

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Procedural Determinations

*National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*Executive Order No. 12291 and the Regulatory Flexibility Act.* On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

*Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

#### List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

Date: December 2, 1988.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

#### PART 915—IOWA

1. The authority citation for Part 915 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 915.15 is amended by adding paragraph (h) to read as follows:

#### 915.15 Approval of regulatory program amendments.

(h) The following amendment to the Iowa program, as submitted to OSMRE on June 9, 1988, is approved effective December 9, 1988: Revisions to Section 83.26 of the Code of Iowa repealing the provision excluding coal extraction operations affecting one-half acre or less from regulation.

[FR Doc. 88-28355 Filed 12-8-88; 8:45 am]

BILLING CODE 4310-05-M

#### POSTAL SERVICE

#### 39 CFR Part 111

#### Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 29 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations on ancillary service endorsements, and the revised regulations on eligibility of "Plus" issues for second-class mail privileges, have previously been published in the Federal Register.

EFFECTIVE DATE: December 18, 1988.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 29, dated December 18, 1988. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 29 covers the minor changes not previously described in interim or final rules published in the Federal Register.

#### Summary of Changes

Chapter 1, Domestic Mail Services. Section 115.231b, Mail Sealed Against Inspection, and 152.71, Who May Recall Mail, are revised to clarify matters concerning Customs clearance of domestic and international mail.

\* \* \* \* \*

Section 122.422a is revised to clarify the existing regulations to specify acceptable wording and the location of address formats for mailers who choose to use the exceptional address format.

The following Exhibits in 122.63 are updated: 122.63c, Sectional Center Facilities Serving a Single Three-Digit ZIP Code Area; 122.63e, Optional Area Distribution Center (ADC) Labeling List for Use with Presort First-Class Mailings Only; 122.63o Area Distribution Center (ADC) labeling list for optional combined ZIP+4, and presorted first-class mail; and 122.63p, originating mixed states labeling list for mailer prepared second-class publications.

In 125.15, Airlift Mail, section 125.152b is revised to change the size limits for parcels of any class that are mailed from an APO/FPO outside the contiguous 48 states. The parcels may not be more than 100 inches in length and girth combined.

Section 137.16, General Instructions, is revised to clarify the procedures for handling undeliverable-as-addressed franked mail bearing a Washington, DC, return address.

In Part 137, Official Mail, section 137.264b is revised to change the limit for insured mail sent as penalty mail. Items insured for over \$100 cannot be sent as penalty mail and must have postage and fees prepaid.

Section 137.275f(3) is revised to raise the minimum dollar amount for orders for penalty mail stamp stock. Each order must now total \$50.

Section 137.275f(4) is revised to state that \$1 and \$5 denomination stamps can only be ordered in multiples of \$10.

Section 137.276h(4)(b) is revised to raise the limit for insured mail sent as penalty merchandise return mail. Items insured for over \$100 cannot be sent as penalty merchandise mail.

In 144.52, Place of Mailing, section 144.524a, is revised to state that metered mail, regardless of its class, may be deposited at the area mail processing center (AMPC) which does the initial distribution of the originating mail and serves the post office where the meter is licensed.

In 159.326, Other Mail, section 159.326f is revised to include postage-due mail. The post office retains postage-due mail for 10 days; and, if no one claims it within that timeframe, it returns the mail to the sender. This same retention and return policy applies to postage-due mail addressed to a post office box.

Section 159.327, Return of Third- and Fourth-Class Mail, is revised to state that the sender of third- and fourth-class mail may identify pieces considered

valuable and ensure their return by using one of the return postage guaranteed endorsements in Exhibits 159.151a-f.

In 164.1, Definition and Policy, section 164.13d is added to grant authority to the General Manager, Philatelic Sales Division, Philatelic and Retail Services Department, to allow backdating of mail for philatelic purposes. Permission to backdate mail for philatelic purposes must be obtained from the General Manager in writing.

Section 164.53i, Cancellation Deadlines, is added to state the Postal Service policy concerning cancellation deadlines for bulk orders of first day covers.

Section 164.73, Special Materials on Which Cancellations Are Requested, is revised to restate Postal Service policy concerning cancellations on special materials. The Postal Service is not responsible for smudged cancels or offsetting on this type of work.

In 164.82, Mailback Service, section 164.82a is revised to require that cover servicers or dealers obtain written authorization from the Philatelic Sales Division for more than 50 rubber composition cancellations. Section 164.82e is added to state the mailback service with overwrapping for cover servicers and dealers submitting 50 or more addressed covers will be subject to a service charge established by the Philatelic Sales Division. Section 164.82f is added to state that cover servicers and dealers wishing to use a protective envelope other than the protective overwrapping provided by the USPS for mailing first day covers must have a signed agreement on file with the Philatelic Sales Division.

Sections 164.83a, First-Day-of-Issue-Cancellations, 164.83b, Pictorial Cancellations, and 164.83d, Standard Cancellations, are revised to change the phrases "hand cancellations" and "hand-stamped cancellations" to "rubber composition cancellations," since not all such cancellations are done "by hand." Some are done by machine.

Section 176.22, Backdating, is added to specify that backdating of mail to comply with customer requests is prohibited unless authorized specifically by the General Manager, Philatelic Sales Division.

\* \* \* \* \*

Section 441.121, Application, is revised to include the procedures for Form 3541-EX.

Section 441.151, Application, is revised to specify that if the frequency of the publication will include more than one issue during a week, Form 3541-EX

must be completed and submitted with Form 3541, Statement of Mailing—2nd Class Pubs Except Requester Publications.

Section 444.1, Change in Title, Frequency, or Office of Publication, is revised to state that when the frequency of a publication is being changed to one that includes more than one issue during a week, Form 3541-EX must be completed by the publisher and submitted with Form 3510, Application for Additional Entry, Reentry, or Special Rate Request for Second-Class Publication.

Part 445, Applications for Exceptional Dispatch and for the Acceptance of Air Freight Second-Class Mail at Airport Mail Facilities (AMFs), is revised in its entirety to incorporate the regulations that govern the acceptance at AMFs of second-class publications that were sent to those facilities as air freight.

Exhibit 447 is revised to add Form 3541-EX as page 4.

\* \* \* \* \*

Sections 463.32a, Optional City Sacks, 464.32a, Optional City Sacks, 667.132b, Optional City Sacks, and 767.222, Optional City Sacks, are revised to include new labeling instructions for optional city sacks of second-, third-, and fourth-class mail. The requirements will make it possible to differentiate between labels of an optional city sack and a five-digit sack.

\* \* \* \* \*

Sections 667.11, General, 667.911, and 667.92, Authorizing Commingling, are revised to clarify the exemption from packaging requirements for bulk rate third-class mailings.

\* \* \* \* \*

Chapter Nine, Special Services. Section 917.342c, Affixing Stamps or Meter Strips, is revised to update the procedures for using Form 3611, Postage Due Statement for Automated BRM, when deducting postage charges from the mailer's Business Reply Advance Deposit Account.

Section 917.622, Cards, is revised to delay the implementation of the enforcement of basis paper weight requirements until January 1, 1989.

Minor, nonsubstantive changes include: 137.274c(1), 137.274c(2)(c), 144.37, 145.222, Exhibit 145.51b, Exhibit 145.51c, Exhibit 145.51d, 146.32, 262.2, 263.3, 294, 364.42a, 364.44, 425.225, 482.23a, 482.23b, 622.144f(1), 622.144f(2), 622.154f(1), 622.154f(3), 622.164d(1), 622.164f, 622.164f(5), 667.132a, 667.311b(5), and 682.

**List of Subjects in 39 CFR Part 111 Postal Service.**

**PART 111—GENERAL INFORMATION ON POSTAL SERVICE**

1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

**§ 111.3 Amendments to the Domestic Mail Manual.**

\* \* \* \* \*

Transmittal letter for issue	Dated	Federal Register publication
29.....	December 18, 1988.	53 FR * * *

Fred Eggleston,  
Assistant General Counsel, Legislative Division.

[FR Doc. 88-28343 Filed 12-8-88; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Office of Hearings and Appeals**

**43 CFR Part 4**

**Department Hearings and Appeals Procedures**

**AGENCY:** Office of Hearings and Appeals, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Hearings and Appeals (OHA) in the Department of the Interior (DOI) is revising its rules at 43 CFR Part 4, Subpart B, by adding a new provision to establish a procedure enabling a party to an administrative proceeding to submit privileged or confidential information as evidence and request limitation on the disclosure of that evidence. Certain existing regulations are also being revised to include references to the new provision.

**EFFECTIVE DATE:** January 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** James R. Kleiler, Attorney-Adviser, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203; Telephone: (703) 235-3750.

## SUPPLEMENTARY INFORMATION:

## I. Discussion of Rule

On June 3, 1987, OHA published its proposed rulemaking concerning the submission of confidential information in OHA proceedings in the *Federal Register* (52 FR 20755-57), indicating that comments would be accepted through July 6, 1987. Six letters containing comments from the public were received.

This rule amends Subpart B by adding a new section, 43 CFR 4.31, which establishes a procedure for submitting documents containing confidential information and for requesting limitation on the disclosure of such documents. The new section establishes conditions under which the confidential information may be provided to other participants to the proceeding. If such conditions are not adequate to protect the confidentiality of information forming the basis for a decision, the rule allows the decisionmaker to consider such evidence without disclosing it to the parties, but only if the proceeding is not conducted pursuant to 5 U.S.C. 554.

The rule amends § 4.22(b) by adding a provision to except documents and requests filed pursuant to § 4.31 from the general requirement for service on all parties. Subsection 4.31 documents and requests would be served only as required by that section.

Section 4.22(c) is amended by adding a provision for securing confidential information against unauthorized disclosure and retaining it with the official record.

The rule amends § 4.24(a)(4) to except evidence reviewed pursuant to § 4.31(d) from the provision that no decision can be based on evidence not open to inspection by the parties.

The rule amends § 4.27(b) by providing an exception for the disposition of *ex parte* matters as authorized by law from the prohibition of any *ex parte* communication as defined in that rule.

The final rule mainly differs from the proposed rule in its organization, not its substance. The provisions of § 4.31(e) of the proposed rule, for example, have been redesignated as § 4.31(d) and revised to more closely parallel the provisions of § 4.31(a). Changes were also made in response to public comments. Any reference in this preamble to a specific subsection of the rule relates to the final rule unless otherwise specified.

OHA notes that this rulemaking is not intended to affect the availability of information subject to disclosure under the FOIA, 5 U.S.C. 552; nor is it intended to authorize the withholding from

Congress of information to which Congress is entitled under law.

## II. Discussion of the Public Comments

One comment observed that in amending the first sentence of § 4.27(b)(1), the proposed rule would delete the remaining sentences of that subsection. The final rule retains those remaining sentences.

One comment noted that § 4.31, as proposed, required a party to submit, together with the document containing confidential information, a copy from which the information had been deleted. The comment observes that there may be circumstances where such deletion would be nearly impossible. For example, if the confidential information is embodied in a map, it would be extremely difficult to obliterate the confidential information without almost completely obscuring the information on the map. In response to this problem, the final rule provides that if it is not practicable to submit a copy of the document because deletion of the information would render the document unintelligible, a description of the document may be substituted.

One comment questions why the rule requires that a submitter of confidential information indicate in the document that it is exempt or contains information which is exempt from disclosure. This provision appeared in § 4.31(a)(2) of the proposed rule and now appears in § 4.31(a)(1) and (d)(1). The primary purpose of this provision is to ensure that Government employees handling the document are aware of its exemption from disclosure so that they will take the necessary precautions to maintain its confidentiality.

One comment notes that § 4.31(d), as proposed, required the party requesting confidential information to adhere to the agreements against disclosure, but suggested that such agreement be verified in writing. We have responded to concerns about the enforceability of this provision by adding language to final § 4.31(c) requiring the party to agree in writing under oath to protect confidential information.

Several comments criticized the provision in § 4.31(d) that enables the presiding officer or an appeals board to consider information not available to all the parties to a proceeding. Some commenters contend that due process requires that such information always be made available, regardless of whether or not a proceeding arises under 5 U.S.C. 554.

Some of the concern appears to arise from a misunderstanding of the scope of the rule. Documents containing

confidential information cannot be withheld under § 4.31(d) from another party in a proceeding under 5 U.S.C. 554. Nor can a document be withheld under § 4.31(d) from another party to any type of proceeding if that party's agreement to abide by the requirements of § 4.31(c) would adequately protect the confidentiality of the documents.

Several comments observe that § 4.31(d) provides that confidential information could be withheld from a party only if disclosure is "prohibited by law." The commenters question the breadth or narrowness of this provision, and note the difference between this standard and the provision set forth at § 4.31(a). It is important to note that subsection (a) applies to any proceeding and does not authorize the withholding of information from parties to a case who agree to keep the information confidential. Rather, that subsection concerns the exclusion of confidential information from the public record, and OHA considers it appropriate to give full effect to the exemptions contained in the FOIA. Subsection (d) differs from subsection (a) because it sets forth the requirements for withholding information from a party to a case. Under subsection (d), an FOIA exemption does not provide a sufficient basis for withholding information from a party who agrees to keep the information confidential; rather the party requesting nondisclosure under that provision must demonstrate that disclosure is prohibited by law. As we indicated in the notice of proposed rulemaking, the final rulemaking merely codifies the standard for disclosure which the Interior Board of Land Appeals has already applied a number of years. *Southern Union Exploration Co.*, 51 IBLA 89 (1980).

One comment refers to the provision in § 4.31(d)(2) that if the request for nondisclosure is intended to protect a nonparty, the party submitting the document must demonstrate that the nonparty refused to consent to the disclosure of the evidence to the other parties to the proceeding. The comment expresses concern that certain agencies tend to be overly protective in claiming that information upon which a decision is based is proprietary and also in claiming that agency-generated information is proprietary. To remedy this perceived problem, the comment recommends that the rule be clarified to indicate that "party" refers to the agency and not just to private parties. We reject this comment because we do not consider such clarification necessary. The procedural regulations under Part 4 are replete with references to party or person, and OHA has

required Government agencies as well as private parties to adhere to those regulations. Accordingly, a bureau or office of the Department can submit confidential information for review by OHA only in the same manner as a private party pursuant to this final rule.

One comment notes that § 4.31(d)(3) provides that a party requesting nondisclosure may withdraw the evidence if the request is denied, but further provides that the evidence may not be withdrawn if an FOIA request, administrative appeal from the denial of a request, or a lawsuit seeking release of the information is pending. The comment suggests that these provisions are inconsistent and recommends that the second provision be deleted. We have not deleted this provision. When a document is submitted pursuant to § 4.31, it arguably becomes an agency record for the purposes of the FOIA, and if an FOIA request has been filed, the agency may not allow the withdrawal of the information until final disposition of the FOIA request.

One comment expresses concern about the potential applicability of these rules to states and tribes operating under delegation or cooperative agreements with the Secretary under the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1701. The comment observes that such delegates have agreed to abide by Federal disclosure and confidentiality laws and assume the liability for penalties for wrongful disclosure. The comment asserts that FOGRMA requires the Secretary to make available to such delegates all information including trade secrets and other confidential data bearing on the collection of royalties from Federal production in the particular state or tribal area. Accommodation of this concern requires no revision of the rule because the rule does not purport to restrict the availability of information to any person who has a statutory right to receive it. The regulation only restricts disclosure of information which is "exempt from disclosure" or where disclosure to a party would be "prohibited by law." If a person is entitled by statute or agreement to receive the information, such information is neither exempt from disclosure to that person nor is such disclosure prohibited by law.

**III. Procedural Matters**

*Federal Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

*Executive Order 12291*

The DOI has examined this rule according to the criteria of Executive Order 12291 (Feb. 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis because the rule only sets forth the details of necessary procedures for hearings and appeals.

*Regulatory Flexibility Act*

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities because the rule simply provides procedures for administrative review of agency actions.

*National Environmental Policy Act*

The Office of Hearings and Appeals has determined, on the basis of the categorical exclusion of regulations of a procedural nature set forth at 516 DM 2 Appendix 1, § 1.10, that this rule will not significantly affect the quality of the human environment.

*Drafting*

This rule was drafted by James R. Kleiler, an Attorney-Adviser with the Interior Board of Land Appeals in OHA.

**List of Subjects in 43 CFR Part 4**

Administrative practice and procedure, Lawyers.

Date: November 7, 1988.

Earl E. Gjelde,

*Under Secretary.*

Accordingly, 43 CFR Part 4, Subpart B, is revised as follows:

**PART 4—DEPARTMENT HEARING AND APPEALS PROCEDURES**

1. The authority citation for Part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. 1201, unless otherwise noted.

**Subpart B—General Rules Relating to Procedures and Practice**

2. Section 4.22 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 4.22 Documents.**

(b) *Service generally.* A copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case, except as otherwise provided by § 4.31. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case

on behalf of his/her client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by order of a presiding official or an appeals board. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(c) *Retention of documents.* All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding before the Office of Hearings and Appeals will be retained with the official record of the proceedings. However, the withdrawal of original documents may be permitted while the case is pending upon the submission of true copies in lieu thereof. When a decision has become final, an appeals board in its discretion may, upon request and after notice to the other party or parties, permit the withdrawal of original exhibits or any part thereof by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal. Transcripts of testimony and/or documents received or reviewed pursuant to § 4.31 of these rules shall be sealed against disclosure to unauthorized persons and retained with the official record, subject to the withdrawal and substitution provisions hereof.

\* \* \* \* \*  
3. Section 4.24 is amended by revising paragraph (a)(4) to read as follows:

**§ 4.24 Basis of decision.**

(a) \* \* \*  
(4) In any case, no decision after a hearing or on appeal shall be based upon any record, statement, file, or similar document which is not open to inspection by the parties to the hearing or appeal, except for documents or other evidence received or reviewed pursuant to § 4.31(d).

\* \* \* \* \*  
4. Section 4.27 is amended by revising paragraph (b)(1) to read as follows:

**§ 4.27 Standards of conduct.**

\* \* \* \* \*  
(b) *Ex parte communication—(1) Prohibition.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, there shall be no communication concerning the merits of a proceeding between any party to the proceeding or any person interested in the proceeding or any representative of a party or interested person and any Office personnel

involved or who may reasonably be expected to become involved in the decisionmaking process on that proceeding, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Proceedings include cases pending before the Office, rulemakings amending this Part 4 that might affect a pending case, requests for reconsideration or review by the Director, and any other related action pending before the Office. The terms "interested person" and "person interested in the proceeding" include any individual or other person with an interest in the agency proceeding that is greater than the interest that the public as a whole may have. This regulation does not prohibit communications concerning case status or advice concerning compliance with procedural requirements unless the area of inquiry is in fact an area of controversy in the proceeding. Any oral communication made in violation of this regulation shall be reduced to writing in a memorandum to the file by the person receiving the communication and shall be included in the record. Any written communication made in violation of this regulation shall be included in the record. In proceedings other than informal rulemakings copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

5. A new § 4.31 is added to Subpart B to read as follows:

**§ 4.31 Request for limiting disclosure of confidential information.**

(a) If any person submitting a document in a proceeding under this part claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of title 18 of the United States Code (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person:

(1) Must indicate in the document that it is exempt, or contains information which is exempt, from disclosure;

(2) Must request the presiding officer or appeals board not to disclose such information except to the parties to the proceeding under the conditions provided in paragraphs (b) and (c) of this section, and must serve the request upon the parties to the proceeding. The request shall include the following items:

(i) A copy of the document from which has been deleted the information for which the person requests nondisclosure; if it is not practicable to submit such copy of the document because deletion of the information would render the document unintelligible, a description of the document may be substituted;

(ii) A statement specifying why the information is confidential, if the information for which nondisclosure is requested is claimed to come within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information;

(iii) A statement specifying the justification for nondisclosure, if the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4).

(b) If information is submitted in accordance with paragraph (a) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with Part 2 of this title, or upon request from a party to the proceeding under the restrictions stated in paragraph (c) of this section.

(c) At any time, a party may request the presiding officer or appeals board to direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding officer or board will so direct, unless paragraph (d) of this section is applicable, if the party requesting the information agrees under oath in writing:

(1) Not to use or disclose the information except in the context of the proceeding conducted pursuant to this part; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(d) If any person submitting a document in a proceeding under this Part other than a hearing conducted pursuant to 5 U.S.C. 554 claims that a disclosure of information in that document to another party to the proceeding is prohibited by law, notwithstanding the protection provided under paragraph (c) of this section, such person:

(1) Must indicate in the original document that it contains information of which disclosure is prohibited;

(2) Must request that the presiding officer or appeals board review such evidence as a basis for its decision without disclosing it to the other party or parties, and serve the request upon the parties to the proceeding. The request shall include a copy of the

document or description as required by paragraph (a)(2)(i) of this section and state why disclosure is prohibited, citing pertinent statutory or regulatory authority. If the prohibition on disclosure is intended to protect the interest of a person who is not a party to the proceeding, the party making the request must demonstrate that such person refused to consent to the disclosure of the evidence to other parties to the proceeding.

(3) If the presiding officer or an appeals board denies the request, the person who made the request shall be given an opportunity to withdraw the evidence before it is considered by the presiding official or board unless a Freedom of Information Act request, administrative appeal from the denial of a request, or lawsuit seeking release of the information is pending.

(e) If the person submitting a document does not submit the copy of the document or description required by paragraph (a)(2)(i) or paragraph (d)(2) of this section, the presiding officer or appeals board may assume that there is no objection to public disclosure of the document in its entirety.

(f) Where a decision by a presiding officer or appeals board is based in whole or in part on evidence not included in the public record or disclosed to all parties, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

[FR Doc. 88-28359 Filed 12-8-88; 8:45 am]

BILLING CODE 4310-79-M

**Bureau of Land Management**

**43 CFR Part 3160**

[AA-630-87-4111-02; Circular No. 2613]

**Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations; Correction**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rulemaking; correction.

**SUMMARY:** The Bureau of Land Management, Department of the Interior, is correcting the final rulemaking adding Onshore Oil and Gas Order No. 2, Drilling Operations, by restoring an inadvertent omission from the Order published in the **Federal Register** on November 18, 1988 (53 FR 46798).