

the benefit of this proposal for small entities.

The Securities Act prohibits the states from requiring the registration of securities transactions with qualified purchasers. Consequently, the states may not review or comment on the disclosure provided to qualified purchasers, nor apply standards with respect to the merits of the offering or impose conditions on offerings to qualified purchasers. Removing these costs should facilitate capital raising.

We believe that preempting state regulation of transactions involving qualified purchasers who we define the same as accredited investors may make state accredited investor exemptions a nullity. In this case, the accredited investor prong of the Rule 504 public offering exemption may no longer be usable. We are concerned, however, that as a result, issuers, especially small ones, might be disadvantaged in their ability to raise capital by publicly offering their securities to accredited investors. Consequently, we have invited comment on the issue and to see if it would be better to provide limited relief from our proposed preemption for these public Rule 504 transactions. We also have solicited comment on an alternative approach that would replace the accredited investor prong with a new exemption for offerings to qualified purchasers.

We believe that design standards of objectively defining qualified purchasers add certainty and promote the purposes of the rule. We therefore do not propose performance standards to specify different requirements for small entities. We do not believe that it is feasible to further clarify, consolidate or simplify the proposed rule for small entities.

E. Overlapping or Conflicting Federal Rules

We do not believe any current federal rules duplicate, overlap or conflict with the rule we propose to amend.

F. Solicitation of Comments

We encourage the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rule amendment is adopted. Persons wishing to submit written comments should follow the instructions contained in the beginning of this release. We particularly seek comment on:

- The number of small entities that would be affected by the proposed rule;

- The expected impact of the proposal;

- How to quantify the number of small entities that would be affected by, and how to quantify the impact of the proposed rule.

We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VII. Promotion of Efficiency, Competition, and Capital Formation

We request your comment on whether the proposed amendment would be a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996. We request comments on whether the proposed amendment is likely to have a \$100 million or greater annual effect on the economy. Your comments should provide empirical data to support your views.

We are required to define qualified purchaser consistent with the public interest and the protection of investors. When the public interest is considered, we must determine whether the definition selected would promote efficiency, competition and capital formation, in addition to investor protection.⁷⁴ As described in this release, we believe the proposal fosters each of these important goals. We request your comments on how our proposals would affect each of these objectives.

VIII. Statutory Basis

We propose an amendment to Rule 146 under the authority set forth in Sections 2(b), 18(b) and 19 of the Securities Act.

IX. Text of the Amendments

List of Subjects in 17 CFR Part 230

Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77sss, 77z-3, 78c, 78d, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

⁷⁴ See Section 2(b) of the Securities Act (15 U.S.C. 77b(b)).

2. Section 230.146 is amended by adding paragraph (c) to read as follows:

§ 230.146 Rules under section 18 of the Act.

* * * * *

(c) *Qualified Purchaser.* A "qualified purchaser" as used in Section 18(b)(3) of the Act (15 U.S.C. 77r(b)(3)) means any accredited investor as defined in § 230.501(a).

3. Section 230.504 is amended by:

- Adding "or" at the end of paragraph (b)(1)(i);
- Removing ";" or" at the end of paragraph (b)(1)(ii) and adding in its place a period; and
- Removing paragraph (b)(1)(iii).

By the Commission.

Dated: December 19, 2001.

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 292

RIN 1076-AD93

Gaming on Trust Lands Acquired After October 17, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule: reopening of comment period.

SUMMARY: This notice reopens the comment period for the proposed rule that was published in the **Federal Register** on September 14, 2000.

EFFECTIVE DATE: Comments must be received on or before February 25, 2002.

ADDRESSES: Mail comments to George Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street NW, MS 2070-MIB, Washington, DC 20240. Comments may be hand delivered to the same address from 9 a.m. to 4 p.m., Monday through Friday or sent by facsimile to 202-273-3153.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Office of Indian Gaming Management, 202-219-4066.

SUPPLEMENTARY INFORMATION: On September 14, 2000, the Bureau of Indian Affairs published a proposed rule (65 FR 55471) concerning Gaming on Trust Lands Acquired After October 17, 1988. The deadline for receipt of comments was November 13, 2000. Six comments were received after

November 13, 2000. Several of these comments raise substantive issues that may result in modification of the proposed rule. The comment period is reopened to allow consideration of the comments received after November 13, 2000, and to allow additional time for comment on the proposed rule. Comments must be received on or before March 27, 2002.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Department Manual 8.1.

Dated: December 11, 2001.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AC95

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Document Incorporated by Reference—API 510

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS is proposing to add a document to be incorporated by reference into our regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS). This revision will ensure that lessees use the best available and safest technologies while operating in the OCS. The new document, API 510, is titled "Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration."

DATES: We will consider all comments we receive by February 25, 2002. We will begin reviewing comments then and may not fully consider comments we receive after February 25, 2002.

ADDRESSES: Mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817; Attention: Rules Processing Team. If you wish to e-mail comments, the e-mail address is: rules.comments@mms.gov. Reference API 510 in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Richard Ensele, Operations Analysis Branch, at (703) 787-1583.

SUPPLEMENTARY INFORMATION: We use standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry for establishing requirements for activities in the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations without increasing the volume of the Code of Federal Regulations (CFR). The legal effect of incorporation by reference is that the material is treated as if it was published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators/lessees accountable for complying with the documents incorporated by reference in our regulations. The regulations found at 1 CFR part 51 govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition or specific edition and supplement or addendum cited in the regulations.

The proposed rule will incorporate by reference into MMS regulations the provisions of API 510.

We have reviewed this document and have determined that the latest edition should be incorporated into the regulations to ensure the use of the best available and safest technologies.

MMS's Review Concerning Pressure Vessels

The MMS documents incorporated by reference currently include three sections of the American Society of Mechanical Engineers (ASME) 1998 Boiler and Pressure Vessel Code:

Section I—Rules for the Construction of Power Boilers;

Section IV—Rules for the Construction of Heating Boilers; and
Section VIII—Rules for the Construction of Pressure Vessels.

Each of these sections provides requirements applicable to the design, fabrication, inspection, testing, and certification of newly constructed boilers and pressure vessels. The ASME Code has been the recognized standard for the construction of new boilers and pressure vessels since the early 1900's. The ASME Code does not, however,

address the maintenance inspection, rating, repair, and alteration of pressure vessels after the vessels are placed into service.

MMS has not previously included in its documents incorporated by reference a standard on pressure vessel maintenance inspection, rating, repair, and alteration. Our review of the document proposed for incorporation into MMS regulations, API 510, indicates that it would be beneficial to us and to the offshore industry to clarify requirements on pressure vessel operations, inspections, repairs, and maintenance of the pressure vessels in service on the OCS.

In December 1931, ASME and the American Petroleum Institute (API) created a joint committee to consider safe practices in the design, construction, inspection, and repair of pressure vessels used in the oil and gas industry. The resulting API/ASME Code remained in effect until discontinued in 1956. Since the need for uniform maintenance, inspection, and repair of pressure vessels continued, API published the first edition of API 510 in 1958 to satisfy this need.

Another set of boiler and pressure vessel requirements exists, which is widely used or referenced by many states and municipalities in their regulations. It is the National Board Inspection Code (NBIC). Many elements of the discontinued API/ASME Code have been included in the NBIC since its 1960 edition. It is the intention of both API and NBIC that their respective scopes not overlap. NBIC advises in its scope that "It is recognized that an American Petroleum Institute Inspection Code, API-510, exists covering the maintenance inspection, repair, alteration and re-rating procedures for pressure vessels used by the petroleum and chemical process industries, which is applicable in these special circumstances. It is the intent that this Inspection Code cover installations other than those covered by API-510 unless the jurisdiction rules otherwise."

NBIC is an excellent generic code applicable to boilers and pressure vessels in general industrial uses. API 510 is designed specifically for the petroleum and chemical process industries. Therefore, API 510 is the appropriate document to provide for the safest maintenance inspection, rating, repair, and alteration of pressure vessels in service on the OCS.