

population parameters linked to assessing population level impacts from oil and gas development. We also agree that as information and technology improves, the monitoring program will continue to evolve. With this in mind, we convened a small workshop of technical experts during September 3–5, 2003, to consider research, studies, and monitoring that would improve our understanding of the effects of oil and gas activities on polar bears. The product of this effort, considered as a work in progress subject to revision and refinement, will be a proceedings of the workshop that details the various information needs, studies, monitoring, and research. We consider the results of workshop to be the first step in improving our monitoring programs. We also acknowledge that developing a comprehensive research and monitoring program capable of developing information of sufficient resolution to detect changes in population rates of recruitment and survival is a formidable task and a worthy goal.

Effective Date

In accordance with 5 U.S.C. 553(d)(3), we find that we have good cause to make this rule effective immediately upon publication. To protect the affected species and reduce the chances of lethal and nonlethal effects from Industry, we need to implement incidental take and monitoring programs on the North Slope of Alaska coincident with the season of greatest probability for polar bear encounters in the industrial area considered within this rule. The period of greatest probability for polar bear encounters is the fall and early winter period. The mitigation measures required through LOAs have proven to be effective in minimizing effects of oil and gas activities on polar bears and walrus. Furthermore, safety measures included in this process minimize potential lethal encounters between polar bears and personnel at industrial sites. Therefore, it is essential to implement these regulations as soon as possible so that polar bears and walrus may benefit from these protective measures.

Required Determinations

NEPA Considerations

We have prepared an Environmental Assessment (EA) in conjunction with this rulemaking, and have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969. For a copy of the

Environmental Assessment, contact the individual identified in the section **FOR FURTHER INFORMATION CONTACT**.

Regulatory Planning and Review

This document has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review). This rule will not have an effect of \$100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. The rule is not likely to result in an annual effect on the economy of \$100 million or more. Expenses will be related to, but not necessarily limited to, the development of applications for LOAs, monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 2002) and LOA requests probably does not exceed \$500,000 per year, short of the “major rule” threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits will accrue to Industry, royalties and taxes will accrue to the Government, and the rule will have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

Small Business Regulatory Enforcement Fairness Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition,

employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. Therefore, a Regulatory Flexibility Analysis is not required. In addition, these potential applicants have not been identified as small businesses, and, therefore, a Small Entity Compliance Guide is not required. The analysis for this rule is available from the person in Alaska identified in the section **FOR FURTHER INFORMATION CONTACT**.

Takings Implications

This rule does not have takings implications under Executive Order 12630 because it authorizes the incidental, but not intentional, take of small numbers of polar bear and walrus by oil and gas industry companies and thereby exempts these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

Federalism Effects

This rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Civil Justice Reform

The Departmental Solicitor's Office has determined that these regulations do not unduly burden the judicial system and meet the applicable standards