarily detailed and restrictive. Several commenters shared the view that common business practices within the geophysical exploration industry are sufficient to ensure broad sponsorship and participation. Section 37.13 has been modified on the basis of these comments. The Simplification of this rule should also satisfy the criticism that the requirements of the proposed § 37.13 worked against group cooperation. To be consistent with this change, the requirement in the proposed § 37.21(d)(13) for a description of provisions facilitating group participation in an exploration plan has been deleted. One commenter recommended placing a high priority on group participation as a means of minimizing adverse environmental impacts. This can be done without a change in the rule whenever the Regional Director considers group participation appropriate to avoid unnecessary duplication.

Section 37.14 Bonding. Whereas three commenters felt that a minimum bond of $100,000 would be insufficient, two others felt that $100,000 should be the maximum amount of the bond. One commenter felt the bond should be increased to $500,000, and another $1,000,000. One commenter thought that a variable amount between these two figures should be required, depending on the area covered and the technique used. The Service has added language in § 37.14(a) to allow for increasing the amount of any bond or requiring a new bond or security if additional coverage is needed to secure performance or as a consequence of default. One commenter wanted the rule explicity to allow self-insurance. The Service feels that self-insurance would not provide the same degree of protection for governmental interests. No changes have been made in the rule on the basis of this comment. The Service has, however, added language to § 37.14(a) requiring the bond to be furnished by a qualified surety company approved by the Department of Treasury and to be maintained until the Regional Director notifies the permittee that its period of liability is ended because it has satisfied all of its obligations or because the Regional Director otherwise consents to the bond's cancellation or termination.

In addition, the rule has been changed to require the bond or other security to be furnished to the Service between the time an applicant's exploration plan is approved and its special use permit is issued. Accordingly, § 37.23(a) has been modified to clarify that permit issuance is conditioned upon compliance with § 37.14(a).

Section 37.21 Application requirements. One commenter suggested that § 37.21(a) be reworded to strongly encourage applicants to engage in pre-submission consultation. Although the Service agrees with this concept, no rule change is deemed warranted.

A few commenters urged the Service to expedite approval of exploration plans so that seismic work could commence in February, 1983. The delay in implementation caused by litigation over the section 1002 program and the legal requirements for establishment of these guidelines and public review of exploration plans made this goal impossible. The Service has, however, made several changes to streamline sections 37.21–37.24 in response to comments that the proposed application process was too time consuming and that plan of operation should be eliminated or subject to public review. These changes include shifting proposed requirements for a plan of operation to an exploration plan and eliminating sections 37.21(e)(1)–37.21(e)(7). Subparagraph 37.21(d)(4), previously section 37.21(d)(5), has been changed to require a map, rather than a statement, of the geographic areas in which exploratory activities are proposed and the approximate locations of the applicant's proposed geophysical survey lines (previously proposed in section 37.21(e)(6)), travel routes to and within the refuge, fuel caches, and major support facilities (previously in section 37.21(e)(4)). Subparagraph 37.21(e)(3) has been inserted as section 37.21(d)(7), with the word "detailed" omitted before "schedule" and the word "approximate" added before "dates". Methods of access which were previously required to be described in the proposed section 37.21(d)(5), are now required to be in section 37.21(d)(9), together with the applicant's proposed equipment, support facilities and personnel. By "description" in section 37.21(d)(9), the Service means to be included the approximate number, type, and size of each of the various kinds of equipment and support facilities and the numbers and duties associated with each of the kinds of personnel positions proposed to be used by the applicant to carry out exploratory activities, in addition to any other information which the applicant wishes to furnish to aid the review of its plan. The verbs "use" and "store" have been added to section 37.21(d)(10). Since hazardous substances are defined in section 37.2(k) to include explosives, this change is to clarify that the description of the storage and use of explosives previously proposed in section 37.21(e)(5) is not subsumed in section 37.21(d)(10). Additional changes made to streamline the application process and permit issuance are explained elsewhere below.

The Service took the initiative to remove from section 37.21(b) the last sentence regarding exploration plan approval and to restate the Regional Director's obligation regarding the approval of qualifying exploration plans affirmatively in section 37.22(a), where it is more appropriately addressed.

Two commenters sought clarification as to whether section 37.21(b) means that applications (*i.e.*, exploration plans) can only be filed on the dates specified. Yes, this is the intent of section 37.21(b). Its purposes are to ensure that the public review period runs concurrently on all exploration plans covering the period and submitted on the dates specified in section 37.21(b), and to facilitate comparison of plans in the application of these guidelines. If an applicant wishes to hand deliver its exploration plan or plans to the Regional Director's office in order to ensure timely submission, that is its choice.

In designing these guidelines, the Service has also sought by using filing dates to balance the need for an integrated and planned program of exploration and the possible foreclosure of additional beneficial geophysical evaluation. Therefore, only two opportunities have been provided for applying by interested applicants. The date of the second opportunity for submitting and exploration plan or plans has been changed from March 1, 1983 to March 1, 1984. In addition, section 37.21(b) has been changed so that plans submitted on the first filing date may cover the entire exploration program, from its inception through May 31, 1986, or such portions thereof as the applicant may choose. As originally proposed, an applicant's initial plan could only have covered up to September 30, 1983. This would have required all permittees interested in a multi-year program to submit additional applications. This requirement has been eliminated.

Nonetheless, section 37.21(b) still allows an applicant to submit separate exploration plans on both dates, if it wishes to use the data and information recovered during its initial exploration plan to design better its subsequent exploration plan. Paragraph 37.21(c) merely requires the applicant to state in its initial plan how the activities under its subsequent plan will be integrated with those first undertaken. A permittee having an approved exploration plan which runs beyond October 1, 1984 may, if it wishes, use the second filing date to submit a new exploration plan, which, if approved, would supersede its original plan. If the new plan were not approved, the original plan would continue in effect for the period specified in it unless otherwise modified, revised, suspended, revoked, or relinquished in accordance with these regulations. An applicant need not have filed on the first filing date in order to file on the second. However, any exploration plan filed on the second filing date will be evaluated against exploration plans already authorized and continuing in force. Consequently, it may run a greater risk that its cumulative effects will cross the threshold of significant adverse effects and unnecessary duplication, and, thereby, result in its disapproval. One commenter recommended that a sentence be added to the end of section 37.21(b) stating that exploration plans employing the best possible techniques for ensuring maximum environmental protection will be given preference for a given area. For the reasons explained elsewhere in this preamble, this recommendation was not followed.

The Service has amended section 37.21(b) in an effort to assure that preliminary field investigations and surface geological exploration may commence during the summer of 1983. The amendment would allow the Regional Director to expedite approval of a portion of an exploration plan submitted on the first application date, which portion would encompass only preliminary field investigations and surface geological exploration to be commenced prior to August 1, 1983. This procedure is necessary because the tentative schedule for completing approvals of exploration plans submitted on the first application date would be too late for a permittee to conduct a summer program. The Service believes it to be in the public interest to assure that preliminary investigations are permitted prior to the first winter season of seismic activities. The information gained could then be used by the permittee to refine its subsequent exploratory activities. It would also allow for archeological investigations to be conducted by the permittee prior to commencing seismic exploration. It is intended that the expedited approval would be a one-time-only occurrence, and would only pertain to the relatively benign surface geological exploration and preliminary field investigations, not seismic exploration. That part of the review process involving publication of and public hearings on the exploration plans would not be changed; the preliminary portion would be evaluated by both the public and the Regional Director in the context of the entire plan.

Several commenters found the information requirements set out in section 37.21(d) to be excessive or unnecessary. The Service has adopted the suggestion to delete stockholder information from section 37.21(d)(1).

One commenter suggested that section 37.21(d)(2), proposed as section 37.21(d)(3), be clarified so that it does not cover crew members. Because the commenter correctly construed the rule, the Service does not feel that any textual change is needed. It is intended to cover the participants to a voluntary "group shoot".

Although two commenters objected to the requirement in section 37.21(d)(3), proposed as section 37.21(d)(4), for information on the applicant's background, two others endorsed the propriety of the Service's concern over an applicant's environmental record and ability to carry out its exploration plan. As noted earlier, the Service has a valid interest in an applicant's qualifications and proven experience and will not, therefore, change this rule. Doubts about the Service's competence to assess an applicant's technical proficiency should be assuaged by the Service's plan to use an interdisciplinary team, consisting of representatives from the Service, BLM and GS, to evaluate exploration plans and advise the Regional Director.

On commenter said that the proposed section 37.21(d)(6), now section 37.21(d)(5), should be broadened to require an applicant to describe its strategy for applying non-seismic geophysical techniques, prior to implementation of seismic operations. Another commenter said that the regulation should require the integration of aeromagnetic data into planning seismic line designation. By these guidelines, the Service does not seek to impose any particular scenario on applicants, but section 37.21(d)(6), formerly section 37.27(d)(7), does require an applicant to show how the exploratory methods and techniques it wishes to use will be coordinated in an integrated fashion. Nor should section 37.21(d)(6) be construed to require an applicant to include more than one exploration method or technique in its exploration plan should it only wish to use one.

A few commenters objected that, because an applicant cannot be expected to know prior to submission whether its proposal will unnecessarily duplicate another's activities, it would not be possible to describe how it would avoid doing so in its exploration plan. Accepting this as a valid objection, the Service has eliminated this requirement from section 37.21(d)(6), formerly section 37.21(d)(7). One commenter suggested that the words "to ensure maximum environmental protection and" be inserted after "integrated fashion" in section 37.21(d)(6). This has not been done for the reasons discussed in the summary of comments on section 37.11.

One commenter recommended that § 37.21(d)(12) also require an applicant to submit a schedule for implementing its monitoring procedures. This change has not been made because the Service expects such procedures to be ongoing and contemporaneous with implementation of the exploration plan.

Two commenters stated that it would also be impossible to make a statement on data quality and type prior to the commencement of data recovery. On the other hand, another commenter, while noting the impossibility of making a definitive statement on data quality before data collection and processing, found it reasonable for the Service to expect the applicant's standards of data utility and quality assurance and control program to be described. Finding these comments to be valid, the Service has modified § 37.21(d)(14), formerly § 37.21(d)(15) to require an applicant to describe its data quality assurance and control program rather than the type and quality of data that it expects to collect. To a limited extent, the later information can be ascertained by the reviewer by knowing the exploratory methods and techniques that the applicant intends to employ, which are required to be identified in its exploration plan by § 37.21(d)(5), formerly § 37.21(d)(6).

One commenter objected to § 37.21(d)(15), formerly § 37.21(d)(16), on the ground that requirements for an exploration plan should be spelled out before a survey begins and not as it progresses. The Service agrees with this comment. Paragraph 37.21(d)(15) is intended to permit the Regional Director to identify additional information, the need for which becomes apparent during pre-submission consultation.

Two commenters suggested that, in the description of an exploration plan, it

should be stated that items susceptible of being discarded will be marked as to their owner as a way of discouraging their discard in the coastal plain. The Service feels that this addition is not necessary. Shot wire, included in the definition of waste in § 37.2(z), will be cleaned up pursuant to § 37.31(e)(2). Fuel drums must be marked according to § 37.31(e)(5) and disposed of as waste in a manner acceptable to the Regional Director according to § 37.31(e)(2). The Service intends to use its monitoring program to enforce these provisions so that it does not expect any shot wire or fuel drums to be discarded within the coastal plain.

Lastly, the Service adopted the suggestion of one commenter to shorten the period in the proposed § 37.21(e) for submission of the plan of operation from 90 days to 45 days prior to commencement of field operations. As part of its effort to simplify its permit issuance process, the requirement for a plan of operation to accompany initially the submission of an exploration plan has been eliminated, and the remainder of § 37.21(e), as modified, has been shifted to § 37.24. Thus, approval of a plan of operation has been removed as a step in the permit issuance process. This change is consistent with eliminating annual permits and shifting some of the information that was proposed to be in a plan of operation to an exploration plan. These changes also clarify the original purpose of the plan of operation, *i.e.*, to serve as an informational document to facilitate the Service's planning.

Section 37.22 Approval of exploration plan. Questioning the Regional Director's expertise in making decisions on when, where, and how exploratory activities should be conducted, five commenters expressed opposition to the Regional Director's authority to assign areas for exploration or require joint exploration. The Service feels that giving the Regional Director the authority to assign areas for exploration is desirable for assuring proper coverage of the coastal plain and adequate data recovery, and that giving him the authority to require joint exploration is desirable for preventing unnecessary duplication of exploratory activities and, thereby, protecting the coastal plain from significant adverse environmental effects. Having this authority does not necessarily mean, however, that the Regional Director will find it necessary to exercise it. Moreover, as suggested earlier, the Regional Director plans to seek the technical advice of GS and BLM, as well as that of the Service, in reviewing and approving exploration plans. In addition to questioning its wisdom, one commenter questioned the legality of giving the Regional Director the authority to assign areas or require joint participation. This authority is based on section 1002(d)(1) of ANILCA, which states,

> [T]he guidelines shall include such prohibitions, restrictions, and conditions on the carrying out of exploratory activities as the Secretary deems necessary or appropriate to ensure that exploratory activities do not significantly adversely affect the fish and wildlife, their habitats, or the environment, including, but not limited to—* * * (D) requirements that exploratory activities be coordinated in such a manner as to avoid unnecessary duplication.

Obviously, the Service recognizes that it cannot force an applicant to carry out an exploration plan which has been approved under certain conditions, if such conditions are unacceptable to the applicant. In the event that an applicant does not wish to participate in exploration of the coastal plain under the conditions of its approved plan, the applicant need only notify the Regional Director that it is withdrawing.

One commenter suggested that an independent panel, comprised of private citizens interested in and knowledgeable about the refuge and having as their primary concern the protection of its environment, be established to review exploration plans and monitor exploratory activities. In view of the statutory and regulatory provisions providing for public review and comment on exploration plans, a citizens' advisory panel is not considered necessary.

Two commenters criticized § 37.22(a) for giving the Regional Director unfettered discretion in assigning areas or requiring joint exploration. They failed to note that the Regional Director's discretion in exercising this authority is limited by the prefatory language "[i]n order to meet the objective and limitations stated in § 37.1, enforce the standards stated in § 37.11(b), or minimize adverse impacts on subsistence uses." One commenter stated that the last sentence of § 37.22(a) establishes totally unnecessary pre-conditions for plan approval and should be deleted. For the reason stated earlier in the discussion of comments on § 37.21(d)(3), the Service disagrees with this comment.

Accordingly, no changes were made in § 37.22(a) on the basis of these comments. However, to be consistent with the change in § 37.21(d)(1), the reference in § 37.22(a) to shareholders of more than 5% interest has been deleted. In addition, the reference to December 3, 1982 has been deleted as that date has now passed.

As part of its efforts to streamline its entire permitting process, the Service has shortened the period stated in § 37.22(b) for reviewing an exploration plan to no more than 90 days, unless the Regional Director extends it for up to another 30 days by notifying the applicant of the extension in writing. This is responsive to comments suggesting that the statutory 120-day period is unnecessarily long. The Service expects that 90 days will be an adequate amount of time in which to publish the exploration plans, hold public hearings, consider public comments and evaluate the plans. If the Service can complete this process in a shorter period, it will do so. But, if it finds that more time is needed, § 37.22(b) has been written to allow it to use up to the full statutory period.

One commenter, who found the procedures leading to the issuance of a special use permit to be lengthy and cumbersome, stated that there should be no need for a public hearing for every exploration plan submitted. Perhaps the commenter does not know that the statute requires a hearing. The Service does not intend, however, to hold a separate hearing for each plan submitted, but rather to hold a combined hearing for all plans submitted on the same filing date. Four commenters requested the public hearing on the exploration plan to be held in Kaktovik. At the present time, the Service contemplates holding such hearings in Anchorage and Kaktovik. One commenter requested the texts of exploration plans to be sent to the city of Kaktovik. The Service foresees no problems in accommodating this suggestion. The commenter also wanted the rules to stipulate that information covered by §§ 37.13 and 37.14 be provided to the city. This change is not necessary as the city's access to this information is covered by the last sentence of § 37.54(a). A few commenters stated that plans of operation should be made available for public review, as well as exploration plans. In light of the changes that have been made in §§ 37.21–37.24, public hearings on plans of operation are not considered necessary, nor would they be likely to be productive.

After considering the criticism, discussed earlier, of § 37.21(d)(15), the Service has added language to § 37.22(b) recognizing that the Regional Director may need to confer with an applicant during plan evaluation. This need may arise, for example, because of questions generated by public comments on the

applicant's plan, because of modifications to the plan being contemplated by the Service, or because of a request received under § 37.21(c) for an expedited review and approval of part of the applicant's exploration plan.

One commenter recommended that § 37.22(b) provide explicitly for the review of proposed exploration plans by state and federal agencies and indicate how the Regional Director will accommodate their comments. The Service plans to solicit and consider the views of other interested agencies, along with other public comments, but it feels that the guidelines, which are to govern how exploratory activities are to be carried out, need not address such internal administrative procedures.

Although one commenter endorsed vesting final decisional authority in the Service's Director, four commenters urged the appeals process outlined in § 37.22(c) to make use of the Interior Board of Land Appeals. Three of these commenters suggested alternatively that provision should be made for appeals to the Secretary. By its own rules, the Board's appellate jurisdiction does not extend to the review of the Regional Director's decisions. 43 CFR 4.410. These final regulations have been modified, however, by the addition of a sentence in § 37.22(c) permitting the Assistant Secretary for Fish and Wildlife and Parks or the Secretary to take jurisdiction at any stage of such an appeal, to review the decisions of the Regional Director and the Director, and to direct them to reconsider their decisions.

One commenter suggested that the Regional Director's decision on an exploration plan should be upheld unless it is determined on appeal to have been clearly erroneous. The "clearly erroneous" rule is the standard for appellate review of a trial court's findings of fact set forth in Rule 52(a) of the Federal Rules of Civil Procedure. This suggestion has not been adopted because it fails to account for the differences between judicial and administrative decisionmaking.

Four commenters suggested that § 37.22(c) be amended to permit non-applicants to appeal the Regional Director's decisions on exploration plans. One commenter also stated members of the public and local governments should have the right to intervene in an appeal filed by an applicant. The Service has not adopted these suggestions because it believes that the interests of other individuals, organizations, and agencies can be adequately vindicated by their participation in the public hearing assured by § 37.22(b). Judicial review remains the basic remedy against illegal administrative action. A non-applicant aggrieved by the Regional Director's decision may challenge its legality in court. One of these commenters also urged the Director to publish a notice of appeal and his decision. Although neither of these steps are contemplated, it should be relatively easy, given the standardized filing dates and specified time frames for subsequent actions, for interested persons to ascertain from the Service whether appeals of the Regional Director's decisions have been filed. In addition, the Director's decision on appeal, which must be in writing, will be available to the public under the Freedom of Information Act.

One commenter stated that the appeal process outlined in § 37.22(c) should extend to suspensions, which are covered in § 37.43. The penultimate sentence of § 37.43 says that "[r]econsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in § 37.22(c)." The Service construes this language as applying to suspension of activities under an exploration plan and/or permit. To appeal a suspension, the application of the procedures in § 37.22(c) would require the permittee to (1) state fully the basis for its disagreement with suspension, (2) provide a statement or documentation in support of its position, and (3) indicate whether or not it requests an informal hearing before the Director.

One commenter recommended that the "no significant effects" standard of section 1002 be used under § 37.22(e) to trigger the Regional Director's compliance with the procedural requirements stated in Section 810(a)(1)–(3) of ANILCA, 16 U.S.C. 3120(a)(1)–(3). This recommendation was not followed because it confuses subsistence uses with subsistence resources and the requirements of Sections 810 and 1002. The commenter's objection to the rule was apparently based on two considerations. One, the commenter was concerned that the information required to be included in exploration plans would be too general to permit a determination of the significance of the restrictions on subsistence uses that could result from approving an exploration plan. The Service disagrees with this assessment, particularly in view of the changes that have been made in § 37.21(d). Two, the commenter felt that reliance on the § 810 threshold in § 37.22(e) weakens the application of Section 1002. The commenter misconstrues the rule; its purpose is to ensure that section 810 is followed in the course of evaluating an exploration plan. If the Regional Director determines that the exploration plan, if approved, would significantly restrict subsistence uses, the rule enables him to combine the public hearing required by section 810(a)(2) with the public hearing required on the exploration plan.

Protection of subsistence uses was also a major concern raised at the public hearings in Kaktovik and Anchorage. Under § 37.22(a) the Regional Director may modify an exploration plan and under § 37.23 he may structure a special use permit to minimize adverse impacts on subsistence uses.

One commenter asked for assurance that, if public hearings are held for the purpose of considering potential impacts of exploration plans on subsistence use, one of those hearings be held in Kaktovik. The Service intends to do so.

One commenter was concerned that access for the purpose of subsistence use not be restricted. The Service is guided not only by section 810, discussed above, but also by section 811(a) of ANILCA, 16 U.S.C. 3121(a), which requires that reasonable access to subsistence resources be assured.

Section 37.23 Special use permit. Five commenters, critical of the delay in obtaining authorization to commence exploratory activities, recommended that a special use permit be issued concurrently with the approval of an exploration plan. Although the Service has not adopted this recommendation, it has reduced the maximum period allowed following plan approval from 60 days to 45 days.

Among its efforts to streamline the permitting process, the Service has deleted references to the plan of operation contained in the proposed § 37.23 which, if adopted, would have had the effect of requiring a plan of operation to be approved before a special use permit could be issued. In addition, the Service has removed language from the proposed §§ 37.2(w) and 37.23 that, if adopted, would have limited the term of a special use permit to one year. Upon reflection, the Service judged such a limitation to be unwarranted, burdensome, and likely to introduce artificial uncertainty into a permittee's planning. The term of a special use permit will run concurrently with the term of the approved exploration plan or portion thereof covered by the permit.

Language has been added to § 37.23(a) to enable the Regional Director to issue a special use permit to authorize preliminary field investigations and/or surface geological exploration to be conducted during the summer of 1983 should he receive a request for

expedited review and approval of an exploration plan incorporating such activities pursuant to § 37.21(c). Should he approve that part of the plan covering such activities, § 37.23(a) would enable him to issue a permit to authorize the activities covered by that part of the plan. An additional permit would then be issued for any remainder of the plan that may be subsequently approved.

Paragraph 37.23(a) has been modified to clarify that a permit may be amended from time to time as the Regional Director deems necessary and appropriate to carry out section 1002 of ANILCA and these regulations. One commenter criticized the use of permit stipulations to define the nature and extent of authorized operations, arguing that such restrictions should be imposed through approval of the exploration plan. The Service disagrees with this criticism. To the extent that environmental restrictions and safeguards are set forth in the guidelines, the Service expects that an applicant will design its exploratory activities and its exploration plan in a way that it feels will be likely to win approval of its plan on the basis of its consistency with such restrictions and safeguards. To the extent that the need for particular environmental restrictions cannot be foreseen or should not uniformly be applied through rules of general application, the special use permit, which can be amended as the need arises, is a more efficient tool for assuring protection of the coastal plain.

Paragraph 37.23(b) has been added to require the Regional Director to seek to consult with holders of approved native allotments and the Kaktovik Inupiat Corporation before issuing permits authorizing exploratory activities that would affect the surface use of their lands. This paragraph is also discussed in the summary of comments on § 37.3 above.

Section 37.24 Plan of operation. This rule has been rewritten so that approval of a plan of operation is no longer a requirement and so that the function of a plan of operation as an aid to the Service's monitoring program is clarified. The plan of operation will continue to inform the Service in detail on how the permittee intends to carry out its approved exploration plan during that fiscal year. For this reason, § 37.24 permits the Regional Director to require the permittee to make such modification in its plan of operation as he deems necessary and appropriate to ensure its consistency with the permittee's approved exploration plan, and §§ 37.12, 37.14, 37.31, and 37.41–37.44 permit the Service to sanction a permittee for its failure to comply with its plan of operation. Consistent with these changes, the deadline for furnishing the Regional Director with a plan of operation has been changed from 90 to 30 days before field operations are to be commenced for the year, or portion thereof, that it covers, or 10 days before operations are to be commenced in the case of preliminary field investigations or surface geological exploration to be done during the summer of 1983. As the deadline for submitting a plan of operation is not tied to permit issuance, a permittee's first plan of operation may have to be filed before its permit is received. Therefore, prospective permittees should be alert to this deadline.

Section 37.25 Revision. Twenty-five commenters recommended that this rule be amended so that a public hearing is required every time an exploration plan is changed. Two commenters endorsed the flexibility allowed under the rule to make changes consistent with the guidelines, and one commenter agreed that publication and hearings should not be required for minor revisions. The Service feels that both data recovery and resource protection will be better served if permittees are permitted to make minor changes in their exploration plans without being encumbered by the delay that would necessarily result if a public hearing were required before any change, no matter how insignificant, could be implemented. Therefore the recommendation has not been adopted.

Two commenters objected to language in the proposed rule suggesting that revisions might be automatically approved. The objectionable language has been deleted. The final rule says that no revision of an exploration plan shall be implemented unless the Regional Director gives his permission for the revision. But, it also states that a permittee's requested revision shall be deemed to be granted on the 10th working day following its receipt unless the Regional Director takes one of the actions outlined in § 37.25(a). Thus, the rule puts the burden on the Regional Director to act, but it gives him sufficient escape clauses should he not be able to act within the 10-day period or not wish to grant the request.

One commenter noted that what is now § 37.25(a) was internally inconsistent, as proposed, in that the proposed rule stated that a major revision of an exploration plan would have to be subjected to publication and a public hearing before it could be acted upon and that approval of any revision would be subject to the conditions stated in § 37.22(b) and § 37.22(c) to the extent applicable. The reference to § 37.22(b) and § 37.22(c) was erroneous; it has been changed to § 37.22(d).

One commenter suggested that some discretion be given to the Regional Director's Field Monitors to approve revisions. No change in this rule is necessary because by the definition of Regional Director given in § 37.2(r), which includes his authorized representative, a Field Monitor can approve a revision which is consistent with these guidelines upon a delegation of that authority to him by the Regional Director.

Consistent with the changes in §§ 37.21–37.24 previously discussed, a new § 37.25(b) has been added to deal specifically with revisions of plans of operation. The final rule permits a revision to a plan of operation to be implemented following notice, provided that the revision is consistent with the exploration plan to which the plan of operation pertains and with these guidelines. The final rule also permits the Regional Director to require the permittee to defer, modify or rescind its revision when necessary and appropriate to ensure such consistency.

Section 37.31 Environmental protection. Two commenters suggested that the opening statement be reworded to state that operations are to be conducted in a manner which provides the highest degree of environmental protection. This has not been done for the reasons stated above.

One commenter objected to this rule, stating that the special use permit should contain all stipulations attendant to the proposed scope of work. The Service disagrees. It needs the flexibility afforded by this rule to adjust to new and changing operating conditions and to benefit from actual field experience.

One commenter stated that under § 37.31(a) the Regional Director should have both the right and the obligation to perform the permittee's duties should the permittee fail to do so. The Service disagrees with this comment. The provision to which the comment is addressed is intended to give the Service an additional discretionary remedy should a permittee not carry out its obligations. However, because the totality of a permittee's obligations under its exploration plan, special use permit, plan of operation, etc., may be greater than actions which the Service may regard as necessary to protect human health and safety and refuge resources and values, the Service should be free to decide when to invoke this remedy.

One commenter criticized § 37.31(a) for not containing any cost control

measures to protect private industry and suggested the rule be modified to notify the permittee of the Department's estimated cost prior to action or to limit recovery to "reasonable expense". The final rule does not adopt either suggestion. A permittee can avoid being billed for costs which it fears may be unreasonable by performing the required action upon demand. In addition, a permittee can use § 37.46(h) to dispute any costs charged to it which it feels were not actually incurred. These provisions provide sufficient safeguards to the permittee. Moreover, as § 37.31(a) will most likely be invoked in emergencies, it would be unreasonable to require an advance notice of estimated departmental costs.

Section 37.31(b) Terrestrial environment. One commenter recommended that § 37.31(b)(1) be rewritten to specify that vehicles shall be operated in a manner such that the vegetative mat or soil is not disturbed, and that blading of snow on trails and campsites shall be limited so as to leave an adequate protective cover. The Service believes that the minor disturbance of the vegetative mat or soil that may occur due to the operation of ground vehicles during the winter does not constitute a significant adverse effect. The Service agrees, however, that blading of snow can and must be limited so as to leave an adequate protective cover. This can be done by exercising the necessary degree of caution. Field Monitors will make on-site visits to ensure that, where snow comprises an important aspect of the surface's protective cover, its removal will be kept to the absolute minimum necessary and that it will be left in place if necessary to provide adequate protection to the underlying soil and vegetation. For these reasons, the recommended change in the first sentence of § 37.31(b)(1) is considered to be unwarranted and the recommended change in the second sentence of § 37.31(b)(1) has been adopted.

One commenter suggested that only flexitrack surface vehicles be permitted to operate in the coastal plain and that bladed vehicles used for snow removal be required to use surface guide skids. The Service disagrees with these suggestions. The guidelines are designed to accommodate the Service's judgment that while a flexitrack configuration may be necessary under certain conditions, there will also be situations where rigid tracks and sleds can be safely utilized without significant harm to the refuge's resources.

One commenter incorrectly construed § 37.31(b)(2) to preclude use of ground vehicles in areas where no snow is present even though they may be sufficiently frozen to support vehicles and naturally barren of vegetation and, therefore, this commenter felt § 37.31(b)(2) to be too rigid. The final rules provide for protection of vegetation and soil by requiring that adequate protection cover in the form of snow and/or a frostline be present. In areas where a frostline alone gives adequate protection, such as frozen mud flats, ground vehicles will be allowed.

One commenter suggested that, in view of the decreased potential for harming wildlife in the winter as compared to the summer, and the likelihood of getting better data during the winter, the regulations should state that winter operations are encouraged. Both the level of impact experienced and the quality of data obtained will depend on season and exploratory method and techniques. With the exception of precluding summer access by ground vehicle, which is known to cause significant impacts, the Service does not wish to limit options or creativity by favoring one season and method and/or technique over others.

One commenter recommended that specific months be named to identify winter and spring under § 37.31(b)(2) and that the use of ground vehicles be permitted in October. The references to winter and spring are intended to connote general climatic conditions rather than specific time periods. Although winter on the coastal plain is generally considered to extend from October through April and spring from May through June, ground vehicles will only be allowed to operate during times of adequate protective cover, which may not occur until December and end in early May. The specific periods and areas in which surface vehicle use will be allowed will be determined by the Regional Director or his Field Monitors. Several commenters thought that the use of large surface vehicles should be precluded throughout the year. The Service has not adopted this suggestion because such vehicles can be used without causing significant adverse effects when properly operated under correct conditions. The Service feels that the guidelines provide the necessary safeguards and limitations to assure their proper use. This issue is also discussed in the summary of comments on §37.11.

One commenter recommended that § 37.31(b)(3) be rewritten to prohibit the movement of equipment through riparian willow stands, except where no feasible and prudent alternative exists and with the Regional Director's express approval. The final rule will prevent equipment movement through riparian willow stands unless it is specifically approved by the Regional Director or his authorized representatives, to the extent they are authorized to act for him in this regard. Approval to intrude into willows will not be granted unless a real need exists. The suggested change would not result in improved protection nor would it alter the intent of the existing provision.

One commenter stated that heavy equipment should be prohibited from crossing riparian willow stands where the tips of willow shrubs protrude beyond the snow level. Again, the Service feels that no change in the rule was warranted by this comment. Whether a crossing will be permitted in such circumstances will depend on the exercise of professional judgment, after the examination of such matters as need, alternatives, and likely impact.

In response to criticism that the proposed § 37.31(b)(5) was too restrictive, the final rule has been revised to allow camping on lagoons which may not be frozen solidly to the bottom. The Service has, however, retained the restriction against camping on river ice in order to protect potential fish overwintering holes.

For clarity, the words "of waste" have been added to the requirement in § 37.31(b)(6) to keep campsites and trails clean.

Turning to § 37.31(b)(7) regarding the treatment of gray water, one commenter asked whether gray water includes sewage. It does not. Sewage is considered "waste" and it must be handled in accordance with § 37.31(e)(2). One commenter asked if the standard stated in § 37.31(b)(7) regarding the discharge of gray water is acceptable to the Alaska Department of Environmental Conservation. This question has prompted no change in the rule, as permittees are required by § 37.3(a) to obtain appropriate state permits, one of which is a wastewater discharge permit. In commenting on the proposed guidelines, the State did not criticize § 37.31(b)(7) as being inconsistent with state discharge standards.

The provision for the rehabilitation of disturbed areas found in § 37.31(b)(9) was criticized by one commenter as inconsistent with the mandate to avoid significant harm. The suggestion was made that rehabilitation be required to repair unauthorized cutting and disturbance, but that surface access not be permitted where it would result in disturbance to vegetation. These guidelines require that ground vehicles be operated only where there is protective cover sufficient to protect the vegetation and soil from significant adverse effects. No rehabilitation plan is

required to be included in the permittee's exploration plan, although a promise to comply with these guidelines and the Regional Director's orders is. The requirement for rehabilitation will be instituted by order by the Regional Director if surface disturbance or damage should occur which in his judgment warrants rehabilitation. For this reason the Service has not adopted the suggestion of one commenter that the rule state that rehabilitation shall be undertaken as soon as possible. Recognition that there may be a need for rehabilitation does not mean that the Service intends to permit significant harm to occur. One commenter asserted that the provision in § 37.31(b)(9) restricting rehabilitation to the use of endemic species of plants is overly restrictive and impractical. The Service disagrees. The use of endemic species has been proven successful, and practical methods for such rehabilitation have been developed on the North Slope.

Whereas one commenter felt that the proposed regulations infringed impermissibly on the jurisdiction of the Federal Aviation Administration (FAA) to regulate use of the navigable airspace and aircraft traffic, another commenter urged the Service to change the word "should" to "shall" in the last sentence of § 37.31(b)(10) in order to protect wildlife from aircraft from harassment. Another commenter wanted a specific rule dealing with the use of aircraft, including helicopters, and minimum flight altitudes. Another commenter wanted helicopter traffic to be carefully controlled and monitored. It is the Service's position that it does not have the legal authority to regulate aircraft use of the navigable airspace and, therefore, that it cannot establish minimum flight altitudes above the coastal plain. The Service does have the authority, however, under the Airborne Hunting Act, 16 U.S.C. 742j–1, to prevent the harassment of wildlife where such harassment is accomplished through the use of aircraft. Therefore, § 37.31(b)(10) is worded to prohibit the harassment of wildlife by any manner, including close approach by aircraft and to advise, rather than to require, permittees to maintain their aircraft at an altitude of at least 1500 feet above ground level whenever practicable. In effect, this rule means that overflight at less than 1500 feet will be viewed as a possible indication of harassment. By being so worded, the rule avoids infringing on the FAA's regulatory jurisdiction over use of the navigable airspace while at the same time protecting wildlife from harassment through the use of aircraft. The Service will closely monitor the use of aircraft for harassment. The correctness of the Service's position on regulating use of the navigable airspace for oil and gas exploration on the coastal plain is being litigated in a declaratory judgment action entitled "Trustees for Alaska v. Robbins", Civ. No. A82–340 (D.Ak., filed August 20, 1982). The words "at least" have been added to the advisory provision to clarify that the Service has no wish to discourage overflights at higher altitudes whenever they are practicable. One commenter urged that the 1500-foot advisory provision be limited only to fixed-wing aircraft, arguing that helicopters can operate effectively at lower altitudes without disturbing wildlife. The Service disagrees. Helicopters can be just as, and sometimes more, disturbing to wildlife.

One commenter urged the Service to establish a minimum forward speed for aircraft. This has not been done because establishment of such a requirement is also regarded as being beyond the authority of the Service.

The rule prohibiting detonation of explosives within ⅛ mile of a known denning brown or polar bear or any muskox herd was questioned as to its adequacy by one commenter. The rule is based on biological studies and the professional judgment of Service biologists. The rule has been expanded to prohibit detonation of explosives within ½ mile of any caribou herd.

Though not opposed to § 37.31(b)(14), one commenter noted that hunting, fishing and trapping rules are set by the Alaska Department of Fish and Game. Although this observation is correct as to resident wildlife, the Service has the authority to increase the restrictions on the taking of wildlife on refuge lands. Another commenter was concerned that the Service not prohibit local residents from hunting on the refuge. The Service does not intend to restrict fishing, hunting or other subsistence activities of non-permittees through § 37.31(b)(14).

Section 37.31(c) Aquatic environment. The need was suggested by one commenter for requirements limiting exploratory activities in coastal lagoon areas in order to protect ringed seals and migratory bowhead whales. The Service disagrees with the need for such requirements. Bowhead whales do not utilize the marine waters encompassed by the coastal plain, which are primarily shallow enclosed lagoons. Technical limitations will likely preclude the use of boat-based exploratory activities. Even if seismic exploration were to be conducted on lagoons during the open-water season, it would have little effect on either bowhead whales or ringed seals because these creatures generally stay well offshore of the area. Additionally, there is no need to restrict exploration on lagoon ice in the winter to protect ringed seals during their vulnerable pupping period, as has been recommended for offshore exploration programs in other areas, because of the lack of seal use of the coastal plain.

Subparagraph 37.31(c)(1) has been changed in accordance with the suggested wording of the State of Alaska to prohibit the alteration of banks and to require snow bridges to be free of dirt and debris, except that "significantly" has been inserted before "alter" to comport with the protection standard stated in section 1002(d)(1). The phrase "whichever occurs first" has been added to the end of § 37.31(c)(1) in response to the comment that the removal of snow bridges should be required prior to breakup whether or not their use has terminated.

Two commenters believed that § 37.31(c)(2) is too restrictive of water withdrawal, while several other commenters criticized the rule as being too permissive. The former argued that either specific streams, rivers, and lakes should be designated as water supply bodies or that field monitors should be delegated responsibility for on-site decisions as to use of water. The latter group of commenters argued variously that water withdrawal should never be allowed, never be allowed during the winter, or never be allowed during the winter in fish-bearing waters. As a major objective of the rule is to maintain fish habitat during the critical winter period, the rule has been clarified to simply prohibit water removal in fish bearing waters during the winter, per the State's suggestion. This will allow water use from surface sources devoid of fish, and will alleviate the necessity for time-consuming inspections of potential sources by monitors. The proposed § 37.31(c)(5) has been subsumed in § 37.31(c)(2). This should answer one commenter's question about how exploration personnel will know about the location of river pools.

Although two commenters suggested that the ⅛ mile limit on the detonation of explosives near water proposed in § 37.31(c)(3) was inadequate, the State of Alaska commented that it was too restrictive. Subparagraph 37.31(c)(3) has been revised in accordance with language recommended by the State, except that use of charges in excess of 100 pounds are required to be approved. One commenter suggested that the prohibition against disturbance of fish

spawning areas in § 37.31(c)(4) be expanded to include fish overwintering and nursery areas. The Service agrees and has so modified the rule. Another commenter recommended that the term "significant" and the phrase "identified by the Regional Director" be deleted from § 37.31(c)(4). This commenter argued that "significance" with respect to siltation or pollution of water bodies is difficult to ascertain until after the fact, especially in winter. Use of the term "significant" is based on the plain language of section 1002(d)(1), as discussed previously. It would be unreasonable to penalize a permittee for causing minor amounts of siltation or water pollution where they do not constitute significant adverse effects. The fact that the location of all fish spawning, over wintering and nursery areas are not known lead the Service to conclude that the most fair and effective course is to identity these areas for special protection as they become known.

The proposed § 37.31(c)(7) has been eliminated because of the changes to § 37.32 which are discussed below.

Section 37.31(d) Cultural resources. One commenter stated that the protections provided for cultural resources are inadequate and suggested that the regulations unnecessarily restrict the Regional Director's authority to fully protect the resources. The Service disagrees. The final rule is congruous with the requirements of Sections 106 and 110 of the NHPA, as amended, 16 U.S.C. 470f and 470h–2, its implementing regulations, 36 CFR Parts 60 and 800, and Executive Order 11593, 36 FR 8921 (May 13, 1971). These authorities permit both beneficial and adverse uses of some historic and archeological sites, provided proper measures are taken to consider and mitigate adverse effects. Thus, these guidelines recognize the flexibility underlying the statutory scheme for the protection of historic and archeological resources. Another commenter noted that, because of the limited quantity of baseline information on cultural resources available, the Regional Director should take a conservative position on their protection. The Service is following this approach by means of the terrestrial and general environmental safeguards contained in §§ 37.31 (b) and (e) and the stipulations that will be included in individual permits, as well as the provisions of § 37.31(d).

One commenter construed §§ 37.11(b)(2), 37.13(a), and 37.22(a), providing for avoidance of unnecessary duplication of exploratory activities as including avoidance of unnecessary duplication of archeological and historic survey requirements. The Service agrees and the stipulations and orders instituted by the Regional Director in implementing § 37.31(d) will further serve to guard against unnecessary duplication. One commenter suggested the need for a procedure to be used by the Service to notify the National Park Service of the discovery of archeological and historic resources eligible for the National Register of Historic Places during exploration. A programmatic memorandum of agreement between the Service, the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Officer (SHPO) will provide for expeditious treatment of emergency discovery situations. Reference to the agreement has been added to § 37.31(d)(3).

Three commenters expressed concern that the guidelines improperly delegate the Service's historic preservation responsibilities to its permittee. This is not the case. The Service is taking full responsibility for assuring that historic and archeological resources are properly identified, evaluated and protected. The final rules establish the means by which the Regional Director can require a permittee to carry out certain survey and analytical tasks and mitigation measures, which are made, be necessary at this time by the permittee's authorized exploration. The Regional Director will carry out certain consultation activities that will remain Service responsibilities in accordance with Sections 106 and 110 of the NHPA. The Regional Director will establish standards for the permittee's work which are consistent with 36 CFR Parts 60 and 800, monitor performance, and work with the permittee to assure that the standards for avoidance and data recovery are met.

Two commenters criticized the proposed § 37.31,(d)(2)(iii) on the ground that the discharge of petroleum or petroleum products should not be permitted anywhere within refuge boundaries. Adopting the suggestion that the prohibition against deliberate discharges should be all-inclusive, the service has moved it to § 37.31(e)(3) and included toxic materials with its scope.

Two minor changes have been made in § 37.31(d)(3). The phrase, "after September 30, 1983" has been deleted because, with the delay in the promulgation of these guidelines and the changes in § 37.21(b) noted above, it no longer serves a meaningful function. In addition, language has been added to clarify that the Regional Director, in accordance with the programmatic memorandum of agreement, can tell a permittee how to mitigate or avoid significant adverse effects on properties eligible for the National Register. Lastly, the heading of § 37.31(d) has been changed from "Human environment" to "Cultural resources" to conform more closely to the scope of the rule and standard usage.

Section 37.31(e) General. One commenter questioned whether oil spills are intended to be included under § 37.31(e)(1). Yes, that is the Service's intent. Oil is a petroleum product and, therefore, under the definition given to hazardous substances in § 37.2(k), oil spills are covered by §§ 37.31(e) (1) and (3).

Based upon a comment received from the State of Alaska, § 37.31(e)(2) has been modified to require all non-combustible solid waste, which includes fuel drums and shot wire, to be returned to a permittee's base of operations and all combustible solid waste to be incinerated or returned to a permittee's base of operations. Because section 37.31(e)(8) prohibiting permanent structures and facilities precludes a permittee's base of operations from being located within the coastal plain, the effect of § 37.31(e)(2) is to preclude the disposal of solid waste on refuge lands.

Subparagraph 37.31(e)(4) is one of the rules being adopted to implement section 1002(d)(1)(C). The words "per year" have been removed because its purpose is to restrict the number of survey crews working for all permittees anywhere within the coastal plain at any particular point in time and not the total that may work for all permittees throughout one year. It has also been modified to specify the maximum number of surface geological survey crews that will be allowed to work at any one time. These crews and their necessary equipment, facilities, and personnel are in addition to the maximum number of seismic crews, and their necessary equipment, facilities, and personnel, that may be permitted.

One commenter suggested that § 37.31(e)(5) be reworded to require the Regional Director's approval for the location of only permanent fuel storage facilities near water bodies. This suggestion has not been adopted. The Service agrees that there will be a need for small caches of fuel in the vicinity of temporary campsites. The wording of § 37.31(e)(5) enables the Regional Director to allow temporary fuel storage within flood plains when necessary. However, the Service intends to discourage this practice when there are viable alternatives as it increases the

risk of water contamination due to fuel spills. Under § 37.31(e)(8), no permanent fuel storage facilities are permitted within the coastal plain.

Another commenter recommended that the normal 100-foot buffer around other water bodies provided for in § 37.31(e)(5) be increased to 500 feet and that the rule also require fuel containers to be surrounded by impermeable dikes. The suggested changes are deemed unnecessary. As indicated above, the Service feels that the existing rule is sufficient to protect water bodies. The Service believes that the damage to soil resulting from berm construction has a greater potential for adversely impacting surface values than does the relatively minor and local risk of fuel spillage. In addition, a new sentence has been added to § 37.31(e)(5) requiring large fuel containers to have double walls.

One commenter recommended that all shot wire, in addition to all fuel containers, be required to be identified by owner. The Service considers the marking of shot wire to be inpracticable. Moreover, littering will not be allowed. Removal of debris will be enforced by on-site monitoring.

Several commenters recommended that support facilities, staging areas, and base camps be located only at existing developed sites, such as Camden Bay, Beaufort Lagoon, or Barter Island, or outside of the refuge entirely. There appears to be a misunderstanding by the commenters on the use of these terms. The Service considers permanent structures or facilities to include such things as airstrips and workpads built on gravel, base camps or bases of operations, and staging areas, and, therefore, as such, they are precluded from being located anywhere within the coastal plain by § 37.31(e)(8). Furthermore, the installation of temporary structures and facilities, such as ice airstrips and navigational towers, requires the prior approval of the Regional Director. As to these kinds of facilities, the Service does not intend to limit their location solely to the three areas mentioned above as they are too distant from all areas of the coastal plain to meet a permittee's needs and because they have relatively little impact. Cat-train or other mobile or temporary camps are not regarded as temporary facilities for the purposes of § 37.31(e)(8); their location is instead governed by § 37.31(b)(5).

The Service feels that no change in the guidelines is warranted by the suggestion of one commenter that the people of Kaktovik should be consulted and given the right of first refusal if a staging area or base camp were proposed to be located there. Nothing in the guidelines mandates the location of a staging area or base camp at Kaktovik, nor do they preclude Kaktovik from exercising any of its options in response to such a proposal.

One commenter urged the Service to reword § 37.31(e)(8) to allow for the implacement of new permanent survey markers by permittees to aid exploratory activities. This change was not adopted because the Service feels that other survey techniques and sufficient geodetic land survey monuments already exist to serve this need.

The Service has, however, reworded § 37.31(e)(8) slightly. First, the term "coastal plain" has been substituted for "refuge" because it is more accurate; this change should not be misconstrued to mean that the Service intends to permit permanent structures to be located on refuge lands outside of the coastal plain. Rather, it simply clarifies that this rule is not intended to preclude a permittee's operations from being staged from Kaktovik should such arrangements be worked out. Second, the word "facilities" has been added to clarify that the rule also covers sites that might be developed in conjunction with exploration operations. Lastly, the word "ice" has been inserted to clarify that airstrips built on ice are considered to be temporary facilities. Airstrips built on gravel, as distinguished from those using existing gravel bars, are regarded as permanent facilities and, therefore, precluded by the rule.

Section 37.32 Special areas. Three commenters criticized the proposed rule for incorporating by reference maps which were not published in the EIS or elsewhere. Three commenters criticized the proposed rule for lacking specificity as to the types of restrictions that would apply to designated areas. One commenter recommended that special areas be designated for birdlife and overwintering fish. One commenter stated that no exploratory activities should be allowed in muskoxen calving areas, in polar bear denning areas or in the Sadlerochit Spring area. One criticized the rule for not closing the entire coastal plain to exploratory activities during the caribou calving and post-calving seasons and for suggesting that exploratory activities might be restricted rather than entirely prohibited in other special areas. One commenter stated that the rule should give the Regional Director more flexibility for citing closures dates on sensitive caribou calving and post-calving areas.

Section 37.32 has been rewritten in response to these comments. Rather than designating special wildlife areas in which no or limited exploratory activities are permitted by reference to maps on file at the refuge office, the rule requires the Regional Director to designate within certain generally described areas specific special wildlife areas which are closed to exploratory activities for specific periods determined by the Regional Director to be necessary or appropriate to protect such wildlife from significant adverse effects. Subparagraph 37.32(a) requires the Regional Director to designate caribou calving and post-calving special areas within the coastal plain which are closed to all exploratory activities at specified times. Not all portions of the coastal plain are used every year for caribou calving and post-calving activities, nor do such activities occur at the same times or at the same places within the coastal plain in successive years. Thus, closure of the entire coastal plain to exploration during the caribou calving and post-calving seasons is not necessary to ensure that calving and post-calving caribou are protected from significant adverse effects. One commenter wanted the term for the closure of caribou special areas to be extended through August. Subsection 1002(d)(1)(A) concerns caribou during the calving and post-calving phases. The post-calving aggregation stage is normally completed by July 15. Even though there may be small groups of caribou widely dispersed throughout the coastal plain after this date, these caribou are must less vulnerable to exploratory activities because their post-calving aggregation phase has ended. Accordingly, the term was not extended through August.

Because muskoxen and snow geese move around within the coastal plain, the rule seeks to inform the reader of those general areas within the coastal plain in which the specific areas used by calving muskoxen or staging snow geese will be located. The rule on the muskoxen special area does not cover the period normally used for muskoxen post-calving, as was suggested by one commenter, because it is not well established that this is a period of heightened biological sensitivity for this species.

Paragraph 37.32(e) gives the Regional Director the discretion to designate additional special areas, such as, for example, major waterbird nesting areas, in which exploratory activities may be prohibited, conditioned or restricted by the Regional Director. Such designated areas may cover lands the surface estate in which is owned by holders of approved native allotments or the Kaktovik Inupiat Corporation. This was added to enable the Regional Director to

protect improvements and prevent conflicts with other surface uses, including subsistence, by imposing conditions on exploratory activities.

Paragraph 37.32(f) states that the Regional Director shall notify the permittee of the locations of the special areas designated pursuant to §§ 37.32(a) through (e) and of the applicable limitations on its activities as far in advance as possible. Because the locations of such special areas, as well as the dates during which the areas are used for such special purposes, may vary from year to year, it may not be possible to notify the permittee until shortly before the applicable limitation goes into effect. The Service intends to work as closely as possible with permittees in carrying out this rule to minimize disruption of their scheduled activities. The last sentence of § 37.32(f) has been added to clarify the Regional Director's authority to modify or remove limitations on exploration when they are no longer needed.

Paragraph 37.32(g) effects a permanent, year-round closure of the area surrounding Sadlerochit Spring. The Service did not adopt a ¾ mile radius buffer around the spring, as was suggested by one commenter, because it does not feel that such a wide buffer is necessary.

Section 37.33 Environmental briefing. One commenter suggested that at least two environmental briefings be held per field season. Though not adopting this specific suggestion, the Service has modified the final rule to permit the Regional Director to require a permittee to have its field personnel participate in additional environmental briefings whenever the Regional Director determines that they are needed.

One commenter recommended that the North Slope Borough be consulted during the structuring of the environmental briefing materials. Of course, the NSB is free to offer its suggestions to the Service at any time, but the most appropriate time for the NSB to make its environmental concerns known is during the public review and comment period for exploration plans. Beyond this, the Service does not envision formal consultations with the NSB for the purpose of preparing its briefing materials.

Section 37.41 Responsibilities of the Regional Director. One commenter criticized these guidelines for giving too much discretion to the Regional Director. The Service disagrees with this criticism. The final rules provide appropriate controls for the exercise of the Regional Director's discretion. These controls encompass both standards and procedures for decisionmaking. At the same time, the final rules preserve the discretion that is necessary to tailor administrative decisions to particular factual situations and to ensure fairness in the application of governmental powers.

Another commenter stated that § 37.41 should require the Regional Director to consult with the Minerals Management Service (MMS) and GS on all matters relating to approval and administration of exploration plans. As noted earlier, the Regional Director intends to seek the technical advice and assistance of BLM (into which all of MMS' onshore mineral management functions were consolidated by Secretarial Order No. 3087 (December 3, 1982)) and GS in such matters. This will be done through the more appropriate vehicle of a memorandum of understanding and, therefore, the suggested change is not needed.

Five commenters opposed and one commenter supported vesting adminstrative responsibility for the section 1002 program in the Regional Director. Those opposed to the Regional Director's role construed the guidelines as removing the Refuge Manager and thus his knowledge of local conditions from the decisionmaking process for the program. This assumption is erroneous. Paragraph 37.2(r) defines "Regional Director" to include his authorized representative. As such, the Refuge Manager, as well as his staff, will be actively involved in the supervision of field activities. The sound policy grounds for vesting primary control in the Regional Director include his greater capacity as a regional official to shift and commit personnel and other resources necessary to carry out the many tasks associated with implementation of the section 1002 program and to obtain and coordinate needed cooperation between the Service and other agencies. Moreover, despite the suggestions of some of these commenters, the management needs for controlling the oil and gas leasing program at the Kenai National Wildlife Refuge are not comparable to those for authorizing oil and gas exploration of the coastal plain. The oil and gas leasing program at Kenai is well established and the administrative procedures associated with it have become routine. On the hand, the § 1002 program covers a larger geographic area with more species of international significance, is highly controversial, and calls for the resolution of novel questions.

Two technical amendments have been made to § 37.41. The words "and disapprove" have been added to the opening clause merely for clarity and the word "approved" has been deleted as an adjective for plan of operation since the final rules do not require such plans to be approved.

One commenter stated that this rule should also cover expressly the identification of cultural resources. This rule is not intended to list explicitly all of the Regional Director's duties. Those not listed are adequately covered by "perform all other duties assigned".

Section 37.42 Inspection and Monitoring. A number of commenters felt that the proposed rule was inadequate. Eight commenters apparently construed the first sentence of § 37.42 to mean that the Service's monitoring program will be discretionary. That is not the Service's intent. The Service intends to have an active monitoring program, but it does not agree with the views of twenty-six commenters that a full-time monitoring program, in which Field Monitors are assigned to accompany all work crews, is necessary. Indeed, the Service feels that a constant association between Field Monitors and work crews might undercut effective enforcement. The important provision to focus on is the one which states that the Regional Director, which includes his authorized representatives and his Field Monitors, has a continuing right of access for inspection and monitoring.

Whereas one commenter stated that the Field Monitors should be full-time Service employees and not volunteers, state officials, or parties working under contract, five other commenters felt that local and regional representatives should be formally included in the monitoring program. Three commenters suggested the need for an interdisciplinary team of Field Monitors. The Service intends to use an interdisciplinary team of professionals to do its field monitoring. It is possible that local and regional representatives may occasionally accompany Field Monitors on a space-available basis where such arrangements can be worked out with the permittee. On those occasions, the local and regional representatives would not be representatives of the Regional Director or authorized to exercise his authorities, and the permittee would not be expected to underwrite their expenses. One commenter suggested that a program be established under § 37.42 to allow local residents to inform the Service of any violations that they observe. This is a good suggestion, but no change in the rule is necessary to accommodate it.

One commenter thought the proposed rule gave the Field Monitors too much authority, but another thought they were

given too little. Five commenters stated that Field Monitors should be empowered to issue stop work orders. The rule has been modified to provide that a Field Monitor may exercise such authority of the Regional Director as is provided by delegation. But, the rule precludes the Regional Director from authorizing one acting as a Field Monitor to revoke a permittee's special use permit pursuant to § 37.44. It also requires the concurrence of the Regional Director or his authorized representative in any order issued by a Field Monitor suspending a permittee's entire field operations. The rule does not, however, require the concurrence of the Regional Director or his authorized representative in any order issued by a Field Monitor ordering the permittee to stop specific exploratory activities or suspending the permittee's authorization to carry out specific exploratory activities. For example, the rule does not preclude the Regional Director from delegating to a Field Monitor the authority to issue, without having obtained his concurrence, an order ordering a permittee to stop detonation of explosives in a particular area or suspending exploratory activities in that area if the Field Monitor finds that the permittee is detonating explosives within ½ mile of a know denning bear.

Three commenters endorsed the requirement that advance notice be given to permittees when the Service wishes them to supply its Field Monitors with lodging, meals, and other services. One of these commenters urged the qualifying phrase "whenever possible" to be deleted from the last sentence of § 37.42 on the ground that advance notice should always be possible, and also, along with another, suggested that the word "written" be deleted on the ground that verbal notice would be adequate. The one commenter favoring written notice stated that it should include the names of visitors, their titles, expected duration of visit, the type of logistical support required, and the specific purpose of their visit. The Service feels that the required notice need not specify more than is indicated. However, as a practical matter and depending on the circumstances, such additional information may be voluntarily supplied. One commenter stated that advance notice of inspections should not be required because they should be unanticipated to be effective. This commenter misconstrued the purpose of the last sentence of § 37.42. It does not require advance notice of all monitoring and inspection activities. Rather, it requires advance notice, whenever possible, of the need for logistical support to be supplied by permittees for Field Monitors or other representatives of the United States. Such support may not always be needed. Based on these comments, the last sentence of § 37.42 has been changed to eliminate the requirement for such notice to be written.

Two commenters suggested that the Service's monitoring program should include field documentation of monitoring activities. The Service agrees with the suggestion, but does not feel that the details of its monitoring program need to be incorporated into the rule.

Section 37.43 Suspension and Modification. Four commenters objected to a provision in the proposed rule that, if adopted, would have allowed the Regional Director to suspend exploratory activities when he deemed them to be no longer necessary. These commenters questioned the legality of the proposed provision as well as the competence of the Regional Director to make such a judgment. The Service has deleted the provision on the belief that the rule otherwise provides the Regional Director with adequate authority to suspend exploratory activities should he have the need to do so.

Three commenters suggested that the Regional Director should be required to consult with a permittee before suspending its exploratory activities or modifying its exploration plan or special use permit, and two commenters suggested that the rule be modified to give a permittee the opportunity to correct any deficiency before allowing the Regional Director to act thereunder. Neither suggestion has been adopted because the Service does not wish to so constrain the Regional Director's authority. However, the Service recognizes that suspension of exploratory activities and/or modification of an exploration plan or permit are serious remedies and, for that reason, feels that both suspension and modification are unlikely to occur without prior notice and/or consultation. One commenter recommended that the rule be modified to limit suspensions and modifications for reason of non-compliance to significant or substantial non-compliance. Again, the Service does not wish to so constrain the Regional Director's discretion, but it does not expect that he will take his authority lightly. One commenter suggested that the rule be modified to provide for an extension of the permit term for a period equivalent to the period of suspension. In view of the change allowing multi-year permits, this change is not necessary.

One commenter expressed concern that the waiver provision could result in a reduction in environmental protection. The Service does not intend to grant a waiver if doing so would result in significant adverse effects to the refuge's resources. However, circumstances change and experience may lead the Regional Director to conclude that performance or enforcement of particular permit provisions, some of which may have nothing to do with environmental concerns, is not necessary. For this reason the Service does not agree with the view point of some commenters that no waiver should be permitted or that the rule provides an inadequate check on the exercise of the Regional Director's discretion.

Section 37.44 Revocation and relinquishment. Consistent with the changes in §§ 37.21–37.24, the word "approved" has been deleted as a modifier of the term "plan of operation". The words "or relinquishment" have been added to the third sentence of this rule to clarify that, by relinquishing or giving up its authorization to conduct exploratory activities, a permittee cannot terminate its liability for clean-up costs incurred under § 37.31(a), its obligation under § 37.53(a) to submit all data and information that it has acquired or processed, etc., as a result of carrying out exploratory activities, its obligation under § 37.53(g) to inform the Department on request of the persons to whom it has provided raw data and information at fair cost, and other obligations.

Section 37.45 Exploration by the U.S. Geological Survey. One commenter stated that all sections of 50 C.F.R. Part 37 should apply to GS and its subcontractors should its exploration plan be approved. The Service does not agree. Since GS can only conduct exploratory activities in those areas where no one else has submitted a plan which satisfies the regulations of Part 37, it is likely that if GS conducts any exploration it will be in areas where others have no interest. Therefore, it is not sensible to make § 37.13 concerning group participation applicable to GS or its contractors and subcontractors. Little would be gained by applying the requirements of § 37.46 concerning cost reimbursement to GS and its contractors and subcontractors. Little would be gained by applying the requirements of § 37.46 concerning cost reimbursement to GS and its contractors and subcontractors because doing so would ultimately only lead to the government reimbursing itself. Accordingly, a new

sentence has been added to § 37.45 clarifying the application of Part 37 to GS' contractors and subcontractors. In addition, the exemption for GS from the bonding and civil penalty provisions of Part 37 has been retained as it makes no sense to apply them to another governmental agency. GS and its contractors and subcontractors have been exempted from the provisions dealing with processed, analyzed and interpreted data or information, as data acquisition, processing, analysis and interpretation done by GS or on its behalf is financed by public funds and, therefore, the Department has no intention of withholding such data and information from the public. Access to such data and information may be obtained by invoking the Freedom of Information Act (FOIA). GS has been exempted from § 37.54(d) because the last sentence of that paragraph is not intended to apply to intradepartmental transfers of information or transfers made under §§ 37.54(b) and (c).

Section 37.46 Cost reimbursement. Eight commenters objected to this rule as unfair for various reasons. Some felt that it was designed to recover all of the goverment's regulatory and administrative costs for the section 1002 program. This is not the case. Section 37.46 does not permit the Department to recover its costs in doing the baseline study required by section 1002(c), in promulgating these guidelines or preparing the associated environmental impact statement, in handling the litigation that has already occurred over the section 1002 program, or in preparing the report to Congress that is required by section 1002(h).

Some felt that the government and the public and not the permittees, are the principal beneficiaries of the program and, therefore, that the charges allowable under the rule are not comparable to standard user changes. The benefits the government and the public may receive from access to geological and geophysical data and information obtained through their privately funded exploratory efforts in no way diminish the benefits that permittees will receive from participating in the program. These include permission to use refuge lands to conduct exploration and the opportunity to gather data and information that can be used by the permittees to participate on an informed basis in the public debate over the future use of the refuge; to urge Congress to open the refuge to leasing, should such exploration lead to the conclusion that the coastal plain possesses oil and gas reserves worthy of development and production; to participate in future lease sales, should leasing be authorized; and to sell such data and information to those interested in participating in future lease sales. Obviously, private companies would not be willing to invest the millions of dollars that will be necessary to carry out oil and gas exploration on the coastal plain without the expectation of receiving substantial benefits in return for their investment. The charges allowable under the rule are for expenses that would not necessarily be incurred but for the desire of applicants and permittees to explore the coastal plain.

Three commenters objected to this rule because applicants and permittees have no control over the costs that they may be required to be reimbursed. While this may be true, the rule does require the Regional Director to notify an applicant or permittee of estimated reimbursable costs at various stages and provides a mechanism to contest costs that are changed to an applicant or permittee.

§ 37.47 Civil penalties. One commenter requested that this rule be broadened to allow restitution for the loss or impairment of subsistence rights and life styles. This has not been done because the purpose of § 37.47 and the statutory provision on which it is based, § 1002(g), is the punishment of certain violations and not the recovery of damages that might be associated with those violations. For this reason, the suggestion that subsistence users or the city of Kaktovik be given the right to appeal the decision of an administrative law judge under § 37.47(h)(1) has not been adopted.

Without being more explicit, one commenter stated that the rule appears to go far beyond section 1002(g) of ANILCA. The Service disagrees. The rule merely provides the procedures for implementing section 1002(g).

One commenter stated that any mailings required of the government under § 37.47 should be of such a nature as to assure receipt by the permittee. The rule has been modified to require notices of violations and notices of assessment to be served personally or by registered mail. This change should assure receipt by the respondent. This change should also eliminate this commenter's due process concern about the requirement in § 37.47(e) that a request for a hearing be received within 45 days of the date of the issuance, rather than the service, of the notice of assessment.

One commenter suggested that § 37.47 provide for notice and demand, accompanied by a reasonable time to correct any deficiency before a notice of violation is issued. The Service does not feel that this change is necessary. Because initiation of the civil penalty process is a serious matter, it is highly likely that the respondent will be informed, through warnings and efforts by the Service to secure compliance, of the grounds that provide the basis for the notice of violation. In addition, no civil penalty can be assessed until 45 days after the notice of violation. This gives the respondent time to correct any deficiency. In assessing the civil penalty, the Solicitor must take into account the respondent's good faith efforts to achieve timely compliance after receiving notice of the violation.

One commenter criticized § 37.47(a) for appearing to exclude from its coverage violations of stipulations and orders which are applied outside of a special use permit. Subsection 1002(g) authorizes the Secretary to penalize a violation of any provision of an approved exploration plan, of any term or condition of a special use permit, or of any act prohibited by these guidelines. Some stipulations and orders issued by the Regional Director or his Field Monitors may be issued as amendments of a permittee's permit. If they are, § 37.47(a) would apply to them. But when they are not, the permittee may still be penalized under § 37.47(a) for conduct not in compliance with such stipulations and orders if that conduct also constitutes a violation of its approved exploration plan or an act prohibited by the guidelines.

One commenter criticized § 37.47(j) for permitting the Solicitor to remit any civil penalty which is imposed pursuant to § 37.47. Remission is an equitable remedy, which permits the government for reasons of equity to mitigate the harshness of a penalty. Paragraph 37.47(h) is based on Section 1002(g)(4). An act of remission does not acquit a petitioner from the existence of a civil penalty.

Section 37.51 Operational reports. Three commenters recommended that monthly rather than bi-weekly progress reports be required under § 37.51(a). This recommendation has not been adopted because the requirement for progress reports to be submitted every two weeks, as the rule is now worded, is reasonable.

One commenter wanted the city of Kaktovik to be included at the end of the first sentence in § 37.51(a). One commenter wanted free access to all operational reports for the North Slope Borough and the people of Kaktovik. One commenter erroneously stated that the regulations do not specifically allow

for public access to operational reports, and noted that making them accessible under the FOIA would be consistent with § 1002. It is the Service's intent that access to these reports would be handled by the last sentence of § 37.54(a), which refers to FOIA.

One commenter recommended that semiannual reports be submitted on February 1 and August 1 in order to allow more time for data processing and evaluation. This recommendation was adopted together with language allowing the Regional Director the flexibility to require their submittal at other times should he wish to do so. Of course, if the Regional Director invokes this clause, he will require their submittal in time for them to be used in preparing the report to Congress required by Section 1002(h) of ANILCA.

One commenter assumed that the adverse effects on cultural resources referred to in § 37.51(b)(4)(ii) were those acceptable to the Service, the ACHP and the SHPO. No, this is not the Service's intent. Mitigation or avoidance of adverse effects that can be anticipated is covered by § 37.31(d). The provision here deals with unanticipated and inadvertent adverse effects.

Section 37.52 Records. One commenter questioned the significance of the date, September 2, 1989. Another stated that the requirement to keep records for inspection until September 2, 1989 is costly and burdensome and, instead, suggested 3 years as a reasonable period for keeping records. The date, September 2, 1989, is three years after the date by which the Secretary must submit the report required by Section 1002(h) to Congress. The three-year period is borrowed from federal procurement regulations.

Section 37.53 Submission of data and information. For simplicity, the second sentence of § 37.53(a) has been rewritten to refer to raw data and information and processed, analyzed and interpreted data or information since these terms are defined in § 37.2. This change is not intended to change the intent of this rule.

One commenter opined that mandatory submission of proprietary geophysical and geological data constitutes an unconstitutional taking of property. The Service disagrees. The required submission of such data is the *quid pro quo* for permission from the government to explore refuge lands. Three commenters recommended that all data and information submitted under this rule be submitted solely to the Secretary. The Secretary's Office does not have the facilities necessary to receive and handle such data and information.

Two commenters asked that the government reimburse a permittee for the cost of reproducing data and information submitted under the rules and for the cost of putting such data and information in any form requested by the Regional Director that is not usually used by the permittee. This has not been done because Section 1002(e) does not authorize the Department to reimburse a permittee for such costs.

One commenter doubted whether the Service realizes the enormity of the material required to be submitted under § 37.53 and suggested, along with another commenter, that a permittee, instead, notify the Regional Director about what is available on a monthly basis and supply that which he then requests. In response to this comment, the last sentence of § 37.53(a) has been modified by insertion of ", unless directed otherwise by the Regional Director" and by substitution of "annual quarter" for "month".

The phrases ", if obtained," and "as much as possible" have been added to §§ 37.53(b)(1) and 37.53(c) respectively at the suggestion of another commenter. For the convenience of those required by § 37.53 to furnish data and information, the proposed § 37.54(b), dealing with the marking of confidential information, has been inserted as § 37.53(e), and its text has been modified slightly on account of this move.

One commenter suggested that the proposed § 37.54(b), now § 37.53(e), be modified to provide for the marking of tapes and other types of data and information not amenable to page marking. This has been done.

Two commenters wanted "raw" to be substituted for "processed" in § 37.53(c) to facilitate public use of raw data. The Service feels that a permittee's compliance with §§ 37.53(a) and (b) should be sufficient to satisfy our obligation a permittee has to the public in this regard.

Five commenters stated that a submitter should be given notice and an opportunity to comment before the Department changes its "confidential" classification of data and information. No change in § 37.53(f) was made on account of this recommendation because departmental procedures for implementing FOIA, which are incorporated by reference in § 37.54, require, under 43 CFR 2.13(h), the official responsible for processing a FOIA request to seek, when it is administratively feasible to do so, the views of the submitter on whether the record requested should be released.

Paragraph 37.53(g) has been added as a final rule on an interim basis to give the Department a means of enforcing the prohibitions mandated by section 110 of Pub. L. 97–394. Comments on § 37.53(g) are invited. For more information, see the discussion of § 37.2(a) above.

Section 37.54 Disclosure. Twenty-four commenters objected to this rule because they thought that it does not require the disclosure of enough information to the public, and twenty-four others objected because they thought that it requires the disclosure of too much information to the public. The first group wanted all data and information gathered as a result of exploration to be made public. The second group's primary concern was that the disclosure of raw data, as defined in § 37.2(p), would enable a permittee's non-participating competitors to process the data and obtain processed, analyzed and interpreted data or information at substantially reduced costs. Several also expressed the concern that, due to the Service's broad definition of raw data, the fear that the disclosure provisions would be unfairly used to the competitive and economic disadvantage of the permittee would undermine the statutory goal of having private industry undertaken and fund exploration of the coastal plain. These commenters offered several solutions. Some thought that all geological and geophysical information should be treated confidentially. Some thought the definition of raw data should be narrowed. One of these suggested limiting raw data to field observation notes and survey plans. Three recommended prohibiting any commercial use of disclosed raw data. Ten recommended charging a user fee for any data disclosed comparable to the cost that a purchaser or group participant would pay. Seven recommended adjusting the timing on when raw data could be released, by deferring their availability until the report required by section 1002(h) is submitted to Congress or for a period of years after a lease sale of the area from which they were obtained or for a reasonable period of time. The Service considers the need for changes in that part of the rule dealing with the disclosure of raw data on account of these comments to have been abrogated by the passage of section 110 of Pub. L. 97–394 for the reasons discussed above under the commentary on §§ 37.2(a), 37.2(o) and 37.2(p). The Service has, however, decided not to make raw data available public disclosure until the Secretary submits the report required by § 1002(h) of ANILCA to Congress. Deferral of availability for public disclosure until that date will eliminate the endless and more importantly,

perhaps erroneous speculation that might otherwise occur should raw data and information be disclosed in a piecemeal fashion as they are submitted to the Regional Director, while at the same time preserving the congressional goal of assuring access to such data and information so as to enable a full public discussion and debate on the future use and development of the refuge.

The Service has also, after considering the recommendations of several commenters, lengthened the period of confidentiality provided for processed, analyzed, and interpreted data and information. This has been done to prevent the competitive harm that might otherwise occur due to the extrapolation of a permittee's processing, analytical and interpretive methodologies from the disclosure of processed, analyzed and interpreted data or information. That period is now 10 years from submission or 2 years from lease sale, whichever is longer.

One commenter pointed out that federal law allows the Department to withhold from the public information on the location of important archeological and historic properties if its disclosure might result in their harm. Nothing in §§ 37.21(d) and 37.31(d) requires such site-specific information to be located in an exploration plan. Furthermore, the last sentence of § 37.54(a) enables the Department to invoke such statutes through application of exemption 3 to the FOIA, 5 U.S.C. section 552(b)(3), to withhold such information.

One commenter contended that the disclosure provisions violate exemptions 4 and 9 to FOIA, 5 U.S.C. § 552(b)(4) and (9). The Service disagrees with the conclusion. This commenter recommended that § 37.54(a) be rewritten to require the withholding of data or information that could be used to the unfair competitive disadvantage of any permittee by invocation of exemptions 3, 4, and 9 to the FOIA.

This change was not adopted because of the enactment of section 110 of Pub. L. 97–394, discussed above.

One commenter recommended the addition of language to § 37.54(b), formerly § 37.54(c), the subject any government employee, agent or third party to a court action for civil damages. The Service's authority to impose this remedy by regulation is questionable. In any case, internal disciplinary measures should provide a sufficient deterrent against unlawful disclosures by employees. The Service has simplified the language of § 37.54(b). In doing so, it has not intended to affect its meaning or scope. The Service continues to construe it to permit the Department to disclose processed, analyzed and interpreted data or information to agents or third parties for reproducing, processing, reprocessing, analysis and interpretation, as well as for other authorized activities. One commenter recommended the phrase "whenever practicable" be deleted from § 37.54(b). This suggestion was not adopted. The Service considers the guidelines adequate to meet the needs and concerns of this commenter.

Another commenter recommended that processed data be provided to the Alaska Department of Natural Resources. This suggestion has been accommodated by including the State of Alaska in § 37.54(c). The phrase "upon proper request" has also been added to this paragraph. This addition is not intended to change the paragraph's purpose, which is to notify permittees of the possibility that under certain circumstances the Department will give their confidential data and information to those entities listed. This phrase has been added to clarify, however, that the Service does not foresee doing so routinely.

Paragraph 37.54(d) was added as a final rule to implement on an interim basis the mandatory prohibition in section 110 of Pub. L. 97–394 against the commercial use of data and information obtained from the Department. It includes a requirement for a certified statement acknowledging this prohibition and the disqualification stated in the first sentence of § 37.4(b) as a condition of obtaining access to any data and information under § 37.54. Such a certified statement will help to educate requesters about the consequences of obtaining such data and information from the Department and the restraint on their use, as well as help the Department to enforce them. Comments on § 37.54(d) are invited. For more information, see the discussion of § 37.2(a) above.

In addition to the changes mentioned above, a number of minor and technical changes have been made on these guidelines to conform to the changes discussed above or to correct typographical errors and omissions made in the publication of the proposed rules in the **Federal Register**.

Determination of Effects. The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The determination that the guidelines do not constitute major rule is based on estimated annual operating costs of $30 million to $40 million for permittees and $1 million to $2.2 million for the federal government. Furthermore, no major increases in costs or prices for consumers, individual industries, government agencies, or geographic regions and no adverse effects on investment, productivity, competition, or employment are predicted to result from their implementation. The certification that the guidelines will not have any significant economic effect on a substantial number of small entities is based on the fact that they contain no special requirements for utilizing unusual or untested exploratory methods and techniques that would be costly or available only to a small set of companies and they afford small entities an opportunity to pool their financial and operational resources in applying for approval to conduct exploratory activities.

Paperwork Reduction Act. The guidelines contain provisions for collecting information that are designed to implement or facilitate performance of section 1002(e)–(h) of ANILCA. However, the information collection requirements contained in 50 CFR Part 37 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

Environmental Impact Statement. In accordance with subsection 1002(d)(2) of ANILCA, the Service prepared an Environmental Impact Statement (EIS) to accompany the guidelines and on February 23, 1983 the Service filed the final EIS with EPA, which announced its availability to the public in accordance with 40 CFR 1506.10(a) at 48 **Federal Register** 9365 on March 4, 1983. Comments received on the EIS which related to the guidelines were considered by the Task Force along with the comments addressed directly to the proposed rules in order to integrate environmental issues raised by EIS comments with environmental and other factors considered in the development of the regulations. All substantive comments on the draft EIS were responded to in the final EIS.

In addition, public comments submitted on the final EIS were reviewed and considered before the decision to adopt the regulatory approach incorporating these final rules (Alternative 3 of the EIS) was made. Copies of these comments are available from the Division of Refuge Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. None of these comments required revision of or supplement to the final EIS or guidelines. The record of decision for

the selection of Alternative 3 is being published separately as a notice also in Part IV of this issue. Copies of the final EIS may be obtained from Doug Fruge, Division of Refuges, Alaska Regional Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

Effective Date. These guidelines, including the provisions specifically designed to implement Section 110 of Pub. L. 97-394, take effect immediately upon their publication in the **Federal Register** because the need to accept, evaluate, modify, if necessary, and approve qualifying applications or exploration plans, and to issue permits in time to authorize preliminary field investigations and surface geological exploration to be conducted during the summer of 1983 and to enable winter seismic exploration to be conducted during the 1983-1984 field season constitutes good cause for waiving the 30-day notice normally afforded in accordance with 5 U.S.C. 553(d). The need to avoid a hiatus in the Service's regulatory program that would otherwise be created at this time, if rules were established to address the acquisition, submission and disclosure of geological and geophysical data and information, but not the use of such data and information, also constitutes good cause for giving immediate effect to the provisions designed to implement Section 110, notwithstanding the invitation of public comment found above under the discussion of 50 CFR 37.2(a). Moreover, the advance public notice of the guidelines' contents afforded by virtue of their inclusion as preliminary final regulations in Appendix A of the final EIS is thought to mitigate any hardship that might otherwise derive from this waiver of the 30-day period provided in 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 37

Alaska, Oil and gas exploration, Wildlife refuges.

For the reasons set out in the preamble, the EIS and the record of decision, and under the authorities of section 1002 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2449, as amended by section 110 of Pub. L. 97-394, 96 Stat. 1982 (16 U.S.C. 3142); section 110 of Pub. L. 89-665, as added by section 206 of Pub. L. 96-515, 94 Stat. 2996 (16 U.S.C. 470h-2); section 401 of Pub. L. 148, 49 Stat. 383, as amended (16 U.S.C. 715s); 31 U.S.C. 9701; 5 U.S.C. 301; and 209 DM 6.1; 50 CFR Part 37 is added to Chapter I, Subchapter C, and established as follows.

Dated: April 4, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

PART 37—GEOLOGICAL AND GEOPHYSICAL EXPLORATION OF THE COASTAL PLAIN, ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA

Subpart A—General Provisions

Sec.

Subpart B—General Requirements

Subpart C—Exploration Plans

Subpart D—Environmental Protection

Subpart E—General Administration

Subpart F—Reporting and Data Management

Authority: Sec. 1002, Pub. L. 96-487, 94 Stat. 2449, as amended by Sec. 110, Pub. L. 97-394, 96 Stat. 1982 (16 U.S.C. 3142); Sec. 110, Pub. L. 89-665, as added by Sec. 206, Pub. L. 96-515, 94 Stat. 2996 (16 U.S.C. 470h-2); Sec. 401, Pub. L. 148, 49 Stat. 383, as amended (16 U.S.C. 715s); 31 U.S.C. 9701; 5 U.S.C. 301; 209 DM 6.1.

Note.—The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

Subpart A—General Provisions

§ 37.1 Purpose.

These regulations implement the requirement of section 1002(d) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2450, as amended, 16 U.S.C. 3142(d), that the Secretary establish guidelines governing surface geological and geophysical exploration for oil and gas within the coastal plain of the Arctic National Wildlife Refuge. Section 1002 mandates an oil and gas exploration program for the refuge's coastal plain. The program shall culminate in a report to Congress which contains, among other things, the identification of those areas within the coastal plain that have oil and gas production potential, an estimate of the volume of oil and gas concerned, the description of the wildlife, its habitat, and other resources that are within the areas identified, and an evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such areas will have on the refuge's resources. It is the objective of this program to ascertain the best possible data and information concerning the probable existence, location, volume, and potential for further exploration, development, and production of oil and gas within the coastal plain without significantly adversely affecting the wildlife, its habitat, or the environment and without unnecessary duplication of exploratory activities. These regulations prescribe the requirements and procedures for obtaining authorization for and the conduct of such exploratory activities, and for submitting to the Department the resulting data and information. These regulations also describe other matters relating to the administration of the program.

§ 37.2 Definitions.

The following definitions are applicable to the sections of this part.

(a) "Act" means section 1002 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2449, as amended by section 110 of Pub. L. 97-394, 96 Stat. 1982, 16 U.S.C. 3142.

(b) "Adequate protective cover" means snow or a frostline, or both, sufficient to protect the vegetation and soil from significant adverse effects due to the operation of surface equipment, as determined by the Regional Director.

(c) "Coastal lagoons" means the waters and submerged lands between the mainland and the offshore barrier islands that lie between Brownlow Point and the Aichilik River within the coastal plain.

(d) "Coastal plain" means that area shown on the map entitled "Arctic National Wildlife Refuge", dated August

1980, and legally described in Appendix I of this Part.

(e) "Cultural resource" means any district, site, building, structure, or object significant in American history, architecture, archeology, engineering or culture, as determined in accordance with 36 CFR 60.6.

(f) "Department" means the Department of the Interior and any of its component bureaus and offices.

(g) "Director" means the Director of the U.S. Fish and Wildlife Service of his authorized representative.

(h) "Exploration plan" means the way in which a program of exploratory activities is proposed to be arranged and carried out.

(i) "Exploratory activities" means surface geological exploration or seismic exploration or both of the coastal plain and all related activities and logistics required for either or both, and any other type of geophysical exploration of the coastal plain which involves or is a component of an exploration program for the coastal plain involving surface use of refuge lands and all related activities and logistics required for such exploration.

(j) "Harass" means to pursue, hunt, take, capture, molest, collect, harm, shoot or kill or attempt to engage in any of the preceding by either intentional or negligent act or omission.

(k) "Hazardous substances" means petroleum, petroleum products, toxic materials, chemical effluent, explosives, or other materials which are likely to cause significant adverse effects to the refuge's wildlife, its habitat, the environment, or humans.

(l) "Permittee" means the person authorized by a special use permit issued pursuant to this part to conduct exploratory activities on the coastal plain; any official, employee, contractor, subcontractor or agent of the permittee or of the permittee's designee; and any participant to the permittee's permit.

(m) "Person" means any individual, partnership, firm, corporation, association, organization, or agency.

(n) "Plan of operation" means detailed procedures, covering a period not to exceed 12 months, proposed for executing an exploration plan.

(o) "Processed, analyzed and interpreted data or information" means any data or information which results from any subsequent modification, processing, analysis, or interpretation of raw data and information by human or electronic means, on or off the refuge.

(p) "Raw data and information" means all original observations and recordings in written or electronic form and samples obtained during field operations.

(q) "Refuge" means the Arctic National Wildlife Refuge.

(r) "Regional Director" means the Regional Director, Region 7 of the U.S. Fish and Wildlife Service, or his authorized representative.

(s) "Rehabilitation" means the act of returning the landform and vegetation to as near its original shape and condition as practicable, as determined by the Regional Director.

(t) "Secretary" means the Secretary of the Interior or his authorized representative.

(u) "Service" means the U.S. Fish and Wildlife Service.

(v) "Solicitor" means the Solicitor of the Department of the Interior or his authorized representative.

(w) "Special use permit" means a revocable, nonpossessory privilege issued in writing by the Regional Director and authorizing the permittee to enter and use the refuge for a specified period to conduct exploratory activities, and other activities necessary thereto.

(x) "Support facilities" means facilities on or near the refuge used to provide logistical support for the field exploratory activities.

(y) "Third party" means any person other than a representative of the permittee or the United States government.

(z) "Waste" means all material for discard from exploratory activities. It includes, but is not limited to, human waste, trash, garbage, refuse, fuel drums, shot wire, survey stakes, explosives boxes, ashes, and functional and nonfunctional equipment.

(aa) "Wildlife" means fish or wildlife or both.

§ 37.3 Other applicable laws.

(a) Nothing in this part shall be construed to relieve a permittee or any person from complying with any applicable federal laws or any applicable state and local laws, the requirements of which are not inconsistent with this part.

(b) Until the litigation between the United States and the State of Alaska over title to the submerged lands of the coastal lagoons, "United States v. Alaska", Sup. Ct., No. 84, Orig. (1979), is resolved, the permittee shall satisfy both federal and state requirements for conducting oil and gas exploration in the coastal lagoons. In the event of an inconsistency between such requirements the permittee shall satisfy that requirement which provides the greatest environmental protection.

§ 37.4 Disclaimer and disqualification.

(a) Authorization granted under this part to conduct exploratory activities shall not confer a right to any discovered oil, gas, or other mineral in any manner.

(b) Any person who obtains access pursuant to § 37.54 to data and information obtained as a result of carrying out exploratory activities shall be disqualified from obtaining or participating in any lease of the oil and gas to which such data and information pertain. Any person who obtains access to data and information obtained as a result of carrying out exploratory activities from any person other than the permittee who obtained such data and information shall be disqualified from obtaining or participating in any lease of the oil and gas to which such data and information pertain.

Subpart B—General Requirements

§ 37.11 General standards for exploratory activities.

(a) No exploratory activities shall be conducted without a special use permit. Requirements and procedures for obtaining a special use permit are prescribed in §§ 37.21 through 37.23.

(b) Exploratory activities shall be conducted so that they do not:

(1) Significantly adversely affect the refuge's wildlife, its habitat, or the environment;

(2) Unnecessarily duplicate exploratory activities of the permittee or another permittee; and

(3) Unreasonably or significantly interfere with another permittee's activities.

(c) Reexamination of an area may be permitted by the Regional Director if necessary to correct data deficiencies or to refine or improve data or information already gathered.

(d) Drilling of exploratory wells is prohibited.

§ 37.12 Responsibilities of permittee.

(a) The permittee shall comply and shall be responsible for the compliance of its officials, employees, contractors, subcontractors and agents with the regulations of this part, the terms and conditions of its special use permit, the provisions of its approved exploration plan and plan or operation, and all reasonable stipulations, demands and orders issued by the Regional Director. All actions by the permittee inconsistent with this part are prohibited.

(b) The permittee shall designate a general representative who shall be the person primarily accountable for managing the permittee's authorized activities, and a field representative who shall be the person primarily accountable for supervising the

permittee's field operations, and their alternates. The Regional Director shall be informed of the names, addresses, and telephone numbers of the persons designated pursuant to this paragraph and of the procedures for contacting them on a 24-hour basis, including the radio frequency for field operations, at the time the permittee submits its first plan of operation pursuant to § 37.24. The permittee shall notify the Regional Director promptly of any changes in such personnel or the procedures for contacting them.

(c) Field operations shall be conducted by the permittee or a designee approved by the Regional Director. Assignment of a designee shall be in a manner and form acceptable to the Regional Director. The Regional Director shall approve or disapprove a permittee's designee within 30 days following the receipt of such information as the Regional Director may require from the permittee and designee in order to reach his decision. Acceptance of a designee to act for the permittee in matters relating to the conduct of exploratory activities does not relieve the permittee of responsibility for compliance with applicable laws, its special use permit, exploration plan, plan of operation, and all reasonable stipulations, demands and orders of the Regional Director. The designee will be considered the agent of the permittee and will be responsible for complying fully with the obligations of the permittee. The serving of stipulations, demands, orders, and notices on the permittee's designee, when delivered personally or by radio or mail, will be deemed to be service upon the permittee. The permittee shall notify the Regional Director in writing when assignment of a designee has been cancelled. A designee cannot reassign its designation to another party. The permittee or designee shall notify the Regional Director 10 working days in advance of its intention to commence field operations for each season that it conducts exploratory activities.

(d) The permittee shall submit to the Regional Director 30 days prior to the commencement of field operations for each year covered by its exploration plan an updated list of the names and addresses of all persons participating in the exploratory activities covered thereby or sharing in the data and information resulting therefrom through a cost-sharing or any other arrangement.

(e) The permittee shall perform operations and maintain equipment in a safe and workmanlike manner. The permittee shall take all reasonable precautions necessary to provide adequate protection for the health and safety of life and the protection of property and to comply with any health and safety requirements prescribed by the Regional Director.

§ 37.13 Group participation.

(a) To avoid unnecessary duplication of exploratory activities, the permittee shall, if ordered by the Regional Director, afford all interested persons, through a signed agreement, an opportunity to participate in its exploratory activities. Within 60 days following such order, the permittee shall provide evidence satisfactory to the Regional Director of its compliance therewith. The permittee shall provide the Regional Director with the names and addresses of all additional participants, as they join.

(b) If, with the approval of the Regional Director, the permittee at any time changes any provisions of its approved exploration plan relating to areal extent, intensity of exploratory activities, or logistical support, and the Regional Director determines such changes to be significant, the Regional Director may require the permittee to afford all interested persons another opportunity to participate in the permitted exploratory activities in accordance with paragraph (a) of this section.

(c) The requirements of this section do not preclude the permittee from initiating field operations as authorized under its special use permit.

(d) All participants shall be bound by the regulations of this part, the permittee's special use permit, approved exploration plan and plan of operation and any reasonable stipulations, demands and orders issued by the Regional Director.

§ 37.14 Bonding.

(a) Before the issuance of its special use permit, any applicant whose exploration plan has been approved under § 37.22 shall furnish to the Service a surety bond of not less than $100,000, or other security satisfactory to the Service, to secure performance of its exploration plan and plan(s) of operation and compliance with the permit and this part. Such surety bond shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570). Such bond shall be maintained by the permittee for the benefit of the Service until the Regional Director notifies the permittee in writing that all terms and conditions of its exploration plan, special use permit, plan of operation, and this part have been met or otherwise consents to its cancellation or termination. Any bond furnished or maintained by a person under this section shall be on a form approved or prescribed by the Regional Director. The Regional Director may require an increase in the amount of any bond or other security to be furnished and any outstanding bond or security or require a new bond or security whenever additional coverage is needed to secure performance of its exploration plan and plan(s) of operation and compliance with the permit and this part or is needed as a consequence of default.

(b) Whenever a permittee's exploration plan, plan of operation, or special use permit is revised or modified, the permittee shall provide to the Regional Director within 30 days thereafter an acknowledgement by the surety that its bond continues to apply to the exploration plan, plan of operation or special use permit, as revised or modified, unless a waiver of notice to the surety is contained in the bond or the surety is not otherwise released by the revision or modification, or unless the permittee provides to the Service an increased or additional bond.

(c) Recovery of the amount specified in the permittee's bond or other security shall not preclude the Department from seeking specific performance by the permittee of any obligations not satisfied by enforcement of the bond or security, or compensation for any damages, losses or costs due to the permittee's activities which exceed the amount recovered, by pursuing the Department's legal remedies.

Subpart C—Exploration Plans

§ 37.21 Application requirements.

(a) Prior to submitting an exploration plan, applicants may meet with the Regional Director to discuss their proposed plans and exploratory activities and the requirements of this part.

(b) Any person wanting to conduct exploratory activities may apply for a special use permit by submitting for approval one or more written exploration plans, in triplicate, to the Regional Director, Region 7, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. To be considered, exploration plans covering the period from the inception of the program through May 31, 1986 or any portions thereof must be received by the Regional Director during normal business hours on May 20, 1983 and exploration plans covering the period from October 1, 1984 through May 31, 1986 or any portions thereof must be

received by the Regional Director during normal business hours on March 1, 1984.

(c) In addition to containing the information required in paragraph (d) of this section, any exploration plan submitted shall describe the applicant's plan for carrying out an integrated program of exploratory activities in such a manner as will satisfy the objective and limitations stated in § 37.1. If an applicant submits an exploration plan on May 20, 1983 with the intention of submitting another exploration plan on March 1, 1984, the applicant shall describe in its initial plan how its future exploratory activities will be integrated with those proposed under its initial plan. Any applicant submitting an exploration plan on May 20, 1983 which incorporates preliminary field investigations and/or surface geological exploration proposed to commence before August 1, 1983 may submit a written request to the Regional Director for an expedited review and approval of that portion of the exploration plan covering such preliminary investigations and/or exploration. Each exploration plan submitted must be published and be the subject of a public hearing in accordance with requirements of § 37.22(b).

(d) An exploration plan shall set forth in general terms such information as is required by this part and by the Regional Director in determining whether the plan is consistent with this part, including, but not limited to:

(1) The name and address of any person who will conduct the proposed exploratory activities, i.e., the applicant/permittee, and, if that person is an agency, firm, corporation, organization, or association, the names and addresses of the responsible officials, or, if a partnership, the names and addresses of all partners;

(2) The names and addresses of all persons planning at the time of plan submittal to participate in the proposed exploratory activities or share in the data and information resulting therefrom through a cost-sharing or any other arrangement;

(3) Evidence of the applicant's technical and financial ability to conduct integrated and well designed exploratory activities in an arctic or subarctic environment and of the applicant's responsibility in complying with any exploration permits previously held by it;

(4) A map at a scale of 1:250,000 of the geographic areas in which exploratory activities are proposed and of the approximate locations of the applicant's proposed geophysical survey lines, travel routes to and within the refuge, fuel caches, and major support facilities;

(5) A general description of the type of exploratory activities planned, including alternate exploratory methods and techniques if proposed, and the manner and sequence in which such activities will be conducted;

(6) A description of how various exploratory methods and techniques will be utilized in an integrated fashion to avoid unnecessary duplication of the applicant's own work;

(7) A schedule for the exploratory activities proposed, including the approximate dates on which the various types of exploratory activities are proposed to be commenced and completed;

(8) A description of the applicant's proposed communication techniques;

(9) A description of the equipment, support facilities, methods of access and personnel that will be used in carrying out exploratory activities;

(10) A hazardous substances control and contingency plan describing actions to be taken to use, store, control, clean up, and dispose of these materials in the event of a spill or accident;

(11) A general description of the anticipated impacts that the proposed exploratory activities may have on the refuge's wildlife, its habitat, the environment, subsistence uses and needs, and cultural resources, and a description of mitigating measures which will be implemented to minimize or avoid such impacts;

(12) A description of the proposed procedures for monitoring the environmental impacts of its operation and its compliance with all regulatory and permit requirements;

(13) A statement that, if authorized to conduct exploratory activities, the applicant shall comply with this part, its special use permit, its approved exploration plan, plan of operation, and all reasonable stipulations, demands and orders issued by the Regional Director;

(14) A description of the applicant's proposed data quality assurance and control program; and

(15) Such other pertinent information as the Regional Director may reasonably require.

§ 37.22 Approval of exploration plan.

(a) An exploration plan shall be approved by the Regional Director if he determines that it satisfies the requirements of §§ 37.21(c) and 37.21(d) and is otherwise consistent with the Act and the regulations of this part. In order to meet the objective and limitations stated in § 37.1, enforce the standards stated in § 37.11(b), or minimize adverse impacts on subsistence uses, the Regional Director may approve or disapprove any exploration plan in whole or in part or may require, as a condition of approval, an applicant to conduct its exploratory activities in an assigned area or jointly with other applicants or to make such modification in its exploration plan as he considers necessary and appropriate to make it consistent with this part. No plan shall be approved if the applicant submitting it does not demonstrate to the reasonable satisfaction of the Regional Director its adequate technical and financial ability to conduct integrated and well designed exploratory activities in an arctic or subarctic environment, and a history of responsible compliance with any exploration permits that it or its responsible officials or partners may have previously held.

(b) Upon receipt of an exploration plan submitted in accordance with § 37.21(b), the Regional Director shall promptly publish notice of the application and text of the plan in the **Federal Register** and newspapers of general circulation in the State of Alaska. The Regional Director shall determine within 90 days after the plan is submitted whether the plan is consistent with this part. The Regional Director may extend this 90-day period for up to 30 additional days upon written notice to the applicant. Before making his determination, the Regional Director shall hold at least one public hearing in the State for the purpose of receiving public comments on the plan and may confer with the applicant whenever he deems it necessary. The Regional Director shall give the applicant written notice of his determination.

(c) Whenever the Regional Director disapproves an exploration plan in whole or in part, he shall notify the applicant in writing of the reasons for his disapproval. The applicant may request the Director to consider that which was disapproved by the Regional Director by filing a written request with the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, within 30 days from the date of disapproval. Such a request shall not operate to stay the Regional Director's disapproval. The request shall:

(1) State fully the basis for the applicant's disagreement with the Regional Director's determination;

(2) Include any statement or documentation, in addition to that already submitted by the applicant with its application, which demonstrates that the applicant's exploration plan is consistent with this part; and

(3) Indicate whether or not the applicant requests an informal hearing before the Director.

The Director shall provide an informal hearing if requested by the applicant. Within 30 days of the receipt of the applicant's request for reconsideration or of the applicant's hearing, if any, whichever is later, the Director shall affirm, reverse, or modify the Regional Director's determination. Written notice of the Director's decision and the reasons therefor shall be provided promptly to the applicant. The Director's decision shall constitute the final administrative decision of the Secretary in the matter. Nothing in this part shall be construed to deprive the Secretary or the Assistant Secretary for Fish and Wildlife and Parks of the authority to take jurisdiction at any stage of any appeal or request for reconsideration and render the final decision in the matter after holding any informal hearing that may be required, to review any decision of the Regional Director or Director, or to direct the Regional Director or Director to reconsider a decision.

(d) The Regional Director, as a condition of approval of any exploration plan under this section, shall:

(1) Require that all data and information (including processed, analyzed and interpreted information) obtained as a result of carrying out the plan shall be submitted to the Regional Director, as provided in § 37.53;

(2) Make such data and information available to the public, except that any processed, analyzed and interpreted data or information shall be held confidential by the Department for a period of not less than 10 years following the submission of such data or information to the Regional Director or 2 years following any lease sale including the area within the refuge from which the information was obtained, whichever period is longer, as provided in § 37.54; and

(3) Require that all raw data and information obtained as a result of carrying out the plan shall be made available by the permittee to any person at fair cost.

(e) In the course of evaluating an exploration plan, the Regional Director shall also evaluate the effect of the proposed exploratory activities on subsistence uses and needs, the availability for exploration of alternate areas within the coastal plain, and alternatives to the proposed activities which would reduce or eliminate the use of areas within the coastal plain needed for subsistence purposes. If the Regional Director finds that the exploration plan, if approved, would significantly restrict subsistence uses, he shall satisfy the requirement to hold a hearing on this isssue by incorporating it in any hearing held pursuant to paragraph (b) of this section and shall otherwise satisfy the procedural requirements of section 810(a) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2427, 16 U.S.C. 3120, before approving the plan.

§ 37.23 Special use permit.

(a) Within 45 days, or sooner if practicable, of approving an exploration plan, or portion thereof, the Regional Director shall, unless prohibited by law, issue a special use permit to authorize the permittee to proceed with those exploratory activities described and approved in its exploration plan, or portion thereof, provided that the requirements of § 37.14(a) have been satisfied. The special use permit may contain such terms and conditions and may be amended from time to time as the Regional Director deems necessary and appropriate to carry out the Act and this part.

(b) Before issuing a special use permit to authorize exploration of lands within the coastal plain allotted pursuant to the Act of May 17, 1906, 34 Stat. 197, as amended by the Act of August 2, 1956, 70 Stat. 954, or on lands within the coastal plain the surface estate in which has been selected by or conveyed to the Kaktovik Inupiat Corporation pursuant to Sections 12 and 14 of the Alaska Native Claims Settlement Act, 85 Stat. 701 and 702, 43 U.S.C. 1611 and 1613, the Regional Director shall seek the views of the holder of such approved native allotment or the Corporation for the purpose of developing permit conditions designed to mitigate the effects of such exploration on its interests.

§ 37.24 Plan of operation.

Each approved exploration plan shall be supplemented by a written plan of operation for each fiscal year, or portions thereof, covered by the exploration plan. Each plan of operation shall specify the field operations for implementing that exploration plan during the year, or portions thereof, covered by the plan of operation. Each plan of operation shall be submitted to the Regional Director at least 30 days before field operations are to be commenced thereunder, except that any plan of operation supplementing a portion of an exploration plan that received expedited review and approval pursuant to § 37.21(c) shall be submitted 10 days before field operations are to be commenced thereunder. A plan of operation shall set forth such specific information as is required by the Regional Director in determining whether the plan is consistent with the exploration plan to which it pertains and with this part. The permittee shall make such modifications in its plan of operation as are deemed at any time by the Regional Director to be necessary and appropriate to ensure such consistency. Reconsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in § 37.22(c).

§ 37.25 Revision.

(a) A permittee may request the Regional Director for permission to revise its approved exploration plan. Until the Regional Director grants the permittee's request, no revision of its exploration plan shall be implemented. Such request shall be deemed to be granted on the 10th working day following its receipt unless the Regional Director denies the request; advises the permittee that the proposed revision is major and, therefore, must satisfy the publication and hearing requirements of § 37.22(b) before it can be acted upon; by timely written notice extends the period for considering the request; conditionally approves the proposed revision with such modifications as he stipulates are necessary and appropriate; or, unconditionally approves the proposed revision within a shorter period. No revision of an exploration plan shall be approved that is inconsistent with the Act or this part. Approval of any revision is subject to the conditions stated in § 37.22(d) to the extent that they are pertinent.

(b) Upon 10 working days advance notice to the Regional Director of its proposed revision, or within such lesser period as may be concurred in by the Regional Director, a permittee may implement a revision of its plan of operation, provided that such revision is consistent with the exploration plan to which the plan of operation pertains and this part. The Regional Director may require the permittee to defer, modify, or rescind such revision whenever he determines that such action is necessary and appropriate to ensure such consistency.

(c) Reconsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in § 37.22(c). A request for reconsideration shall not operate to stay the Regional Director's actions unless such stay is granted in writing by the Director.

Subpart D—Environmental Protection

§ 37.31 Environmental protection.

(a) The permittee shall conduct operations in a manner which avoids significant adverse effects on the refuge's wildlife, its habitat, and environment. The Regional Director may impose stipulations to supplement the permittee's special use permit and issue other orders as needed to ensure that the permittee's activities are conducted in a manner consistent with this part. If, after 30 days, or in emergencies such shorter periods as shall not be unreasonable, following a demand by the Regional Director, the permittee shall fail or refuse to perform any action required by this part, its exploration plan, plan of operation, special use permit, or a stipulation or order of the Refuge Manager, the department shall have the right, but not the obligation, to perform any or all such actions at the sole expense of the permittee. Prior to making such demand, the Regional Director shall confer with the permittee, if practicable to do so, regarding the required action or actions included in the demand. Reconsideration of the Regional Director's demands under this section may be obtained by employing the procedures described in § 37.22(c). A request for reconsideration shall not operate to stay the Regional Director's demands or the Department's performance pursuant to this section unless such stay is granted in writing by the Director.

(b) *Terrestrial environment.* (1) Vehicles shall be operated in a manner such that the vegetative mat or soil is not significantly damaged or displaced. Blading of snow on trails or campsites shall be limited so as to maintain an adequate protective cover.

(2) Ground vehicles shall be of the type causing the least practicable harm to the surface, such as Nodwell FN–110 or FN–60 or Bombardier track vehicles, mobile camps on flexible tracks or skids, vibrator units on flexible tracks or wheels, D–7 Caterpillar tractors, or their equivalent. They shall be operated only in the winter and where there is adequate protective cover. Vehicle operation shall cease in the spring when the Regional Director determines that the protective cover is no longer adequate. Operation of ground vehicles in the summer is prohibited.

(3) Movement of equipment through riparian willow stands shall be avoided, except when approved by the Regional Director.

(4) Above ground explosive charges shall be utilized in a manner to minimize damage to the vegetative mat.

(5) Campsites may be located on lakes which are frozen throughout, including botton sediments, on durable ground, and on lagoons which are frozen to sufficient depth to ensure safety of personnel, but shall not be located on river ice. Durable ground can include gravel or sand bars or vegetated ground with adequate protective cover.

(6) Campsites and trails shall be kept clean of waste.

(7) Gray water may be discharged to the surface provided it is filtered, disinfected, and not discharged directly into lakes and rivers.

(8) The permittee shall take all precautionary measures necessary to prevent and suppress man-caused tundra fires and shall notify the Regional Director of the occurrence of any tundra fires immediately or as soon as communication can be established.

(9) Rehabilitation of disturbed surface areas shall be accomplished by the permittee in accordance with schedules and a plan required and approved by the Regional Director. Revegetation shall be accomplished exclusively with endemic species.

(10) The permittee shall not harass wildlife in any manner, including, but not limited to, close approach by surface vehicles or aircraft. Aircraft should maintain an altitude of at least 1500 feet above ground level whenever practicable.

(11) No explosives shall be detonated within ⅛ miles of any known denning brown or polar bear or any muskoxen or caribou herd.

(12) The permittee shall operate in such a manner as not to impede or restrict the free passage and movement of large mammals, including caribou, muskoxen, moose, polar bear, and brown bear.

(13) Feeding of wildlife is prohibited. This includes the leaving of garbage or edibles in a place which would attract wildlife. Garbage shall be kept in covered animal-proof containers while awaiting incineration.

(14) Hunting, fishing, and trapping by the permittee within the refuge are prohibited during the conduct of exploratory activities. Employing firearms in defense of life and property is allowed.

(c) *Aquatic environment.* (1) The permittee shall not significantly alter the banks of streams, rivers, or lakes while conducting exploratory activities. Crossings of stream, river, or lake banks shall utilize a low angle approach or, if appropriate, snow bridges. If snow bridges are utilized for bank protection they shall be free of dirt and debris and shall be removed after use or prior to breakup each year, whichever occurs first.

(2) No water shall be removed from any subsurface source. Removal of water or snow cover from or compaction of snow cover on streams, rivers or lakes identified by the Regional Director as inhabited by fish shall be prohibited during the winter.

(3) To protect fish and other aquatic fauna, high explosives shall not be detonated within, beneath, on or in close proximity to fish-bearing waters unless prior drilling indicates that the water body, including its substrate, is solidly frozen. The minimum acceptable offset from fishing-bearing waters for various size charges is:

1 pound charge—50 feet
2 pound charge—75 feet
5 pound charge—125 feet
10 pound charge—150 feet
25 pound charge—250 feet
100 pound charge—500 feet

Use of a charge in excess of 100 pounds shall be approved by the Regional Director and shall be in a manner prescribed or approved by him.

(4) All operations shall be conducted in a manner that will not impede the passage of fish, disrupt fish spawning, overwintering or nursery areas identified by the Regional Director or block or change the character or course of, or cause significant siltation or pollution of any stream, river, pond, pothole, lake, lagoon, or drainage system.

(5) Ground vehicles shall not cross active spring areas.

(d) *Cultural resources.* (1) Prior to implementing any plan of operation, the permittee shall obtain from the Regional Director copies of the cultural resource reconnaissance reports, maps and other available documents which identify all known cultural resource sites and areas of predicted high probability of containing cultural resources. The Regional Director may reasonably restrict or prohibit exploratory activities in these areas and, in accordance with 36 CFR Part 800, thereby mitigate, minimize or avoid any adverse effects thereon.

(2) Unless otherwise specified by the Regional Director, the following prohibitions shall be in effect:

(i) No vehicle of any type shall pass over or through a known cultural resource site with standing structures; and

(ii) No seismic train shall camp on a known cultural resource site.

(3) If any exploratory activities require entry into areas known to contain historic or archeological resources, high probability areas, or

areas previously unsurveyed for cultural resources, prior to the initiation of such activities, the permittee shall, if ordered by the Regional Director, locate, identify and evaluate properties eligible for listing on the National Register of Historic Places, recover for the Department historic and archeological data contained in such properties, and take other measures, as directed by the Regional Director, designed to mitigate, minimize or avoid to the extent practicable any significant adverse effects on them. Such efforts shall be done in a manner prescribed or approved by the Regional Director in accordance with a programmatic memorandum of agreement among the Service, the State Historic Preservation Officer and the Advisory Council on Historic Preservation, and without expense or liability to the Department.

(e) *General.* (1) All spills or leakages of any hazardous substances, fires, fatalities, and any other conditions which threaten the refuge's resources, the environment, or human safety, shall be reported by the permittee to the Regional Director immediately or as soon as communication can be established. Other notifications shall be made by the permittee as required by applicable laws.

(2) All combustible solid waste shall be incinerated or returned to the permittee's base of operations for disposal in accordance with applicable federal, state and local standards. All non-combustible solid waste, including, but not limited to, fuel drums and shot wire, shall be returned to the permittee's base of operations for disposal in accordance with applicable federal, state and local standards.

(3) No discharge of petroleum, petroleum products, or toxic materials shall be made within the refuge. All hazardous subtances utilized and/or generated in conducting exploratory activities shall be contained, controlled, and cleaned up in accordance with the permittee's approved hazardous substances control and contingency plan. Such measures shall take precedence over all other matters except human safety.

(4) Unless exigencies warrant, in any field operations employing surface geological exploration, the equipment, facilities, and personnel used within the coastal plain shall not exceed that necessary to support a maximum of 6 simultaneously operating surface geological survey crews, and in any field operations employing seismic exploration methods, the equipment, facilities, and personnel used within the coastal plain shall not exceed that necessary to support a maximum of 6 simultaneously operating seismic survey crews.

(5) No fuel storage facilities shall be placed within the annual floodplain of fish-bearing watercourses or within 100 feet of any other water body, and no vehicle refueling shall occur within such areas except when approved by the Regional Director. All fuel storage sites shall be approved by the Regional Director. Fuel containers shall be properly stored and marked with the permittee's name, type of fuel, and last date of filling. All fuel containers with a storage capacity greater than 55 gallons shall be of double-wall construction. All fuels containers, including those emptied, shall be capped when not in actual use. All fuel containers placed within the annual floodplain of fish-bearing watercourses shall be removed prior to breakup.

(6) The permittee shall not disturb or damage any geodetic land survey monuments. If any monument is disturbed or damaged, the permittee shall reestablish it in a manner acceptable to the Regional Director.

(7) The timing and location of the detonation of explosives shall be approved in advance by the Regional Director.

(8) No permanent structures or facilities will be erected within the coastal plain. The type and location of temporary structures and facilities including, but not limited to, ice airstrips, for use in support of exploratory activities must be approved by the Regional Director.

§ 37.32 Special areas.

(a) *Caribou Calving and Post-Calving Special Areas.* The Regional Director shall designate within the coastal plain specific caribou calving and post-calving special areas which shall be closed to all exploratory activities for such periods between May 10 and July 15 of each year as those areas are determined by the Regional Director to be used for caribou calving and post-calving or both so as to ensure that exploratory activities do not significantly adversely affect calving and post-calving caribou. No exploratory activities shall be conducted in such designated areas during such periods.

(b) *Muskoxen Calving Special Areas.* Whenever he deems it necessary or appropriate to ensure that exploratory activities do not significantly adversely affect calving muskoxen, the Regional Director shall designate within the following areas specific areas which shall be closed to all exploratory activities for such periods between April 15 and June 5 of each year as those areas are determined by the Regional Director to be used for muskoxen calving. No exploratory activities shall be conducted in such designated areas during such periods.

(1) One generally encompassing the Tamayariak uplands bordered on the east by the Tamayariak River, on the northwest by the Canning River, on the east by a north-south line intersecting the benchmark "Can", and on the south by an east-west line also intersecting the benchmark "Can".

(2) One generally encompassing the Carter Creek uplands, bordered on the east by the Sadlerochit River, on the north by the mainland coastline, on the west by Carter Creek, and on the south by an east-west line approximately six miles inland from the coastline.

(3) One generally encompassing the Niguanak hills, bordered on the east by the Angun River, on the north by the mainland coastline, on the west by a line parallel to and two miles west of the Niguanak River, crossing portions of the Okerokovik River, and extending south to the southern boundary of the coastal plain, and on the south by the southern boundary of the coastal plain.

(c) *Brown Bear and Polar Bear Denning Special Areas.* Whenever he deems it necessary or appropriate to ensure that exploratory activities do not significantly adversely affect denning bears, the Regional Director shall designate within the coastal plain brown bear and polar bear denning sites within ½ mile of which all exploratory activities shall be prohibited for such periods between October 1 of one year and April 30 of the following year as are prescribed by the Regional Director.

(d) *Snow Goose Staging Special Areas.* Whenever he deems it necessary or appropriate to ensure that exploratory activities do not significantly adversely affect staging snow geese, the Regional Director shall designate within the general area bordered on the east by the Aichilik River, on the north by the mainland coastline, on the west by the Hulahula River, and on the south by the southern boundary of the coastal plain, specific snow goose staging special areas which shall be closed to all exploratory activities during such periods between August 20 and September 10 of each year as those areas are determined by the Regional Director to be used for snow goose staging. No exploratory activities shall be conducted in such designated areas during such periods.

(e) In addition, the Regional Director may designate specific areas within the coastal plain that are important for other wildlife or that encompass lands the surface estate in which is owned by

holders of approved native allotments or the Kaktovik Inupiat Corporation as special areas in which exploratory activities may be prohibited, conditioned or otherwise restricted in such manner and for such period as prescribed by the Regional Director to avoid significant adverse effects from exploratory activities.

(f) The Regional Director shall notify the permittee of the locations of designated special areas and of the applicable limitations on its exploratory activities as far in advance of the effective dates of such limitations as is possible. The Regional Director may modify or remove such designations and limitations whenever he determines that they are no longer necessary to protect the resources or values of such special areas from significant adverse effects.

(g) No exploratory activities shall be conducted by any permittee at any time within ½ mile of the source of the Sadleochit Spring or within ¼ mile on either side of Sadlerochit Spring Creek for a distance of 5 miles downstream from its source.

§ 37.33 Environmental briefing.

The permittee shall provide opportunities for the Regional Director to conduct environmental and other pertinent briefings for all of its personnel involved in field operations prior to commencement of field work and periodically thereafter as the Regional Director may determine. The permittee shall require the attendance of its personnel and arrange the time and place for such briefings upon the request of the Regional Director. In addition, the permittee shall provide a copy of this part to each employee involved with its exploratory activities.

Subpart E—General Administration

§ 37.41 Responsibilities of the Regional Director.

The Regional Director is authorized to approve and disapprove exploration plans; issue special use permits; inspect and regulate exploratory activities; require compliance with the permittee's approved exploration plan, plan of operation, this part, and other statutes and regulations under which the refuge is administered; and perform all other duties assigned to the Regional Director by this part. The Regional Director may issue written or oral stipulations, demands and orders to carry out his responsibilities, and amend and terminate them as he deems appropriate. Any oral stipulation, demand or order shall be confirmed in writing within 3 working days from its issuance.

§ 37.42 Inspection and monitoring.

The Regional Director may designate field representatives, hereinafter known as Field Monitors, to monitor the exploratory activities in the field. A Field Monitor may exercise such authority of the Regional Director as is provided by delegation, except that a Field Monitor may not revoke a permittee's special use permit, and provided that any order issued by a Field Monitor which suspends all of a permittee's field activities shall, except in emergencies, require the concurrence of the Regional Director. The Regional Director shall have a continuing right of access to any part of the exploratory activities at any time for inspection or monitoring and for any other purpose that is consistent with this part. A permittee, upon request by the Regional Director, shall furnish lodging, food, and reasonable use of its communication and surface and air transportation systems, to the Field Monitors and other representatives of the United States for the purposes of inspecting and monitoring the permittee's exploration activities in the field and for any other purpose consistent with this part. Whenever possible, the Regional Director shall give advance notice of the need for such services and facilities, including the names of persons to be accommodated.

§ 37.43 Suspension and modification.

If at any time while exploratory activities are being carried out under an approved exploration plan and special use permit, the Regional Director, on the basis of information available to him, determines that continuation of further activities under the plan or permit will significantly adversely affect the refuge's wildlife, its habitat, or the environment, or significantly restrict subsistence uses, or that the permittee has failed to comply with its approved exploration plan, plan of operation, special use permit, any reasonable stipulation, demand or order of the Regional Director, or any regulation of this part, the Regional Director may, without any expense or liability to the Department, suspend activities under the plan and/or permit for such time, or make such modifications to the plan and/or permit, or both suspend and so modify, as he determines necessary and appropriate. Such suspensions shall state the reasons therefore and be effective immediately upon receipt of the notice. Suspensions issued orally shall be followed by a written notice confirming the action within 3 days, and all written notices will be sent by messenger or registered mail, return receipt requested. A suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Regional Director. For good cause, the Regional Director may also grant at the permittee's request, a written waiver of any provision of its special use permit, so long as such waiver will not be likely to result in significant adverse effects on the refuge's resources. Reconsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in Section 37.22(c). A request for reconsideration shall not operate to stay the Regional Director's actions unless such stay is granted in writing by the Director.

§ 37.44 Revocation and relinquishment.

For nonuse, for failure to comply with Section 37.14, or for any action of the permittee not consistent with this part, the Regional Director may revoke or a permittee may relinquish a special use permit to conduct exploratory activities at any time by sending to the other a written notice of revocation or relinquishment. Such notice shall state the reasons for the revocation or relinquishment and shall be sent by registered mail, return receipt requested, at least 30 days in advance of the date that the revocation or relinquishment will be effective. Revocation or relinquishment of a permit to conduct exploratory activities shall not relieve the permittee of the obligation to comply with all other obligations specified in this part and in its special use permit, approved exploration plan and plan of operation. Reconsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in Section 37.22(c). A request for reconsideration shall not operate to stay the Regional Director actions unless such stay is granted in writing by the Director.

§ 37.45 Exploration by the U.S. Geological Survey.

Notwithstanding the requirement found in § 37.21(b) on when exploration plans shall be submitted, the U.S. Geological Survey may at any time apply for a special use permit to conduct exploratory activities by submitting for approval one or more exploration plans in accordance with the requirements of this part and the Act. No plan submitted by the Survey will be approved unless (1) no other person has submitted a plan for the area involved which satisfies the regulations of this part and (2) the information which would be obtained from the Survey is needed to make an adequate report to Congress pursuant to

the Act. Sections 37.13, 37.14, 37.22(d)(3), 37.46, 37.47, and 37.54(d) and the provisions of §§ 37.22(d)(2), 37.53(e), and 37.54 on processed, analyzed and interpreted data or information shall not apply to the Survey. If authorized to conduct exploratory activities, the Survey shall comply with this part in all other respects. All contractors and subcontractors used by the Survey to conduct exploratory activities shall be subject to all of the regulations of this part excepting §§ 37.13 and 37.46 and the provisions of §§ 37.22(d)(2), 37.53(e), and 37.54 on processed, analyzed and interpreted data or information.

§ 37.46 Cost reimbursement.

(a) Each applicant for or holder of a special use permit issued under this part shall reimburse the Department for its actual costs incurred, including, but not limited to, its direct costs and indirect costs as established by the indirect cost rate of the charging bureau or office, in publishing, reviewing (which includes, but is not limited to, conducting any public hearings thereon), modifying, and approving or disapproving the applicant's or permittee's exploration plan(s); reviewing evidence of the permittee's compliance with any order given by the Regional Director under § 37.13; preparing and issuing the permittee's special use permit; reviewing and acting on the permittee's plan(s) of operation; inspecting, monitoring, and enforcing the permittee's compliance with its approved exploration plan(s), plan(s) or operation, special use permit and this part; performing the permittee's obligations pursuant to § 37.31(a); and identifying, evaluating and preserving historic, archeological and cultural resources in areas to be explored by the permittee; as further delineated by the Regional Director.

(b) Each applicant shall submit with each exploration plan submitted a payment, the amount of which shall be an estimate made by the Regional Director of the costs which will be incurred by the Department in publishing, reviewing, modifying and approving or disapproving the applicant's exploration plan.

(1) If the applicant's plan is disapproved or if the applicant withdraws its application before a decision is reached on its plan, the applicant shall be responsible for such costs incurred by the Department in processing the applicant's application up to the date on which the plan is disapproved or the Regional Director receives written notice of the applicant's withdrawal, and for costs subsequently incurred by the Department in terminating the application review process. If the costs actually incurred exceed the estimate paid at the time of application, reimbursement by the applicant of such additional costs shall be due within 30 days of receiving notice from the Regional Director of the additional amount due. If the actual costs incurred are less than the estimate paid by the applicant, the excess shall be refunded to the applicant.

(2) If the applicant's plan is approved, the applicant shall pay an estimate made by the Regional Director of the costs which will be incurred by the Department in preparing and issuing to the applicant a special use permit. The first quarterly payment made by the applicant pursuant to paragraph (c) of this section will be adjusted upward or downward, as warranted, to accurately reflect the actual costs incurred by the Department in processing the permit. If an applicant withdraws after its plan is approved, but before its special use permit is issued, the applicant shall be responsible for such costs incurred by the Department in preparing the applicant's permit up to the date on which the Regional Director receives written notice of the applicant's withdrawal and for costs subsequently incurred by the Department in terminating permit preparation and issuance.

(3) When two or more applications are filed which the Regional Director determines to be in competition with each other, each applicant shall reimburse the Department for such actual costs incurred in processing its exploration plan and special use permit, if issued, except that those costs which are not readily identifiable with one of the applicants, shall be paid by each of the applicants in equal shares.

(c) Upon issuance of a special use permit, the permittee shall make an initial advance payment covering that current fiscal year quarter and quarterly payments thereafter to cover the actual costs incurred by the Department in administering the permittee's permit for its duration. Such costs shall include, but are not limited to, those direct costs and indirect costs, as established by the indirect costs rate of the charging bureau or office, incurred in reviewing and acting on permittee's plan(s) of operation; reviewing evidence of the permittee's compliance with any order given by the Regional Director under § 37.13; preparing and issuing the permittee's special use permit; inspecting monitoring, and enforcing the permittee's compliance with its approved exploration plan, plan(s) of operation, special use permit and this part; performing the permittee's obligations pursuant to § 37.31(a); and identifying, evaluating and preserving historic, archeological and cultural resources in areas to be explored by the permittee. Each quarterly payment will be paid at the outset of the quarter and will cover the estimated cost of that quarter as adjusted by the Regional Director by reason of any adjustment warranted by paragraph (b) of this section or by overpayments or underpayments in previous quarters for which adjustment has not already been made. Upon termination of the permittee's special use permit, reimbursement or refundment of any outstanding amounts due the Department or the permittee shall be made within 180 days.

(d) Estimates required by this section shall be made by the Regional Director on the basis of the best available cost information. However, reimbursement shall not be limited to the Regional Director's estimate if actual costs exceed projected estimates.

(e) All payments required by this section shall be made payable to the Service. No applicant or permittee shall set off or otherwise deduct any debt due to or any sum claimed to be owed to it by the United States from any payment required by this section. Overpayments shall be credited or refunded to the person making them.

(f) When through partnership, joint venture or other business arrangement more than one person applies for or participates in a special use permit, each shall be jointly and severally liable for reimbursing the Department's cost under this section.

(g) Any lodging, food, communication, and transportation provided by a permittee under § 37.42 shall be deemed to be costs paid to the Department in kind for services rendered in inspecting and monitoring the permittee's exploratory activities. At the end of each quarter, the permittee shall furnish the Regional Director with a report, in a format approved or prescribed by him, on the goods and services provided during that quarter, and the names of the individuals to whom they were provided.

(h) Any dispute between an applicant or permittee and the Regional Director as to costs actually incurred by the Department and charged to the applicant or permittee shall be finally decided for the Secretary by the Director, using the procedures described in § 37.22(c).

§ 37.47 Civil penalties.

(a) This section prescribes the procedures for assessing a civil penalty

for the violation of any provision of an approved exploration plan, any term or condition of the special use permit issued under § 37.23, or any prohibition contained in this part. The civil penalty remedy afforded by this section is in addition to all other remedies available to the Secretary.

(b) *Notice of violation.* (1) The notice of violation shall be issued by the Solicitor and served personally or by registered mail upon the person named in the notice (hereinafter the respondent) or his authorized representative. The notice shall contain:

(i) A summary of the facts believed to show a violation by the respondent;

(ii) A specific reference to the provision, term, condition or prohibition allegedly violated; and

(iii) The amount of the penalty proposed to be assessed. The notice may also contain an initial proposal for compromise or settlement of the action.

(2) The notice of violation shall also advise respondent of his right to:

(i) Respond to the notice within 45 calendar days from the date of its issuance by: (A) Undertaking informal discussions with the Solicitor; (B) Accepting the proposed penalty or the compromise, if any, offered in the notice; or (C) Filing a petition for relief in accordance with paragraph (c) of this section; or

(ii) Take no action and await the Solicitor's notice of assessment. Such response must be received by the Solicitor on or before the 45th day during normal business hours at the address stated in the notice.

(3) Any notice of violation may be amended, but any nontechnical amendment will extend the running of the respondent's 45 day period for response from the date of the notice to the date of the amendment.

(4) Acceptance of the proposed penalty or the compromise, if any, stated in the notice of violation shall be deemed to be a waiver of the notice of assessment required in paragraph (d) of this section and of the respondent's right to an opportunity for a hearing described in paragraph (e) of this section.

(c) *Petition for relief.* If the respondent chooses, he may ask that no penalty be assessed or that the amount be reduced and he may admit or contest the legal sufficiency of the Solicitor's charges and allegations of facts, by filing a petition for relief at the address specified in the notice within 45 calendar days from the date thereof. Such petition must be received by the Solicitor on or before the 45th day during normal business hours. The petition shall be in writing and signed by the respondent. If the respondent is a corporation, partnership, association or agency, the petition must be signed by an officer or official authorized to sign such document. It must set forth in full the legal or other reasons for the relief requested.

(d) *Notice of assessment.* (1) After 45 calendar days from the date of the notice of violation or any amendment thereof, the Solicitor may proceed to determine whether the respondent committed the violation alleged and to determine the amount of civil penalty to be assessed, taking into consideration the information available and such showing as may have been made by the respondent. The Solicitor shall notify the respondent of his determinations by a written notice of assessment, which shall also set forth the basis for his determinations. The notice of assessment shall be served on the respondent personally or by registered mail.

(2) The notice of assessment shall also advise the respondent of his right to request a hearing on the matter in accordance with paragraph (e) of this section.

(e) *Request for a hearing.* Within 45 calendar days from the date of the issuance of the notice of assessment, the respondent may request a hearing to be conducted on the matter in accordance with 5 U.S.C. 554 through 557 by filing a dated, written request for hearing with the Hearings Division, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Such request must be received at this address on or before the 45th day during normal business hours. The respondent shall state the respondent's preference as to the place and date for a hearing. The request must enclose a copy of the notice of violation and the notice of assessment. A copy of the request shall be served upon the Solicitor personally or by mail at the address specified in the notice of assessment.

(f) *Finality of decision.* If no request for a hearing is filed in accordance with this section, the assessment stated in the notice of assessment shall be effective and constitute the final administrative decision of the Secretary on the 45th calandar day from the date of the notice of assessment. If the request for hearing is timely filed in accordance with this section, the date of the final administrative decision in the matter shall be as provided in paragraph (g) or (h) of this section. When a civil penalty assessed under this section becomes final, the respondent shall have 20 calendar days from the date of the final administrative decision within which to make full payment of the penalty assessed. Payment will be timely only if received in the Office of the Solicitor during normal business hours on or before the 20th day.

(g) *Hearing.* (1) Upon receipt of a request for a hearing, the Hearings Division will assign an administrative law judge who shall have all the powers accorded by law and necessary to preside over the parties and the hearing and to make decisions in accordance with 5 U.S.C. 554 through 557. Notice of such assignment shall be given promptly to the respondent and to the Solicitor at the address stated in the notice of assessment. Upon notice of the assignment of an administrative law judge to the case, the Solicitor shall file all correspondence and petitions exchanged between the Solicitor and the respondent which shall become a part of the hearing record.

(2) The hearing shall be conducted in accordance with 5 U.S.C. 554 through 557 and with 43 CFR Part 4 to the extent that it is not inconsistent with this part. Subject to 43 CFR 1.3, the respondent may appear in person, by representative, or by counsel. The hearing shall be held in a location established by the administrative law judge, giving due regard to the convenience of the parties, their representatives and witnesses. Failure to appear at the time set for hearing shall be deemed a waiver of the right to a hearing and consent to the decision on the record made at the hearing. The judge shall render a written decision on the record, which shall set forth his findings of facts and conclusions of law and the reasons therefore, and an assessment of a civil penalty if he determines that the respondent committed the violation charged.

(3) Discovery shall be obtained by employing the procedures described 43 CFR 4.1130 through 4.1141. In addition, discovery of facts known and opinions held by experts, otherwise discoverable under 43 CFR 4.1132(a) and acquired and developed in anticipation of administrative adjudication or litigation, may be obtained only as follows:

(i)(A) A party through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (B) Upon motion, the administrative law judge may order further discovery by other means, subject to such restrictions as to scope and such provisions under paragraph

(g)(3)(iii) of this section concerning fees and expenses, as the administrative law judge may deem appropriate.

(ii) A party may discover facts known or opinions held by an expert, who has been retained or employed by another party in anticipation of administrative adjudication or litigation or preparation therefore and who is not expected to be called as a witness, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(iii) Unless manifest injustice would result, (A) the administrative law judge shall require the party seeking discovery to pay the expert, or the Department if the expert is an employee of the United States, a reasonable fee for time spent in responding to paragraphs (g)(3)(i)(B) and (g)(3)(ii) of this section; and (B) with respect to discovery under paragraph (g)(3)(i)(B) of this section the administrative law judge may require and with respect to discovery under paragraph (g)(3)(ii) of this section the administrative law judge shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(4) Unless the notice of appeal is filed in accordance with paragraph (h) of this section, the administrative law judge's decision shall constitute the final administrative decision of the Secretary in the matter and shall become effective 30 calendar days from the date of the decision.

(h) *Appeal.* (1) Either the respondent or the Solicitor may seek an appeal from the decision of an administrative law judge as to the respondent's violation or penalty or both by the filing of a notice of appeal with the Director, Office of Hearings and Appeals, United States Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 calendar days of the date of the administrative law judge's decision. Such notice shall be accompanied by proof of service on the administrative law judge and the opposing party.

(2) Upon receipt of such a request, the Director, Office of Hearings and Appeals, shall appoint an ad hoc appeals board to determine whether an appeal should be granted, and to hear and decide an appeal. To the extent they are not inconsistent herewith, the provisions of 43 CFR Part 4, Subpart G shall apply to appeal proceedings under this subsection. The determination of the board to grant or deny an appeal, as well as its decision on the merits of an appeal, shall be in writing and become effective as the final administrative determination of the Secretary in the matter on the date it is rendered, unless otherwise specified therein.

(i) *Amount of Penalty.* The amount of any civil penalty assessed under this section shall not exceed $10,000 for each violation. Each day of a continuing violation shall, however, constitute a separate offense. In determining the amount of such penalty, the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the respondent, his history of any prior offenses, his demonstrated good faith in attempting to achieve timely compliance after being cited for the violation, and such other matters as justice may require shall be considered.

(j) *Petition for remission.* The Solicitor may modify or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph unless the matter is pending in court for judicial review or for recovery of the civil penalty assessed. A petition for remission may be filed by the respondent with the Solicitor at any time from the date of the notice of violation referred to in paragraph (b) of this section until 90 days after the date of final administrative decision assessing a civil penalty. The petition must set forth in full the legal and other reasons for the relief requested. Any petition that is not timely filed will not receive consideration. The Solicitor's decision shall be the final administrative decision for the Secretary on the petition.

Subpart F—Reporting and Data Management

§ 37.51 Operational reports

(a) Each permittee shall submit reports every 2 weeks on the progress of exploratory activities in a manner and format approved or prescribed by the Regional Director. These shall include, but are not limited to, a daily log of operations, and a report on the discovery of any springs, hydrocarbon seeps, and other unusual phenomena.

(b) Each permittee shall submit to the Regional Director a semiannual report of exploratory activities conducted within the periods from December through May and June through November. These semiannual reports shall be submitted on August 1 and February 1 or, as otherwise specified by the Regional Director, and shall contain the following:

(1) A description of the work performed;

(2) Charts, maps, or plats depicting the areas in which any exploratory activities were conducted, specifically identifying the seismic lines and the locations where geological exploratory activities were conducted, and the locations of campsites, airstrips and other support facilities utilized;

(3) The dates on which exploration was actually performed.

(4) A narrative summary of any: (i) Surface occurrences of hydrocarbon or environmental hazards, and (ii) adverse effects of the exploratory activities on the refuge's wildlife, its habitat, the environment, cultural resources, or other uses of the area in which the activities were conducted; and

(5) Such other information as may be reasonably specified by the Regional Director.

(c) Each permittee shall also submit such other reports as are specified in this part.

§ 37.52 Records.

The permittee shall keep accurate and complete records relating to its exploratory activities and to all data and information, including, but not limited to, raw, processed, reprocessed, analyzed and interpreted data and information, obtained as a result thereof. Until September 2, 1989, the Secretary shall have access to and the right to examine and reproduce any records, papers, or other documents relating to such activities, data and information in order to ascertain the permittee's compliance with this part, ability to perform under any special use permit, and reliability and accuracy of all data, information and reports submitted to the Regional Director.

§ 37.53 Submission of data and information.

(a) The permittee shall submit to the Regional Director free of charge all data and information obtained as a result of carrying out exploratory activities. Such data and information include copies of all raw data and information and all processed, analyzed and interpreted data or information. The permittee shall, unless directed otherwise by the Regional Director, submit such data and information within 30 days after the end of the annual quarter during which they become available to it at every level of data gathering or utilization, i.e., acquisition, processing, reprocessing, analysis, and interpretation.

(b) Each submission of geophysical data or information shall contain, unless otherwise specified by the Regional Director, the following:

(1) An accurate and complete record of each geophysical survey conducted under the permittee's permit, including digital navigational data, if obtained,

and final location maps of all survey stations; and,

(2) All seismic data developed under the permit, presented in a format prescribed or approved by the Regional Director and of a quality suitable for processing.

(c) Processed geophysical information shall be submitted with extraneous signals and interference removed as much as possible, and presented in a format and of a quality suitable for interpretive evaluation, reflecting state-of-the-art processing techniques.

(d) Processed, analyzed and interpreted data or information required to be submitted by the Act and this section shall include, but not be limited to, seismic record sections, and intepretations thereof; geologic maps, cross sections, and intepretations thereof; maps of gravitational and magnetic fields and interpretations thereof; and chemical or other analyses of rock samples collected on the refuge and interpretations thereof.

(e) Any permittee or other person submitting processed, analyzed and interpreted data or information to the Regional Director shall clearly identify them by marking the top of each page bearing such data or information with the words "PROCESSED, ANALYZED AND INTERPRETED DATA OR INFORMATION". All pages so marked shall be physically separated by the person submitting them from those not so marked, unless doing so will destroy the value or integrity of the data or information presented. In that event or in the event that an item is submitted which is not susceptible to marking by page, the document or item submitted will be accompanied by a summary identifying the location of all processed, analyzed and interpreted data or information which are not segregated or marked by page, and expalning the reasons therefore. All pages not marked with this legend, all other data and information not identified as bearing such data or information, and all other data and information incorrectly identified as bearing such data or information shall be treated as raw data and information and shall be made available to the public upon request in accordance with § 37.54(a). The Department reserves the right to determine whether any page or item is correctly identified as constituting processed, analyzed and interpreted data or information.

(f) If the permittee proposes to transfer any data or information covered by this section to a third party or the third party proposes to transfer such data or information to another third party, the transferor shall notify the Regional Director at least 10 days in advance and shall require the receiving third party, in writing, to abide by the obligations of the permittee as specified in this section as a condition precedent to the transfer of such data or information.

(g) Upon request by the Department, a permittee shall identify each person to whom the permitttee has provided data and information pursuant to § 37.22 (d)(3) and provide a description of the area to which such data and information pertain.

§ 37.54 Disclosure.

(a) The Department shall make raw data and information obtained as a result of carrying out exploratory activities and submitted by the permittee or a third party available to the public upon submittal to the Congress of the report required by subsection (h) of the Act in accordance with subsection (e)(2)(C) of the Act, this section, and the procedural requirements of the Freedom of Information Act, 5 U.S.C. 552, and 43 CFR Part 2. The Department shall withhold from the public all processed, analyzed and interpreted data or information obtained as a result of carrying out exploratory activities and submitted by the permittee or a third party, if they have been properly marked and correctly identified in accordance with § 37.53(e), until 10 years after the submission of such data or information to the Regional Director or until 2 years after any lease sale including the area within the refuge from which such data or information were obtained, whichever period is longer, by invoking subsection (e)(2)(C) of the Act and exemption 3 to the Freedom of Information Act, 5 U.S.C. 552(b)(3). Thereafter, the Department shall treat such data or information as raw data and information. The Department shall make all other records, except exploration plans which must be published in accordance with § 37.22(b), submitted by a permittee or a third party relating to the activities covered by the Act and this part available to the public in accordance with the Freedom of Information Act, 5 U.S.C. 552, and 43 CFR Part 2.

(b) The Department reserves the right to disclose any data and information obtained as a result of carrying out exploratory activities and submitted by a permittee or a third party and any other information submitted by a permittee or a third party which may be exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552, to an agent or third party in order to carry out the Department's statutory authorities. When practicable, the Department shall notify the permittee who provided the data or information of its intent to disclose the data or information to an agent or third party. Prior to any such disclosure, the recipient shall be required to execute a written commitment not to transfer or to otherwise disclose any data or information to anyone without the express consent of the Department. The recipient shall be liable for any unauthorized use by or disclosure of such data or information to other third parties.

(c) The Department reserves the right to disclose upon proper request any processed, analyzed and interpreted data and information and any other confidential information to the State of Alaska, to the Congress and any committee or subcommittee of the Congress having jurisdiction over the refuge or this exploration program, and to any part of the Executive and Judicial Branches of the United States for official use. The recipient shall be responsible for maintaining the confidentiality of such data and information in accordance with the Act.

(d) Commercial use by any person of data or information obtained as a result of carrying out exploratory activities and disclosed pursuant to this section is prohibited. No person shall obtain access from the Department, pursuant to paragraph (a) of this section, to any data or information obtained as a result of carrying out exploratory activities and submitted by the permittee or a third party until such person provides the Department with a statement certifying that person's awareness of the prohibition contained in this paragraph and the disqualification stated in the first sentence of § 37.4(b).

Appendix I—Legal Description of the Coastal plain, Arctic National Wildlife Refuge, Alaska

Beginning at the meander corner of section 35 on the First Standard Parallel North on the line of mean high water on the left bank of the Canning River, T. 5 N., R. 23 E., Umiat Meridian;

Thence easterly, along the First Standard Parallel North, approximately 40¾ miles to the closing corner of T. 4 N., Rs. 30 and 31 E., Umiat Meridian;

Thence southerly, between Rs. 30 and 31 E., approximately 6 miles to the corner of Tps. 3 and 4 N., Rs. 33 and 34 E., Umiat Meridian;

Thence easterly, between Tps. 3 and 4 N., approximately 18 miles to the corner of Tps. 3 and 4 N., Rs. 33 and 34 E., Umiat Meridian;

Thence southerly, between Rs. 33 and 34 E., approximately 6 miles to the corner of Tps. 2 and 3 N., Rs. 33 and 34 E., Umiat Meridian;

Thence easterly, between Tps. 2 and 3 N., approximately 21 miles to the meander corner

of sections 4 and 33, on the line of mean high water on the left bank of the Aichilik River, Tps. 2 and 3 N., R. 37 E., Umiat Meridian;

Thence northeasterly, along the line of mean high water on the left bank of the Aichilik River, approximately 32 miles to a point at the line of mean high tide of the Beaufort Lagoon, located in section 28, T. 6 N., R. 40 E., Umiat Meridian;

Thence on an approximate forward bearing of N. 65 degrees E., approximately 7,600 feet to a point on the northerly boundary of the Arctic National Wildlife Refuge located in section 22, T. 6 N., R. 40 E., Umiat Meridian at the line of extreme low tide;

Thence northwesterly, along the northerly boundary of the Arctic National Wildlife Refuge at the line of extreme low tide on the seaward side of all offshore bars, reefs and islands, approximately 28 miles, to a point in section 33, T. 9 N., R. 36 E., that is due north of the corner of T. 8 N., Rs. 36 and 37 E., Umiat Meridian;

Thence due South, approximately ¾ mile to the corner of T. 8 N., Rs. 36 and 37 E., Umiat Meridian;

Thence southerly between Rs. 36 and 37 E., approximately 3 miles to the corner of sections 13, 18, 19, and 24, T. 8. N., Rs. 36 and 37 E., Umiat Meridian;

Thence westerly, between sections 13 and 24, approximately 1 mile to the corner of sections 13, 14, 23 and 24, T. 8. N., R. 36 E., Umiat Meridian;

Thence northerly, between sections 13 and 14, approximately 1 mile to the corner of sections 11, 12, 13 and 14, T. 8. N., R. 36 E., Umiat Meridian;

Thence westerly, between sections 11 and 14, 10 and 15, 9 and 16, 8 and 17, approximately 4 miles to the corner of sections 7, 8, 17 and 18, T. 8 N., R. 36 E., Umiat Meridian;

Thence southerly, between sections 17 and 18, 19 and 20, 29 and 30 to the corner of sections 29, 30, 31 and 32, T. 8. N., R. 36 E., Umiat Meridian;

Thence westerly, between sections 30 and 31, approximately 1 mile to the corner of sections 25, 30, 31 and 36, T. 8. N., Rs. 35 and 36 E., Umiat Meridian;

Thence southerly, between sections 31 and 36, approximately 1 mile to the corner of Tps. 7 and 8 N., Rs. 35 and 36 E., Umiat Meridian;

Thence westerly, between Tps. 7 and 8 N., approximately 1 mile to the corner of sections 1, 2, 35 and 36, Tps. 7 and 8 N., R. 35 E., Umiat Meridian;

Thence Northerly, between sections 35 and 36 and 25 and 26, 23 and 24, approximately 3 miles to the corner of sections 13, 14, 23 and 24, T. 8 N., R. 35 E., Umiat Meridian;

Thence westerly, between sections 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, approximately 10 miles to the corner of sections 17, 18, 19 and 20, T. 8 N., R. 34 E., Umiat Meridian;

Thence northerly, between sections 17 and 18, approximately 1 mile to the corner of sections 7, 8, 17 and 18, T. 8 N., R. 34 E., Umiat Meridian;

Thence westerly, between sections 17 and 18, approximately 1 mile to the corner of sections 7, 12, 13 and 18, T. 8 N., Rs. 33 and 34 E., Umiat Meridian;

Thence southerly, between Rs. 33 and 34 E., approximately 1 mile to the corner of sections 13, 18, 19 and 24, T. 8 N., Rs. 33 and 34 E., Umiat Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, approximately 3 miles to the corner of sections 15, 16, 21 and 22, T. 8 N., R. 33 E., Umiat Meridian;

Thence southerly, between sections 21 and 22, approximately 1 mile to the corner of sections 21, 22, 27 and 28, T. 8 N., R. 33 E., Umiat Meridian;

Thence westerly, between sections 21 and 28, approximately one mile to the corner of sections 20, 21, 28 and 29, T. 8 N., R. 33 E., Umiat Meridian;

Thence southerly, between sections 28 and 33, 29 and 32, approximately 2 miles to the corner of sections 4, 5, 32 and 33, Tps. 7 and 8 N., R. 33 E., Umiat Meridian;

Thence westerly, between Tps. 7 and 8 N., approximately 2 miles to the corner of Tps. 7 and 8 N., Rs. 32 and 33 E., Umiat Meridian;

Thence southerly, between section 1 and approximately 1 mile to the corner of sections 1, 6, 7, and 12, T. 7 N., Rs. 32 and 33 E., Umiat Meridian;

Thence westerly, between sections 1 and 12, approximately 1 mile to the corner of sections 1, 2, 11 and 12, T. 7 N., R. 32 E., Umiat Meridian;

Thence northerly, between sections 1 and 2, 35 and 36, approximately 2 miles to the corner of sections 25, 26, 35 and 36, T. 8 N., R. 32 E., Umiat Meridian;

Thence westerly, between sections 26 and 27, 34 and 35, approximately 2 miles to the corner of sections 27, 28, 33 and 34, T. 8 N., R. 32 E., Umiat Meridian;

Thence southerly, between sections 33 and 34, approximately one mile to the corner of sections 3, 4, 33 and 34, Tps. 7 and 8 N., R. 32 E., Umiat Meridian;

Thence westerly, between Tps. 7 and 8 N., approximately 3 miles to the corner of Tps. 7 and 8 N., Rs. 31 and 32 E., Umiat Meridian;

Thence northerly, between sections 31 and 32 E., approximately 3½ miles to a point on the northerly boundary of the Arctic National Wildlife Refuge at the line of extreme low tide located between sections 13 and 18, T. 8 N., Rs. 31 and 32 E., Umiat Meridian;

Thence westerly, along the northerly boundary of the Arctic National Wildlife Refuge approximately 57 miles along the line of extreme low water of the Arctic Ocean, including all offshore bars, reefs, and islands, to the most westerly tip of the most northwesterly island, westerly of Brownlow Point, section 6, T. 9 N., R. 25 E., Umiat Meridian;

Thence on an approximate forward bearing of S. 56½ degree W. approxiimately 3¼ miles to the mean high water line of the extreme west bank of the Canning River in section 15, T. 9 N., R. 24 E., Umiat Meridian;

Thence southerly, along the mean high water line of the west bank of the Canning River approximately 32 miles to the meander corner on the First Standard Parallel North at a point on the southerly boundary of section 35, T. 5 N., R. 23 E., Umiat Meridian, the point of beginning.

[FR Doc. 83-10230 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 37

Record of Decision for Oil and Gas Exploration Within the Coastal Plain of the Arctic National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Rule-related notice.

SUMMARY: This notice makes available to the public the Record of Decision (ROD) on oil and gas exploration within the coastal plain of the Arctic National Wildlife Refuge in Alaska. The ROD was prepared in accordance with Council on Environmental Quality regulations, 40 CFR 1505.2. The ROD reflects the recommendations of the Fish and Wildlife Service to the Assistant Secretary for Fish and Wildlife and Parks for implementing Section 1002(d) of the Alaska National Interest Lands Conservation Act (ANILCA). The recommendations of the Fish and Wildlife Service were based on the information contained in: the Final Environmental Impact Statement, which was filed with the Environmental Protection Agency on February 23, 1983, and became available to the public on March 4, 1983; the Baseline Study Reports published in April, 1982, and January, 1983, as required by Section 1002(c) of ANILCA; other pertinent scientific and technical data; and public comments received on the proposal. The ROD selects Alternative 3 of the proposal as the best alternative for implementing Section 1002(d)(1) of ANILCA. The regulatory guidelines representing Alternative 3 are being published separately also in Part IV of this same issue of the **Federal Register** as Final Rules under 50 CFR Part 37.

The Fish and Wildlife Service will hold a workshop for those interested parties wishing to submit applications for a permit to conduct exploratory activities on the coastal plain of the Arctic National Wildlife Refuge. The purpose of the workshop is to clarify application procedures and information requirements consistent with the provisions specified in 50 CFR Part 37. This workshop wil be conducted in Anchorage, Alaska approximately one week from the publication of this Notice in the **Federal Register**. For specific date(s), place, and time contact Mr. Doug Fruge of the Fish and Wildlife Service Regional Office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Fruge, 1011 East Tudor Road, Anchorage, Alaska, 99503, (907) 786-3381.