

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date
FILED

OCT 23 2 15 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Division Environmental Protection-Office Oil & Gas TITLE NUMBER: 35

CITE AUTHORITY: 29A-3-14

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 7

TITLE OF RULE BEING PROPOSED: "Certification of Gas Wells"

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This Emergency Rule is being proposed in order for WV natural gas producers to submit applications to the Office of Oil & Gas (O&G) for approval to be certified for Section 29 tax credits as provided for in the US Federal Energy Regulatory Commission (FERC), 18CFR Parts 270, 375, & 381: Order No. 616. The FERC Order became effective on September 25, 2000, and applications must first be reviewed and approved by O&G before they are submitted to the US FERC.

Use additional sheets if necessary

Barrie J. Chambers
Authorized Signature



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

October 23, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 35CSR7 - "Certification of Gas Wells"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced Emergency Rule with your Office and the Legislative Rule-Making Review Committee as "Notice of an Emergency Rule." Attached to this emergency rule filing, I have also included a letter to the Honorable Ken Hechler describing in more detail the reasons for this proposed Emergency Rule that I would appreciate your forwarding to Secretary Hechler.

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: John Johnston, Chief, Office Oil & Gas
Carrie Chambers, Executive Assistant, DEP

Attachment



Executive Office
#10 McJunkin Road
Nitro, West Virginia 25143-2506
304-759-0514
Fax: 304-759-0529



West Virginia Division of Environmental Protection

Cecil H. Underwood
Governor

Michael C. Castle
Director

October 23, 2000

Honorable Ken Hechler
Secretary of State
Building 1, Room 157K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

Re: Title 35, Series 7
Emergency Rule

Dear Secretary Hechler:

The Federal Energy Regulatory Commission (FERC) has recently approved issuance of a "Final Rule" (FERC Order 616, issued July 14, 2000, published in the Federal Register Volume 65, No. 144, pages 45, 859 - 45,873) reinstating regulations for review of well category determinations under Section 503 of the Natural Gas Policy Act. The regulations allow certain designated formations of natural gas production to qualify for tax credits under Section 29 of the Internal Revenue Code (IRC), provided that the gas is sold before January 1, 2003.

In background, the Section 29 Credit was established in 1980, in part, to encourage drilling of high cost gas formations in order to expand the United States natural gas resource base. For a gas well to receive the credit, the Section 503 procedure required an initial state or federal agency to determine that the well meets all qualifications as outlined in the IRC. The state or federal agency then sent notice to the FERC of the determination along with supporting documents.

FERC has the final authority for each well determination along with the power to reverse or remand the determination if incomplete or erroneous. If FERC did nothing, the determination became final. On January 1, 1993, Section 503 was repealed and FERC only reviewed determinations dated prior to this date. By early 1994, FERC arbitrarily stopped reviewing well determinations altogether leaving many otherwise qualified natural gas wells "uncertified" for lack of final FERC approval.

The issue was litigated in 1999 (True Oil Co. v. Commissioner, 120 F2d 1294 (10th Cir. 1999)). The True Oil decision involved a well being drilled in 1980 where the owner could have, but did not obtain a Section 503 well determination for the well. The court held that Section 29 of the IRC required that there be a Section 503 FERC determination for a well in order for the tax credit to be taken.

At the insistence of a coalition of producers who have an inventory of qualified but "uncertified" natural gas wells, the FERC finally agreed to reopen the Section 503 process. After consultations with the Independent Oil and Gas Association of West Virginia (IOGA-WV), it appears that there are numerous West Virginia exploration and production companies who have an inventory of qualified wells which, having been previously unable to obtain Section 29 credit certifications, are currently being denied the tax credits they deserve.

"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."



West Virginia
Division of
Environmental Protection

Honorable Ken Hechler
October 23, 2000
Page 2

While FERC has reinstated regulations for review of well category determinations under Section 503 of the Natural Gas Policy Act, it did so under the assumption that it would be for a limited time. FERC Order 616 does not reference a date certain which FERC will cease to certify Section 29 Credit applications, however, FERC understands that there is a relatively small number of wells which failed to be properly certified. FERC does not expect this process to take more than a few months.

It is, therefore, a threat to the financial wellbeing of the West Virginia operators of these uncertified natural gas wells not to process their Section 29 credit certification applications as promptly as possible after the FERC rulemaking takes effect on September 25, 2000.

Sincerely,

A handwritten signature in black ink that reads "Michael C. Castle". The signature is written in a cursive, slightly slanted style.

Michael C. Castle, Director

cc: John H. Johnston, Chief, Office of Oil and Gas
Judy Cooper, Director, Administrative Law Division, Secretary of State

Questionnaire
Emergency

DATE: September 27, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division Of Environmental Protection
Office of Oil & Gas, #10 McJunkin Road
Nitro, WV 25143; Phone (304)759-0514, Attn: John Johnston

EMERGENCY RULE TITLE: 35CSR7 - "Certification of Gas Wells"

1) **DATE OF FILING** October 23, 2000

2) **STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:**

West Virginia Code §29A-3-15

3) **DATE OF FILING OF PROPOSED LEGISLATIVE RULE:**

August 23, 2000 - Filing of Agency Approved Rule

4) **DOES THE EMERGENCY RULE ADOPT NEW LANGUAGE OR DOES IT AMEND OR APPEAL A CURRENT LEGISLATIVE RULE?**

Adopts new language

5) **HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED?**

NO

6) **STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE EMERGENCY RULE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC PEACE, HEALTH, SAFETY OR WELFARE.**

In 1994, the Federal Energy Regulatory Commission (FERC) stopped reviewing applications for the Section 29 tax credit from natural gas producers. They did so in the belief that there were few, if any, qualifying wells left that had not been reviewed. FERC's cessation was abrupt and without warning. As a result, many West Virginia producers who either drilled natural gas wells late in the period prior to the 12/31/92 ending date for drilling qualified Section 29 wells or recompleted wells which were appropriately drilled prior to the ending date were left without the necessary Federal infrastructure to complete the Section 29 filing and claim the credit they deserved. Many of these West Virginia producers, believing that their natural gas wells "would have qualified" had FERC been available to process their claims, continued to apply production from these qualified, yet "uncertified" wells and claimed the Section 29 tax credit against their taxes payable. The Internal Revenue Service, upon audit of these claimed credits, have steadfastly disallowed the credit to producers unless the natural gas well has proof of certification. The immediate financial welfare of numerous West Virginia producers is at stake.

7) **IF THE EMERGENCY RULE WAS PROMULGATED IN ORDER TO COMPLY WITH A TIME LIMIT ESTABLISHED BY THE CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN.**

US. Federal Energy Regulatory Commission
18 CFR Parts 270, 375 and 381
(Docket No. RM00-6-000; Order No. 616...Well Category Determinations)

This order is a result of an intensive lobbying effort of a coalition of natural gas producers who have an inventory of qualified, yet uncertified natural gas wells. Many of these producers are West Virginian Companies. While there is no specific time limit named in Order No. 616, it is believed by FERC that only a relatively small number of qualified wells exist. Because of this, FERC has publicly stated that it believes this issue will be resolved in just a few months. It is further believed that once FERC stops reviewing certification applications, it will consider the issue final and permanently resolved.

8) **STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE EMERGENCY RULE NECESSARY TO PREVENT SUBSTANTIAL HARM TO THE PUBLIC INTEREST.**

FERC has agreed that it ended the well certification review process prematurely in early 1994 and has issued the aforementioned Order 616 to rectify this situation. It is further believed that while there is no specific time limit contained in Order 616, the time allocation by FERC staff to accomplish this objective is minimal, possibly as little as two or three months. The order becomes effective September 25, 2000 and FERC is expecting process filings immediately. Therefore, it is our belief that if West Virginia producers are forced to wait until proposed 35CSR7 is promulgated by an act of the Legislature and will not become effective until May, 2001, and given the time it will take Office of Oil & Gas personnel to process each application, it is highly probable that it will be too late for these West Virginia producers to obtain the FERC approvals necessary to claim the tax credits they deserve, causing immediate and irreparable financial harm.

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
EMERGENCY RULE
BRIEFING DOCUMENT**

Rule Title: 35CSR7 - "Certification of Gas Wells"

A. Authority: §29A-3-15

B. Summary of Rule:

This proposed emergency rule will allow certain West Virginia producers of certain qualified natural gas wells that have previously been drilled in West Virginia, but were not at that time given an opportunity by the Federal Energy Regulatory Commission to apply for certification, an opportunity to submit applications to the Office of Oil & Gas for Section 29 tax credits.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE EMERGENCY RULE:

The US Federal Energy Regulatory Commission, 18 CFR Parts 270, 375, and 381, Order No. 616, is a result of intensive lobbying efforts of natural gas producers who have an inventory of qualified, but uncertified, natural gas wells. This Order will allow many WV Oil & Gas Producers the opportunity to submit applications for certification to the WV Oil & Gas Office in order to qualify for the Section 29 tax credits. All applications must be received and reviewed by DEP before they are submitted to the US Federal Energy Regulatory Commission for final review and approval. If this Emergency Rule is not approved, and the Office of Oil and Gas cannot submit applications to the Federal Energy Regulatory Commission until the Legislative rule is approved and becomes final in early May of 2001, it may be too late for West Virginia natural gas producers to comply with the provisions set forth in Order No. 616.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There is no federal counterpart rule

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c), the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 35CSR7 - "Certification of Gas Wells"

Type of Rule: Legislative Interpretive Procedural

Agency: Division Environmental Protection, Office of Oil & Gas

Address: #10 McJunkin Road, Nitro, WV Attn: John Johnston

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:
There will be no additional impact on State Government.

3. Objectives of These Rules:
The federal tight sands credit may be reinstated, and this proposed rule will allow state oil and gas producers to take the credit.

Rule Title: 35CSR7 - "Certification of Gas Wells"

4. Explanation of Overall Economic Impact of Proposed Rule:

- A. Economic Impact on State Government:
The proposed rule will give the Office of Oil and Gas the authority to review FERC filings for gas wells in West Virginia. The state may see an increase in drilling, which will bring more jobs and an increase in tax revenue.
- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: The proposed rule will allow natural gas producers to qualify for Section 29 IRS tax credits.
- C. Economic Impact on Citizens/Public at Large.
See A and B above.

Date: _____

July 17, 2000

Signature of Agency Head or Authorized Representative: _____

Carrie J. Chambers

TITLE 35
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS

FILED

OCT 23 2 15 PM '00

SERIES 7
CERTIFICATION OF GAS WELLS

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

§35-7-1. General.

1.1. Scope. -- This legislative rule shall govern and apply to proceedings under West Virginia Code §22-6-2(c)(11) concerning gas wells and implementation of the Natural Gas Policy Act of 1978, and pertinent federal regulations.

1.2. Authority. -- WV Code §§22-1-3; 22-1-10; 22-6-2; and 22-6-2(c)(11).

1.3 Filing Date. --

1.4. Effective Date. --

§35-7-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions contained in West Virginia Code §§22-1-4 and 22-6-1 shall apply to this rule, in addition to the definition expressly set forth in this section. Each definition adopted by this section, whether statutory or by rule, is for the purpose of implementing the Natural Gas Policy Act of 1978, and is intended to be used in any other context:

2.1. "Btu" means British Thermal Unit.

2.2. "Completion location" means any subsurface location from which natural gas is being, or has been produced in commercial quantities.

2.3. "FERC" means the Federal Energy Regulatory Commission.

2.4. "Jurisdictional agency" means the Office of Oil and Gas of the West Virginia Division of Environmental Protection.

2.5. "Marker well" means any well from which natural gas was produced in commercial quantities at any time after January

1, 1970, and before April 20, 1977, including a well, the depth of which was increased on or after February 19, 1977, to a completion location at least one thousand (1,000) feet below the depth of the deepest completion location to such well attained before February 19, 1977; provided, that the term "marker well" shall not include a well the surface drilling of which began on or after February 19, 1977.

2.6. "Marker well completion location" or completion location when used with reference to any marker well, means any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970, and before April 20, 1977.

2.7. "Mcf" used with respect to natural gas means 1,000 cubic feet of natural gas measured at a standard pressure base of 14.73 pounds per square inch (absolute), and a temperature of 60 degrees Fahrenheit.

2.8. "Mile" means a statute mile of five thousand two hundred eighty feet (5,280').

2.9. "Month" means a calendar month.

2.10. "Natural gas" means either natural gas unmixed or any mixture of natural and artificial gas.

2.11. "New well" means any well, the surface drilling of which began on or after February 19, 1977, or the depth of which was increased by means of drilling on or after February 19, 1977, to a completion location which is at least one thousand (1,000) feet below the depth of the deepest completion location of such well attained before February 19, 1977.

2.12. "NGPA" means the Natural Gas Policy Act of 1978.

2.13. "Old well" means any well other than a new well.

2.14. "Production in commercial quantities" means production of natural gas from a well or reservoir which is either sold and delivered to one other than the operator, or retained by the operator or any owner of the production at severance for beneficial economic use; provided, that natural gas used for the testing of natural gas wells or for other field uses which are production related, shall not be considered produced in commercial quantities.

2.15. "Proration unit" means an area around a well as per the following:

2.15.a. For all shallow wells with a depth less than three thousand (3,000) feet, the proration unit will have a one thousand (1,000) foot radius, and shall constitute a proration unit for only the formations for which a well has been completed for production or target formations on wells spudded but not yet completed;

2.15.b. For shallow wells with a depth of three thousand (3,000) feet or more, the proration unit will have a one thousand five hundred (1,500) foot radius and shall constitute a proration unit for only the formations for which a well has been completed for production or target formations on wells spudded but not yet completed; and

2.15.c. For all deep wells, the proration unit will be the drilling unit as defined in WV Code §22C-9-2(13).

2.16. "Recognized enhanced recover techniques" means processes or equipment, or both, which when performed or installed, increase the ultimate recovery of gas from the well, including mechanical or chemical stimulation of the reservoir formation, and devices installed in the well bore or on the surface; provided, that normal well maintenance repair or replacement of equipment or facilities do not qualify as enhanced recovery techniques.

2.17. "Reservoir" means any producible natural accumulation of natural gas, crude oil, or both confined by impermeable rock or water barriers, and characterized by single natural pressure system or confined by lithologic or structural barriers which prevent pressure communication.

2.18. "Well" means any well for the discovery of production of natural gas, crude oil, or both.

§35-7-3. Filing Requirements.

3.1. General Requirements.

3.1.a. No application under this rule will be certified until such time as a copy of Form OP-1, "Operator Registration Form and Designation Form," has been filed.

3.1.b. All forms promulgated by the Office of Oil and Gas and required by this rule, may be replaced by copies of any

applicable predecessor form promulgated by the Office of Oil and Gas, or by equivalent company or operator forms.

3.1.c. If an Operator wishes to seek a determination that a well qualifies for more than one (1) category under NGPA, a separate application must be submitted for each category for which a determination is desired.

3.1.d. Each application must be accompanied by a filing fee of one hundred dollars (\$100.00). Where an Operator is submitting several applications at one (1) time, a single check may be submitted for a sum equal to the number of applications multiplied by one hundred dollars (\$100.00).

3.1.e. Applications may be submitted electronically if approved by the Chief

3.1.f. Such other information as the Office of Oil and Gas may require in order to establish by substantial evidence that the well qualifies for NGPA category for which a determination is sought.

3.2. New Onshore Wells Under §102 of the NGPA. -- For each well for which certification is sought under §274.202 of the FERC regulations implementing the NGPA, the following shall be submitted by the operator:

3.2.a. For wells more than 2.5 miles from a marker well:

3.2.a.1. One (1) copy of FERC Form 121;

3.2.a.2. One (1) copy of Form WW-6, "Well Plat";

3.2.a.3. One (1) copy of Form WR-35, "Well Operator's Report of Drilling";

3.2.a.4. One (1) copy of Form FC-48, "State Application for Well Classification";

3.2.a.5. One (1) copy of Form FC-51, "Well Classification Form; Wells Drilled More than 2.5 miles from a Marker Well";

3.2.a.6. A plat to the scale of one inch (1") equals four thousand (4,000) feet produced on some high-quality material, and prepared by a licensed land surveyor or registered engineer, showing all wells within 2.5 miles of the well for

which certification is sought and also showing all wells which are producing, or produced after January 1, 1970, natural gas within said 2.5 mile radius, and identifying each such well by the last four (4) digits of the API permit number;

3.2.a.7. A separate sheet tabulating all wells identified on the plat required by paragraph 3.2.a.6 of this section as to linear distance, depth of the top of the producing formation, and the geological name of the formation;

3.2.a.8. Electric logs and directional drilling surveys, if performed in the normal course of drilling and completion of the well; and

3.2.a.9. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.

3.2.b. For wells more than one thousand feet (1,000') deeper than a marker well:

3.2.b.1. One (1) copy of FERC Form 121;

3.2.b.2. One (1) copy of Form WW-6, "Well Plat";

3.2.b.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.2.b.4. One (1) copy of Form FC-48, "State Application for Well Classification";

3.2.b.5. One (1) copy of Form FC-52, "Well Classification Form; Wells Drilled More than One Thousand Feet (1,000') Deeper than a Marker Well";

3.2.b.6. A plat to the scale of one inch (1") equals four thousand (4,000) feet produced on some high-quality material and prepared by a licensed land surveyor or registered engineer, showing all wells within 2.5 miles of the well for which certification is sought and also showing all wells which are producing or produced after January 1, 1970, natural gas within said 2.5 radius and identifying each such well by the last four digits of the API permit number; including specific identification of all marker wells within the 2.5 mile radius, and also indicating the deepest completion locations for each such marker well identified on the plat;

3.2.b.7. A separate sheet tabulating all wells identified on the plat required by paragraph 3.2.b.6. of this section as to linear distance, depth of the top of the producing formation, and the geological name of the formation; and

3.2.b.8. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well.

3.2.c. For new onshore reservoir wells:

3.2.c.1. One (1) copy of FERC Form 121;

3.2.c.2. One (1) copy of Form WW-6, "Well Plat";

3.2.c.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.2.c.4. One (1) copy of Form FC-48, "State Application for Well Classification";

3.2.c.5. One (1) copy of Form FC-53, "Well Classification Form; New Onshore Reservoir Wells";

3.2.c.6. Subsurface cross-section charts;

3.2.c.7. Formation structure map;

3.2.c.8. A gas analysis; and

3.2.c.9. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well.

3.3. New Onshore Production Wells Under §103 of the NGPA - For each well for which certification is sought under §274.204 of the FERC regulations implementing the NGPA, the following shall be submitted by the operator:

3.3.a. One (1) copy of FERC Form 121;

3.3.b. One (1) copy of Form WW-6, "Well Plat";

3.3.c. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.3.d. One (1) copy of Form FC-48, "State Application for Well Classification";

3.3.e. One (1) copy of Form FC-53, "Well Classification Form; New Production Onshore Wells";

3.3.f. Sub-surface cross-section charts;

3.3.g. Formation structure map;

3.3.h A gas analysis; and

3.3.i. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well.

3.4. High Cost-Natural Gas Under §107 of the NGPA - For each well for which certification is sought under §274.205 of the FERC regulations implementing the NGPA, the following shall be submitted by the operator.

3.4.a. One (1) copy of FERC Form 121;

3.4.b. One (1) copy of Form WW-6, "Well Plat";

3.4.c. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.4.d. One (1) copy of Form FC-48, "State Application for Well Classification";

3.4.e. One (1) copy of Form FC-55, "Well Classification Form; High Cost Gas";

3.4.f. Electric logs; and

3.4.g. Directional drilling surveys if made in the ordinary course of drilling and completing the well.

3.5. Stripper Wells under §108 of the NGPA -- For each well for which certification is sought under §274.206 of the FERC regulations implementing the NGPA, the following shall be submitted by the operator:

3.5.a. One (1) copy of FERC Form 121;

3.5.b. One (1) copy of Form WW-6, "Well Plat";

3.5.c. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.5.d. One (1) copy of Form WR-39, "Report of Production", for twelve (12) consecutive months ending within ninety (90) days of the date of application;

3.5.e. Production records for a period of ninety (90) consecutive days ending within ninety (90) days of the date of application;

3.5.f. If items required by subdivision 3.5.d. and 3.5.e. of this section are not available, tax records or verified copies of billing statements for twelve (12) calendar months ending within ninety (90) days of the date of filing;

3.5.g. If the well for which a determination is sought has produced nonassociated natural gas at an average rate not in excess of sixty (60) Mcf per production day, for a ninety (90) day production period ending within ninety (90) days of the date of filing, but such as average rate of production has not been experienced for a twelve (12) month period, the operator shall file as soon as practicable but no later than ten (10) months after the date of application, production records, if available, and if not, tax records or verified copies of billing statements for a twelve (12) month period, including any part of the indicated ninety (90) day production period;

3.5.h. One (1) copy of Form FC-48, "State Application for Well Classification"; and

3.5.i. One (1) copy of Form FC-56, "Well Classification Form; Stripper Wells".

3.6. Report of Increase in Production; Enhanced Recovery; Seasonally Affected Wells.

3.6.a. Whenever a well, which had previously received a certification as being qualified as a stripper well, produced nonassociated natural gas at a rate exceeding an average sixty (60) Mcf per production day for any ninety (90) day production period, the operator or purchaser shall file a notice containing the following information with the Chief:

3.6.a.1. The names and addresses of the operator and purchaser indicating whether it is the operator or the purchaser who is filing the notice;

3.6.a.2. Identification of the subject well and accurate records reference to the original determination qualifying the well as a stripper well;

3.6.a.3. The monthly production reports, tax records or billing statements upon which the notice is based for the period of production in question;

3.6.a.4. A statement of the production per production day for the period in question;

3.6.a.5. A statement that all the information contained in the notice is true to the best of his information, knowledge and belief; and

3.6.a.6. If the notice is filed by a purchaser, a statement that the notice has been served on the operator.

3.6.b. An operator desiring a determination that an increase in production has been the result of enhanced recovery techniques, shall file with the Chief within thirty (30) days of the date of the notice of an increase in production:

3.6.b.1. One (1) copy of Form FC-57WV, "Request for Determination that Increased Production is the Result of Enhanced Recovery Techniques"; and

3.6.b.2. One (1) copy of Form FC-48WC, "State Application for Well Classification".

3.6.c. An operator desiring a determination that a well previously certified to be a stripper well is seasonally affected, shall file with the Chief within thirty (30) days of the date of the notice of an increase in production:

3.6.c.1. One (1) copy of FC-58WC, "Request for Determination of Seasonally Affected Well";

3.6.c.2. Production records, tax records or billing statements for a period of twenty-four (24) months, including the ninety (90) day or twelve (12) month period which is the subject of a notice of an increase of production;

3.6.c.3. One (1) copy of Form FC-48WV, "State Application for Well Classification";

3.6.c.4. Applications may be submitted electronically if approved by the Chief.

3.7. Designation of Tight Formation Areas. -- A determination designating a portion of a formation as a tight formation must be made in the form and manner prescribed in §270.305 of the FERC regulations implementing the NGPA, per Order No. 616.

§35-7-4. Certification Procedures.

4.1 Initial Action by the Office of Oil and Gas. -- Upon receipt of an application to certify a well for the maximum lawful price under §§102, 103, 107 or 108 of the NGPA, the Office of Oil and Gas will conduct a review of the submitted data, along with other information available to it, and prepare a summary report for the Chief. A file number and a determination date will be assigned. One copy of FERC Form 121, and one copy of Form FC-48WC, will be mailed to the Operator notifying them of the file number, determination date, and the date of filing with the Office of Oil and Gas.

4.2. Periodical Circular. -- The Office of Oil and Gas will publish from time to time a circular indicating the status of various applications filed under this rule. Such circular may be published on the Division of Environmental Protection's Website.

4.2.a. The circular will identify each well by applicant and by a file number which will indicate:

4.2.a.1. The date received by the Office of Oil and Gas;

4.2.a.2. The NGPA category for which application is made; and

4.2.a.3. The API county and permit number.

4.2.b. The circular will constitute notice of the following:

4.2.b.1. That the initial application was complete or incomplete as received;

4.2.b.2. The scheduled determination date;

4.2.b.3. The determination made by the Office of Oil and Gas and the date of determination; and

4.2.b.4. The date on which the determination order was filed with FERC.

4.3. Notice of Hearing. -- Notice of all filings for applications for certification under this rule will be filed by the Office of Oil and Gas with the Secretary of State and the Capitol News Media, indicating that interested persons may intervene in the application by filing written comments with the Office of Oil and Gas within fifteen (15) days from the date that the circular is filed with the Secretary of State. If objections are made by any interested person, or by the Office of Oil and Gas, or if the Chief determines that other information may be necessary in order to make a determination, a public hearing will be held. On the hearing date, the applicant and all persons who have timely filed objections on or before the date of the hearing will be given an opportunity to present additional evidence.

4.4. Determination. -- After a hearing has been held, a determination as to whether the well qualifies for certification will be made by the Chief. If no objection is made within the time prescribed by subsection 4.3, the Chief will make a determination as to whether the well qualifies for certification. A copy of FERC Form 121 and the order will be mailed to the FERC for final review pursuant to §503 of the NGPA.

4.5. Extra Powers of Chief. -- The Chief may also certify or provide a waiver for a well located within a proration unit as defined in subsection 2.15 of this rule, or any other well sought to be certified under this rule, after notice and hearing.