

## **SUPPORTING STATEMENT PS-97-91, PS-101-90, (T.D. 8448)**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

For purpose of section 43 of the Code, these regulations provide guidance regarding the determination of costs that are subject to the enhanced oil recovery credit and the circumstances under which the credit is available. Further, pursuant to section 43(e), these regulations set out the manner in which a taxpayer may elect to have section 43 not apply for any taxable year.

These final regulations set out rules regarding who may claim the enhanced oil recovery credit and the effect that claiming the credit will have on other deductions and a taxpayer's basis in certain tangible property. The regulations provide rules for determining both what is a qualified enhanced oil recovery project and what a qualified enhanced oil recovery costs.

Pursuant to section 43(c)(2)(B), these final regulations set out the time and manner by which operators of qualified enhanced oil recovery projects must certify to the Internal Revenue Service that their projects meet the requirements of section 43(c)(2)(A).

These final regulations require that a duly certified petroleum engineer certify, under penalties of perjury, that a project meets the requirements of section 1.43-2(a)(i), (2), and (3). A certification must be submitted for each project by the operator or any designated owner of an operating mineral interest to the Internal Revenue Service Center, Austin, Texas not later than the last date prescribed by law (determined without regard to extensions) for filing the operator's (or owner's) return for the taxable year for which the credit is allowable. These regulations set out the information that must be included when a project is significantly expanded.

### **2. USE OF DATA**

Enhanced oil recovery projects are typically implemented in respect of oil and gas properties that have numerous co-owners. Section 43(c)(2)(B) requires that the operator must certify to the Service that the project meets certain requirements. This information is necessary in order for the Service to verify that the other owners of working

interests (other than the operator) in the property who are eligible to claim the enhanced oil recovery credit have in fact claimed the credit with respect to qualified costs.

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

The collection of information does not involve the use of automated, electronic, or other technological collection techniques.

**4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

**5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Not applicable.

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

A notice of proposed rulemaking (PS-101-90) was published in the Federal Register on December 30, 1991 (56 FR 67256). Temporary regulations (PS-097-91) were published in the Federal Register on December 30, 1991 (56 FR 67176). The general public was provided an opportunity to review and provide comments upon any aspect of the proposed regulations and the temporary, including the reporting requirements. A public hearing was requested and held April 7, 1992, with respect to the proposed regulations. The final regulations (57 FR 54919) were published in the Federal Register on November 23, 1992.

We received no comments during the comment period in response to the **Federal Register Notice dated August 23, 2010 (75 FR 51879)**.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

The collection of information in this final regulation is in section 1.43-3. The taxpayers affected are oil and gas working interest owners who operate enhanced oil recovery projects. Section 1.43-3(a)(2) describes the information required in a certification. We estimate that there will be approximately 20 respondents per year and that it will take each respondent approximately 72 hours to collect the information required in §1.43-3(a)(2) and to prepare the certification. The estimated total annual burden under § 1.43-3(a)(2) is 1,440 hours.

Section 1.43-3(a)(3) requires the operator of a previously certified project to submit an annual statement that the project continues to be implemented in accordance with the original certification. We estimate that there will be approximately 20 respondents per year and that it will take each respondent approximately 1 hour to prepare the statement. The estimated total annual burden under § 1.43-3(a)(3) is 20 hours.

Section 1.43-3(b) requires the operator to notify the Internal Revenue Service in writing if a project is terminated. We estimate that this provision will affect 5 or fewer taxpayers per year. Consequently, it is not a collection of information subject to the Paperwork Reduction Act, and accordingly, is not included in the estimate of

burden.

Section 1.43-6 provides rules for electing to have section 43 not apply for a taxable year. We estimate that this provision will affect 5 or fewer taxpayers per year. Consequently, it is not a collection of information subject to the Paperwork Reduction Act, and accordingly is not included in the estimate of burden.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our **Federal Register Notice dated August 23, 2010 (75 FR 51879)**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval

and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.