

## SUBCHAPTER H—PROCEDURES GOVERNING DETERMINATIONS FOR TAX CREDIT PURPOSES

### PART 270—DETERMINATION PROCEDURES

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SOURCE: Order 616, 65 FR 45865, July 26, 2000, unless otherwise noted.

#### Subpart A—General Definitions

##### § 270.101 General definitions.

(a) *NGPA definitions.* Terms defined in the Natural Gas Policy Act of 1978

(NGPA) will have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) One continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater (but if the interval selected is more than 200

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feet thick, the bottom and top 100 foot portions must meet the five percent test independently).

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

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

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

### Subpart B—Determinations by Jurisdictional Agencies

#### § 270.201 Applicability.

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

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

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

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

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

#### § 270.202 Definition of determination.

For purposes of this subpart, a determination has been made by a jurisdictional agency when such determination

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is administratively final before such agency.

#### § 270.203 Determinations by jurisdictional agencies.

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

#### § 270.204 Notice to the Commission.

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

(a) A list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

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

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

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

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

#### § 270.301 General requirements.

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

(b) The documents required by this subpart are the minimum required in

support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

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

**§270.302 Occluded natural gas produced from coal seams.**

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

- (a) FERC Form No. 121;
- (b) All well completion reports.
- (c) A radioactivity, electric or other log which will define the coal seams.
- (d) Evidence to establish that the natural gas was produced from a coal seam;
- (e) A statement by the applicant, under oath, that gas is produced from a coal seam through:
  - (1)(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;
  - (ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or
  - (iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980; and

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

**§270.303 Natural gas produced from Devonian shale.**

A person seeking a determination that natural gas is produced from Devonian shale shall file an application

with the jurisdictional agency which contains the following items:

- (a) FERC Form No. 121;
- (b) All well completion reports;
- (c) A gamma ray log with superimposed indications of the shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section designated pursuant to §270.101(b)(8);
- (d) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and
- (e) A sworn statement:
  - (1) Calculating the percentage of footage of the producing interval which is not Devonian shale as indicated by a Gamma ray index of less than 0.7;
  - (2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the stratigraphic section selected is equal to or less than 5 percent of the Devonian stratigraphic age interval designated pursuant to §270.101(b)(7);
  - (3) Attesting that the natural gas is being produced from Devonian shale through:
    - (i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;
    - (ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or
    - (iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980; and
  - (4) Attesting that the applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

**§270.304 Tight formation gas.**

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

- (a) FERC Form No. 121;
- (b) All well completion reports;
- (c) A map that identifies the surface location of the well and the completion location in the well in the designated

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

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

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

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

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

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

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

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

**§ 270.305 Determination of tight formation areas.**

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

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

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

permeabilities obtained from the wells that penetrate, and have a pay section in, such portion of such formation.

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

If the average depth to the top of the formation (in feet)		The maximum allowable production rate of natural gas (in Mcf per day) may not exceed—
exceeds—	but does not exceed—	
0 .....	1,000	44
1,000 .....	1,500	51
1,500 .....	2,000	59
2,000 .....	2,500	68
2,500 .....	3,000	79
3,000 .....	3,500	91
3,500 .....	4,000	105
4,000 .....	4,500	122
4,500 .....	5,000	141
5,000 .....	5,500	163
5,500 .....	6,000	188
6,000 .....	6,500	217
6,500 .....	7,000	251
7,000 .....	7,500	290
7,500 .....	8,000	336
8,000 .....	8,500	388
8,500 .....	9,000	449
9,000 .....	9,500	519
9,500 .....	10,000	600
10,000 .....	10,500	693
10,500 .....	11,000	802
11,000 .....	11,500	927
11,500 .....	12,000	1,071
12,000 .....	12,500	1,238
12,500 .....	13,000	1,432
13,000 .....	13,500	1,655
13,500 .....	14,000	1,913
14,000 .....	14,500	2,212
14,500 .....	15,000	2,557

(c) *Notice to the Commission.* Any jurisdictional agency making a determination that a formation, or portion thereof, qualifies as a tight formation will provide timely notice, in writing,

of such determination, to the Commission. Such notice shall include the following to substantiate the jurisdictional agency's findings:

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

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

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

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

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

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

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

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

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

(a) FERC Form No. 121;

(b) All well completion reports;

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

(1) The shale base line and the gamma ray index of 0.7 over the Devo-

nian age stratigraphic section penetrated by the well bore; and

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

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

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

(f) A driller's log, or similar report, from the well for which the determination is sought, indicating the general characteristics of the strata penetrated and the corresponding depths at which they are encountered throughout the Devonian age stratigraphic section penetrated by the well bore;

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

(h) A sworn statement:

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

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

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

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

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

(iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any

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completion location in existence in the well bore before January 1, 1980 and

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

**Subpart D—Identification of State and Federal Jurisdictional Agencies**

**§ 270.401 Jurisdictional agency.**

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

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

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

(2)(i) Alaska, Anchorage Field Office—Assistant District Manager for Mineral Resources, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, AK 99507.

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

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

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

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

(5) California, except Naval Petroleum Reserve No. 1 (Elk Hills) and No. 2 (Buena Vista)—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Re-

sources (C–920), 2800 Cottage Way, Suite W–1834, Sacramento, CA 95825.

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

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

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

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

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

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

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

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

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

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

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

(16) New York and North Carolina—Chief, Branch of Resources, Planning &

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

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

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

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

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

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

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

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

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

(24) (i) Texas, east of the 100th Meridian—Field Office Manager, Bureau of Land Management, Tulsa Field Office (NGPA), 7906 East 33rd Street, Suite 101, Tulsa, OK 74145.

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

(25) (i) Utah, except for the Navajo and Hopi Indian Reservations—Deputy State Director for Natural Resources, Bureau of Land Management, Utah State Office (U-930), 324 South State

Street, Suite 301, Salt Lake City, UT 84111.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Florida—Administrator Oil and Gas, Bureau of Geology, Department of

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Natural Resources, 903 West Tennessee Street, Tallahassee, FL 32304.

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

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

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

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

(12) Kansas—Kansas Corporation Commission, Finney State Office Building, 130 South Market, Room 2078, Wichita, KS 67202-3802.

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

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

(15) Maryland—Department of Natural Resources, Tawes State Office Building., Annapolis, MD 21404.

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

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

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

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

(20) Nebraska—Oil & Gas Conservation Commission, Box 399, Sidney, NE 68162.

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

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

(23) New York—New York State Department of Environmental Conservation, Division of Mineral Resources,

Bureau of Oil and Gas Regulation, 50 Wolf Road, Albany, NY 12233-6500.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) All lands leased under:

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

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

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

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

(e) *Divided-interest leases.* Unless an agreement under this paragraph provides otherwise, where a well is located on a divided-interest lease involving Federal (or Indian) and private (or State) ownership:

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

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

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

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

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

## Subpart E—Commission Review of Jurisdictional Agency Determinations

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

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

(b) The acknowledgment will contain the following:

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

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

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

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

### § 270.502 Commission review of final determinations.

(a) *Review by Commission.* Except as provided in paragraphs (b), (c) and (d) of this section, a determination submitted to the Commission by a jurisdictional agency will become final 45 days after the date on which the Commission received notice of the determination, unless within the 45 day period, the Commission:

(1) Makes a preliminary finding that:

(i) The determination is not supported by substantial evidence in the record on which the determination was made; or

(ii) The determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

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

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

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

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

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

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

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

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

prior to the date such determination becomes final under paragraph (a) or (g)(4) of this section.

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

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

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

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

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

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

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

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the Commission under paragraph (d) of this section and under §270.503.

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

### § 270.503 Protests to the Commission.

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

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

(1) Not supported by substantial evidence;

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

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

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

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

Each protest must include:

(a) An identification of the determination protested;

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

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

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

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

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

### § 270.505 Procedure for reopening determinations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 270.506 Confidentiality.**

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

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

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

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