Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); E.O. 11063, 27 FR 11527; sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1); sec. 562, Housing and Community Development Act of 1987 (42 U.S.C. 3608a); sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 121.1 Purpose.

The purpose of this part is to enable the Secretary of Housing and Urban Development to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, dated November 20, 1962, Title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department of Housing and Urban Development, and they direct the Secretary to administer the Department's housing and urban development programs and activities in a manner affirmatively to further these policies and to collect certain data to assess the extent of compliance with these policies.

§ 121.2 Furnishing of data by program participants.

Participants in the programs administered by the Department shall furnish to the Department such data concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, those programs as the Secretary may determine to be necessary or appropriate to enable him or her to carry out his or her responsibilities under the authorities referred to in § 121.1.

20. The text of the preamble to this rule beginning at the heading "BACKGROUND" and ending before the heading "*Legislative review issues,*" is added as Appendix I to Subchapter A of Chapter I as follows:

Appendix I to Subchapter A—Preamble to Final Rule Implementing Fair Housing Amendments Act of 1988 (Published January 19, 1989)

Dated: January 12, 1989.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 89–1211 Filed 1–19–89; 8:45 am]

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federal register

Monday
January 23, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

Minimum Equipment List (MEL) Requirements; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 25780; Notice No. 89-2]

RIN 2120-AC86

Minimum Equipment List (MEL) Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Part 125 and 135 requirements for the use of a Minimum Equipment List (MEL).

The proposed amendment would provide much needed guidance and direction by clarifying the intent of the MEL concept in Part 121. It also proposes to amend the Part 121 requirements for the use of an MEL to make them consistent with the amended Part 125 and 135 MEL requirements. Finally, it provides for the development and use of MEL's for single-engine aircraft operated under Part 135.

DATE: Comments must be received on or before March 24, 1989.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25780, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked "Docket No. 25780." Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Marlene G. Livack, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3753.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of this proposal. The comment should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received, as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the closing date for making comments.

Before taking any final action on the proposal, the Administrator will consider any comment made on or before the closing date for comments. The proposal may be changed in light of comments received.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25780." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should identify the docket number of this proposed rule. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular No. 112A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The airworthiness certification of an aircraft is based upon the requirement that the aircraft conforms to its type certificate and is in a condition for safe operation. Early commercial aircraft had very little equipment redundancy beyond that necessary to meet the existing Civil Aviation Regulations (CAR) basic type certification requirements. Prior to adoption of specific provisions in the CAR operating rules, operation with inoperative equipment was prohibited.

The concept of the Minimum Equipment List (MEL) presently embodied in Part 121 was first developed for air carrier and commercial operators of large aircraft in 1953 (then CAR 40 and 41) when it was recognized that a flight or series of flights might be continued with certain inoperable instruments and equipment under appropriate circumstances. This concept was established following the determination of the Civil Aeronautics Agency (CAA) that strict observance of the requirement to delay or postpone a flight with an inoperative equipment was an undue hardship and that strict compliance was not necessary to maintain the type certification level of safety. In 1956, the CAR's were further updated to outline the circumstances when procedures for limited operations beyond a terminal point with inoperative required equipment might be incorporated and authorized in air carrier manuals.

The air carrier operating rules of the CAR were recodified effective April 1, 1965. Part 121 of the Federal Aviation Regulations (FAR), which replaced CAR 40, 41, and 42, was initiated to regulate the certification and operations of air carriers and commercial operators of large aircraft. The preamble to Part 121 indicates the intent to carry over procedures for operating with inoperative equipment, as they existed in CAR 40 and 41, intact in the recodification and introduced the term "minimum equipment list." To date there have been no substantive amendments to the Part 121 MEL procedures.

Historically, the MEL process has been an effective mechanism to permit continued flight with instruments and equipment inoperative. It allows operational flexibility and a higher degree of schedule reliability while still maintaining the level of safety required by the type certification rules.

Evolutionary improvements in both aircraft design and in safety requirements have provided modern aircraft with the capability for operation over a wide range of environmental conditions. These improvements also have provided improved convenience for both the operator and passengers. Certain installed equipment is required to operate in specific environmental conditions. This equipment is not essential for safe operations provided the kind of operation necessitating the equipment is avoided; for example, certain lights are not essential during daytime operations. Other non-required optional equipment (such as entertainment systems, logo lights, and galley equipment) may be installed for the convenience of the operator or passengers.

The MEL is a practical method of enhancing air carrier dispatch reliability where equipment and accessories not required for type certification are involved. Also, experience has shown that given individual aircraft designs, operation of every system or component may not be necessary when the remaining operative equipment can provide the required level of safety. Section 121.627(c) provides that the Minimum Equipment List and procedures for continuing flight beyond a terminal point with equipment required by § 121.303(d) inoperative may be included in the certificate holder's manual if the Administrator finds that, in a particular situation, literal compliance with those equipment requirements is not necessary in the interests of safety. Although it would be desirable to maintain the aircraft at all times with installed equipment operative, it is possible under controlled conditions to maintain the required level of safety with specific items of equipment inoperative until repairs are available or feasible.

A Master Minimum Equipment List (MMEL) for a particular aircraft type is developed by the FAA along with the holder of the type certificate for that aircraft. The MMEL is the basis for development of an individual operator's MEL which takes into consideration the operator's particular aircraft equipment configuration and operational conditions. The individual operator's MEL, when approved and authorized by the FAA air carrier certificate holding district office, allows relief from the maintenance and operating rules that require every item of equipment or instrument installed in the aircraft to be operable. The intent of this process is to improve aircraft utilization and thereby provide more covenient and economic air transportation for the public.

On September 16, 1981, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 81–14 (46 FR 52278; October 26, 1981). This notice proposed to consolidate MEL requirements that were contained in Parts 121, 125, and 135 into Part 91. It also proposed regulatory changes to permit the operation of general aviation aircraft (for which an MMEL has not been developed) with certain inoperative instruments and equipment that are not essential for the safe operation of the aircraft through an approved aircraft flight manual or operating limitations statement. Due to concerns and objections expressed by the general aviation community, the FAA decided that the notice needed further changes. Subsequent to the publication of NPRM No. 81–14, the FAA determined that although the rules concerning MEL requirements should be standardized, Parts 121, 125, and 135 should each contain a separate reference to MEL requirements.

The proposed amendment would standardize application of the MEL concept by bringing Part 121 in line with Parts 125 and 135 which contain detailed requirements concerning the MEL. As a result of this standardization, implementation and enforcement of the MEL concept would be more consistent for all operators in air transportation. Additionally, the proposal requires amendment of individual operator's operations specifications to authorize the use of an MEL, if that operator elects to use an MEL. The inclusion of the MEL authorization in the operations specifications eliminates the need for the letter of authorization currently required in Parts 125 and 135.

Discussion of Proposals

Section 121.627(c) contains the only Part 121 reference to MEL. This rule permits an MEL to be included in the certificate holder's manual. This simple statement has fostered numerous questions within the air carrier industry and, therefore, needs to be clarified. The FAA proposes to amend § 121.627 by deleting paragraph (c) and by adding a new § 121.628, which would set forth specific requirements for an MEL. As a result, the current § 121.303(d) will be revised by deleting reference to § 121.627(c) and referring instead to the new § 121.628. The FAA also proposes to amend the language of §§ 135.179 and 125.201 to make them essentially the same as § 121.628. The FAA proposes to eliminate the need for the letter of authorization currently required by §§ 125.201(b)(2) and 135.179(b)(2). Instead, the authorization to operate in accordance with an FAA approved MEL will be contained in the certificate holder's operations specifications. Proposed §§ 121.628(a)(2), 125.201(a)(2), and 135.179(a)(2) would require that an operations specifications authorization be obtained and would also require either that the MEL be carried aboard the aircraft or that the flight crew have access to all information contained in the MEL prior to and during flight.

It is not the FAA's intention to require that the actual MEL be carried aboard the aircraft, although this would be an acceptable means of compliance. The FAA may accept any method which allows the information contained in the MEL to be "directly" accessible to the flightcrew at all times prior to and during flight. This could be accomplished through a state-of-the-art information retrieval system. Furthermore, the FAA does not intend for the pilot to have access by "indirect" means such as conversations and maintenance personnel over the aircraft radio.

These proposals are being made to clarify the extent to which MELs can permit operation with inoperative equipment. Since the purpose of an MEL is to allow an aircraft to be dispatched with certain inoperative equipment, the proposal would reduce ambiguity and, at the same time, standardize and clarify the FARs. Finally, these proposals will standardize the language of Parts 121, 125, and 135 to clarify the intent of the Minimum Equipment List, provide a uniform application of Minimum Equipment List throughout industry, and establish that configurations approved through the proper use of a Minimum Equipment List constitute an approved change to the type design.

The current § 135.179 limits the use of an MEL to multiengine aircraft. Since the rule is silent concerning single-engine aircraft, those aircraft must have all instruments and equipment operative. Strict observance of the requirment to delay or postpone a flight with certain equipment inoperative creates an unnecessary economic burden for operators of single-engine aircraft in air transportation and strict compliance is not necessary to maintain the required level of safety. The proposed changes to Part 135 will allow for the use of an MEL by any civil aircraft, including single-engine aircraft.

With respect to the length of time an aircraft may be operated with inoperative instruments or equipment, it should be noted that the FAA has implemented procedures which categorize items of equipment and place a fixed "time to repair" requirement on items within a category. These procedures are contained in the individual air carrier's operations specifications. The "time to repair" requirement is currently being implemented for air carriers operating under Part 121 although it is anticipated that the same requirements will be effected in the future for Part 125 and 135. Implementation of the "time to repair" requirement is being carried out independently of this rulemaking project.

Regulatory Evaluation Summary

Benefits

The benefits of these proposed rule changes are nonquantifiable because they primarily would reorganize and standardize the MEL provisions of various operating rules to clarify and explain the intent of existing requirements. Further, to the extent that their single-engine aircraft could operate using an MEL, Part 135 operators would benefit from the greater flexibility and efficiency in the utilization of these aircraft that would be allowed under the proposed rules, and their passengers and shippers would avoid unnecessary delays and inconveniences as well. Additionally, the use of operations specifications in lieu of letters of authorization, in the long run, should result in a consolidation of administrative burdens for both the FAA and the air carriers. This should work to reduce administrative costs. The FAA, however, has no precise basis on which to quantify these benefits, since it cannot predict the extent to which Part 135 operators of single-engine aircraft will elect to use MELs.

Costs

Operators subject to the proposed rule change would not incur any compliance costs because the proposals would only change the format in which MEL authorizations are granted. The substantive provisions of the MEL's for individual operators would continue to be determined by the FAA flight standards field offices having jurisdiction over the particular operators, and policy guidance for specific MEL operating privileges and limitations would continue to be disseminated through nonregulatory channels, such as the Advisory Circular system. The FAA would incur some minor administrative costs in transferring MEL requirements from letters of authorization to operations specifications, but this would be a one-time expense and is in the nature of an ordinary cost of doing business for a regulatory agency. Moreover, the use of operations specifications should, in the long run, tend to ease administrative burdens and reduce costs for both the FAA and the carriers.

International Trade Impact Assessment

The proposed regulations would clarify and standardize existing MEL requirements for various classes of United States operators, and as such, would have no effect on the sale of foreign aviation products or services in the United States, nor would they affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated by small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The small entities potentially affected by the proposed rule changes are those Part 121, 125, and 135 operators that own nine or fewer aircraft. However, because these proposals would not impose any compliance costs on affected operators, and would provide relief in the case of Part 135 operators of single-engine aircraft, none of the threshold cost values stipulated in Order 2100.14A are expected to be exceeded by any operator. Therefore, the FAA has determined that these proposals would not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, this proposal, if adopted, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 121

Aviation safety, Safety, Air carriers, Airplanes.

14 CFR Part 125

Aircraft, Airworthiness.

14 CFR Part 135

Aviation safety, Air carriers, Safety, Airworthiness Aircraft, Airplanes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 121, 125, and 135 of the Federal Aviation Regulations (14 CFR Parts 121, 125, and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS, AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421, 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By amending § 121.303 by revising the introductory text of paragraph (d) to read as follows:

§ 121.303 Airplane instruments and equipment.

* * * * *

(d) Except as provided in §§ 121.627(b) and 121.628, no person may take off any airplane unless the following instruments and equipment are in operable condition:

* * * * *

§ 121.627 [Amended]

3. By amending § 121.627 by removing paragraph (c).

4. By adding a new § 121.628 following § 121.627 to read as follows:

§ 121.628 Inoperable instruments and equipment.

(a) No person may take off an airplane with inoperable instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for the airplane.

(2) The Flight Standards District Office having certification responsibility has issued the certificate holder operations specifications authorizing operations in accordance with an approved Minimum Equipment List. The approved Minimum Equipment List shall be carried aboard the airplane or the flight crew shall have access at all times prior to and during flight to all of the information contained in the approved Minimum Equipment List. An approved Minimum Equipment List, as authorized by the operations specification, constitutes an approved change to the type design.

(3) The approved Minimum Equipment List must:

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section.

(ii) Provide for the operation of the airplane with the instruments and equipment in an inoperable condition.

(4) Records identifying the inoperable instruments and equipment must be available to the pilot.

(5) The airplane is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the operations specifications authorizing use of the Minimum Equipment List.

(b) The following instruments and equipment may not be included in the Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the airplane is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive.

(3) Instruments and equipment required for specific operations by this part.

(c) Notwithstanding paragraphs (b)(1) and (b)(3) of this section, an airplane with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430 and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

6. By revising § 125.201 to read as follows:

§ 125.201 Inoperable instruments and equipment.

(a) No person may take off an airplane with inoperable instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for the airplane.

(2) The Flight Standards District Office having certification responsibility has issued the certificate holder operations specifications authorizing operations in accordance with an approved Minimum Equipment List. The approved Minimum Equipment List shall be carried aboard the airplane or the flight crew shall have access at all times prior to and during flight to all of the information contained in the approved Minimum Equipment List. An approved Minimum Equipment List, as authorized by the operations specification, constitutes an approved change to the type design.

(3) The approved Minimum Equipment List must:

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section.

(ii) Provide for the operation of the airplane with the instruments and equipment in an inoperable condition.

(4) Records identifying the inoperable instruments and equipment must be available to the pilot.

(5) The airplane is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the operations specifications authorizing use of the Minimum Equipment List.

(b) The following instruments and equipment may not be included in the Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the airplane is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive.

(3) Instruments and equipment required for specific operations by this part.

(c) Notwithstanding paragraphs (b)(1) and (b)(3) of this section, an airplane with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

7. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431 and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

8. By revising § 135.179 to read as follows:

§ 135.179 Inoperable instruments and equipment for multiengine aircraft.

(a) No person may take off an aircraft with inoperable instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for the aircraft.

(2) The Flight Standards District Office having certification responsibility has issued the certificate holder operations specifications authorizing operations in accordance with an approved Minimum Equipment List. The approved Minimum Equipment List shall be carried aboard the aircraft or the flight crew shall have access at all times prior to and during flight to all of the information contained in the approved Minimum Equipment List. An approved Minimum Equipment List, as authorized by the operations specifications, constitutes an approved change to the type design.

(3) The approved Minimum Equipment List must:

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section.

(ii) Provide for the operation of the aircraft with the instruments and equipment in the inoperable condition.

(4) Records identifying the inoperable instruments and equipment and the information required by paragraph (a)(3)(ii) of this section must be available to the pilot.

(5) The aircraft is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the operations specifications authorizing use of the Minimum Equipment List.

(b) The following instruments and equipment may not be included in the Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the airplane is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive.

(3) Instruments and equipment required for specific operations by this part.

(c) Notwithstanding paragraphs (b)(1) and (b)(3) of this section, an aircraft with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

Issued in Washington, DC, on January 12, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

[FR Doc. 89–1171 Filed 1–19–89; 8:45 am]

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federal register

Monday
January 23, 1989

Part V

Department of Agriculture

Forest Service

36 CFR Parts 211, 228, and 261

Oil and Gas Resources; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 211, 228, and 261

Oil and Gas Resources

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: These proposed rules set forth the procedures by which the Forest Service of the U.S. Department of Agriculture would carry out its statutory responsibilities for management of oil and gas leasing and attendant surface disturbing activities conducted on leaseholds on National Forest System lands. In the past, the Forest Service has relied on Bureau of Land Management procedures and regulations. However, the Federal courts have ruled that the Forest Service must promulgate its own procedures and regulations. Additionally, the Federal Onshore Oil and Gas Leasing Reform Act of 1987 expanded the authority of the Secretary of Agriculture in the management of oil and gas resources on National Forest System lands and directed the Secretary to issue rules on bonding and reclamation standards. The intent of these rules is to satisfy both judicial direction and the new statute; to coordinate Forest Service oil and gas resource management procedures with those of the Bureau of Land Management, and to promote cooperation among the Agency, the oil and gas industry, and other publics interested in the management of oil and gas resources of the National Forest System lands.

DATE: Comments must be received in writing by March 24, 1989.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2820), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on these proposed rules in the office of the Director, Minerals and Geology Management Staff, Room 606, 1621 North Kent Street, Arlington, VA, during regular business hours (8 a.m. to 5 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stanley Kurcaba, Minerals and Geology Management Staff, (703) 235–9715.

SUPPLEMENTARY INFORMATION: The Forest Service of the United States Department of Agriculture and the Bureau of Land Management of the United States Department of the Interior have joint responsibilities for the administration of the Federal oil and gas resources on National Forest System lands. In the past, the Forese Service has relied upon interagency agreements with the Bureau of Land Management to guide Forest Service review of proposed oil and gas leasing and review of proposed surface disturbances caused by oil and gas operations on those leases. However, the Forest Service has received judicial direction to promulgate regulations governing oil and gas leasing on National Forest System lands. The recently enacted Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 et seq.) also requires the Forest Service to promulgate rules both to implement the new authority that the statute gave to the Secretary of Agriculture over oil and gas leasing and operations and to fufill the statute's mandate that the Secretary of Agriculture develop rules which ensure that adequate bonds are posted for reclamation of surface disturbing operations on a lease.

The Forest Service seeks to facilitate the orderly and environmentally sound development of Federal leasable oil and gas resources of the National Forest System in cooperation with the oil and gas industry and other interested publics. These regulations are designed to achieve that end.

The Secretary of Agriculture is reserving the authority at lease issuance to deny all operations on a leasehold in those circumstances where further environmental analyses beyond those done at the suitability determination indicate such preclusion is appropriate. This reservation of authority is required under such cases as *Conner* v. *Burford*, 848 F.2d 1441 (9th Cir. 1988) and *Sierra Club* v. *Peterson*, 717 F.2d 1409 (D.C. Cir. 1983) to allow the agency the flexibility to engage in staged NEPA compliance. To the extent practicable given the changes in the Forest Service's authority over oil and gas leasing and operations made by the Leasing Reform Act, the proposed rule maintains the existing procedures by which the Bureau of Land Management and the Forest Service have been jointly responding to leasing and operating proposals. The primary reason for following the existing procedures to the extent practicable is that they reflect the many legal authorities applicable to oil and gas leasing and operating decisions and they are responsive to current management needs. In addition, agency personnel, the oil and gas industry and other persons interested in the management of National Forest System resources are familiar with existing procedures and requirements. Therefore, maintaining the existing procedures to the extent possible will reduce confusion over Agency roles and operator responsibilities in the leasing and development of Federal oil and gas resources located on National Forest System lands.

Many of the new requirements and procedures that are included in the proposed rule are designed to define the role that the Forest Service will play in the approval of oil and gas leasing and operations because of the expanded authority of the Secretary of Agriculture under the Leasing Reform Act. Other of the new requirements are included to implement the direction in the Leasing Reform Act to the Secretary of Agriculture to issue regulations establishing bonding standards.

The following briefly describes the role that the Forest Service would play under the proposed rule in the issuance of oil and gas leases, the approval of operations on the leaseholds, and the administration of those operations.

The Bureau of Land Management cannot issue leases for Federal oil and gas resources on National Forest System lands without the approval of the Forest Service. Therefore, the Forest Service must develop a process for making decisions as to whether to authorize the Bureau of Land Management to offer National Forest System lands for leasing. First, the Forest Service proposes to identify lands with potential for leasing based on existing oil and gas production, known geologic potential, or industry interest in an area and, in cooperation with the oil and gas industry, the Bureau of Land Management, and interested publics to develop a schedule for reviewing those areas. Then the Forest Service would determine if these lands with leasing potential are legally available for leasing. The Agency would review whether available lands are suitable for exploration and development by considering whether oil and gas development is consistent with the forest land and resource management plan or not precluded by the plan or if the lands could be suitable for leasing if stipulations governing surface uses were added to a lease. The Forest Service and Bureau of Land Management would then evaluate the adequacy of the Forest Plan Environmental Impact Statement or other National Environmental Policy Act documents to determine if additional National Environmental Policy Act analysis and documentation is required. The Forest Service would make a determination of an area's suitability for oil and gas leasing and give public notice of the decision. A suitability determination would be an appealable decision under Forest Service appeals procedures (36 CFR 211.18). The Forest Service would then forward its decision to the appropriate Bureau of Land Management office.

The Bureau of Land Management would then be able to offer such lands for competitive sale. If there were no bidders for the offering, the lands would then be available for lease by an over-the-counter application process for a period of 2 years.

After the Bureau of Land Management issued a lease, the operator might seek to conduct surface disturbing activities on the lease. In accordance with the Federal Onshore Oil and Gas Leasing Reform Act, the proposed regulations would require an operator to obtain Forest Service approval of a surface use plan of operations before conducting operations. In order to coordinate review of proposed operations by the Forest Service and the Bureau of Land Management and to ease the administrative burden on the public, the proposed rules would direct operators to submit surface use plans of operations involving National Forest System lands to the Bureau of Land Management as part of the operator's Application for a Permit to Drill. The proposed rule specifies the information that the operator would have to include in a surface use plan of operations for a lease on National Forest System lands and encourages the operator to contact the appropriate local Forest Service office for assistance in preparing the proposed plan. Upon receipt of a surface use plan of operations involving operations on National Forest System lands, the Bureau of Land Management would forward that plan to the Forest Service for its review and approval.

Prior to, or in connection with, the submittal of a surface use plan of operations, the operator could request that the Forest Service authorize the Bureau of Land Management to modify or waive a stipulation included in a lease at the direction of the Forest Service. The proposed rule would permit the Forest Service to grant such a request in the circumstances specified after compliance with the National Environmental Policy Act of 1969 and other applicable laws. The Forest Service would give public notice of its decision on a substantial stipulation modification or waiver request in a newspaper of general circulation. The decision would be subject to administrative appeal under the procedures at 36 CFR 211.18.

The Forest Service would review a proposed surface use plan of operations for adequacy using the criteria proposed in the rule. If the plan of operations was adequate as submitted, the Forest Service would approve the plan. If the plan of operations was not adequate, the Forest Service could disapprove the plan or approve the plan subject to operating conditions which would render the plan adequate. As part of the review process, the Forest Service would establish bonding requirements for any plan of operations that would be approved. In accordance with the requirements of the Federal Onshore Oil and Gas Leasing Reform Act, the proposed rules would direct an operator to post a bond in an amount sufficient to ensure reclamation and the restoration of any lands or surface water adversely affected by the operations prior to the commencement of operations.

At the conclusion of the surface use plan of operations review process, the Forest Service would advise the operator and the appropriate Bureau of Land Management office of the decision on a proposed plan and, if appropriate, the bonding requirements for the operations. Public notice of the decision also would be given. The decision would be subject to administrative appeal under the procedures at 36 CFR 211.18.

If the operator completed the operations authorized by the initial surface use plan of operations and desired to conduct further operations, the operator would be required to submit a supplemental plan of operations which would be subject to review and approval in the same manner as an initial plan of operations.

The proposed regulations would require an operator to perform reclamation on the leasehold as the operations were completed. The proposed regulations also provide for the staged release of bonds as reclamation is completed.

Under the proposal, the operator would be required to conduct operations on the leasehold in accordance with the terms of the lease, these regulations and an approved surface use plan of operations. The proposed rule also details the remedies that the Forest Service would have if the operations conducted by the operator were not in compliance with the terms of the lease, these regulations and an approved surface use plan of operations. Initially, the Forest Service would try to obtain the operator's voluntary compliance with the applicable provision. If the operator refused to voluntarily comply, the proposed rules would provide that the Forest Service would issue the operator a notice of noncompliance specifying a deadline for the operator to bring the operations into compliance. The proposed regulations provide that if the operator still failed to come into compliance the Forest Service would take the following actions, as appropriate:

1. If the noncompliance appeared to be material, the Forest Service would initiate a material noncompliance proceeding in accordance with the procedures proposed in the regulations If the Forest Service official presiding over the proceeding found that the noncompliance was material, the operator and the Bureau of Land Management would be so advised. An operator found to be in material noncompliance would be ineligible to receive further Federal oil and gas leases or assignments until the operations were brought into compliance.

2. If the noncompliance was resulting in an imminent danger to public health or safety or in irreparable resource damage, the Forest Service could suspend the approval of the surface use plan of operations. The proposed rule provides that the suspension would last until the operator brought the operations into compliance.

3. If the noncompliance was resulting in an emergency, the Forest Service could take whatever measures were necessary to abate the emergency. The proposed regulations would require the operator to reimburse the Forest Service for the full cost of such abatement actions.

The proposed rule also advises the operator that the Forest Service could seek criminal penalties for the operator's noncompliance pursuant to 36 CFR Part 261.

In addition to these requirements which would be set forth at 36 CFR Part 228, Subpart E, the proposed rules would make conforming changes in two other existing Forest Service rules—36 CFR 211.18, which governs the Forest Service administrative appeal process; and 36 CFR Part 261, which specifies conduct on the National Forest System which is prohibited and for which criminal penalties may be imposed.

The following diagram illustrates how oil and gas leasing and operations would be administered on National Forest System lands:

BILLING CODE 3410-11-M

FOREST SERVICE OIL AND GAS LEASING AND OPERATIONS PROCESS

1. Agency IDENTIFIES LANDS WITH POTENTIAL for leasing.
(factors: existing production, known geologic potential, and industry interest in areas)

2. Agency REVIEWS LANDS FOR LEASING SUITABILITY

3. Agency DETERMINES IF LANDS ARE SUITABLE for leasing
(i.e., lands are available for leasing, leasing consistent with Forest plan or not precluded by plan, or lands can be suitable for leasing with certain stipulations)

4. Agency/BLM CONDUCTS NEPA ANALYSIS AND DOCUMENTATION
Gives public notice. Decision appealable.

5. BLM HOLDS COMPETITIVE LEASE SALE.

Parcels are sold

Parcels not bought

Available for application for 2 years

application   no application

6. BLM ISSUES LEASE

7. LESSEE SUBMITS APD TO BLM

8. BLM FORWARDS SURFACE USE PLAN TO FOREST SERVICE

9 FS AND BLM CONDUCT NEPA COMPLIANCE AND REQUIRE BONDING

FS APPROVES-------(SUBJECT TO APPEAL)-------FS DISAPPROVES

10. OPERATIONS COMMENCE
(Once the BLM has approved down hole use)

Producer

Dry Hole

11. SUPPLEMENTAL SURFACE USE PLAN OF OPERATIONS

12 NEPA COMPLIANCE AND DECISION PROCESS REPEATED
(SUBJECT TO APPEAL)

WELL DEPLETES

13. OPERATOR COMPLETES RECLAMATION

14. BLM RELEASES BOND

BILLING CODE 3410-11-C

Section-by-Section Analysis of Proposed Rule

The rules governing Forest Service procedures for responding to and managing oil and gas leasing and surface disturbing operations on National Forest System lands would be codified as a new Subpart E of Part 228 of Title 36 of the Code of Federal Regulations. The following section-by-section analysis describes in detail the provisions of the proposed rule.

Section 228.100 Scope and applicability.

This section specifies the scope of Forest Service responsibility in oil and gas leasing and further states that the rules would apply to leases and operations in effect as of the effective date of the rule as well as to new leases issued under the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This section also makes clear that surface uses off a leasehold require authorization by the authorized Forest officer and cites the major existing rules that apply to those uses.

Section 228.101 Definitions.

This section defines special terms used in the proposed rules.

Section 228.102 Determination of lands suitable for leasing.

The Federal Onshore Oil and Gas Leasing Reform Act of 1987 made significant changes in the manner in which Federal oil and gas leasing is conducted. Under the Act, application for leases will no longer be accepted until after lands have been offered for competitive sales. Therefore, in order to offer leases, Federal Agencies must take the initiative to identify lands suitable for leasing and to make those lands available for competitive sale through the Bureau of Land Management. Under the proposed rule, each Forest Supervisor would, within 6 months of the effective date of the rule, identify those areas of the National Forest System in which there is potential for leasing and that have not been previously evaluated and develop a schedule for determining their suitability for oil and gas leasing. The Forest Supervisor, in cooperation with the oil and gas industry and the Bureau of Land Management, would give first priority to those areas having the highest potential for leasing. This would meet the mandate in the *Mountain States Legal Foundation vs Andrus (1980)* decision to require the Forest Service to develop a leasing process and would eliminate needless analyses of areas where no potential for oil and gas leasing exists. Potential lessees would have the opportunity to participate in the process of establishing the priority for reviewing those areas identified as having leasing potential.

When areas are reviewed for their suitability for leasing, this section would require the authorized Forest officer to identify those areas legally available (that is, not withdrawn from leasing), review the Forest land and resource management plan for direction, and identify conditions of occupancy that would be included as lease stipulations. The Forest Service and the Bureau of Land Management would cooperate in meeting the analysis and documentation requirements of the National Environmental Policy Act. This section would require the authorized Forest officer to give written notice to the Bureau of Land Management of the outcome of a suitability determination, which in effect is the notice to consent, or not to consent, to leasing certain lands. The authorized Forest officer would include any stipulations as a condition of leasing derived from the suitability determination. For decisions on suitability for leasing, the Regional Forester is the authorized Forest officer.

Section 228.103 Notice and transmittal of suitability decision.

This section would require public notice in a newspaper of general circulation of the suitability decision and of appeal rights available under 36 CFR 211.18. It should be noted that in addition to this public notice requirement, under existing agency procedures, all who request notice of a suitability decision would receive direct notice. This section also specifies inclusion in all leases to which the Forest Service consents of a standard stipulation that gives the lessee notice that the Secretary of Agriculture retains the authority to preclude all operations on a leasehold in those exceptional circumstances where further environmental analyses indicate such action is appropriate, that lease operations are subject to the regulations of the Secretary of Agriculture and that the operator must submit a surface use plan of operations for Forest Service approval or disapproval. The Secretary of Agriculture is specifically requesting public comments on the effect of this retention of authority and its effect on perceived lease value and compared with lease rights currently specified at 43 CFR 3101.1–2.

Section 228.104 Consideration of request to modify lease terms.

This section would allow an operator to request that the Forest Service modify or waive a stipulation included in a lease at the direction of the Forest Service. The proposed rule would permit the Forest Service to grant such a request in the circumstances specified after compliance with the National Environmental Policy Act of 1969 and other applicable laws. The Forest Service would give notice of its decision on a substantial stipulation modification or waiver request and of appeal rights under the procedures at 36 CFR 211.18 in a newspaper of general circulation.

Section 228.105 Operator's submission of a surface use plan of operations.

The proposed rule would clarify that an operator would submit a surface use plan of operations that would involve the National Forest System through the appropriate Bureau of Land Management office. Having the Bureau of Land Management continue to receive the entire Application for Permit to Drill (APD) package will provide for more efficient administration and less burden to an operator than submitting information separately to two agencies. This section also encourages cooperation between the operator and the Forest Service in preparing a surface use plan of operations prior to formally submitting an APD, thus eliminating potential problems early in the process. This section specifies surface use plan of operations content which is the same information as currently required for lands administered by the Bureau of Land Management.

Section 228.106 Review of a surface use plan of operations.

This section establishes the process by which the Forest Service would review a surface use plan of operations. Under this proposed process, the authorized Forest officer would base the approval of a surface use plan of operations on the terms of the lease, direction in the Forest land and resource management plan in effect at the time the surface use plan of operation is submitted, and information derived from the result of National Environmental Policy Act analyses.

When lands are determined to be suitable for leasing, a lessee can normally expect that future lease operations would be authorized, but the Forest Service must explicitly approve operations under a lease and comply with the National Environmental Policy Act before approving or denying such operations. Past experience demonstrates that most problems can be solved by the Forest Service and the lessee working cooperatively to obtain necessary revisions in the design of a proposal. However, if the circumstances warrant, the Forest Service will use the authority granted the Secretary of Agriculture by the Leasing Reform Act of 1987 to disapprove proposed operations. In exceptional circumstances, this could mean that no operations would be approved on a leasehold.

This section also gives notice that the National Environmental Policy Act of 1969, implementing regulations at 40 CFR Parts 1500 through 1508, and Forest Service implementing policies and procedures must be followed as part of the Agency's review of an operating plan.

This section would further require the authorized Forest officer to advise the Bureau of Land Management of the reasons when a proposed surface use plan cannot be processed within 3 days after the conclusion of the 30-day notice period. Finally, this section requires the Forest Service to give public notice of a decision on a surface use plan of operations and appeal rights available under 36 CFR 211.18.

Section 228.107 Surface use requirements.

This section establishes requirements that would apply to oil and gas operations on the National Forest System. The requirements address the design of access facilities, protection of cultural and historic resources, fire prevention and control, maintaining fisheries, wildlife and plant habitat, conduct of reclamation, safety measures, waste disposal, and watershed protection. It is necessary to establish minimum surface use requirements for operations on National Forest System lands in order to carry out the direction in Section (g) of the Leasing Reform Act of 1987 which directs that:

> * * * For National Forest lands, the Secretary of Agriculture, shall regulate all surface disturbing activities conducted pursuant to any lease issued under the Act and shall determine reclamation and other actions as required in the interests of conservation of surface resources.

The surface use requirements of the rule are the same requirements as currently contained in standard stipulations that the Forest Service, until recently, has attached to all lease issuance decisions or recommendations.

Establishment of specific National reclamation standards would not be appropriate because of the diverse land surfaces, vegetation, animal life, soil types, etc., and the uniqueness of many surface disturbances. Therefore, standards for reclamation and mitigation measures to minimize adverse impacts are established for each operation by the Bureau of Land Management and Forest Service personnel during the onsite inspection as part of the review of each Application for Permit to Drill and the accompanying surface use plan of operations. General guidance on reclamation and operating standards is contained in a joint Bureau of Land Management, Forest Service, and Geological Survey publication entitled, "Surface Operating Standards for Oil and Gas Exploration and Development," Second Edition, August 1978.

Section 228.108 Bonds.

This section would establish that bonding is required before surface disturbing activities can be authorized and would require the authorized Forest officer to fix the bond amount at a sum adequate to ensure compliance with 30 U.S.C. 226(g). A bond required by the authorized Forest officer would be held by the Bureau of Land Management. This would provide for more efficient management and less burden on the public. The proposed rule does not establish a fixed bond sum because the extent of reclamation required varies by site and type of operation. The authorized Forest officer is in the best position to determine what is an adequate bond amount based upon on-the-ground site specific review of proposed operations.

Section 228.109 Indemnification.

This section would provide a means of protecting the United States Government from liability as a result of claims, demands, losses, or judgments caused by an operator's use or occupancy. This language is similar to that found in 36 CFR 251.56, terms and conditions for special use permits, and is necessary to adequately regulate occupancy.

Section 228.110 Temporary cessation of operations.

The Agency has experienced a high incidence of operators temporarily ceasing operations without adequate stabilization of the site or protection of resources or public safety. This section addresses this problem by requiring notification to the Forest Service of temporary or seasonal cessation of operations. This notification would allow the authorized Forest officer to work with the lessee in taking appropriate interim measures to protect resources or public safety.

Section 228.111 Compliance and inspection.

Section (g) of the Leasing Reform Act of 1987 (30 U.S.C. 226(g)) provides remedies in situations where operators fail to comply in any material respect with the reclamation, bonding, and other standards established by the Secretary of Agriculture. Because the sanctions of the Act can result in loss of leases, it is important to establish compliance procedures that ensure operators timely notice of noncompliance, opportunity to remedy the violation, and opportunity for a hearing. Sections 228.111 through 228.113 set forth both informal and formal compliance and hearing procedures. Section 228.111 would require the Forest officer to give notice to an operator when that operator is found in noncompliance with an approved surface use plan of operations, with stipulations made part of the lease at the direction of the Forest Service, or with these proposed regulations. Because it is the intent of the Forest Service to resolve problems at the local level if possible, this section is designed to encourage cooperation between the Forest Service and the operator.

This section also notifies the operator of other statutes applicable to their operations.

Section 228.112 Notice of noncompliance.

This section of this proposed rule would establish the formal procedures to be followed if the authorized Forest officer has determined an entity may have failed or refused to comply in any material respect with the reclamation requirements and other applicable standards established under 30 U.S.C. 226(g) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. The authorized Forest officer would be required to refer noncompliance such as, but not limited to, operating without an approved surface use plan of operations or failure to complete reclamation. The section describes the manner of serving notice and states that the authorized Forest officer shall either refer the matter to a compliance officer for review and/or suspend the surface use plan of operations in the event of imminent dangers to public health or safety and irreparable resource damage. The section also provides for the abatement of such emergencies as irreparable resource damage through actions by the Forest Service and for billing of the operator for costs incurred by the Agency to perform such abatement actions.

Section 228.113 Material noncompliance preceedings.

This section would establish the procedure for review and determination of material noncompliance. The Deputy Chief of the National Forest System would review a noncompliance referral made by the authorized Forest officer and if evidence supports a reasonable belief that an operator has failed to come into compliance with the requisite standards and that noncompliance may be material, the Deputy Chief would initiate the material noncompliance proceedings. The section requires due notice to the operator and specifies the content of the notice, permits an operator to submit argument and allows for an informal hearing at the operator's request or a fact finding conference.

The proposed rule specifies that the compliance officer's decision shall be based on the entire record and prescribes the content of decision letter.

Upon determining that an operator is in material noncompliance, the compliance officer would be required to notify the Secretary of the Interior of his/her findings. This section of the proposed rule would require the Deputy Chief for the National Forest System to maintain and distribute a list of operators in noncompliance to help ensure that pursuant to the 1987 Act, such operators do not receive future leases. Paragraph (g) of this section also provides for petition of the authorized Forest officer to rescind a finding of noncompliance once an entity has come into compliance. Reinstatement of an operator's opportunity to obtain future leases is clearly envisioned by the 1987 Leasing Reform Act and the petitioning process proposed in this section provides a manageable process for achieving reinstatement when an operator has come into compliance.

Section 228.114 Additional notice of decisions.

In compliance with 30 U.S.C. 226(f) of the Leasing Reform Act, this section requires the Forest Service to post notices provided by the Bureau of Land Management of lease sales, requests for modification of lease stipulations, and applications for permit to drill. The section specifies where such notices are to be posted and makes clear that posting notices is in addition to the public notice requirements imposed elsewhere in the rule.

36 CFR 211.18 Appeal of decisions of forest officers.

In addition to the proposed rules at Part 228, Subpart E of Title 36, this rulemaking contains an amendment to the rules governing appeal of decisions of authorized Forest officers. Under this proposed rule, 36 CFR 211.18 would be amended to exempt from those rules, appeal of decisions related to determining lands suitable for leasing made pursuant to 36 CFR 228.102 and related to the issuance of a notice of noncompliance or to material noncompliance proceedings related to oil and gas leasing operations on National Forest System lands pursuant to 36 CFR 228.11 through 228.112. Section 228.113 of the proposed rule would establish separate administrative procedures for material noncompliance decisions. It should be noted that, under this conforming amendment, the general public also could not appeal decisions related to compliance and noncompliance decisions. This exclusion is appropriate since compliance decisions are solely matters affecting the business relationship that exists between the operator and the Forest Service based on the terms of a Federal lease and an approved surface use plan of operations. Those decisions that are appealable are identified in this proposed rulemaking.

36 CFR Part 261 Prohibitions.

Ths rulemaking also contains an amendment to the rules governing occupancy of the National Forest System. Under this proposed rule, 36 CFR Part 261, Subpart A—General Prohibitions, would amend "Operating Plan" to include a surface plan of operations as provided for in 36 CFR Part 228, Subpart E. This is necessary to differentiate between a plan of operations at 36 CFR Part 228, Subpart A.

Regulatory Impact

These proposed rules have been reviewed under the Department of Agriculture procedures and Executive Order 12291, and it has been determined that these regulations are not major rules. This regulation will not have an effect on the economy of $100 million or more and, in and of itself, will not increase major costs to consumers, geographic regions, industry, or Federal, State, and local agencies. These regulations are essentially procedural and represent no change in current requirements on lessees, assignees, or operators and, therefore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in foreign markets.

It has also been determined that these proposed rules do not have a significant economic impact on a substantial number of small entities because of its limited scope and application. Therefore, the proposed rules are not subject to review under the Regulations Flexibility Act (5 U.S.C. 60 et seq.).

It should be noted, that while the requirements of the surface use plan of operations proposed in this rule are new requirements by the Department of Agriculture, the requirements are identical to that now required by the Bureau of Land Management, U.S. Department of the Interior, as part of an Application for Permit, to Drill or Sundry Notice and, therefore, will not increase the amount or type of information a lessee would have to submit for operations on National Forest System lands.

The total burden hours on an operator are estimated to be 125 hours annually. These hours are the same as estimated by the Bureau of Land Management in its request for Office of Management and Budget clearance of Forms 3160–3 and 3160–5. These forms were cleared through December 31, 1988, and are assigned clearance numbers 1004–0136 and 1004–0135 respectively. An operator proposing to conduct surface disturbing activities on the National Forest System is required to utilize these existing Bureau of Land Management forms and submit information required in this proposed rule to the appropriate Bureau of Land Management office.

However, because these requirements will not be levied by the Department of Agriculture, a request for approval of these new reporting requirements has been submitted to the Office of Management and Budget pursuant to 5 CFR Part 1320. Those wishing to comment on the proposed information requirements of this rule are encouraged to send their written comments to the Forest Service and to the:

USDA Regulatory Desk Officer, Office of Information and Regulatory Affairs, Attention: Docket Library, Room 3201 NEOB, Washington, DC 20503

Based on both experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects

36 CFR Part 211

Administrative practice and procedure, Fire prevention, Intergovernmental relations, National forests.

36 CFR Part 228

Administrative practices and procedures, Environmental protection, Mines, National forests, Public lands—Mineral resources, Rights of way, Reporting and recordkeeping, Surety bonds, Wilderness areas.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Chapter II of Title 36 of the Code of Federal Regulations as follows:

PART 211—ADMINISTRATION

1. The authority citation for Part 211 would continue to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—Appeal of Decisions Concerning the National Forest System

2. Amend § 211.18 by adding a new paragraph (b)(16) to read as follows:

§ 211.18 Appeal of decisions of Forest officers.

* * * * *

(b) * * *

(16) Decisions made pursuant to 36 CFR Part 228, Subpart E, except as otherwise provided by §§ 228.102(d), 228.104(c) and 228.106(b).

* * * * *

PART 228—MINERALS

1. The authority citation for Part 228 would be revised to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 914, as amended (30 U.S.C. 352).

2. Add new Subpart E to read as follows:

Subpart E—Oil and Gas Resources

Sec.
228.100 Scope and applicability.
228.101 Definitions.

Leasing

228.102 Determination of lands suitable for leasing.
228.103 Notice and transmittal of suitability decision.
228.104 Consideration of requests to modify lease terms.

Authorization of Occupancy Within a Leasehold

228.105 Operator's submission of surface use plan of operations.
228.106 Review of surface use plan of operations.
228.107 Surface use requirements.
228.108 Bonds.
228.109 Indemnification.

Administration of Operations

228.110 Temporary cessation of operations.
228.111 Compliance and inspection.
228.112 Notice of noncompliance.
228.113 Material noncompliance proceedings.

Notice of Decisions

228.114 Additional notice of decisions.

§ 228.100 Scope and applicability.

(a) *Scope.* This subpart sets forth the rules and procedures by which the Forest Service of the United States Department of Agriculture will carry out its statutory responsibilities in the issuance of oil and gas leases on National Forest System lands, for approval and modification of attendant surface use plans of operations, for monitoring of surface disturbing operations on such leases, and for enforcement of surface use requirements and reclamation standards.

(b) *Applicability.* The rules of this subpart apply to leases on National Forest System lands and to operations that are conducted on Federal oil and gas leases on National Forest System lands as of [*Insert effective date of these rules*].

(c) *Applicability of other rules.* Surface uses, including access, associated with oil and gas prospecting, exploration, development, production, and reclamation activities, that are conducted on National Forest System lands outside a leasehold must be authorized by the Forest Service. Such off-leasehold activities are subject to the regulations set forth elsewhere in 36 CFR Chapter II, including but not limited to the regulations set forth in 36 CFR Parts 251 and 261.

§ 228.101 Definitions.

For the purposes of this subpart, the terms listed in this section have the following meanings:

Assignee. A person to whom a lessee has transferred all or part of the lessee's interest in a Federal oil and gas lease.

Assignment. The transfer of all or part of an interest in a Federal oil and gas lease by a lessee to an assignee.

Authorized Forest officer. The Forest Service employee delegated the authority to perform a duty described in these rules. Generally, a Regional Forester, Forest Supervisor, District Ranger, or Minerals Staff Officer depending on the scope and level of the duty to be performed.

Compliance Officer. The Deputy Chief, or the Associate Deputy Chiefs, National Forest System or the line officer designated to act in the absence of the Duty Chief.

Leasehold. The area described in a Federal oil and gas lease.

National Forest System. All National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under title III of the Bankhead-Jones Tenant Act (7 U.S.C.A. 1010 et seq.), and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system (16 U.S.C. 1609).

Off-leasehold. A term used to characterize activities associated with oil and gas leasing operations that occur on National Forest System lands outside the area described in a Federal oil and gas lease.

Operations. Surface disturbing activities that are conducted on a leasehold on National Forest System lands pursuant to a current approved surface use plan of operations, including but not limited to, exploration, development, production and utilization of oil and gas resources and reclamation of surface resources.

Operator. A person who is conducting operations pursuant to a Federal oil and gas lease. The operator may be a lessee, assignee, or a person conducting operations on behalf of a lessee or assignee.

Person. An individual, partnership, corporation, association or other legal entity.

Surface use plan of operations. A document submitted by an operator as part of an Application for Permit to Drill or a supplement to an approved plan of operations detailing proposed surface occupancy and planned operations pursuant to a Federal oil and gas lease.

Leasing

§ 228.102 Determination of land suitable for leasing.

(a) *Compliance with the National Environmental Policy Act of 1969.* In determining lands suitable for leasing, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR Parts 1500–1508, and Forest Service implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15. In compliance with the Act, the authorized Forest officer shall take into consideration the authority granted by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, to subsequently approve or disapprove a surface use plan of operations proposed following issuance of a lease.

(b) *Identification of potential leasing areas.* Within 6 months of the effective date of these rules, Forest Supervisors shall identify those areas of the National Forest System under their jurisdiction that have potential for oil and gas leasing and that have not previously been evaluated for their suitability for oil and gas leasing.

(1) An area shall be considered to have potential for oil and gas leasing if:

(i) There is ongoing oil and gas production in the area;

(ii) The geological environment of the area is known to be favorable for the accumulation of oil and gas resources; or

(iii) There is ongoing industry interest in obtaining oil and gas leases for the area.

(2) After identifying those areas that have potential for oil and gas leasing, each Forest Supervisor shall consult with the oil and gas industry, the Bureau of Land Management, and other interested parties and develop a schedule for reviewing areas not previously evaluated to determine their suitability for oil and gas leasing. In developing this schedule, the Forest Supervisor shall give first priority to reviewing those areas that appear to have the highest potential for leasing. The Forest Supervisor may update the schedule as appropriate.

(c) *Review of lands for leasing suitability.* In reviewing areas identified as having potential for oil and gas leasing, the authorized Forest officer:

(1) Shall identify and exclude from further review the following lands, which are not available for leasing:

(i) Lands withdrawn from mineral leasing by an act of Congress or by an order of the Secretary of the Interior;

(ii) Lands recommended for wilderness allocation by the Secretary of Agriculture;

(iii) Lands designated by statute as wilderness study areas, unless oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(iv) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document No. 96–119), unless such lands subsequently have been allocated to uses other than wilderness by an approved forest land and resource management plan or have been released to uses other than wilderness by an act of Congress; and

(v) Roadless areas currently undergoing evaluation pursuant to 36 CFR 219.17; and,

(2) Shall review the relevant forest land and resource management plan to identify direction, management prescriptions, and associated standards and guidelines that would be applicable to oil and gas leasing on the area.

(d) *Determination of suitability.* The respective Regional Forester shall determine that an area is suitable for oil and gas leasing and authorizes the Bureau of Land Management to offer oil and gas leasing upon:

(1) A finding that the lands are available for oil and gas leasing,

(2) A finding that oil and gas leasing operations on the area would be consistent with, or would not be precluded by, the applicable forest land and resource management plan, management prescriptions, and associated standards and guidelines in the plan, and

(3) Identification of conditions of surface occupancy and use that would be required as stipulations in leases issued for the area to ensure consistency with law and the forest land and resource management plan for the area.

§ 228.103 Notice and transmittal of suitability decision.

(a) *Public notice.* The authorized Forest officer shall give public notice in a newspaper of general circulation of the outcome of each suitability review conducted pursuant to § 228.102(d). The notice shall further specify that the decision is subject to administrative appeal under the procedures at 36 CFR 211.18.

(b) *Notice to the Bureau of Land Management.* The authorized Forest officer shall promptly notify the appropriate Bureau of Land Management office, in writing, of the decision. The notice shall clearly specify those lands that the Forest Service authorizes the Bureau of Land Management to offer for oil and gas leasing and those stipulations which the Forest Service directs the Bureau of Land Management to include in a lease which may be issued for those lands.

(c) *Standard stipulation.* The following standard stipulation shall be included in oil and gas leases issued for National Forest System lands: "The lessee must comply with the applicable rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing use and management of the National Forest System and must submit to the authorized Forest officer a surface use plan of operations for approval or disapproval in accordance with 36 CFR Part 228, Subpart E. The Secretary of Agriculture retains the authority under this lease to preclude all operations on a leasehold where analyses of the environment indicate such action is appropriate."

§ 228.104 Consideration of requests to modify lease terms.

(a) *General.* A person proposing to conduct operations on a lease may request the authorized Forest officer to authorize the Bureau of Land Management to modify or waive a stipulation included in a lease at the direction of the Forest Service except for the standard stipulation as required by § 228.103(c) of this subpart. The person making the request should submit any information which might assist the authorized Forest officer in making a decision.

(b) *Review.* The authorized Forest officer shall review any information submitted in support of the request and any other pertinent information.

(1) As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1970 (42 U.S.C. 4331 et seq.) and any other applicable laws, and prepare any appropriate environmental documents.

(2) The authorized Forest officer may grant a request to modify or waive a stipulation if:

(i) Modification or waiver of the stipulation is consistent with applicable Federal laws;

(ii) Modification or waiver of the stipulation is consistent with the current forest land and resource management plan if such a plan is in effect;

(iii) The management objectives which led the Forest Service to require the inclusion of the stipulation in the lease can be met without restricting operations in the manner provided for by the stipulation given the present condition of the surface resources or the nature, location, or timing of the proposed operations; or are no longer applicable for the area; and

(iv) Is acceptable to the authorized Forest officer based upon the review of the environmental consequences of the proposed modification.

(c) *Notice of decision.* (1) When the review of a stipulation modification or waiver request has been completed and the authorized Forest officer has reached a decision, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, of the decision to grant, with or without additional conditions, or deny the request.

(2) For any decision to modify or waive a lease stipulation that would result in a substantial modification of a lease term, the authorized Forest officer shall give notice in a newspaper of general circulation of the decision. The notice shall specify that the decision is subject to administrative appeal at 36 CFR 211.18.

Authorization of Occupancy Within a Leasehold

§ 228.105 Operator's submission of surface use plan of operations.

(a) *General.* An operator proposing to conduct operations that will cause disturbance of surface resources of National Forest System lands must submit a proposed surface use plan of operations as part of the Application for Permit to Drill to the appropriate Bureau of Land Management office for forwarding to the Forest Service.

(b) *Preparation of plan.* In preparing the surface use plan of operations, the operator is encouraged to contact the local Forest Service office for assistance and to make use of such information as is available from the Forest Service concerning the surface resources and uses, environmental considerations, and local reclamation procedures.

(c) *Content of plan.* The type, size, and intensity of the proposed operations and the sensitivity of the surface resources that will be affected by the proposed operations determine the level of detail and the amount of information which the operator must include in a proposed plan of operations. However, any surface use plan of operations submitted by an operator shall contain maps and plats of a scale no smaller than 1:24,000 and narrative descriptions which provide the following information:

(1) *Access facilities.* The location, size, and type of existing or new access facilities that the operator proposes to use, maintain, improve, or construct in connection with the operations;

(2) *Ancillary facilities.* The location, size, and type of any ancillary facilities (such as airstrips, camps, living facilities, parking areas, reserve and burn pits, and soil material stockpiles) that the operator proposes to use in connection with the operations;

(3) *Drill pad.* The location and design parameters of the drill pad that the operator proposes to construct;

(4) *Production facilities.* To the extent known or anticipated, the location, size, and type of production facilities and lines that the operator anticipates would be installed if the well is successful;

(5) *Reclamation measures.* The measures that the operator proposes to take to reclaim surface resources disturbed in connection with the operations, including information on the configuration of the reshaped topography, drainage system, segregation of spoil materials, surface manipulations, waste disposal, revegetation methods, soil treatments and other practices necessary to reclaim all disturbed areas, including any access roads or portions of drill pads when no longer needed;

(6) *Reclamation timing.* An estimate of the time for commencement and completion of reclamation operations, dependent upon weather conditions and other surface uses of the area;

(7) *Waste disposal.* The methodology that the operator proposes to use for the safe containment and disposal of the waste materials (such as cuttings, garbage, salts, chemicals, sewage, etc.) that will result from drilling the proposed well and the location of the waste containment and disposal facilities that the operator proposes to utilize; and

(8) *Other information.* Any other information that might assist the authorized Forest officer in reviewing the proposed surface use plan of operations.

(d) *Supplemental plan.* The operator must submit a supplemental surface use plan of operations to the Bureau of Land Management for forwarding to the Forest Service whenever the operator proposes to conduct additional surface disturbing operations that are not authorized by a current approved surface use plan of operations. A supplemental plan of operations is subject to the same requirements under this subpart as an initial surface use plan of operations.

§ 228.106 Review of surface use plan of operations.

(a) *Review.* The authorized Forest officer shall review and decide on the adequacy of a surface use plan of operations as promptly as practicable given the nature and scope of the proposed plan.

(1) As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR Parts 1500 through 1508, and the Forest Service implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15.

(2) An adequate surface use plan of operations is one that:

(i) Contains the information specified in § 228.105(c) of this subpart;

(ii) Is consistent with the terms of the lease, including the lease stipulations, and applicable Federal laws;

(iii) Is consistent with the current forest land and resource management plan if such a plan is in effect; and

(iv) Meets or exceeds the surface use requirements of § 228.107 of this subpart.

(v) Is acceptable to the authorized Forest officer based upon the review of the environmental consequences of the proposed operation.

(b) *Decision.* The authorized Forest officer shall make a decision on the approval of a surface use plan of operations as follows:

(1) If the authorized Forest officer will not be able to make a decision on the proposed plan within 3 days after the conclusion of the 30-day notice period provided for by 30 U.S.C. 226(f), the authorized Forest officer shall advise the appropriate Bureau of Land Management office, either in writing or orally with subsequent written confirmation, that additional time will be needed to process the plan. The authorized Forest officer shall explain the reason why additional time is needed and predict the date by which the authorized Forest officer will make a decision on the plan.

(2) When the review of a surface use plan of operations has been completed, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, that:

(i) The plan is approved as submitted upon signature of the operator and posting of the required bond with the Bureau of Land Management as specified by the authorized Forest officer (§ 228.108);

(ii) The plan is approved subject to specified operating conditions upon signature of the operator and posting of the required bond with the Bureau of Land Management as specified by the authorized Forest officer (§ 228.108); or

(iii) The plan has been disapproved for the reasons stated.

(c) *Notice of decision.* The authorized Forest officer shall give public notice of the decision on a plan and include in the notice that the decision is subject to appeal under the administrative appeal procedures at 36 CFR 211.18.

(d) *Transmittal of decision.* The authorized Forest officer shall immediately forward a decision on the approval of a surface use plan of operations to the appropriate Bureau of Land office.

(e) *Supplemental plans.* A supplemental surface use plan of operations (§ 228.105(d)) is reviewed in the same manner as an initial surface use plan of operations.

§ 228.107 Surface use requirements.

(a) *General.* The operator shall conduct operations on a leasehold on National Forest System lands to minimize effects on surface resources, to prevent unnecessary or unreasonable surface resource disturbance, and in compliance with the other requirements of this section.

(b) *Notice of operations.* The operator must notify the authorized Forest officer 48 hours prior to commencing operations or resuming operations following their temporary cessation (§ 228.110).

(c) *Access facilities.* The operator shall construct and maintain access facilities to assure adequate drainage and to minimize or prevent damage to surface resources.

(d) *Cultural and historical resources.* The operator shall report findings of cultural and historical resources to the authorized Forest officer immediately and, except as otherwise authorized in an approved surface use plan of operations, protect such resources.

(e) *Fire prevention and control.* To the extent practicable, the operator shall take measures to prevent uncontrolled fires on the area of operation and to suppress uncontrolled fires resulting from the operations.

(f) *Fisheries, wildlife and plant habitat.* The operator shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR Chapter IV), and, except as otherwise provided in an approved surface use plan of operations, conduct operations in such a manner as to maintain and protect other fisheries, wildlife, and plant habitat.

(g) *Reclamation.* (1) Unless otherwise provided in an approved surface use plan of operations, the operator shall conduct reclamation concurrently with other operations.

(2) Within 1 year of completion of operations on a portion of the area of operation, the operator must reclaim that portion, unless a different period of time is specified in writing by the authorized Forest officer.

(3) The operator must:

(i) Control soil erosion and landslides;

(ii) Control water runoff;

(iii) Remove, or control, solid wastes, toxic substances, and hazardous substances;

(iv) Reshape and revegetate disturbed areas;

(v) Remove structures, improvements, facilities and equipment, unless otherwise authorized; and

(vi) Take such other reclamation measures as specified in the approved surface use plan of operations.

(h) *Safety measures.* (1) The operator must maintain structures, facilities, improvements, and equipment located on the area of operation in a safe and neat manner and in accordance with an approved surface use plan of operations.

(2) The operator must take appropriate measures in accordance with applicable Federal and State laws and regulations to protect the public from hazardous sites or conditions resulting from the operations. Such measures may include, but are not limited to, posting signs, building fences, or otherwise identifying the hazardous site or condition.

(i) *Wastes.* The operator must either remove garbage, refuse, and sewage from National Forest System lands or treat and dispose of that material in such a manner as to minimize or prevent adverse impacts on surface resources. The operator shall treat or dispose of produced water, drilling fluid, and other waste generated by the operations in such a manner as to minimize or prevent adverse impacts on surface resources.

(j) *Watershed protection.* (1) Except as otherwise provided in the approved surface use plan of operations, the operator shall not conduct operations in areas subject to mass soil movement, riparian areas and wetlands.

(2) The operator shall take measures to minimize or prevent erosion and sediment production. Such measures include, but are not limited to, siting structures, facilities, and other improvements to avoid steep slopes and excessive clearing of land.

§ 228.108 Bonds.

(a) *Bond amount.* As part of the review of a proposed surface use plan of operations, the authorized Forest officer shall determine, based upon the costs of reclamation of surface disturbance and other pertinent factors, the bonding requirements for any plan of operations that the authorized Forest officer proposes to approve. Bonds required by the Forest Service are posted with the Bureau of Land Management.

(b) *Calculation.* The authorized Forest officer shall fix the amount of the bond at the sum that is adequate, for the entire period of operations that will be authorized by the plan of operations, to ensure compliance with 30 U.S.C. 226(g), including complete and timely reclamation of the leasehold and the restoration of lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. An adequate amount is one that is equal to but not greater than the cost of reclaiming surface disturbances.

(c) *Reduction in bond amount after reclamation.* (1) The operator may request the authorized Forest officer to request the Bureau of Land Management to approve a reduction in the amount of an individual lease bond whenever the operator receives a notice that reclamation has been satisfactorily completed on a portion of the area of operation.

(2) The authorized Forest officer receiving the request shall:

(i) Calculate the sum that is sufficient for the remainder of the period of operation authorized by the surface use plan of operations;

(ii) Notify the Bureau of Land Management of the amount that is sufficient for the remainder of operations; and

(iii) If appropriate under the circumstances, recommend a reduction in the amount of the bond.

(d) *Recalculation of bond requirements.* The authorized Forest officer shall recalculate bonding requirements whenever the authorized Forest officer proposes to approve a supplemental plan of operations (§ 228.105(d)).

§ 228.109 Indemnification.

The operator and, if the operator does not hold all of the interest in the applicable lease, all lessees and assignees are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for:

(a) Injury, loss or damage, including fire suppression costs, which the United States incurs as a result of the operations; and

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss or damage, including fire suppression costs, which result from the operations.

Administration of Operations

§ 228.110 Temporary cessation of operations.

(a) *General.* Except as provided in paragraph (b) of this section, immediately upon the temporary cessation of operations for a period of 45 days or more, the operator must file a statement with the authorized Forest officer that verifies the operator's intent to maintain structures, facilities, improvements, and equipment that will remain on the area of operation during the cessation of operations and that specifies the expected date by which operations will be resumed.

(b) *Seasonal shutdowns.* The operator need not file the statement required by paragraph (a) of this section if the cessation of operations results from seasonally adverse weather conditions and the operator will resume operations promptly upon the conclusion of those adverse weather conditions.

(c) *Interim measures.* The authorized Forest officer may require the operator to take reasonable interim reclamation or erosion control measures to protect surface resources during temporary cessations of operations, including cessations of operations resulting from seasonally adverse weather conditions.

§ 228.111 Compliance and inspection.

(a) *General.* Operations must be conducted in accordance with the lease, including stipulations made part of the lease at the direction of the Forest Service, an approved surface use plan of operations, and the regulations of this subpart.

(b) *Voluntary correction of noncompliance.* When, during an inspection, an authorized Forest officer finds that the operator is not in compliance with a reclamation requirement or other standard in a stipulation included in the lease at the request of the Forest Service, an approved surface use plan of operations or the regulations of this subpart, the authorized Forest officer shall promptly notify the operator on-site or by telephone of the noncompliance and give the operator the opportunity to either correct the noncompliance or, if appropriate, to reach agreement with the authorized Forest officer on an amendment to the approved surface use plan of operations that would remedy the noncompliance. After discussing the noncompliance with the operator, the authorized Forest officer shall establish a deadline for voluntary compliance, advise the operator of the deadline, and make a note to the file of the noncompliance, the applicable deadline, and the date the operator was advised of the deadline. If the operations have not been brought into compliance by the deadline, the authorized Forest officer shall utilize the provisions of § 228.112 of this subpart.

(c) *Completion of reclamation.* The authorized Forest officer shall give prompt written notice to an operator whenever reclamation of a portion of the area affected by surface operations has been satisfactorily completed in accordance with the approved surface use plan of operations and § 228.106 of this subpart. The notice shall describe the portion of the area on which the reclamation has been satisfactorily completed.

(d) *Compliance with other statutes and regulations.* Nothing in this subpart shall be construed to relieve an operator from complying with applicable Federal and State laws or regulations, including, but not limited to:

(1) Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(2) Federal and State water quality standards including the requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.);

(3) Federal and State standards for the use or generation of solid wastes, toxic substances and hazardous substances;

(4) The Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., and its implementing regulations, 50 CFR Chapter IV; and

(5) The Archeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa et seq.) and its implementing regulations 36 CFR Part 296.

(e) *Penalties.* An operator is subject to the prohibitions and attendant penalties of 36 CFR Part 261 if surface disturbing operations are being conducted that are not authorized by an approved surface use plan of operations or those operations violate a term or operating condition of an approved surface use plan of operations.

(f) *Inspection.* Forest Service officers shall periodically inspect the area of operations to determine whether the operation are being conducted in compliance with the regulations in this subpart, the stipulations included in the lease at the direction of the Forest Service, and an approved surface use plan of operations.

§ 228.112 Notice of noncompliance.

(a) *Issuance.* When an operator has not voluntarily corrected an instance of noncompliance with a reclamation requirement or other standard, in a stipulation included in a lease at the direction of the Forest Service, an approved surface use plan of operation, or the regulations in this subpart by the deadline established through the procedures of §228.111(b) of this subpart, the authorized Forest officer shall issue a notice of noncompliance.

(1) *Content.* The notice of noncompliance shall include the following:

(i) Identification of the reclamation requirements or other standard(s) with which the operator is not in compliance;

(ii) Description of the measures which are required to correct the noncompliance;

(iii) Specification of a reasonable period of time within which the noncompliance must be corrected;

(iv) If the noncompliance appears to be material, identification of the possible consequences of continued noncompliance of the requirement(s) or standard(s) as described in 30 U.S.C. 226(g);

(v) If the noncompliance appears to be in violation of the prohibitions set forth in 36 CFR Part 261, identification of the possible consequences of continued noncompliance of the requirement(s) or standard(s) as described in 36 CFR 261.1b; and

(vi) Notification that the authorized Forest officer remains willing and desirous of working cooperatively with the operator to resolve or remedy the noncompliance.

(2) *Extension of deadlines.* The oeprator may request an extension of a deadline specified in a notice of noncompliance if the operator is unable to come into compliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance by the deadline because of conditions beyond the operator's control. The authorized Forest officer shall not extend a deadline specified in a notice of noncompliance unless the operator requested an extension and the authorized Forest officer finds that there was a condition beyond the operator's control, that such condition prevented the operator from complying with the notice of noncompliance by the specified deadline, and that the extension will not adversely affect the interests of the United States. Conditions which may be beyond the operator's control include, but are not limited to, closure of an area in accordance with 36 CFR Part 261, Subparts B or C, or inaccessibility of an area of operations due to such conditions as fire, flooding, or snowpack.

(3) *Manner of service.* The authorized Forest officer shall serve a notice of noncompliance or a decision on a request for extension of a deadline specified in a notice upon the operator in person, by certified mail or by telephone. However, if notice is initially provided in person or by telephone, the authorized Forest officer shall send the operator written confirmation of the notice or decision by certified mail.

(b) *Failure to come into compliance.* If the operator fails to come into compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or an approved extension, the authorized Forest officer shall decide whether the noncompliance appears to be material given the reclamation requirements and other standards applicable to the lease established by 30 U.S.C. 226(g) the regulations in this subpart, the stipulations included in a lease at the direction of the Forest Service, or an approved surface use plan of operations and whether the noncompliance is resulting in an imminent danger to public health or safety, irreparable resource damage or another emergency.

(1) *Referral to compliance officer.* When the operations appear to be in material noncompliance, the authorized Forest officer shall promptly refer the matter to the compliance officer. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits. Noncompliance which the authorized Forest officer shall refer includes, but is not limited to, operating without an approved surface use plan of operations, operating under a suspended surface use plan of operations, failing to timely complete reclamation in accordance with an approved surface use plan of operations, failing to maintain an acceptable bond in the amount specified by the authorized Forest officer during the period of operation, failing to timely reimburse the Forest Service for the cost of abating an emergency, and failing to comply with any term included in a lease, stipulation, or approved surface use plan of operations relating to the protection of a threatened or endangered species.

(2) *Suspension of a surface use plan of operations.* When the noncompliance is resulting in an imminent danger to public health or safety or in irreparable resource damage, the authorized Forest officer shall suspend approval of the surface use plan of operations, in whole or in part.

(i) A suspension will remain in effect until the operator comes into compliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance.

(ii) The authorized Forest officer shall serve decisions suspending a surface use plan of operations upon the operation in person, by certified mail, or by telephone. However, if notice is initially provided in person or by telephone, the authorized Forest officer shall send the operator written confirmation of the decision by certified mail.

(iii) The authorized Forest officer shall immediately notify the appropriate Bureau of Land Management office of a suspension of an operator's surface use plan of operations.

(3) *Abatement of emergencies.* When the noncompliance is resulting in an emergency, the authorized Forest officer may take action as necessary to abate the emergency. The total cost to the Forest Service of taking actions to abate an emergency becomes an obligation of the operator.

(i) Emergency situations include, but are not limited to, imminent dangers to public health or safety or irreparable resource damage.

(ii) The authorized Forest officer shall promptly serve a bill for such costs upon the operator by certified mail.

§ 228.113 Material noncompliance proceedings.

(a) *Initiation of proceedings.* The compliance officer shall promptly evaluate a referral made by the authorized Forest officer pursuant to § 228.112(b)(1) of this subpart. If the compliance officer agrees that there is adequate evidence to support a reasonable belief that an operator has failed to come into compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or an extension approved by the authorized Forest officer, and that the noncompliance may be material, the compliance officer shall initiate a material noncompliance proceeding.

(1) *Notice of proceedings.* The compliance officer shall inform the operator, and if the operator does not hold all the interest in the lease, all lessees, and assignees of the material noncompliance proceedings by certified mail, return receipt requested.

(2) *Content of notice.* The notice of the material noncompliance proceeding shall include the following:

(i) The specific reclamation requirement(s) or other standard(s) of which the operator may be in material noncompliance;

(ii) A description of the measures that are required to correct the violation;

(iii) A statement that if the compliance officer finds that the operator is in material noncompliance with a reclamation requirement or other standard applicable to the lease, the Secretary of the Interior will not be able to issue new leases or approve new assignments of leases to the operator, any subsidiary or affiliate of the operator, or any person controlled by or under common control with the operator until the compliance officer finds that the operator has come into compliance with such requirement or standard; and

(iv) A recitation of the specific procedures governing the material noncompliance proceeding set forth in paragraphs (b) through (e) of this section.

(b) *Answer.* Within 30 calendar days after receiving the notice of the proceeding, the operator may submit, in person, in writing, or through a representative, an answer containing information and argument in opposition to the proposed material noncompliance finding, including information that raises a genuine dispute over the material facts. In that submission, the operator also may:

(1) Request an informal hearing with the compliance officer; and

(2) Identify pending administrative or judicial appeal(s) which are relevant to the proposed material noncompliance finding and provide information which shows the relevance of such appeal(s).

(c) *Informal hearing.* If the operator requests an informal hearing, it shall be held within 20 calendar days from the date that the compliance officer receives the operator's request.

(1) The compliance officer may postpone the date of the informal hearing if the operator requests a postponement in writing.

(2) At the hearing, the operator, appearing personally or through and attorney or another authorized representative, may informally present and explain evidence and argument in opposition to the proposed material noncompliance finding.

(3) A transcript of the informal hearing shall not be required.

(d) *Additional procedures as to disputed facts.* If the compliance officer finds that the answer raises a genuine dispute over facts essential to the proposed material noncompliance finding, the compliance officer shall so inform the operator by certified mail, return receipt requested. Within 10 days of receiving this notice, the operator may request a fact-finding conference on those disputed facts.

(1) The fact-finding conference shall be scheduled within 20 calendar days from the date the compliance officer receives the operator's request, unless the operator and compliance officer agree otherwise.

(2) At the fact-finding conference, the operator shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront the person(s) the Forest Service presents.

(3) A transcribed record of the fact-finding conference shall be made, unless the operator and the compliance officer by mutual agreement waive the requirement for a transcript. The transcript will be made available to the operator at cost upon request.

(4) The compliance officer may preside over the fact-finding conference or designate another authorized Forest officer to preside over the fact-finding conference.

(5) Following the fact-finding conference, the authorized Forest officer

who presided over the conference shall promptly prepare written findings of fact based upon the preponderance of the evidence. The compliance officer may reject findings of fact prepared by another authorized Forest officer, in whole or in part, if the compliance officer specifically determines that such findings are arbitrary and capricious or clearly erroneous.

(e) *Dismissal of proceedings.* The compliance officer shall dismiss the material noncompliance proceeding if, before the compliance officer renders a decision pursuant to paragraph (f) of this section, the authorized Forest officer who made the referral finds that the operator has come into compliance with the applicable requirements or standards identified in the notice of proceeding.

(f) *Compliance officer's decision.* The compliance officer shall base the decision on the entire record, which shall consist of the authorized Forest officer's referral and its accompanying statement of facts and exhibits, information and argument that the operator provided in an answer, any information and argument that the operator provided in an informal hearing, and the findings of fact if a fact-finding conference was held.

(1) *Content.* The compliance officer's decision shall state whether the operator has violated the requirement(s) or standard(s) identified in the notice of proceeding and, if so, whether that noncompliance is material given the requirements of 30 U.S.C. 226(g), the stipulations included in the lease at the direction of the Forest Service, the regulations in this subpart or an approved surface use plan of operations. If the compliance officer finds that the operator is in material noncompliance, the decision also shall:

(i) Describe the measures that are required to correct the violation;

(ii) Apprise the operator that Secretary of the Interior is being notified that the operator has been found to be in material noncompliance with a reclamation requirement or other standard applicable to the lease; and

(iii) State that the decision is the final administrative determination of the Department of Agriculture.

(2) *Service.* The compliance officer shall serve the decision upon the operator and, if the operator does not hold all of the interest in the applicable lease, upon all lessees and assignees by certified mail, return receipt requested. If the operator is found to be in material noncompliance, the compliance officer also shall immediately send a copy of the decision to the appropriate Bureau of Land Management office.

(g) *Petition for withdrawal of finding.* If an operator who has been found to be in material noncompliance under the provisions of this section believes that the operations have subsequently come into compliance with the applicable requirement(s) or standard(s) identified in the compliance officer's decision, the operator may submit a written petition requesting that the material noncompliance finding be withdrawn. The petition shall be submitted to the authorized Forest officer who issued the operator the notice of noncompliance under § 228.112(a) of this subpart and shall include information or exhibits which shows that the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision.

(1) *Response to petition.* Within 30 calendar days after receiving the operator's petition for withdrawal, the authorized Forest officer shall submit a written statement to the compliance officer as to whether the authorized Forest officer agrees that the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision. If the authorized Forest officer disagrees with the operator, the written statement shall be accompanied by a complete statement of the facts supported by appropriate exhibits.

(2) *Additional procedures as to disputed material facts.* If the compliance officer finds that the authorized Forest officer's response raises a genuine dispute over facts material to the decision as to whether the operator has come into compliance with their requirement(s) or standard(s) identified in the compliance officer's decision, the compliance officer shall so notify the operator and authorized Forest officer by certified mail, return receipt requested. The notice shall also advise the operator that the fact finding procedures specified in paragraph (d) of this section apply to the compliance officer's deicision on the petition for withdrawal.

(3) *Complaince officer's decision.* The compliance officer shall base the decision on the petition on the entire record, which shall consist of the operator's petition for withdrawal and its accompanying exhibits, the authorized Forest officer's response to the petition and, if applicable, its accompanying statement of facts and exhibits, and if a fact-finding conference was held, the findings of fact. The compliance officer shall serve the decision on the operator by certified mail.

(i) If the compliance officer finds that the operator remains in violation of requirement(s) or standard(s) identified in the decision finding that the operator was in material noncompliance, the decision on the petition for withdrawal shall identify such requirement(s) or standard(s) and describe the measures that are required to correct the violation(s).

(ii) If the compliance officer finds that the operator has subsequently come into compliance with standard(s) identified in the compliance officer's decision that the operator is in material noncompliance, the compliance officer also shall immediately send a copy of the decision on the petition for withdrawal to the appropriate Bureau of Land Management office.

(h) *List of operators found to be in material noncompliance.* The Deputy Chief, National Forest System, shall compile and maintain a list of operators who have been found to be in material noncompliance with reclamation requirements and other standards as provided in 30 U.S.C. 226(g), the regulations in this subpart, a stipulation included in a lease at the direction of the Forest Service, or an approved surface use plan of operations, for a lease on National Forest System lands to which such standards apply. This list shall be made available to Regional Foresters, Forest Supervisors, and upon request, members of the public.

Notice of Decisions

§ 228.114 Additional notice of decisions.

(a) The authorized Forest officer shall promptly post notices provided by the Bureau of Land Management of:

(1) Competitive lease sales which the Bureau plans to conduct that include National Forest System lands;

(2) Substantial modifications in the terms of a lease which the Bureau proposes to make for leases on National Forest System lands; and

(3) Applications for permits to drill which the Bureau has received for leaseholds located on National Forest System lands.

(b) The notice shall be posted at the offices of the affected Forest Supervisor and District Ranger in a prominent location readily accessible to the public.

(c) The authorized Forest officer shall keep a record of the date(s) the notice was posted in the offices of the affected Forest Supervisor and District Ranger.

(d) The posting of notices required by this section are in addition to the requirements for public notice of decisions provided in § 228.104(c) (Notice of decision), and § 228.106 (Review of surface use plan of operations) of this subpart.

PART 261—PROHIBITIONS

1. The authority citation for Part 261 would continue to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)-(d)(1).

Subpart A—General Prohibitions

2. Amend § 261.2 by adding a new definition to read as follows:

§ 261.2 Definitions.

"Operating plan" means a plan of operations as provided for in 36 CFR Part 228, Subpart A, and a surface use plan of operations as provided for in 36 CFR Part 228, Subpart E.

Date: January 13, 1989.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 89-1252 Filed 1-19-89; 8:45 am]

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