PART 3190 — DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTION

Subpart 3190 — Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections: General

Sec.
3190.0 – 1 Purpose.
3190.0 – 3 Authority.
3190.0 – 4 Objective.
3190.0 – 5 Definitions.
3190.0 – 7 Cross references.
3190.1 Proprietary data.
3190.2 Recordkeeping, funding and audit.
3190.2 – 1 Recordkeeping.
3190.2 – 2 Funding.
3190.2 – 3 Audit.
3190.3 Sharing of civil penalties.
3190.4 Availability of information.

Subpart 3191 — Delegation of Authority

3191.1 Petition for delegation.
3191.1 – 1 Petition.
3191.1 – 2 Eligibility.
3191.1 – 3 Action upon petition.
3191.1 – 4 Public hearing on petition.
3191.2 Terms of delegation.
3191.3 Termination and reinstatement.
3191.3 – 1 Termination.
3191.3 – 2 Reinstatement.
3191.4 Standards of delegation.
3191.5 Delegation for Indian lands.
3191.5 – 1 Indian lands included in delegation.
3191.5 – 2 Indian lands withdrawn from delegation.

Subpart 3192 — Cooperative Agreements

3192.1 What is a cooperative agreement?
3192.2 Who may apply for a cooperative agreement with BLM to conduct oil and gas inspections?
3192.3 What must a Tribe or State include in its application for a cooperative agreement?
3192.4 What is the term of a cooperative agreement?

3192.5 How do I modify a cooperative agreement?
3192.6 How will BLM evaluate my request for proprietary data?
3192.7 What must I do with Federal assistance I receive?
3192.8 May I subcontract activities in the agreement?
3192.9 What terms must a cooperative agreement contain?
3192.10 What costs will BLM pay?
3192.11 How are civil penalties shared?
3192.12 What activities may Tribes or States perform under cooperative agreements?
3192.13 What responsibilities must BLM keep?
3192.14 What are the requirements for Tribal or State inspectors?
3192.15 May cooperative agreements be terminated?
3192.16 How will I know if BLM intends to terminate my agreement?
3192.17 Can BLM reinstate cooperative agreements that have been terminated?
3192.18 Can I appeal a BLM decision?

Authority: 30 U.S.C. 1735 and 1751.
Source: 52 FR 27182, July 17, 1987, unless otherwise noted.

Subpart 3190 – Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections: General

§3190.0 – 1 Purpose.

The purpose of the part is to provide procedures for approval, implementation and administration of delegations of authority, cooperative agreements and contracts for inspection, enforcement and investigative activities related to oil and gas production operations on Federal and Indian lands under the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

§3190.0 – 3 Authority.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

§3190.0 – 4 Objective.

The objective of this part is to assure that delegations of authority, cooperative agreements and contracts as provided for under the Federal Oil and Gas Royalty Management Act are carried out in accordance with the provisions of the Act and this title.

§3190.0 – 5 Definitions.

As used in this part, the term:

(a) *Inspection* means the examination of oil and gas lease sites, records or motor vehicle documentation by an authorized representative of the Secretary of the Interior to determine if there is compliance with applicable regulations, Onshore Oil and Gas orders, ***approvals***, Notices to Lessees and Operators, ***approvals***, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(b) *Investigation* means any inquiry into any action by or on behalf of a lessee or operator

of a Federal or Indian lease, or transporter of oil from such lease.

(c) *Contractor* means any individual, corporation, association, partnership, consortium or joint venture who has contracted to carry out activities under this part.

(d) *Enforcement* means action taken by an authorized representative of the Secretary in order to obtain compliance with applicable regulations, Onshore Oil and Gas Orders, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(e) *Indian lands* means any lands or interests in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539).

(f) *Proprietary data* means information obtained from a lessee that constitutes trade secrets, or commercial or financial information that is privileged or confidential, or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)).

§3190.0 – 7 Cross references.

(a) 25 CFR 211.18; 212.24; 213.34.

(b) 30 CFR part 229.

(c) 43 CFR part 3160.

§3190.1 Proprietary data.

With regard to any data or information obtained by a State, Indian tribe or individual, whether under a delegation of authority, cooperative agreement or contract, the following applies:

(a) Proprietary data shall be made available to a State or Indian tribe pursuant to a cooperative agreement under the provisions of 30 U.S.C. 1732 if such State or Indian tribe:

(1) Consents in writing to restrict the dissemination of such information to such persons directly involved in an investigation under 30 U.S.C. 1732 who need the information to conduct the investigation;

(2) Agrees in writing to accept liability for wrongful disclosure;

(3) In the case of a State, the State demonstrates that such information is essential to the conduct of an investigation or to litigation under 30 U.S.C. 1734; and

(4) In the case of an Indian tribe, the tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives sovereign immunity by express consent for wrongful disclosure

(b) (1) Any person or State that obtains proprietary data pursuant to a delegation of authority, cooperative agreement or contract under this part is subject to the same provisions of law with respect to the disclosure of such information as would apply to any officer or employee of the United States.

(2) Disclosure of proprietary data obtained pursuant to a delegation of authority, cooperative agreement, or contract under this part may not be compelled under State law.

§3190.2 Recordkeeping, funding and audit.

§3190.2 – 1 Recordkeeping.

(a) Records and accounts relating to activities under delegations of authority, cooperative agreements or contracts shall be identified in the delegation, cooperative agreement or contract.

(b) All records and other materials relating to a delegation of authority, cooperative agreement or contract shall be maintained by the State, Indian Tribe or contractor for a period of 6 years from the date they are generated or such other period as may be specified in the delegation, cooperative agreement or contract.

§3190.2 – 2 Funding.

(a) States and Tribes shall provide adequate funding for administration and execution of activities carried out under a delegation or cooperative agreement.

(b) Reimbursement for allowable costs incurred by a State, Indian tribe or contractor as a result of activities carried out under a delegation of authority, cooperative agreement or contract shall be as negotiated, with the following limitations:

(1) Up to 100 percent for a delegation of authority; or

(2) Up to 100 percent for a cooperative agreement.

(c) Funding shall be subject to the availability of funds.

(d) States, Indian tribes or contractors shall maintain financial records relating to the funds received and expended under a delegation of authority, cooperative agreement or contract as specified in the delegation of authority, cooperative agreement or contract.

(e) Reimbursement shall be at least quarterly and only shall be made upon submission of an invoice or request for reimbursement to the authorized officer.

§3190.2 – 3 Audit.

In maintaining financial records relating to the funds received and expended under a delegation of authority, cooperative agreement, or contract, States, Indian tribes and contractors shall comply with generally accepted accounting principles and audit requirements established by the Department of the Interior and Bureau of Land Management.

§3190.3 Sharing of civil penalties.

Fifty percent of any civil penalty collected by the United States as a result of activities carried out by a State under a delegation of authority or a State or Indian tribe under a cooperative agreement shall be payable to that State or Indian tribe upon receipt by the United States. Such amount shall be deducted from compensation due to the State or Indian tribe by the United States under the delegation of authority or cooperative agreement.

§3190.4 Availability of information.

Information in the possession of the Bureau of Land Management that is necessary to carry out activities authorized by delegations of authority, cooperative agreements, or contracts entered into under this part will be provided by the BLM to the States and Indian tribes party to such agreements. Release of proprietary data shall be subject to the provisions of §3190.1 of this part.

[56 FR 2998, Jan. 25, 1991]

Subpart 3191 – Delegation of Authority

§3191.1 Petition for delegation.

§3191.1 – 1 Petition.

The Governor or other authorized official of any eligible State may request in writing that the Director delegate all or part of his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on Federal lands within the State and on Indian lands within the State where the affected Indian tribe or Indian allottee has given written permission for such inspection, enforcement and investigation. Requests by a State for delegation of other activities may be granted by the Director with the approval of the Secretary.

§3191.1 – 2 Eligibility.

Any State with producing oil or gas leases on Federal or Indian lands may request a delegation of authority.

§3191.1 – 3 Action upon petition.

Upon request for a delegation of authority, the Director shall determine if:

(a) The State has proposed an acceptable plan for carrying out the delegated activities and will provide adequate resources to achieve the purposes of 30 U.S.C. 1735. This plan shall, at a minimum:

(1) Identify specific authorities and responsibilities for which the State is requesting a delegation of authority and whether it is applicable to Federal lands only or includes Indian lands;
(2) Provide evidence of written permission of the affected Indian tribe(s) or allottee(s) for such lands;
(3) Include specifics for carrying out the delegated activities;
(4) Indicate the inspector resources for carrying out the delegated activities and documentation of inspector qualifications;
(5) Describe the proposed record keeping for funding purposes;
(6) Detail the frequency and method of payment; and
(7) Include copies of any non-Federal forms that are to be used.

(b) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Department of the Interior in accordance with the provisions of 30 U.S.C. 1735.

(c) The delegation will be carried out in coordination with activities retained by the Bureau so that such delegation will not create an unreasonable burden on any lessee.

§3191.1 – 4 Public hearing on petition.

Prior to the granting of any delegation of authority, the notice of proposed delegation shall be published in the Federal Register. The Federal Register notice shall provide an opportunity for a public hearing in the affected State.

§3191.2 Terms of delegation.

(a) Delegations shall be continuing, contingent upon available funding, providing that there is an annual finding by the Director that the provisions of the delegation and the mineral leasing laws are still being carried out and that the requirements of §3191.1 - 3 (a), (b) and (c) of this title are still in effect.

(b) Authority delegated to a State under this subpart shall not be redelegated.

(c) The State regulatory authority shall maintain sufficient qualified, personnel to comply with the terms and purpose of the delegation.

(d) Inspection identification cards shall be issued by the authorized officer to all certified State inspectors for the purpose of identifying the bearer as an authorized representative of the Secretary. Identification cards remain the property of the United States.

(e) The delegation shall provide for coordination with designated offices of the Bureau of Land Management, the Minerals Management Service, and, where appropriate, the Bureau of Indian Affairs, Forest Service, and other surface management agencies.

(f) The delegation shall provide for annual program review.

(g) The delegation shall provide for annual budget and program reporting in conjunction with the Federal Budget process.

(h) The Director reserves the right to make inspections on Federal and Indian leases inspected by a State under this subpart for the purpose of evaluating the manner in which the delegation is being carried out.

(i) The Director reserves the right to act independently to carry out his/her responsibilities under the law.

§3191.3 Termination and reinstatement.

§3191.3 – 1 Termination.

(a) The delegation may be terminated by mutual written consent at any time.

(b) The Director may revoke a delegation if it is determined that the State has failed to meet the minimum standards for complying with the delegated authority.

(c) Prior to any action to revoke a delegation, the Director shall notify the State in writing of the deficiencies in the program leading to such revocation.

(d) Upon notification of intent to revoke a delegation, the State shall have 30 days to

respond with a plan to correct the cited deficiencies. If the Director determines that the plan of correction is acceptable, the Director shall then approve the plan and specify the timeframe within which the cited deficiencies shall be corrected.

(e) In the event the Director makes a determination to revoke a delegation of authority, the State shall be provided an opportunity for a hearing prior to final action.

§3191.3 – 2 Reinstatement.

Terminated delegations of authority may be reinstated as set out below:

(a) For a delegation terminated by mutual consent under §3191.3 - 1(a) of this title, the State shall apply for reinstatement by filing a petition with the Director, who shall determine whether such reinstatement should be granted.

(b) For a delegation of authority revoked by the Director, the State shall file a petition requesting reinstatement. In applying for reinstatement, the State shall provide written evidence that it has remedied all defects for which the delegation was revoked and that it is fully capable of resuming the activities carried out under the delegation. Upon receipt of the petition, the following actions shall be taken:

(1) The authorized officer, after review of the petition, may recommend approval of the reinstatement but shall provide proof that the deficiencies have been corrected and that the State is fully capable of carrying out the delegation.

(2) The Director shall review the petition and the recommendation of the authorized officer and may approve the reinstatement of a delegation upon a determination that the findings of the authorized officer are acceptable.

§3191.4 Standards of delegation.

(a) The Director shall establish minimum standards to be used by a State in carrying out activities established in the delegation.

(b) The delegation shall identify functions, if any, that are to be carried out jointly.

(c) A delegation shall be made in accordance with the requirements of this section.

(d) Copies of delegations shall be on file in the Washington Office of the Bureau and shall be available for public inspection.

§3191.5 Delegation for Indian lands.

§3191.5 – 1 Indian lands included in delegation.

(a) No activity under a delegation made under this subpart may be carried out on Indian lands without the written permission of the affected Indian tribe or allottee.

(b) A State requesting a delegation involving Indian lands shall provide, as evidence of permission, a written agreement signed by an appropriate official(s) of the Indian tribe for tribal lands, or by the individual allottee(s) or their representative(s) for allotted lands. The agreement shall at a minimum specify the type and extent of activities to be carried out by the State under

the agreement, and provisions for State access to carry out the specified activities.

(c) Delegations covering Indian lands shall be separate from delegations covering Federal lands.

§3191.5 – 2 Indian lands withdrawn from delegation.

(a) When an Indian tribe or allottee withdraws permission for a State to conduct inspection and related activities on its lands, the Indian tribe or allottee shall provide written notice of its withdrawal of permission to the State.

(b) Immediately upon receipt of a notice of withdrawal of permission, the State shall provide written notification of said notice to the authorized officer, who immediately shall take all necessary action to provide for inspection and enforcement activities on the affected Indian lands.

(c) No later than 120 days after receipt of a notice of withdrawal of permission draw from an Indian tribe or allottee, the delegation on the lands covered by the notice shall terminate.

(d) Upon termination of a delegation covering Indian lands, appropriate changes in funding shall be made by the authorized officer.

Subpart 3192 – Cooperative Agreements

Source: 62 FR 2998, Sept. 22, 1997, unless otherwise noted.

§3192.1 What is a cooperative agreement?

(a) A cooperative agreement is a contract between the Bureau of Land Management and a Tribe or State to conduct inspection, investigation, or enforcement activities on producing Indian Tribal or allotted oil and gas leases.

(b) BLM will enter into a cooperative agreement with a State to inspect oil and gas leases on Indian lands only with the permission of the Tribe with jurisdiction over the lands.

§3192.2 Who may apply for a cooperative agreement with BLM to conduct oil and gas inspections?

(a) The Tribal chairperson, or other authorized official, of a Tribe with producing oil or gas leases, or agreements under the Indian mineral Development Act of 1982 (25 U.S.C. 2101 et seq.), may apply for a cooperative agreement with BLM for Indian lands under the Tribe's jurisdiction.

(b) Tribes may join together to apply for a multi-tribe cooperative agreement.

(c) The Governor of a State having a Tribal resolution from the Tribe with jurisdiction over the Indian lands, permitting the Governor to enter into a cooperative agreement, may apply for a cooperative agreement with BLM.

§3192.3 What must a Tribe or State include in its application for a cooperative agreement?

(a) To apply for a cooperative agreement you must complete—

(1) Standard Form 424, Application for Federal Assistance;

(2) Standard Form 424A, Budget Information—Non-Construction Programs; and

(3) Standard Form 424B, Assurances—Non-Construction Programs.

(b) You must describe the type and extent of oil and gas inspection, enforcement, and investigative activities proposed under the agreement and the period of time the proposed agreement will be in effect (See section 11 of Standard Form 424).

(c) You may include allotted lands under an agreemen with the written consent of all the allottees or their heirs. BLM will ask the Bureau of Indian Affairs (BIA) to verify that the Tribe or State has obtained all the necessary signatures to commit 100 percent of each individual tract of allotted lands to the agreement.

§3192.4 What is the term of a cooperative agreement?

Cooperative agreements can be in effect for a period from 1 to 5 years from the effective date of the agreement, as set out in the agreement.

§3192.5 How do I modify a cooperative agreement?

You may modify a cooperative agreement by having both parties to the agreement consent to the change in writing. If the agreement is with a State, and the modification would effect the duration or scope of the agreement, then you must obtain the written consent of the affected Tribe and/or allottee or heir.

§3192.6 How will BLM evaluate my request for proprietary data?

BLM will evaluate Tribal or State requests for proprietary data on a case-by-case basis according to the requirements of Sec. 3190.1 of this part.

§3192.7 What must I do with Federal assistance I receive?

You must use Federal assistance that you receive only for costs incurred which are directly related to the activities carried out under the cooperative agreement.

§3192.8 May I subcontract activities in the agreement?

You must obtain BLM's written approval before you subcontract any activities in the agreement with the exception of financial audits of program funds, that are required by the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.).

§3192.9 What terms must a cooperative agreement contain?

The cooperative agreement must –

(a) State its purpose, objective, and authority;
(b) Define terms used in the agreement;
(c) Describe the Indian lands covered;
(d) Describe the roles and responsibilities of BLM and the Tribe or State;
(e) Describe the activities the Tribe or State will carry out;
(f) Define the minimum performance standards to evaluate Tribal or State performance;
(g) Include provisions to—
    (1) Protect proprietary data, as provided in §3190.1 of this part;
    (2) Prevent conflict of interest, as provided in §3192.14(d);
    (3) Share civil penalties, as provided in §3192.11; and
    (4) Terminate the agreement;
(h) List BLM and Tribal or State contacts;
(i) Avoid of duplication of effort between BLM and the Tribe or State when conducting inspections;
(j) List schedules for—
    (1) Inspection activities;
    (2) Training of Tribal or State inspectors;
    (3) Periodic reviews and meetings;
(k) Specify the limit on the dollar amount of Federal funding;
(l) Describe procedures for Tribes or States to request payment reimbursement;
(m) Describe allowable costs subject to reimbursement; and
(n) Describe plans for BLM oversight of the cooperative agreement.

§3192.10 What costs will BLM pay?

(a) BLM will pay expenses allowed under part 12, subpart A, Administrative and Audit Requirements and Cost Principles for Assistance Programs, of this title.

(b) BLM will fund the agreements up to 100 percent of allowable costs.

(c) Funding is subject to the availability of BLM funds.

(d) Funding for cooperative agreements is subject to the shared civil penalties requirement of Sec. 3192.11.

§3192.11 How are civil penalties shared?

(a) Civil penalties that the Federal government collects resulting from an activity carried out by a Tribe or State under a cooperative agreement are shared equally between the inspecting Tribe or State and BLM.

(b) BLM must deduct the amount of the civil penalty paid to the Tribe or State from the funding paid to the Tribe or State for the cooperative agreement.

§3192.12 What activities may Tribes or States perform under cooperative agreements?

Activities carried out under the cooperative agreement must be in accordance with the

policies of the appropriate BLM State or field office and as specified in the agreement, and may include –

(a) Inspecting tribal oil and gas leases for compliance with BLM regulations;

(b) Issuing initial Notices of Incidents of Non-Compliance, Form 3160-9, and Notices to Shut Down Operation, Form 3160-12;

(c) Conducting investigations; or

(d) Conducting oil transporter inspections.

§3192.13 What activities must BLM keep?

(a) Under cooperative agreements, BLM continues to –

(1) Issue Notices of Incidents of Noncompliance that impose monetary assessments and penalties;

(2) Collect assessments and penalties;

(3) Calculate and distribute shared civil penalties;

(4) Train and certify Tribal or State inspectors;

(5) Issue and control inspector identification cards; and

(6) Identify leases to be inspected, taking into account the priorities of the Tribe. Priorities for allotted lands will be established through consultation with the BIA office with jurisdiction over the lands in the agreement.

(b) If BLM enters into a cooperative agreement, that agreement does not affect the right of BLM to enter lease sites to conduct inspections, enforcement, investigations or other activities necessary to supervise lease operations.

§3192.14 What are the requirements for Tribal or State inspectors?

(a) Tribal or State inspectors must be certified by BLM before they conduct independent inspections on Indian oil and gas leases.

(b) The standards for certifying Tribal or State inspectors must be the same as the standards BLM uses for certifying BLM inspectors.

(c) Tribal and State inspectors must satisfactorily complete on-the-job and classroom training in order to qualify for certification.

(d) Tribal or State inspectors must not –

(1) Inspect the operations of companies in which they, a member of their immediate family, or their immediate supervisor, have a direct financial interest; or

(2) Use for personal gain, or gain by another person, information he or she acquires as a result of his or her participating in the cooperative agreement.

§3192.15 May cooperative agreements be terminated?

(a) Cooperative agreements may be terminated at any time if all parties agree to the termination in writing.

(b) BLM may terminate an agreement without Tribal or State agreement if the –

(1) Tribe or State fails to carry out the terms of the agreement; or
(2) Agreement is no longer needed.

(c) A Tribe may unilaterally terminate an agreement after notifying BLM. For a unilateral termination, the agreement terminates 60 days after the Tribe notifies the BLM.

§3192.16 How will I know if BLM intends to terminate my agreement?

(a) If BLM intends to terminate your agreement because you did not carry out the terms of the agreement, BLM must send a notice to you that lists the reason(s) BLM plans to terminate the agreement.

(b) Within 30 days after receiving the notice, you must send BLM a plan to correct the problem(s) BLM listed in the notice. BLM has 30 days to approve or disapprove the plan, in writing.

(c) If BLM approves the plan, you have 30 days after you receive notice of the approval to correct the problem(s).

(d) If you have not corrected the problem within 30 days, BLM will send you a second written termination notice that will give you another opportunity to correct the problem.

(e) If the problem is not corrected within 60 days after you receive the second notice , BLM will terminate the agreement.

§3192.17 Can BLM reinstate cooperative agreements that have been terminated?

(a) If your cooperative agreement was terminated by consent you may request that BLM reinstate the agreement at any time.

(b) If BLM terminated your agreement because you did not carry out the terms of the agreement, you must prove that you have corrected the problem(s) and are able to carry out the terms of the agreement.

(c) For any reinstatement request BLM will decide whether or not your cooperative agreement may be reinstated and, if so, whether you must make any changes to the agreement before it can be reinstated.

§3192.18 Can I appeal a BLM decision?

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

Note: Those parts that are in **BOLD**, <u>underlined</u>, and *italicized*, should be reviewed for modification or correction the next time changes are made to this part.

p 2- In §3190.0-5(a), delete one of the "*<u>approvals</u>*".