Railroad Commission District 4 in the eastern half of Starr County, Texas.

(B) *Depth.* The top of the Vicksburg Formation is defined as the top of the Rincon Sand and the base as the top of the Yegua sand. Specifically, it is defined as that interval on the log of the Corpus Christi Oil and Gas Company, Heard #1 Well that occurs between a measured depth of 8,260 feet to 10,836 feet, which yields a gross thickness of 2,217 feet.

* * * * *

[FR Doc. 85-20209 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-241 (Kentucky-4); Order No. 429]

High-Cost Gas Produced From Tight Formations, Kentucky; Final Rule

Issued August 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1984)). This rule established procedures for jurisdiction agencies to submit recommendations of areas for designation as tight formations. This order adopts the recommendations of the Commonwealth of Kentucky's Public Service Commission that the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group be designated as tight formations under § 271.703(d) of the Commission's Regulations.

EFFECTIVE DATE: This rule is effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357-9114 or C. W. Gray, Jr., (202) 357-8731.

Based on a recommendation made by the Public Service Commission of the Commonwealth of Kentucky, the Commission amends § 271.703(d) of its regulations [1] to include the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group located in Lawrence and Johnson Counties, Kentucky, as designated tight formations eligible for incentive pricing under § 271.703. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on March 20, 1985.[2]

Evidence submitted by Kentucky supports the assertion that the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group located in Lawrence and Johnson Counties, Kentucky meet the guidelines contained in § 271.703(c)(2). The Commission adopts Kentucky's recommendations.

This amendment shall become effective September 23, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7171 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(211) to read as follows:

§ 271.703 Tight Formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(211) *"Corniferous-Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group in Kentucky.* RM79-76-241 (Kentucky-4)

(i) *Delineation of formations.* The "Corniferous-Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group is found in Lawrence and Johnson Counties, Kentucky. Several areas in these counties are excluded from the designation and are shown on maps on file with the Commission.

(ii) *Depth.* The average depth to the top of the "Corniferous-Big Six" Formation ranges from 2,900 feet in the east to 1,750 feet in the west and has a thickness ranging from 500 feet to 775 feet. It is overlain by the Devonian Ohio Shale and underlain by the Silurian Rose Hill Shale. The average depth to the top of the "Clinton" Formation ranges from 2,460 feet in the west to 4,050 feet in the east and has thickness ranging from 0 to 35 feet. It is overlain by the Rose Hill Shale and underlain by the Brassfield Dolomite.

[FR Doc. 85-20211 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 18 CFR 271.703(d) (1984).

[2] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held. 50 F.R. 11,901, March 26, 1985.

18 CFR Part 271

[Docket No. RM 79-76-182; (Texas-8); Order No. 428]

High-Cost Gas Produced From Tight Formations; Texas; Final Rule

Issued: August 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated many receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission rejects the recommendation of the Railroad Commission of Texas that additional areas of the Geopressured Wilcox Lobo Formation located in Zapata County, Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, (202) 357-9115; or Walter W. Lawson, (202) 357-8556.

On January 24, 1983, the Federal Energy Regulatory Commission (Commission) received an amended recommendation pursuant to § 271.703(d) of the Commission's regulations [1] from the Railroad

[1] 18 CFR 271.703(d) (1983).

Commission of Texas (Texas) that two proration units in the Geopressured Wilcox Lobo formation, located in Zapata County, Texas, be designated as a tight formation. The units are on acreage previously excluded from tight formation designation under § 271.703(c)(2)(i).[2] The Director of the Office of Pipeline and Producer Regulation (Director) issued a notice proposing the amendment on April 1, 1983.[3]

Background

On December 13, 1983, Commission staff and Texas staff met to discuss the problems inherent in the proposed amended recommendation. Further work on the recommendation was suspended pending a response from Texas. No response from Texas has been received.[4]

Discussion

Under § 271.703(e)(2) of the Commission's regulations, the Commission may approve a recommendation by a jurisdictional agency that a natural gas formation be designated as a tight formation if certain geological criteria are met.[5] Although the individual wells satisfy the guidelines set forth in the regulations, the area surrounding the wells does not. Both wells are located in a block which contains three other wells which do not satisfy the guidelines.[6]

[2] 18 CFR 271.703(c)(2)(i) (1983). In Order No. 153, Docket No. RM79-76 (Texas-8), 46 FR 31,255 (June 15, 1981), the Commission adopted Texas' recommendation that the Geopressured Wilcox Lobo formation underlying Webb and Zapata Counties, Texas, be designated as a tight formation. The area designated as a tight formation by Order No. 153 consists of all of Webb and Zapata Counties, with the exception of approximately 130 square miles identified by Texas in its original recommendation as an area that did not meet the Commission's requirements.

[3] 48 FR 14,974 (April 6, 1983). No comments were received, no party requested a hearing, and no hearing was held.

[4] In a November 16, 1984 letter to the Railroad Commission of Texas, Commission staff noted, "The permeability and flow rate data for each of the wells meets the standards . . . [h]owever, both wells are located in an area which Texas has termed substantially developed conventional production acreage . . . [a]verage reservoir characteristics for this area did not meet the . . . standards . . . [b]ecause of the current well spacing regulations . . . there would be little or no opportunity for further developmental drilling on the acreage recommended . . .".

[5] Section 271.703(c)(2)(i)(A)-(c) (1984). Incentive pricing under section 107(c)(5) is provided to encourage the exploration for and development of unconventional gas supplies.

[6] The average data for the block shows an average flow rate of 544 Mcf per well per day; the regulations require a flow rate not in excess of 336 Mcf per well per day.

Texas originally excluded the subject block from tight formation designation because it was determined to be a "sweet spot" within an otherwise "tight" formation. Texas explicitly carved out this area from the acreage described in the applicant's proposal. Having reached that determination, the Commission will not now permit individual wells within the "sweet spot" to be eligible for tight formation designation.

The Commission Orders

Based on the discussion herein, the Commission rejects the recommendation of the Railroad Commission of Texas that two proration units be included within the previously approved Geopressured Wilcox Lobo Formation.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20210 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 635, 710, 712, 713, 720, 740, 750 and 751

Relocation Assistance and Real Property Acquisition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of regulations; technical amendments.

SUMMARY: This document rescinds FHWA's regulations relating to relocation assistance and the acquisition of real property, that are based on the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*) (Uniform Act). This action is being taken because those regulations have been superseded by a Department of Transportation (DOT) regulation, 49 CFR Part 25 (50 FR 8955, March 5, 1985). The DOT regulation prescribes uniform departmental procedures for compliance with the Uniform Act, and replaces the FHWA regulations that implement the Uniform Act. It is intended to serve as a model for all other Federal agencies operating under the Uniform Act.

EFFECTIVE DATE: July 3, 1985, or on such earlier date as the State elects to begin operating under 49 CFR Part 25.

FOR FURTHER INFORMATION CONTACT: Barbara Reichart, Chief, Relocation Division (202) 426-0116, Gerald Saunders, Chief, Real Estate Division (202) 426-0142, or Reid Alsop, Office of the Chief Counsel (202) 426-0800, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: In May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to review existing Federal agency regulations which implement the Uniform Act and to develop recommendations for uniform regulations to be adopted by each covered agency to implement the Uniform Act. This was done in response to concerns expressed by State and local governments through the President's Task Force on Regulatory Relief.

In addition to the Working Group, OMB also established a policy-level Interagency Regulatory Review Steering Group. The Steering Group and the Working Group, both chaired by OMB, included representatives of the Department of Housing and Urban Development, Department of Transportation (DOT), Department of Interior, Department of the Army (Corps of Engineers), and the Environmental Protection Agency. The Working Group developed a proposed regulation that was approved by the Steering Group. The DOT at the request of OMB, published the proposed regulation in the **Federal Register** on April 14, 1983, as a notice of proposed rulemaking (48 FR 16197).

Following the review of comments by the Working Group, a final rule was developed. On March 5, 1985, the Department of Transportation published the final rule in the **Federal Register** (50 FR 8955), as 49 CFR Part 25. This final rule was accompanied by a Presidential Memorandum (50 FR 8953) designating the DOT as the lead agency to coordinate administration and implementation of the Uniform Act. The Presidential Memorandum directed all affected executive departments and agencies to issue common regulations under the Uniform Act that would be consistent with the model rule promulgated by DOT.

The new DOT Uniform Act regulation replaced the prior DOT Uniform Act regulation of Part 25. The prior regulation, in 49 CFR 25.9, permitted the FHWA and other operating administrations in DOT to promulgate their own additional Uniform Act implementing regulations. No such authority is provided by FHWA in the new DOT regulations. Moreover, any such FHWA regulations would be contrary to the overall policy objectives of the new DOT regulation; that is to provide a single Federal regulation to be used by all agencies operating under the Uniform Act. Accordingly, FHWA regulations that implement the Uniform Act ceased to have effect on the date that a State begins operating under the new DOT regulation. Therefore, FHWA is herewith rescinding those provisions of Parts 710, 712, 713, 720, and 740 which implement the Uniform Act. Only procedural provisions that relate solely to program administration and funding, and other provisions that do not directly implement the Uniform Act are being retained. Several provisions have been moved or renumbered for clarity, and provisions providing a cross reference to the new DOT regulation have been added. This rescission will become effective on the date that the new DOT regulation becomes effective. (July 3, 1985, or earlier at the option of the State).

In order that these changes will be easier to follow, the following status table is provided.

Former Part/Section	Present status
§ 710, Subpart A	Removed.
§ 710.201 (b) and (d)	Removed.
§ 710.203(f)	Added.
§ 710.204	Removed.
§ 710.304(p)(1)(i)	Removed.
712, Subpart A	Removed.
§ 712.204(c)(3)(i)	Removed.
§ 712.304(a)	§ 710.203(e).
§ 712.304(f)(1)	§ 710.203(e)(4).
§ 712.404	Revised.
§ 713.102	Revised.
§ 713.103(b)	Removed.
§ 720.201(d)(1) and (2)	Revised as § 710.304(r).
§ 720.202(e)(5)(i) and (v)	§712.203(d)(1) and (2).
§ 720.200 through 720.203	Removed.
§ 720.204(e)(18)	Revised.
Appendix 1 of Part 720	Removed.
§ 720.201	Added.
§ 720.204	720.202.
§§ 740.1 through 740.6	Removed.
§§ 740.10 through 740.15	Removed.
§ 740, Subparts B through F	Removed.
§ 740.7	Revised as §740.2.
§ 740.8	Revised as § 740.3.
§ 740.9	Revised as § 740.4.
§ 740.1	Added.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since this is a techhical amendment that merely rescinds FHWA provisions which have been superseded by DOT provisions which are more uniform, public comment is unnecessary. For this reason, the FHWA finds good cause to make the rescission final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reason, notice, and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information. Again, for the reasons stated above, the preparation of an economic evaluation is unnecessary, since the economic impact is minimal. Also, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing the FHWA hereby amends Parts 710, 712, 713, 720, and 740 of Title 23, Code of Federal Regulations as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Parts 710, 712, 713, 720, and 740

Grant programs—Transportation, Highways and roads, Real property acquisition, Relocation assistance, Rights-of-way.

Issued on: August 13, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator.

PART 710—RIGHT-OF-WAY—GENERAL

1. The authority citation for Part 710 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.4 and 1.32; 42 U.S.C. 2000d *et seq.*; Executive Orders 11246, 11247, and 11375; 49 CFR 21.

Subpart A—[Removed and Reserved]

2. Subpart A of Part 710 (§§ 710.101–710.104) is removed and reserved.

Subpart B—State Highway Department Responsibilities

§ 710.201 [Amended]

3. Section 710.201 is amended by removing and reserving paragraphs (b) and (d).

4. Section 710.203 is amended by adding paragraph (f) to read as follows:

§ 710.203 General responsibilities.

* * * * *

(f) *Additional requirements.* Additional requirements governing federally assisted real property acquisition, based upon the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25, Subpart B.

§ 710.204 [Removed and reserved]

5. Section 710.204 is removed and reserved.

Subpart C—Reimbursement Provisions

§ 710.304 [Amended]

6. Section 710.304 is amended by removing and reserving paragraph (p)(1)(i).

PART 712—THE ACQUISITION FUNCTION

7. The authority citation for Part 712 is revised to read as follows:

Authority: 42 U.S.C. 2000d–1; 49 CFR 25; 23 U.S.C. 315 and 323; 49 CFR 1.48(b); 23 CFR 1.32.

Subpart A—[Removed and Reserved]

8. Subpart A of Part 712 (§§ 712.101 through 712.103) is removed and reserved.

Subpart B—General Provisions and Project Procedures

§ 712.204 [Amended]

9. Section 712.204 is amended by removing and reserving paragraph (c)(3)(i).

Subpart C—Negotiations

10. Subpart C of Part 712 (§§ 712.301 through 712.304) is removed and reserved with the exceptions of § 712.304(a) and (f)(1).

Paragraph (a) of § 712.304 is redesignated as § 710.203(e) and paragraph (f)(1) of § 712.304 is redesignated as § 710.203(e)(4).

Subpart D—Administrative Settlements, Legal Settlements, and Court Awards

11. Section 712.404 is revised to read as follows:

§ 712.404 Administrative settlements.

Administrative settlements on Federal and federally assisted highway projects are governed by the provisions of 49 CFR 25.102(i).

PART 713—RIGHT-OF-WAY—THE PROPERTY MANAGEMENT FUNCTION

12. The authority citation for Part 713 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart A—Property Management

13. Section 713.102 is revised to read as follows:

§ 713.102 Applicability.

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project.

§ 713.103 [Amended]

14. Section 713.103 is amended by removing and reserving paragraph (b).

PART 720—APPRAISAL

15. The authority citation for Part 720 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.32; 49 CFR 1.48(b).

16. Paragraphs (d)(1) and (2) of § 720.201 are revised and redesignated as § 710.304(r) with a revised paragraph heading, as follows:

§ 710.304 Reimbursement policy.

* * * * *

(r) *Appraisal costs and minimum payment.* (1) If otherwise eligible, Federal funds may participate in the cost of appraisal and specialty reports obtained by the State in accordance with its accepted plan of operation.

(2) Where the State prescribes a minimum payment, not to exceed $500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

17. Paragraphs (e)(5)(i) and (v) of § 720.202 are redesignated as § 712.203(d) and given the heading "Reviewing appraiser" as follows:

§ 712.203 General provisions.

* * * * *

(d) *Reviewing appraiser.* The reviewing appraiser shall place in the parcel file a signed and dated statement setting forth:

(1) The estimate of just compensation including, where appropriate, the allocation of compensation for the real property acquired and for damages to remaining real property, and an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which he considered to be a part of the real property to be acquired if such allocation or listing differs from that of the appraisal(s).

(2) The value estimate of items compensable under State law but not eligible for Federal reimbursement, if any.

18. Part 720 is amended by removing § 720.200 through 720.203; removing the last sentence of § 720.204(e)(18); removing Appendix 1 at the end of § 720.204; adding a new § 720.201; and redesignating § 720.204 as § 720.202 as follows:

§ 720.201 Appraisal requirements.

Additional policies and requirements governing the appraisal of property for Federal and federally assisted projects, based upon the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25, Subpart B.

PART 740—RELOCATION ASSISTANCE

19. The authority citation for Part 740 is revised to read as follows:

Authority: 49 CFR 25; 23 U.S.C. 315; 49 CFR 1.48(b); 23 CFR 1.32.

20. Part 740, Subparts A, B, C, D, E, and F, (§§ 740.1–740.6, 740.10–740.15, 740.31–740.38, 740.51–740.59, 740.71–740.81, 740.91–740.97 and 740.111–740.121) are removed with the exceptions of §§ 740.7, 740.8, and 740.9.

21. Section 740.7 is redesignated as § 740.2 and is amended by removing paragraphs (c), (d), (g), (h), and (i); and by redesignating the paragraphs (e) and (f) as (c) and (d), respectively, and by revising new paragraph (c)(2) to read as follows:

§ 740.2 Eligibility for participation of Federal-aid funds.

* * * * *

(c) *Federal share.* * * *

(2) Federal funds may not participate in any costs of a project, including preliminary engineering, right-of-way, relocation and construction, costs, unless prior to their displacement from their home, comparable replacement dwellings were available or provided for displaced individuals and families.

* * * * *

§ 740.8 [Redesignated as § 740.3 and amended]

22. Section 740.8 is redesignated as § 740.3 and is amended by removing paragraph (b) in its entirety and by removing the designation to paragraph (a).

§ 740.9 [Redesignated as § 740.4 and amended]

23. Section 740.9 is redesignated as § 740.4 and is amended by removing paragraph (b); removing everything after the words "Executive Order 11246." in the introductory text of paragraph (c); removing the words "required by this part" and adding in lieu thereof "required by 49 CFR Part 25" in paragraph (e)(2)(ii); removing the words "to ascertain compliance with the provisions of this part" and adding a period after the word "necessary" in paragraph (f); and redesignating paragraphs (c), (d), (e), and (f) as (b), (c), (d), and (e), respectively.

24. Part 740 is amended by adding a new § 740.1 to read as follows:

§ 740.1 Relocation requirements.

Substantive requirements governing the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs and projects, prescribed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25.

Technical Amendments

Due to the removal of a large portion of 23 CFR Part 740, and other changes the following technical amendments are necessary to correct references found in other parts of Title 23, CFR, and are set forth below.

PART 635—[AMENDED]

§ 635.309 [Amended]

25. In § 635.309, paragraph (c)(3) is amended by removing the reference "23 CFR 740.12" and inserting in lieu thereof "49 CFR 25.204".

PART 710—[AMENDED]

§ 710.304 [Amended]

26. In § 710.304, paragraph (o)(3)(iii) is amended by removing the phrase § 740.9(d) of this subchapter" and inserting in lieu thereof "49 CFR 25.6".

PART 712—[AMENDED]

§ 712.204 [Amended]

27. In § 712.204, paragraph (d)(5) is amended by removing the reference "23 CFR Part 740" and inserting in lieu thereof "49 CFR Part 25".

PART 750—[AMENDED]

§ 750.304 [Amended]

28. In § 750.304, paragraph (c)(4) is amended by removing the reference "23 CFR 710.204" and inserting in lieu thereof "23 CFR 710.304(h)".

PART 751—[AMENDED]

§ 751.21 [Amended]

29. In § 751.21, remove the reference "Part 740, 23 CFR" and insert in lieu thereof "49 CFR 25".

[FR Doc. 85-20079 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 45

Special Education; Establishment of Standards

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule which establishes standards for the provision of special education and related services under the Education for All Handicapped Children Act of 1975, as amended, to Indian schools operated by or under the authority of the Bureau of Indian Affairs (BIA).

EFFECTIVE DATE: October 7, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Cordova, Chief, Branch of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, 1951 Constitution Ave., N.W., Room 4651, Washington, D.C. 20245, telephone number: (202) 343-6675.

SUPPLEMENTARY INFORMATION: The authority for issuing this rule is contained in 5 U.S.C. 301; 25 U.S.C. 2 and 9. This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

This final rule establishes criteria for governing the operation of special education programs for handicapped Indian children enrolled or eligible for enrollment in BIA operated and/or funded schools. The regulations establish a single comprehensive set of standards for ensuring all handicapped children enrolled in BIA operated and/or funded schools are provided a free appropriate education in the least restrictive educational environment appropriate to their needs, consistent with their rights and related procedural safeguards.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.* The information collections identified in §§ 45.19(d) and 45.33 are required by the Department of Education in 34 CFR 300.

The primary author of this document is Charles G. Cordova, Bureau of Indian Affairs, telephone number: (202) 343-6675.

The Department of Interior has determined that this document pertains only to schools operated or funded by the BIA; and therefore, is not a major rule under E.O. 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 Bureau of Indian Affairs published a proposed rule 25 CFR Part 31k (renumbered throughout this document as Part 45) on September 29, 1980. Public comments were invited until November 27, 1981. In response to this invitation, individuals, groups, schools and interested persons submitted comments. In addition, the Bureau of Indian Affairs, Office of Indian Education Programs, conducted public hearings throughout the Country where large percentages of Indian people are located. During these public hearings, commenters were given an opportunity to write or record their comments for transcript. Copies of the proposed regulations were made available for their convenience. A task force of Bureau of Indian Affairs' (BIA) educators was selected from various locations to review and respond to the comments from the field. The Bureau of Indian Affairs, Office of Indian Education Programs, has carefully considered the views of the public as reflected in the written comments and testimonies at public hearings. The following is a description of these views and BIA responses to them.

Subpart A—General

During the comment period, recommendations of numerous changes were received to improve the clarity of the rule and make it consistent with previous regulations relative to Indian children. Several editorial changes were incorporated into the final rule which include the following items:

General responsibility (§ 45.1)

Comment: Several commenters recommended the term "public" be deleted as it relates to public education since Bureau schools are Federally funded education facilities.

Response: We agree that the schools are not public in the strictest sense of the word and the term "public" has been deleted.

Enrollment in early childhood education programs (§ 45.2)

The title of this section has been changed to "Provisions of Early Childhood Special Education Programs and Services."

Comments: One commenter suggested that the title of this section read: "Provisions of Early Childhood Special Education Programs and Services."

Several commenters suggested that a definition of Early Childhood Special Education be included in the regulations.

Several commenters recommended that this section be charged to include children from birth to five (5) years of age and that the BIA provide special education services to these children.

Response: This section has been changed to agree with the requirements of the Indian School Equalization Program (25 CFR Part 39). The ISEP program provides funding for children enrolled in BIA operated or funded schools. At this time, there are no provisions to enroll children in pre-kindergarten programs. Because of the supplemental nature of the funds received through Pub. L. 94-142, it has been determined that funding can only be provided toward the education of children enrolled in BIA operated or funded schools. To require schools to serve zero to five (0-5) year olds would be inconsistent with BIA regulations and practice. Since BIA is not eligible to receive pre-school incentive funds from the Department of Education, a limited number of model programs for handicapped Indian children from birth to age five (5) may be approved for funding. The number will be based on need and funding limitations. Although funding will be limited for children from birth to age five (5), every effort will be made by the BIA to locate and identify handicapped children and to refer them to appropriate service providers.

Children of ages eighteen through twenty-one (§ 45.3)

Comment: Several comments were received regarding the age range of three (3) to twenty-one (21) years. The commenter felt the age limit of twenty-one (21) should be raised.

Response: No change has been made. Pub. L. 94-142 as well as Pub. L. 95-561 provide for services to students only through the age of 21 years.