UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
CONSERVATION DIVISION

Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases (NTL-4A)

Royalty or Compensation for Oil and Gas Lost

This Notice is issued pursuant to the authority prescribed in the Oil and Gas Operating Regulations, Title 30 CFR 221, and in accordance with the terms of the Federal and Indian oil and gas leases under the jurisdiction of the Geological Survey. This Notice supersedes certain provisions of NTL-4, issued effective December 1, 1974; Supplement No. 1 to NTL-4, issued effective December 1, 1978, to 10 lessees and operators on a nationwide basis; and Supplement No. 1 to NTL-4, issued effective December 1, 1978, to all lessees and operators in Wyoming. Lessees and operators who submitted payments for royalty on oil and gas lost under those provisions of NTL-4, which are hereby revoked, may file with the Area Oil and Gas Supervisor (Supervisor) an application for a refund of those payments in accordance with the addendum attached to this Notice.

I. GENERAL

Oil production subject to royalty shall include that which (1) is produced and sold on a lease basis or for the benefit of a lease under the terms of an approved communitization or unitization agreement and (2) the Supervisor determines to have been avoidably lost on a lease, communitized tract, or unitized area. No royalty obligation shall accrue as to that produced oil which (1) is used on the same lease, same communitized tract, or same unitized participating area for beneficial purposes or (2) the Supervisor determines to have been unavoidably lost.

Gas production (both gas well gas and oil well gas) subject to royalty shall include that which is produced and sold on a lease basis or for the benefit of a lease under the terms of an approved communitization or unitization agreement. No royalty obligation shall accrue on any produced gas which (1) is used on the same lease, same communitized tract, or same unitized participating area for beneficial purposes, (2) is vented or flared with the Supervisor's prior authorization or approval during drilling, completing, or producing operations, (3) is vented or flared pursuant to the rules, regulations, or orders of the appropriate State regulatory agency when said rules, regulations, or orders have been ratified or accepted by by Supervisor, or (4) the Supervisor determines to have been otherwise unavoidably lost.

Where produced gas (both gas well gas and oil well gas) is (1) vented or flared during drilling, completing, or producing operations without the prior authorization, approval, ratification, or acceptance of the Supervisor or (2) otherwise avoidably lost, as determined by the Supervisor, the compensation due the United States or the Indian lessor will be computed on the basis of the full value of the gas so wasted, or the allocated portion thereof, attributable to the lease.

II. DEFINITIONS

As used in this Notice, certain terms are defined as follows:

A. "Avoidably lost" production shall mean the venting or flaring of produced gas without the prior authorization, approval, ratification, or acceptance of the Supervisor and the loss of produced oil or gas when the Supervisor determines that such loss occurred as a result of (1) negligence on the part of the lessee or operator, or (2) the failure of the lessee or operator to take all reasonable measures to prevent and/or to control the loss, or (3) the failure of the lessee or operator to comply fully with the applicable lease terms and regulations, appropriate provisions of the approved operating plan, or the prior written orders of the Supervisor, or (4) any combination of the foregoing.

B. "Beneficial purposes" shall mean that oil or gas which is produced from a lease, communitized tract, or unitized participating area and which is used on or for the benefit of that same lease, same communitized tract, or same unitized participating area for operating or producing purposes such as (1) fuel in lifting oil or gas, (2) fuel in the heating of oil or gas for the purpose of placing it in a merchantable condition, (3) fuel in compressing gas for the purpose of placing it in a marketable condition, or (4) fuel for firing steam generators for the enhanced recovery of oil. Gas used for beneficial purpose shall also include that which is produced from a lease, communitized tract, or unitized participating area and which is consumed on or for the benefit of that same lease, same communitized tract, or same unitized participating area (1) as fuel for drilling rig engines, (2) as the source of actuating automatic valves at production facilities, or (3) with the prior approval of the Supervisor, as the circulation medium during drilling operations. Where the produced gas is processed through a gasoline plant and royalty settlement is based on the residue gas and other products at the tailgate of the plant, the gas consumed as fuel in the plant operations will be considered as being utilized for beneficial purposes. In addition, gas which is produced from a lease, communitized tract, or unitized participating area and which, in accordance with a plan approved

by the Supervisor, is reinjected into wells or formations subject to that same lease, same communitized tract, or same unitized participating area for the purpose of increasing ultimate recovery shall be considered as being used for beneficial purposes; provided, however, that royalty will be charged on the gas used for this purpose at the time it is finally produced and sold.

C. "Unavoidably lost" production shall mean (1) those gas vapors which are released from storage tanks or other low-pressure production vessels unless the Supervisor determines that the recovery of such vapors would be warranted, (2) that oil or gas which is lost because of line failures, equipment malfunctions, blowouts, fires, or otherwise except where the Supervisor determines that said loss resulted from the negligence or the failure of the lessee or operator to take all reasonable measures to prevent and/or control the loss, and (3) the venting or flaring of gas in accordance with Section III hereof.

III. AUTHORIZED VENTING AND FLARING OF GAS

Lessees or operators are hereby authorized to vent or flare gas on a short-term basis without incurring a royalty obligation in the following circumstances:

A. Emergencies. During temporary emergency situations, such as compressor or other equipment failures, relief of abnormal system pressures, or other conditions which result in the unavoidable short-term venting or flaring of gas. However, this authorization to vent or flare gas in such circumstances without incurring a royalty obligation is limited to 24 hours per incident and to 144 hours cumulative for the lease during any calendar month, except with the prior authorization, approval, ratification, or acceptance of the Supervisor.

B. Well Purging and Evaluation Tests. During the unloading or cleaning up of a well during drillstem, producing, routine purging, or evaluation tests, not exceeding a period of 24 hours.

C. Initial Production Tests. During initial well evaluation tests, not exceeding a period of 30 days or the production of 50 MMcf of gas, whichever occurs first, unless a longer test period has been authorized by the appropriate State regulatory agency and ratified or accepted by the Supervisor.

D. Routine or Special Well Tests. During routine or special well tests, other than those cited in III.B and C above, only after approval by the Supervisor.

IV. OTHER VENTING OR FLARING

A. Gas Well Gas. Except as provided in II.C and III above, gas well gas may not be flared or vented. For the purposes of this Notice, a gas well will be construed as a well from which the energy equivalent of the gas produced, including its entrained liquid hydrocarbons, exceeds the energy equivalent of the oil produced.

B. Oil Well Gas. Except as provided in II.C and III above, oil well gas may not be vented or flared unless approved in writing by the Supervisor. The Supervisor may approve an application for the venting or flaring of oil well gas if justified either by the submittal of (1) an evaluation report supported by engineering, geologic, and economic data which demonstrates to the satisfaction of the Supervisor that the expenditures necessary to market or beneficially use such gas are not economically justified and that conservation of the gas, if required, would lead to the premature abandonment of recoverable oil reserves and ultimately to a greater loss of equivalent energy than would be recovered if the venting or flaring were permitted to continue or (2) an action plan that will eliminate venting or flaring of the gas within 1 year from the date of application.

The venting or flaring of gas from oil wells completed prior to the effective date of this Notice is authorized for an interim period. However, an application for approval to continue such practices must be submitted within 90 days from the effective date hereof, unless such venting or flaring of gas was authorized, approved, ratified, or accepted previously by the Supervisor. For oil wells completed on or after the effective date of this Notice, an application must be filed with the Supervisor, and approval received, for any venting or flaring of gas beyond the initial 30-day or other authorized test period.

C. Content of Applications. Applications under section B above shall include all appropriate engineering, geologic, and economic data in support of the applicant's determination that conservation of the gas is not viable from an economic standpoint and, if approval is not granted to continue the venting or flaring of the gas, that it will result in the premature abandonment of oil production and/or the curtailment of lease development. The information provided shall include the applicant's estimates of the volumes of oil and gas that would be produced to the

economic limit if the application to vent or flare were approved and the volumes of the oil and gas that would be produced if the applicant was required to market or beneficially use the gas. When evaluating the feasibility of requiring conservation of the gas, the total leasehold production, including both oil and gas, as well as the economics of a fieldwide plan shall be considered by the Supervisor in determining whether the lease can be operated successfully if it is required that the gas be conserved.

V. REPORTING AND MEASUREMENT RESPONSIBILITIES

The volume of oil or gas produced, whether sold, avoidably or unavoidably lost, vented or flared, or used for beneficial purposes (including gas that is reinjected) must be reported on Form 9-329, Monthly Report of Operation, in accordance with the requirement of this Notice and the applicable provisions of NTL-1 and NTL-1A. The volume and value of all oil and gas which is sold, vented or flared without the authorization, approval, ratification, or acceptance of the Supervisor, or which is otherwise determined by the Supervisor to be avoidably lost must be reported on Form 9-361, Monthly Report of Sales and Royalties. Payments submitted in this respect must be accompanied by a Form 9-614-A, Rental and Royalty Remittance Advice.

In determining the volumes of oil and gas to be reported in accordance with the first and second paragraphs of this Section V, lessees and operators shall adhere to the following:

1. When the amount of oil or gas involved has been measured in accordance with Title 30 CFR 221.43 or 221.44, that measurement shall be the basis for the volume reported.

2. When the amount of oil and gas avoidably or unavoidably lost, vented or flared, or used for beneficial purposes occurs without measurement, the volume of oil or gas shall be determined utilizing the following criteria, as applicable:

   a. Last measured throughput of the production facility.

   b. Duration of the period of time in which no measurement was made.

   c. Daily lease production rates.

   d. Historic production data.

   e. Well production rates and gas-oil ratio tests.

   f. Productive capability of other wells in the area completed in the same formation.

g. Subsequent measurement or testing, as required by the Supervisor.

h. Such other methods as may be approved by the Supervisor.

The Supervisor may require the installation of additional measurement equipment whenever it is determined that the present methods are inadequate to meet the purposes of this Notice.

VI. VALUE DETERMINATIONS FOR ROYALTY OR COMPENSATION PURPOSES

In computing the royalty or compensation due on oil or gas under the provisions of this Notice, the value shall be computed in the same manner as the Supervisor would have calculated the value of the oil or gas had it been sold from the same lease, same communitized tract, or same unitized participating area.

VII. COMPLIANCE

The failure to comply with the requirements of this Notice will result in compliance being secured by such actions as are provided by law and regulation.

JAN 1 1980
Date

F. L. Stelzer
Oil and Gas Supervisor
Mid-Continent Area

Approved:

Hillary A. Oden
Acting Chief, Conservation Division

ADDENDUM TO NTL-4A

Refund Applications

Certain provisions of NTL-4 have been revoked retroactive to December 1, 1974, the effective date of said Notice. Accordingly, lessees and operators who submitted royalty payments under the provisions of NTL-4 may apply for a refund of those payments made for (1) oil that was used for beneficial purposes on the lease, communitized tract, or unitized participating area from which it was produced and/or (2) gas that was vented or flared with the prior approval of the Supervisor or unavoidably lost. No refunds will be processed in the absence of such an application, and no refunds will be made of those payments submitted on the basis of a determination of waste by the Supervisor. In addition, liquidated damages assessed for the late filing of reports or the failure to report pursuant to the provisions of NTL-4 will not be refunded.

The application shall be in the form of a letter signed by an authorized officer or agent of the lessee or operator and for each individual lease shall include:

1. The lease prefix code and lease number.

2. The month and year.

3. The product code (01, 02, 03, 04, 41, or 43) used in the reports and payments previously submitted to the Supervisor.

4. The volume of lost oil and/or gas previously reported and the amount of the refund requested.

5. The total amount of the refund requested for each lease as a subtotal.

6. The total amount of the refund requested for all leases as a grand total.

Additional instructions in regard to the filing and contents of said applications may be obtained by contacting the Supervisor having jurisdiction over the lease or leases involved.

Refund applications will be processed as promptly as possible. The Supervisor, as to Federal leases, may process a direct refund or authorize the applicant to withhold the refund amount from future royalty accruals. However, refunds authorized by the Supervisor with respect to Indian leases will be recoverable only as a credit against future rental or royalty accruals in accordance with the provisions of Section IX (Overpayments) of NTL-1A.

Department of the Interior
GEOLOGICAL SURVEY
CONSERVATION DIVISION MANUAL

Transmittal Sheet | Onshore Oil and Gas Program Series

Release No. 68 | June 23, 1980

This release, CDM 644.5, provides guidelines and procedures for implementing the requirements of NTL-4A; it defines the circumstances under which the flaring or venting of gas from, or for the benefit of, onshore Federal and Indian oil and gas leases will be authorized.

George F. Brown
Chief, Conservation Division

FILING INSTRUCTIONS:

Remove:	Insert:
None	CDM 644.5 (pages 1 -19)

Replaces:

None

.1 Purpose and Objective.

This chapter provides guidelines for ensuring that all operations conducted on, or for the benefit of, Federal and Indian onshore oil and gas leases result in: (1) beneficial use of leasehold production, and (2) maximum ultimate recovery of oil and gas, with minimum waste or damage to hydrocarbons or other resources. This chapter also contains specific guidelines and procedures for approving the flaring or venting of gas.

A Notice to Lessees and Operators (NTL-4A) summarizing the requirements in this chapter is shown in Exhibit 1.

.2 Authority.

A. Mineral Leasing Act of 1920, as Amended (30 U.S.C. 181 et seq.)

(1) Section 16. ". . . All leases of lands containing oil or gas. . . shall be subject to the condition that the lessee will . . .use all reasonable precautions to prevent waste of oil or gas. . . ."

(2) Section 30. ". . . Each lease shall contain provisions for. . .insuring the exercise of reasonable diligence, skill, and care in the operation of said property. . .for the prevention of undue waste. . . ."

B. Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351 et seq.)

(1) Section 10. "The Secretary. . .is authorized to prescribe such rules and regulations as are necessary. . .to carry out the purpose of this Act, which rules and regulations shall be the same as those prescribed under the mineral leasing laws. . . ."

C. 30 CFR 221 (7 F.R. 4132, June 2, 1942)

(1) 221.2(n) Waste of oil or gas. "Waste of oil or gas, in addition to its ordinary meaning, shall mean the physical waste of oil or gas, and waste, or dissipation of reservoir energy existent in any deposit containing oil or gas and necessary or useful in obtaining the maximum recovery from such deposit.

"(1) Physical waste of oil or gas shall be deemed to include the loss or destruction of oil or gas after recovery thereof such as to prevent proper utilization and beneficial use

thereof, and the loss of oil or gas prior to recovery thereof by isolation or entrapment, by migration, by premature release of natural gas from solution in oil, or in any other manner such as to render impracticable the recovery of such oil or gas.

"(2) Waste of reservoir energy shall be deemed to include the failure reasonably to maintain such energy by artificial means and also the dissipation of gas energy, hydrostatic energy, or other natural reservoir energy, at any time at a rate or in a manner which would constitute improvident use of the energy available or result in loss thereof without reasonably adequate recovery of oil."

(2) 221.35 Waste prevention; beneficial use. "The lessee is obligated to prevent the waste of oil or gas and to avoid physical waste of gas the lessee shall consume it beneficially or market it or return it to the productive formation. If waste of gas occurs the lessee shall pay the lessor the full value of all gas wasted by blowing, release, escape, or otherwise at a price not less than 5 cents for each 1,000 cubic feet, unless, on application by the lessee, such waste of gas under the particular circumstances involved shall be determined by the Secretary to be sanctioned by the laws of the United States and of the state in which it occurs. The production of oil and gas shall be restricted to such amount as can be put to beneficial use with adequate realization of values, and in order to avoid excessive production of either oil or gas, when required by the Secretary, shall be limited by the market demand for gas or by the market demand for oil."

D. Standard Public Domain and Acquired Oil and Gas Lease Forms contain language similar to the following:

"To exercise reasonable diligence in drilling and producing the wells herein. . .to carry on all operations in accordance with approved methods and practice as provided in the Oil and Gas Operating Regulations, having due regard for the prevention of waste of oil or gas or damage to deposits or formations containing oil, gas, or water,. . .or other mineral deposits, for conservation of gas energy, for the preservation and conservation of the property for future productive operations. . . ."

E. Standard Tribal and Allotted Indian Oil and Gas Lease Forms and the regulations in Title 25 CFR generally provide that the lessee shall "exercise reasonable diligence in drilling and operating

wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land...."

F. 25 CFR 171.19 Diligence and prevention of waste. (22 F.R. 10588, December 24, 1957)

"The lessee shall exercise diligence in drilling and operating wells for oil and gas on the leased lands while such products can be secured in paying quantities; carry on all operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land...."

G. 25 CFR 172.24 Operation and development regulations. (22 F.R. 10592, December 24, 1957)

"Lessees will be required to carry out and observe the operating regulations now or hereafter in force governing oil and gas operations on restricted Indian lands...."

.3 Guidelines and Policy.

A. General.

In accordance with the regulations and the terms of the various oil and gas leases issued pursuant to the Mineral Leasing Act of 1920 (30 U.S.C. 181-287), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), the implied authority of the Executive Branch as defined in the Attorney General's Opinion of April 2, 1941, the Allotted Land Leasing Act of March 3, 1909 (25 U.S.C. 396), and the Unallotted Indian Leasing Act of May 11, 1938 (25 U.S.C. 396a), the lessee of a Federal or Indian oil and gas lease is obligated to avoid physical waste of gas, and the Area Oil and Gas Supervisor (Supervisor) is responsible for assuring that such waste is avoided.

All gas produced from, or for the benefit of, Federal and Indian oil and gas leases may be flared or vented only in accordance with the requirements of this chapter and NTL-4A. Any other flaring or venting is considered waste. Accordingly, the term waste, as used in this chapter, implies a preventable loss, and the criteria to determine whether an occurrence constitutes waste are whether it is unnecessary, avoidable, excessive, or unreasonable. Mere physical loss is not necessarily waste.

Oil production subject to royalty or other compensation includes that which (1) is produced and sold on a lease basis or for the benefit of a lease under the terms of an approved communitization or unitization agreement and (2) the Supervisor determines to have been avoidably lost on a lease, communitized tract, or unitized area. No royalty obligation accrues on oil which (1) is used on the same lease, same communitized tract, or same unitized participating area for beneficial purposes or (2) the Supervisor determines to have been unavoidably lost.

Gas production (both gas-well gas and oil-well gas) subject to royalty or other compensation includes that which is produced and sold on a lease basis or for the benefit of a lease under the terms of an approved communitization or unitization agreement. No royalty obligation accrues on any produced gas which (1) is used on the same lease, same communitized tract, or same unitized participating area for beneficial purposes, (2) is vented or flared with the Supervisor's prior authorization or approval during drilling, completing, or producing operations, (3) is vented or flared pursuant to the rules, regulations, or orders of the appropriate State regulatory agency when said rules, regulations, or orders have been ratified or accepted by Supervisor, or (4) the Supervisor determines to have been otherwise unavoidably lost.

Where produced gas (both gas-well gas and oil-well gas) is (1) vented or flared during drilling, completing, or producing operations without the prior authorization, approval, ratification, or acceptance of the Supervisor or (2) otherwise avoidably lost, as determined by the Supervisor, the compensation due the United States or the Indian lessor will be computed on the basis of the full value of the gas so wasted, or the allocated portion thereof, attributable to the lease.

B. Definitions.

(1) "Avoidably lost" production means the venting or flaring of produced gas without the prior authorization, approval, ratification, or acceptance of the Supervisor and the loss of produced oil or gas when the Supervisor determines that such loss occurred as a result of (1) negligence on the part of the lessee or operator, or (2) the failure of the lessee or operator to take all reasonable measures to prevent and/or to control the loss, or (3) the failure of the lessee or operator to comply fully with the applicable lease terms and regulations, appropriate provisions of the approved operating plan, or the prior written orders of the Supervisor, or (4) any combination of the foregoing.

(2) "Beneficial purposes" means oil or gas which is produced from a lease, communitized tract, or unitized participating area and which is used on or for the benefit of that same lease, same communitized tract, or same unitized participating area for operating or producing purposes such as (1) fuel in lifting oil or gas, (2) fuel in the heating of oil or gas for the purpose of placing it in a merchantable condition, (3) fuel in compressing gas for the purpose of placing it in a marketable condition, or (4) fuel for firing steam generators for the enhanced recovery of oil.

Gas used for beneficial purposes shall also include that which is produced from a lease, communitized tract, or unitized participating area and which is consumed on or for the benefit of that same lease, same communitized tract, or same unitized participating area (1) as fuel for drilling rig engines, (2) as the source of actuating automatic valves at production facilities, or (3) (with the prior approval of the Supervisor) as the circulation medium during drilling operations.

Where the produced gas is processed through a gasoline plant and royalty settlement is based on the residue gas and other products at the tailgate of the plant, the gas consumed as fuel in the plant operations will be considered as being utilized for beneficial purposes. In addition, gas which is produced from a lease, communitized tract, or unitized participating area and which, in accordance with a plan approved by the Supervisor, is reinjected into wells or formations subject to that same lease, same communitized tract, or same unitized participating area for the purpose of increasing ultimate recovery will be considered as being used for beneficial purposes; however, royalty will be charged on the gas used for this purpose at the time it is finally produced and sold.

(3) "Unavoidably lost" production means (1) gas vapors which are released from storage tanks or other low-pressure production vessels, unless the Supervisor determines that the recovery of such vapors would be warranted, (2) oil or gas which is lost because of line failures, equipment malfunctions, blowouts, fires, or otherwise, except where the Supervisor determines that the loss resulted from negligence or failure of the lessee or operator to take all reasonable measures to prevent and/or control the loss, and (3) the venting or flaring of gas in accordance with Section III of NTL-4A.

C. Small Volume or Short-term Venting and Flaring.

Oil- or gas-well gas may be vented or flared on a short-term basis without incurring a royalty obligation only in the following circumstances.

(1) Emergencies. During temporary emergency situations, such as compressor or other equipment failures, relief of abnormal system pressures, or other conditions which result in the unavoidable short-term venting or flaring of gas. However, this authorization to vent or flare gas in such circumstances without incurring a royalty obligation is limited to 24 hours per incident and to 144 hours cumulative for the lease during any calendar month, except with the prior authorization, approval, ratification, or acceptance of the Supervisor.

(2) Well Purging and Evaluation Tests. While unloading or cleaning up a well during drillstem, producing, routine purging, or evaluation tests, not exceeding a period of 24 hours.

(3) Initial Production Tests. During initial well evaluation tests, not exceeding a period of 30 days or the production of 50 MMcf of gas, whichever occurs first, unless a longer test period has been authorized by the appropriate State regulatory agency and ratified or accepted by the Supervisor.

(4) Routine or Special Well Tests. During routine or special well tests, other than those cited above, only after approval by the Supervisor.

D. Gas-well Gas.

Except as provided in paragraph .3C above, gas-well gas may not be flared or vented. Any venting or flaring not in accordance with these guidelines will be considered avoidable.

For purposes of this release, a gas well is defined as one in which the energy equivalent of the gaseous component (gas and entrained liquids) produced exceeds the energy equivalent of the liquid component (crude oil) produced. Each producing situation must be considered separately, but the energy equivalent of the two phases will normally be equal, at a gas-oil ratio of about 5300.

E. Oil-well Gas.

Except as provided in paragraph .3C above, oil-well gas may not be flared or vented unless approved in writing by the Supervisor. The Supervisor may approve an application for flaring or venting of oil-well gas if the operator has submitted an evaluation supported by engineering, economic, and geologic data indicating that: (1) the expenditures necessary to market or benefically use the gas are not economically justified, i.e. would result in an unreasonable payout period; or (2) conservation of the gas will result in an earlier abandonment and ultimate greater loss of equivalent energy than would be recovered for beneficial use, if flaring or venting were allowed; or (3) the operator has initiated positive action which will eliminate flaring or venting within one year. Any venting or flaring not in accordance with these guidelines will normally be considered avoidable.

Upon completion of the well and prior to the conclusion of the initial test period, the lessee/operator will be requested to submit plans for conserving the gas or sufficient justification for flaring. If the operator's response does not meet these conditions, the well should be shut in or its production restricted (and the gas flared will be considered wasteful).

F. Applications for Flaring or Venting.

Applications for venting or flaring oil-well gas must include all appropriate engineering, geologic, and economic data in support of the applicant's determination that conservation of the gas is not economically viable and, if approval is not granted to continue the venting or flaring of the gas, that it will result in the premature abandonment of oil production and/or the curtailment of lease development. This information must include the applicant's estimates of the volumes of oil and gas that would be produced to the economic limit if the application to vent or flare were approved and the volumes of the oil and gas that would be produced if the applicant was required to market or beneficially use the gas.

From an economic basis, all leasehold production must be considered; the major concern is profitable operation of the lease, not just the profitable disposition of the gas. However, the gas portion should not burden the overall profitability of the lease operation to the extent that it is no longer a reasonable investment because of an excessive payout term. Therefore, if the lessee contends that reserves of casinghead gas are inadequate to support the installation of facilities for gas collection and

sale, this contention must be justified by submittal of: (1) an economic reserve estimate, (2) a cost estimate for the facilities necessary to market or otherwise conserve the gas, and (3) estimates of operating income with and without gas conservation.

Many times, it may be uneconomical for an individual lease to put casinghead gas to beneficial use. However, economics of conserving gas must be on a field-wide basis, and the Supervisor must consider the feasibility of a joint operation between all other lessees/operators in the field or area. Even in cases where it is uneconomical to build a pipeline to market the casinghead gas, the well should be considered for being shut in or production restricted when the value of the gas flared exceeds the value of the oil produced. When production is restricted rather than shut in, the restricted rate should not exceed 10 MMcf/well/month or 50 MMcf/field/month. If gas volumes from the initial well(s) are insufficient to support a pipeline connection, operations can likewise be shut in or restricted, until additional engineering data or drilling either develops sufficient reserves or confirms the absence of additional gas. The Supervisor should periodically reassess leases/fields which have approved flaring, as additional development occurs or economic conditions improve.

There are two economic criteria for approving applications for flaring gas: (1) absence of a reasonable payout, considering both oil and gas production; and (2) the required gas facilities would pose an excessive burden on total lease operation. Guidelines for evaluating applications are contained in Exhibit 2.

When it is justified by the lessee/operator, temporary flaring of gas production not exceeding one year may be allowed while evaluating reserves, awaiting pipeline construction, negotiating sales contracts, or awaiting plant construction, provided total monthly per-well gas flared does not exceed 10 MMcf. The fact that a lessee/operator is not financially able to properly dispose of all production from the leasehold is not automatic justification for allowing loss of nonrenewable resources.

G. Other Measures.

Other items to be considered include:

(1) Requiring collection and conservation of stock tank vapors where such vapors can be collected economically, even though the payout period may be longer than desired by the operator.

(2) Requiring recovery and conservation of natural gas liquids, even when pipeline connections are not feasible and gas must be flared.

(3) Requiring reinjection of the gas to the producing formation where reservoir conditions are such that the injection of gas will not result in decreased ultimate recovery; (Requiring injection of the gas into a different horizon under a gas storage agreement should also be considered.)

(4) Requiring that all venting or flaring of gas conform with State or Federal air quality standards for emissions, whichever are more stringent, and with State regulations for gas waste and flaring. Because of safety requirements, gas which cannot be beneficially used or sold must normally be flared, not vented.

(5) Oil and gas lost during a blowout would be considered as unavoidably lost unless the blowout resulted from noncompliance with the regulations or approved APD.

(6) Gas flared while drilling underbalanced may be considered as unavoidably lost.

(7) Shutting in producing oil or gas wells to conserve gas constitutes a suspension of production, but not of operations. Therefore, applications for a suspension of operations in accordance with Section 39 of the Mineral Leasing Act (30 U.S.C. 209) should not be approved. Wells shut in for conservation purposes may still be counted as producing for royalty purposes under 30 CFR 221.49.

H. Non-Federal Lands.

When flaring or venting occurs within areas which involve both Federal and non-Federal lands, the Supervisor will contact the appropriate State agency to attempt to jointly effect optimum gas conservation. If such cooperative effort is not possible, the Supervisor will proceed unilaterally to take action to prevent unnecessary venting or flaring from Federal lands. Where substantial waste is occurring, its prevention is more important than possible drainage which may occur during the period of downtime. CDM 641.2 presents guidelines on drainage determinations, and CDM 645.1, 645.2, and 645.3 discuss operations on non-Federal lands in approved unit or communitization agreements.

I. Enforcement Provisions.

In all cases, the Supervisor will determine whether a specific instance or occurrence is unnecessary, excessive, or unreasonable, to an extent that constitutes waste. The burden of proof rests with the lessee/operator to justify that his practices are not wasteful. If the Supervisor determines that the small volumes involved are not economically feasible to conserve or recover, and waste is not occurring, no further action need be taken unless future developments, such as extension of gathering facilities or the development of additional reserves, warrant a re-evaluation. However, if the Supervisor determines that waste is occurring, immediate steps shall be taken to conserve the gas by shutting in or restricting all operations on Federal land that are contributing to the waste. If such operations are restricted rather than shut in, the lessee/operator shall be charged full value for the wasted gas until waste ceases. The purpose of charging full value on wasted gas is to encourage the conservation of these important resources by increasing the incentive to do so.

When Indian lands are involved, the Area Supervisor shall advise the appropriate Bureau of Indian Affairs (BIA) office that gas production must be conserved. The Supervisor must inform the BIA office of the existing circumstances and what the effect of shutting-in or restricting production would be in terms of lost royalty revenue for the gas, reduced royalty revenue for the oil, and the possibility of drainage. The Supervisor should, on his own authority, assess full value for gas he determines was wasted but should not take shut-in or production restriction actions until BIA concurs.

J. Effective Date.

The venting or flaring of gas from oil wells completed prior to January 1, 1980, is authorized to continue for an interim period. However, an application for approval to continue such practices must be submitted within 90 days (i.e. by March 31, 1980) unless such venting or flaring was previously authorized, approved, ratified, or accepted in writing by the Supervisor.

For oil wells completed on or after January 1, 1980, an application must be filed with the Supervisor, and approval received, for any venting or flaring of gas beyond the initial 30-day or other authorized test period.

K. Payment for Gas Lost.

Royalty is due for that gas subject to payment at the time it is flared or vented. Where the loss is determined to be avoidable,

or where it occurred without the approval of the Supervisor, the payment will be based on the full value of the gas lost. Guidelines and procedures on payment for oil and gas lost are contained in CDM 647.18.

The volume of oil or gas produced, whether sold, avoidably or unavoidably lost, vented or flared, or used for beneficial purposes (including gas that is reinjected) must be reported on Form 9-329, Monthly Report of Operation, in accordance with the requirement of NTL-4A and the applicable provisions of NTL-1 and NTL-1A. The volume and value of all oil and gas which is sold, vented or flared without the authorization, approval, ratification or acceptance of the Supervisor, or which is otherwise determined by the Supervisor to be avoidably lost, must be reported on Form 9-361, Monthly Report of Sales and Royalties. Payments submitted in this respect must be accompanied by a Form 9-614-A, Rental and Royalty Remittance Advice.

No decision on approval of applications to flare under NTL-4A will affect previous determinations on flaring and payments made under NTL-4. This means a decision that flaring is currently unavoidable would not be applied retroactively to affect a previous decision that unauthorized flaring was wasteful.

Exhibit 3 summarizes the payment requirements for oil and gas production.

.4 Responsibility and Procedures.

A. District Supervisor/Engineer.

In general, the District Supervisor/Engineer is responsible for: approving the drilling of new wells with appropriate stipulations concerning test periods and gas venting/flaring; reviewing new well completions to assure compliance with NTL-4A; reviewing operator's applications for flaring oil-well gas and providing recommendations to the Area Supervisor; assuring, during field inspections, that gas venting/flaring is in accordance with NTL-4A; reviewing all approved flaring on a periodic basis to determine if changing conditions warrant conservation of the gas; monitoring all cases where conservation was required to determine if deadlines or other requirements were met; and taking interim action to stop avoidable or unauthorized gas flaring, and reporting such instances to the Area Supervisor.

B. Area Supervisor.

In general, the Area Supervisor is responsible for: routing a copy of all applications for venting/flaring to Districts for

B. *Well Purging and Evaluation Tests.* During the unloading or cleaning up of a well during drillstem, producing, routine purging, or evaluation tests, not exceeding a period of 24 hours.

C. *Initial Production Tests.* During initial well evaluation tests, not exceeding a period of 30 days or the production of 50 MMcf of gas, whichever occurs first, unless a longer test period has been authorized by the appropriate State regulatory agency and ratified or accepted by the Supervisor.

D. *Routine or Special Well Tests.* During routine or special well tests, other than those cited in III.B and C above, only after approval by the Supervisor.

IV. Other Venting or Flaring

A. *Gas Well Gas.* Except as provided in II. C and III above, gas well gas may not be flared or vented. For the purposes of this Notice, a gas well will be construed as a well from which the energy equivalent of the gas produced, including its entrained liquid hydrocarbons, exceeds the energy equivalent of the oil produced.

B. *Oil Well Gas.* Except as provided in II.C and III above, oil well gas may not be vented or flared unless approved in writing by the Supervisor. The Supervisor may approve an application for the venting or flaring of oil well gas if justified either by the submittal of (1) an evaluation report supported by engineering, geologic, and economic data which demonstrates to the satisfaction of the Supervisor that the expenditures necessary to market or beneficially use such gas are not economically justified and that conservation of the gas, if required, would lead to the premature abandonment of recoverable oil reserves and ultimately to a greater loss of equivalent energy than would be recovered if the venting or flaring were permitted to continue or (2) an action plan that will eliminate venting or flaring of the gas within 1 year from the date of application.

The venting or flaring of gas from oil wells completed prior to the effective date of this Notice is authorized for an interim period. However, an application for approval to continue such practices must be submitted within 90 days from the effective date hereof, unless such venting or flaring of gas was authorized, approved, ratified, or accepted previously by the Supervisor. For oil wells completed on or after the effective date of this Notice, an application must be filed with the Supervisor, and approval received, for any venting or flaring of gas beyond the initial 30-day or other authorized test period.

C. *Content of Applications.* Applications under section B above shall include all appropriate engineering, geologic, and economic data in support of the applicant's determination that conservation of the gas is not viable from an economic standpoint and, if approval is not granted to continue the venting or flaring of the gas, that it will result in the premature abandonment of oil production and/or the curtailment of lease development. The information provided shall include the applicant's estimates of the volumes of oil and gas that would be approved and the volumes of the oil and gas that would be produced to the economic limit if the application to vent or flare were produced if the applicant was required to market or beneficially use the gas. When evaluating the feasibility of requiring conservation of the gas, the total leasehold production, including both oil and gas, as well as the economics of a fieldwide plan shall be considered by the Supervisor in determining whether the lease can be operated successfully if it is required that the gas be conserved.

V. Reporting and Measurement Responsibilities

The volume of oil or gas produced, whether sold, avoidably or unavoidably lost, vented or flared, or used for beneficial purposes (including gas that is reinjected) must be reported on Form 9-329, Monthly Report of Operation, in accordance with the requirement of this Notice and the applicable provisions of NTL-1 and NTL-1A. The volume and value of all oil and gas which is sold, vented or flared without the authorization, approval, ratification, or acceptance of the Supervisor, or which is otherwise determined by the Supervisor to be avoidably lost must be reported on Form 9-361, Monthly Report of Sales and Royalties. Payments submitted in this respect must be accompanied by a Form 9-614-A, Rental and Royalty Remittance Advice.

In determining the volumes of oil and gas to be reported in accordance with the first and second paragraphs of this Section V, lessees and operators shall adhere to the following:

1. Where the amount of oil or gas involved has been measured in accordance with Title 30 CFR 221.43 or 221.44, that measurement shall be the basis for the volume reported.

2. Where the amount of oil and gas avoidably or unavoidably lost, vented or flared, or used for beneficial purposes occurs without measurement, the volume of oil or gas shall be determined utilizing the following criteria, as applicable:

a. Last measured throughput of the production facility.

b. Duration of the period of time in which no measurement was made.

c. Daily lease production rates.

d. Historic production data.

e. Well production rates and gas-oil ratio tests.

f. Productive capability of other wells in the area completed in the same formation.

g. Subsequent measurement or testing, as required by the Supervisor.

h. Such other methods as may be approved by the Supervisor.

The Supervisor may require the installation of additional measurement equipment whenever it is determined that the present methods are inadequate to meet the purposes of this Notice.

Don E. Kash,
Chief, Conservation Division, Geological Survey.

[FR Doc. 70-20020 12-22-70; 8:45 am]

BILLING CODE 4310-31-M

VI. Value Determinations for Royalty or Compensation Purposes

In computing the royalty or compensation due on oil or gas under the provisions of this Notice, the value shall be computed in the same manner as the Supervisor would have calculated the value of the oil or gas had it been sold from the same lease, same communitized tract, or same unitized participating area.

VII. Compliance

The failure to comply with the requirements of this Notice will result in compliance being secured by such actions as are provided by law and regulation.

Addendum to NTL-4A

Refund Applications

Certain provisions of NTL-4 have been revoked retroactive to December 1, 1974, the effective date of said Notice. Accordingly, lessees and operators who submitted royalty payments under the provisions of NTL-4 may apply for a refund of those payments made for (1) oil that was unavoidably lost or used for beneficial purposes on the lease, communitized tract, or unitized participating area from which it was produced and/or (2) gas that was vented or flared with the prior approval of the Supervisor or unavoidably lost. No refunds will be processed in the absence of such an application, and no refunds will be made of those payments submitted on the basis of a determination of waste by the Supervisor. In addition, liquidated damages assessed for the late filing of reports or the failure to report pursuant to the provisions of NTL-4 will not be refunded.

The application shall be in the form of a letter signed by an authorized officer or agent of the lessee or operator and *for each individual lease* shall include:

1. The lease prefix code and lease number.
2. The month and year.
3. The product code (01, 02, 03, 04, 61, or 63) used in the reports and payments previously submitted to the Supervisor.
4. The volume of lost oil and/or gas previously reported and the amount of the refund requested.
5. The total amount of the refund requested for each lease as a subtotal.
6. The total amount of the refund requested for all leases as a grand total.

Additional instructions in regard to the filing and contents of said applications may be obtained by contacting the Supervisor having jurisdiction over the lease or leases involved.

Refund applications will be processed as promptly as possible. The Supervisor, as to Federal leases, may process a direct refund or authorize the applicant to withhold the refund amount from future royalty accruals. However, refunds authorized by the Supervisor with respect to Indian leases will be recoverable only as a credit against future rental or royalty accruals in accordance with the provisions of Section IX (Overpayments) of NTL-1A.

Guidelines for Evaluating Applications for Flaring

Upon application, flaring or venting of oil-well gas will be allowed when the operator has submitted an evaluation, with appropriate supporting data, showing that rejection of the request for flaring will result in an early abandonment and ultimate greater loss of equivalent total energy (i.e. Btu) than could be recovered for beneficial use from the lease if flaring or venting were allowed, or the investment required to conserve the gas is not economically feasible. Accordingly, an economic analysis must be made for each application for flaring or venting. Although the format of the evaluation may vary depending upon the circumstances of each case, the following will generally be required for each applicant:

(1) Estimate the life of the lease and the annual net operating income from oil recovery operations (and initial capital investment, where appropriate);

(2) Estimate capital investment and annual net operating income from gas recovery operations; then

(3) Using mid-year lump-sum deferment factors (from Republic National Bank of Dallas tables or equivalent), calculate the present value of operating net income for both oil and gas operations. Unless a different rate is justified by the operator, the discount factor used must be 12 percent;

(4) Based on the present value of net income from: (1) oil operations, (2) gas operations, and (3) combined operations, calculate the payout periods for each.

(5) Criteria for requiring gas conservation:

(a) New field:

(i) Combined payout exceeds the payout of the oil operation by less than 25%, but not beyond 5 years, (i.e., if payout of oil operation is estimated to be 12 months, the combined operation must pay out within 15 months); and

(ii) Payout from gas-only operation is less than 5 years; and

(iii) The estimated life of the field/lease is greater than the longest pay out period calculated; then, gas conservation is required.

(b) Old field (payout of original investment achieved):

(i) If combination of all net income from existing oil operation and gas operation will provide a payout of capital investment for gas facilities within 6 months; and

(ii) Payout from gas operation is less than 5 years; and

(iii) The estimated life of the field is greater than 5 years; then, gas conservation is required.

Generally, in situations requiring longer payout periods, approval to flare may be granted. In marginal cases, consideration should be given to granting a reduction of royalty rate in conjunction with gas conservation measures, where a profitable/nonprofitable lease operation would be affected by royalty rate.

In cases where the only gas conservation option considered is reinjection, payout of the gas operation must be calculated solely from oil revenue, and the limiting factor for a gas-only payout ignored. However, estimated enhanced recovery resulting from gas injection should be considered in an economic evaluation. While neither the operator nor the Supervisor can place a true value on gas which is reinjected because of the lack of, or unfavorable, marketing conditions, the gas will have an intangible future value, which should not be completely ignored.

A tabular example, which illustrates an evaluation of a new field/lease, follows, in which the capital investment required for initial oil production has been established, and the gas gathering facilities are considered for the following year. The example assumes a 12% discount factor for both oil and gas. It shows a payout of the oil operation in 3.4 years, the gas operation in 4 years, and the combined in 3.6 years. Because the combined payout is less than oil payout period plus 25% (3.4 + .85 = 4.25) and the gas operation will pay out in less than 5 years, conservation of gas is required.

If the example were an old field (payout of the original capital investment had been achieved), the development cost for oil operation would not be considered (eliminate line 1 in the example and adjust PV factor of oil operations to start at year 1), and the payout of gas facilities would be based on total lease net income. In this case, the payout would be $110,000 ÷ $360,000/yr. or 0.3 year or 3.7 months, and conservation of gas would be required.

Oil Operation Only

Yr	Cost($)	Net Income($)	PV Factor	Present Value($)	Cumulative Present Value($)
0	1,000,000	0	1.0000	0	0
1		360,000	.94491	340,167	340,167
2		360,000	.84367	303,721	643,888
3		350,000	.75328	263,648	907,536[1]
4		340,000	.67258	228,677	1,136,214[1]

[1]Payout in 3.4 years.

Gas Operation Only

Yr	Cost($)	Net Income($)	PV Factor	Present Value($)	Cumulative Present Value($)
0	0	0	---	0	0
1	110,000	0	1.00000	0	0
2	0	20,000	.94491	18,898	18,898
3		40,000	.84367	33,746	52,645
4		40,000	.75328	30,131	82,776
5		40,000	.67257	26,902	1,109,679[2]
6		40,000	.60051	24,020	133,699[2]

[2]Payout in 4.0 years.

Combined Operations

Yr	Cost($)	Net Income($)	Present Value($)	Cumulative Present Value($)
0	1,000,000	0	0	0
1	110,000	360,000	340,167	340,167
2		380,000	322,619	662,787
3		390,000	297,394	960,181[3]
4		380,000	258,808	1,218,9.0[3]

[3]Payout in 3.6 years.

12%

PRESENT WORTH DISCOUNT FACTORS AT 12%
FOR INCOME RECEIVED IN ONE PAYMENT AT MIDDLE OF YEAR

Year	Factor for Year	Equal Payments	5% Per Yr. Decline	10% Per Yr. Decline	15% Per Yr. Decline	20% Per Yr. Decline	30% Per Yr. Decline	40% Per Yr. Decline	50% Per Yr. Decline
1	.94491	.94491	.94491	.94491	.94491	.94491	.94491	.94491	.94491
2	.84367	.89429	.89559	.89696	.89840	.89992	.90322	.90695	.91116
3	.75328	.84729	.85056	.85401	.85764	.86145	.86967	.87872	.88861
4	.67257	.80361	.80943	.81555	.82197	.82869	.84298	.85826	.87421
5	.60051	.76299	.77182	.78110	.79080	.80089	.82199	.84377	.86538
6	.53617	.72518	.73740	.75023	.76359	.77738	.80566	.83373	.86015
7	.47872	.68998	.70588	.72257	.73987	.75756	.79308	.82692	.85715
8	.42743	.65716	.67700	.69779	.71922	.74093	.78350	.82237	.85546
9	.38163	.62654	.65050	.67557	.70126	.72700	.77625	.81938	.85454
10	.34074	.59796	.62617	.65565	.68567	.71538	.77083	.81744	.85403
11	.30424	.57126	.60382	.63780	.67214	.70573	.76679	.81619	.85377
12	.27164	.54629	.58327	.62178	.66042	.69772	.76382	.81540	.85362
13	.24254	.52293	.56435	.60742	.65028	.69110	.76163	.81490	.85355
14	.21655	.50104	.54693	.59454	.64151	.68564	.76003	.81459	.85351
15	.19335	.48053	.53086	.58298	.63394	.68115	.75888	.81439	.85349
16	.17263	.46129	.51604	.57261	.62741	.67747	.75804	.81427	.85348
17	.15414	.44322	.50235	.56330	.62178	.67446	.75743	.81420	.85347
18	.13762	.42624	.48970	.55495	.61694	.67199	.75700	.81415	.85347
19	.12288	.41027	.47800	.54745	.61277	.66999	.75669	.81412	.85347
20	.10971	.39525	.46717	.54072	.60919	.66835	.75647	.81410	.85347
21	.09796	.38109	.45714	.53468	.60612	.66703	.75631	.81409	.85347
22	.08746	.36774	.44783	.52925	.60348	.66595	.75620	.81409	.85347
23	.07809	.35515	.43920	.52437	.60122	.66508	.75612	.81408	.85347
24	.06972	.34326	.43118	.52000	.59929	.66437	.75606	.81408	.85347
25	.06225	.33202	.42372	.51606	.59763	.66380	.75602	.81408	.85347
26	.05558	.32138	.41679	.51253	.59621	.66334	.75600	.81408	.85347
27	.04963	.31132	.41034	.50935	.59500	.66297	.75598	.81408	.85347
28	.04431	.30178	.40432	.50650	.59396	.66267	.75596	.81408	.85347
29	.03956	.29274	.39872	.50393	.59307	.66242	.75595	.81408	.85347
30	.03532	.28416	.39349	.50163	.59231	.66223	.75595	.81408	.85347
31	.03154	.27601	.38861	.49956	.59167	.66207	.75594	.81408	.85347
32	.02816	.26827	.38406	.49770	.59112	.66195	.75594	.81408	.85347
33	.02514	.26090	.37980	.49602	.59065	.66185	.75593	.81408	.85347
34	.02245	.25389	.37581	.49452	.59025	.66177	.75593	.81408	.85347
35	.02004	.24720	.37208	.49316	.58990	.66170	.75593	.81408	.85347
36	.01790	.24083	.36859	.49195	.58961	.66165	.75593	.81408	.85347
37	.01598	.23476	.36532	.49085	.58936	.66161	.75593	.81408	.85347
38	.01427	.22895	.36225	.48987	.58915	.66157	.75593	.81408	.85347
39	.01274	.22341	.35937	.48898	.58897	.66155	.75593	.81408	.85347
40	.01137	.21811	.35667	.48819	.58882	.66152	.75593	.81408	.85347
41	.01015	.21304	.35414	.48747	.58869	.66151	.75593	.81408	.85347
42	.00907	.20818	.35175	.48682	.58858	.66149	.75593	.81408	.85347
43	.00810	.20353	.34951	.48625	.58848	.66148	.75593	.81408	.85347
44	.00723	.19907	.34741	.48572	.58840	.66147	.75593	.81408	.85347
45	.00645	.19479	.34543	.48526	.58833	.66147	.75593	.81408	.85347
46	.00576	.19068	.34356	.48483	.58828	.66146	.75593	.81408	.85347
47	.00514	.18673	.34180	.48445	.58823	.66146	.75593	.81408	.85347
48	.00459	.18294	.34015	.48411	.58818	.66145	.75593	.81408	.85347
49	.00410	.17929	.33859	.48381	.58815	.66145	.75593	.81408	.85347
50	.00366	.17577	.33712	.48353	.58812	.66145	.75593	.81408	.85347

Exhibit 3
644.5.3K

DISPOSITION OF PRODUCTION	COMPENSATION DUE		
	None	Royalty	Full Value
Oil Sales		X	
Gas Sales		X	
Gas Flared/Lost With Prior Approval	X		
Oil or Gas Beneficially Used	X		
Gas Flared/Lost Without Prior Approval			X
Oil or Gas Avoidably Lost			X

ATTACHMENT 1
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
3162.7-1(d) (610)

January 3, 1992

Instruction Memorandum No. 92-91
Expires: 9/30/93

To: All State Directors

From: Assistant Director

Subject: Policy for Avoidably Lost Gas - Onshore Federal and Indian Oil and Gas Leases

The current procedures to be followed in implementing the Bureau of Land Management's (BLM) policy for avoidably lost gas were set forth in Notice to Lessees and Operators No. 4A (NTL-4A), dated January 1, 1980, as modified by Instruction Memorandum (IM) No. 87-652, dated August 17, 1987. These procedures specify how the resultant monetary obligation is to be calculated whenever the BLM determines that gas has been avoidably lost, i.e., full value for that gas so lost prior to October 22, 1984, and royalty value thereafter, except as modified by the penultimate paragraph of both Section I.B. and II.B., and the last paragraph of both Section I.D. and II.D., IM No. 87-652. These four sections were incorporated to implement the Secretary of the Interior's policy decision of August 1, 1986, that full value compensation be assessed whenever an operator, after a reasonable period of time and due notice, continues to vent or flare gas which the authorized officer determines to be economically feasible to capture, i.e., avoidably loss. These provisions are retained by this IM.

The Interior Board of Land Appeals' (Board) decision in Mobil Exploration & Producing U.S., Inc. (119 IBLA 76, April 5, 1991), copy attached, ruled that 43 CFR 3162.7-1(d), which became effective on October 22, 1984, and provides for royalty value only on avoidably lost gas, should be applied retroactively. The effect of this ruling is to eliminate full value compensation for gas determined to have been avoidably lost prior to October 22, 1984, except in the circumstances specified in the aforementioned paragraphs of IM No. 87-652.

The impact of applying the Board's decision in Mobil to all identified related actions now pending within the Department of the Interior (i.e., pending BLM determinations, pending State Director Reviews, pending billings by the Minerals Management Service (MMS), pending appeals to MMS from prior billings, and pending appeals to the Board from prior BLM determinations) has been analyzed. Based on that analysis, it is concluded that the BLM's policy should be modified to adopt the Board's ruling in Mobil.

In view of the foregoing policy change, the Board should be requested to remand all currently pending appeals from BLM determinations that gas was avoidably lost prior to October 22, 1984. The rationale for each such request is that the BLM wishes to reconsider the case in light of the Board's decision in Mobil. Five pending appeals in this category recently identified are:

State Office	Appellant	Board Docket Number
New Mexico	Merrion O&G Corp.	IBLA 89-674
	Rife Oil Properties	IBLA 91-253
Utah	C.C. Company	IBLA 90-308
Wyoming	Western Production Co.	IBLA 90-383
	Maxus Exploration	IBLA 91-49

A copy of this IM is being provided to the MMS's Appeals and Royalty Compliance Divisions to assure that this change in BLM policy will be applied to related matters under their respective jurisdictions. Subsequently, this office will furnish the MMS's Appeals Division with recommendations concerning the disposition of six pending appeals from prior MMS billings for gas alleged to have been avoidably lost. A copy of these recommendations will be provided to each State Director since we intend to recommend that five of these cases be remanded to the appropriate State Director for determinations in accordance with this IM. Such remands will assure a proper determination based on the revised procedures, and will provide the opportunity to correct certain procedural errors identified in the case files of the five appeals to be remanded. More specifically, the procedural errors identified are as follows:

1. Each of the five cases originated from audits external to the BLM. In each instance, the records contain no official determination by the BLM that gas had been avoidably lost or, if so, the determination was based solely on the single NTL-4A criterion of the operator not having obtained prior approval to vent/flare the gas, rather than on the

economic criteria instituted with the issuance of IM No. 87-652 on August 17, 1987. Since the BLM has exclusive jurisdiction in this regard, no avoidable loss can be said to have occurred absent an official determination of avoidable loss made by the BLM in accordance with its controlling policy and related procedures.

2. In two of the cases, the operator was billed for gas vented/flared prior to the time first established by NTL-4A and retained in IM No. 87-652. Both of these documents, as well as this IM, provide that for wells completed prior to January 1, 1980, the earliest effective date of any assessment for avoidably lost gas is to be April 1, 1980. For wells completed on or after January 1, 1980, the earliest possible date for such an assessment is the day next following the expiration date of the well's initial, authorized test period. Thus, for a well completed for production on January 1, 1980, followed by the customary 30-day test period, the effective date of any resultant assessment would be February 1, 1980.

The BLM's policy remains that gas produced from or allocable to a Federal or Indian lease may not be vented or flared absent the authorized officer's prior written approval without incurring a liability to compensate the United States or the Indian lessor for any portion of that gas which the authorized officer determines to have been avoidably lost.

The revised procedures set forth below are to be followed in all remanded, pending, and future cases for determining whether vented or flared gas has been avoidably lost and, if so, the basis for the resultant assessment (full value compensation or royalty value). These procedures are the same as those contained in IM No. 87-652, modified to adopt the Board's decision in Mobil and to update the previous instructions as a result of events which occurred after the issuance of IM No. 87-652. These procedures will remain in effect until Onshore Oil and Gas Order No. 9 (Waste Prevention and Beneficial Use of Oil and Gas) is finalized, unless earlier superseded by new written instructions. The draft of Onshore Oil and Gas Order No. 9, previously reviewed by the State Directors, will be revised appropriately to reflect the foregoing, and will be published in the Federal Register for public comment as soon as possible.

I. Wells completed prior to January 1, 1980.

A. No avoidable loss has occurred and no assessment shall result if:

1. The gas was being captured as of April 1, 1980; or

2. An application to continue the venting or flaring as uneconomic was received on or before March 31, 1980, and was approved; or

3. A plan was submitted on or before March 31, 1980, to eliminate the venting or flaring within a year of the plan's submittal date, and the commitment to do so was honored timely.

B. Where none of the I.A. criteria was satisfied timely, and no application subsequently has been submitted to continue the venting or flaring as uneconomic, the operator shall be sent a notice by certified mail. The notice shall allow 60 days from receipt in which to submit an application to justify its position that it was uneconomic to capture the gas, both at the time of application and as of April 1, 1980. If an application to continue the venting or flaring previously was filed, but after March 31, 1980, and regardless of whether final action has been taken thereon, the operator shall be sent a notice by certified mail allowing 60 days from receipt in which to submit data in support of its position that it was uneconomic to have captured the gas as of April 1, 1980. Once the appropriate 60-day period has expired, one of the following shall result:

1. If the authorized officer agrees that it was uneconomic to have captured the gas, both at the time of application and as of April 1, 1980, no avoidable loss has occurred and no assessment shall result.

2. If the authorized officer agrees that it was uneconomic to capture the gas at the time of application but determines that it was economic to have done so as of April 1, 1980, an avoidable loss has occurred, and the resultant assessment shall be based on the following:

As appropriate to the timeframe during which the avoidable loss occurred, royalty value on and after April 1, 1980, to be terminated at any time after

April 1, 1980, that an approval is granted to continue the venting or flaring as uneconomic.

3. Where no application to continue the venting or flaring previously was filed and no such application was filed within the 60-day period allowed; or the operator responds to the notice by advising of the intent to capture the gas at a future date (Note: Since no capture plan was submitted timely, later advice of the intent to capture at a future date does not result in a 1-year grace period thereafter in which to do so); or the authorized officer determines that it was economic to have captured the gas, both at the time of application and as of April 1,1980, an avoidable loss has occurred. The resultant assessment shall be based on the following:

As appropriate to the timeframe during which the avoidable loss occurred, royalty value on and after April 1, 1980, to be terminated at any time after April 1, 1980, that the gas is captured or approval is granted to continue the venting or flaring as uneconomic.

Each notice of an avoidable loss determination under I.B.3. also shall advise the operator that, if the gas is not being captured within 60 days of receipt, full value will be assessed thereafter until the gas is captured or approval is granted to continue the venting or flaring as uneconomic.

All prior determinations of avoidable loss involving cases that meet the criteria of this item I.B. shall be reviewed and, if necessary, appropriate action shall be taken to conform those determinations to the above guidance.

C. An avoidable loss has occurred when none of the I.A. criteria was satisfied timely, but the gas is captured before any notice is issued under I.B. The resultant assessment shall be based on the following:

As appropriate to the timeframe during which the avoidable loss occurred,

royalty value on and after April 1, 1980, to be terminated at any time after April 1, 1980, that the gas is captured.

D. An avoidable loss has occurred whenever the gas was not being captured as of April 1, 1980, if:

1. An application to continue the venting or flaring was received on or before March 31, 1980, but was rejected because it was considered economically feasible to have captured the gas at that time; or

2. A plan to eliminate the venting or flaring within 1 year of its submittal date was received on or before March 31, 1980, but the commitment to do so was not honored timely.

The resultant assessment shall be based on the following:

As appropriate to the timeframe during which the avoidable loss occurred, royalty value on and after April 1, 1980 (except as modified by the following paragraph), to be terminated at any time after April 1, 1980, that the gas is captured or approval is granted to continue the venting or flaring as uneconomic.

In any existing case meeting the criteria of this item I.D. in which the gas still is being vented or flared without approval, the operator shall be given notice by certified mail that, within 60 days of its receipt, capture of the gas must be occurring or an approvable application to continue the venting or flaring as uneconomic must be received, otherwise full value will be assessed thereafter until the gas is captured or approval is granted to continue the venting or flaring as uneconomic.

II. Wells completed on or after January 1, 1980.

A. No avoidable loss has occurred and no assessment shall result if:

1. The gas was being captured on or before the day next following the expiration date of the initial, authorized test period, i.e., 30 days or 50 MMcf, whichever first occurs,

unless a longer test period was approved by the authorized officer; or

2. An application to continue the venting or flaring as uneconomic was received on or before the expiration date of the initial, authorized test period and was approved; or

3. A plan was submitted on or before the expiration date of the initial, authorized test period to eliminate the venting or flaring within 1 year of the plan's submittal date, and the commitment to do so was honored timely.

B. Where none of the II.A. criteria is satisfied timely, and no application subsequently is submitted to continue the venting or flaring as uneconomic, the operator shall be sent a notice by certified mail. The notice shall allow 60 days from receipt in which to submit an application to justify its position that it was uneconomic to capture the gas, both at the time of application and as of the expiration date of the initial, authorized test period. If an application to continue the venting or flaring previously was filed, but after the expiration date of the initial, authorized test period, and regardless of whether final action has been taken thereon, the operator shall be sent a notice by certified mail allowing 60 days from receipt in which to submit data in support of its position that it was uneconomic to have captured the gas as of the expiration date of the initial, authorized test period. Once the appropriate 60-day period has expired, one of the following shall result:

1. If the authorized officer agrees that it was uneconomic to have captured the gas, both at the time of application and as of the expiration date of the initial, authorized test period, no avoidable loss has occurred and no assessment shall result.

2. If the authorized officer agrees that it was uneconomic to capture the gas at the time of application but determines that it was economic to have done so as of the expiration date of the initial, authorized test period, an avoidable loss has occurred, and the resultant assessment shall be based on the following:

As appropriate to the timeframe during which the avoidable loss occurred, royalty value on and after the expiration date of the initial, authorized test period, to be terminated at any time after the expiration date of the initial, authorized test period that approval is granted to continue the venting or flaring as uneconomic.

3. Where no application to continue the venting or flaring previously was filed and no such application was filed within the 60-day period allowed; or the operator responds to the notice by advising of the intent to capture the gas at a future date (Note: Since no capture plan was submitted timely, later advice of the intent to capture at a future date does not result in a 1-year grace period thereafter in which to do so); or the authorized officer determines that it was economic to have captured the gas, both at the time of application and as of the expiration date of the initial, authorized test period, an avoidable loss has occurred. The resultant assessment shall be based on the following:

As appropriate to the timeframe during which the avoidable loss occurred, royalty value on and after the expiration date of the initial, authorized test period, to be terminated at any time after the expiration date of the initial, authorized test period that the gas is captured or approval is granted to continue the venting or flaring as uneconomic.

Each notice of avoidable loss determination under II.B.3., also shall advise the operator that, if the gas is not being captured within the appropriate time after receipt (60 days or more -- see last paragraph of II.D.), full value will be assessed thereafter until the gas is captured or approval is granted to continue the venting or flaring as uneconomic.

All prior determinations of avoidable loss involving cases that meet the criteria of this item II.B. shall be reviewed and, if necessary, appropriate action shall be taken to conform those determinations to the above guidance.

C. An avoidable loss has occurred when none of the II.A. criteria is satisfied timely, but the gas is captured before any notice is issued under II.B. The resultant assessment shall be based on the following:

> As appropriate to the timeframe during which the avoidable loss occurred, royalty value on and after the expiration date of the initial, authorized test period, to be terminated at any time after the expiration date of the initial, authorized test period that the gas is captured.

D. An avoidable loss has occurred whenever the gas is not being captured on or before the day next following the expiration date of the initial, authorized test period, if:

> 1. An application to continue the venting or flaring was received on or before the expiration date of the initial, authorized test period, but was rejected because it was considered economically feasible to capture the gas at that time; or
>
> 2. A plan to eliminate the venting or flaring within 1 year of its submittal date was received on or before the expiration date of the initial, authorized test period, but the commitment to do so was not honored timely.

The resultant assessment shall be based on the following:

> As appropriate to the timeframe during which the avoidable loss occurred, royalty value on and after the expiration date of the initial, authorized test period (except as modified by following paragraph), to be terminated at any time after the expiration date of the initial, authorized test period that the gas is captured or approval is granted to continue the venting or flaring as uneconomic.

In any existing case meeting the criteria of this item II.D. in which the gas still is being vented or flared without approval and such unauthorized

> venting or flaring has continued for a year or more after it first became appropriate to assess royalty value, a notice in that regard shall be sent to the operator by certified mail. The notice shall advise that, within 60 days of its receipt, capture of the gas must be occurring or an approvable application to continue the venting or flaring as uneconomic must be received, otherwise full value will be assessed thereafter until the gas is captured or approval is granted to continue the venting or flaring as uneconomic. Similar notifications shall be issued promptly in those existing cases where the assessment of royalty value first became appropriate less than a year previous. These notices shall require capture of the gas or the submission of an approvable application to continue the venting or flaring as uneconomic by the end of that 1-year period or, where less than 60 days remain in that year, within 60 days of receipt of the notice, otherwise full value will be assessed thereafter until the gas is captured or approval is granted to continue the venting or flaring as uneconomic. In future cases, approvals of timely filed plans to capture or rejections of timely filed applications to continue the venting or flaring as uneconomic shall include language to this effect.

The rationale for permitting an operator to demonstrate later under I.B. or II.B. that it was uneconomic to capture the gas at the appropriate critical point in time is that if, in fact, it was not economic to do so at that time, no monetary obligation should attach solely by reason of a failure to have filed a timely application to continue the venting or flaring. In most, if not all cases of unauthorized venting or flaring, operators have reported and continue to report monthly the volumes of gas being vented or flared. In many instances, however, no action was taken to compel compliance with the applicable requirements until months or even years after the onset of the unauthorized venting or flaring. Thus, when it would have been uneconomic to capture the gas as of the critical point in time, the balance weighs on the BLM's failure to react timely to the monthly reports, rather than on the operator's failure to seek a timely approval to continue the venting or flaring as uneconomic, since no economic loss has been suffered. The balance weighs on the operator's failure, however, when it would have been economic to have captured gas at the critical time.

The feasibility of capturing gas at any point shall be based on the economics of the operator's total operation on the lease, unitized area, or communitized tract rather than on

the total production of the well or wells from which the gas is being vented or flared or only on the gas production from such well(s), i.e., one must consider not only the value of the gas being vented or flared, but also the value of the liquefiable hydrocarbons entrained in the vented or flared wet gas stream, and the oil and other gas which is being captured or sold from that lease, unitized area, or communitized tract.

With respect to the foregoing paragraph, it should be kept in mind that what is determined to be economically feasible at a given point in time may not be economically viable at a later point. Thus, where an operator continues to vent or flare gas, even though it is being assessed for such loss, a continuation of such practice may be approved later without the operator incurring any further monetary obligation if the authorized officer subsequently determines that it is then no longer economically feasible to capture the gas. It also is probable that there will be some instances where the venting or flaring of gas has been or will be approved because the economics at that time did not warrant its capture but where, due to changed circumstances, it becomes economic to do so at a later date. In that event, the procedures in I. or II., as appropriate, are to be followed to conclusion and result in a new determination.

All approvals granted should be made effective the first of the month in which the complete application or plan is filed. An approval to continue the venting or flaring always should be conditioned to the effect that said approval is based on present circumstances.

All notices served on operators shall be by certified mail, and those which relate to determinations of avoidable loss shall cite the operator's rights to seek administrative relief.

An additional effort also is required to ensure that all existing but presently unknown cases of unauthorized venting or flaring, as well as future cases, will be identified quickly and prompt corrective action initiated to compel the submittal of a capture plan or an application to continue the venting or flaring as uneconomic. Obviously, operators need to be made more aware of our requirements in this regard and of the consequences which can result from their failure to comply with t ose requirements.

We know that most offices incorporate some type of notice as to the BLM's requirements regarding the venting or flaring of gas in their approvals of Applications for Permit to Drill (APD). However, it is apparent that these notices have not accomplished their objective in many instances. Thus, all

future APD's to drill a new well or to plug back or deepen an existing well and which may result in the completion or recompletion in one or more oil-bearing zones likely to contain associated gas are to include a specific, stipulated condition of approval the same or similar to the following:

> Gas produced from this well may not be vented or flared beyond an initial, authorized test period of ____*____ days or 50 MMcf following its (completion) (recompletion), whichever first occurs, without the prior, written approval of the authorized officer. Should gas be vented or flared without approval beyond the test period authorized above, you may be directed to shut-in the well until the gas can be captured or approval to continue the venting or flaring as uneconomic is granted, and you shall be required to compensate the lessor for that portion of the gas vented or flared without approval which is determined to have been avoidably lost.
>
> * 30 days, unless a longer test period specifically is approved by the authorized officer.

It is suggested that this stipulation be (1) separate and apart from all other stipulated conditions of approval; (2) attached to the face of the APD itself; and (3) highlighted in a manner to draw attention to it, such as underscoring the language in red ink. The use of such a separate, highlighted stipulation, prominently attached to the face of each approved APD, should increase the level of operator compliance in this regard.

It will remain incumbent on the BLM to identify quickly those situations in which an operator fails to comply timely and to require prompt corrective action. If we are to do so, inspectors must be particularly sensitive to identifying and reporting to their supervisors any instances of unauthorized venting or flaring encountered, and an increased effort must be made to otherwise identify unauthorized venting or flaring by a review of all Monthly Reports of Operations data promptly on their receipt from MMS.

Since the MMS is responsible for billing and collecting all assessments resulting from the BLM's determinations that gas has been avoidably lost, it must be advised at the appropriate time of all such determinations. Guidance in this respect was provided by IM No. 88-146, dated December 17, 1987. Nothing has occurred in the interim to warrant a revision of that guidance.

Should you require any clarification or have questions not addressed by this IM or the attachment, please communicate those in writing to this office (610) or call Eddie Wyatt, Division of Fluid Mineral Lease and Reservoir Management, directly at 653-2127 (FTS) or (202) 653-2127 (Commercial).

Hillary A. Oden
Assistant Director,
Energy and Mineral Resources

1 Attachment
1 - 1 119 IBLA 76 (7 PP)

IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

MOBIL EXPLORATION & PRODUCING U.S., INC.

IBLA 90-208 Decided April 5, 1991

Appeal from a decision by the Wyoming Acting Deputy State Director, Bureau of Land Management, affirming a decision by the Platte River Resource Area Manager assessing a Federal lessee the full value of vented gas found to have been avoidably lost. WY-90-04.

Reversed in part, affirmed in part, and remanded.

1. Oil and Gas Leases: Generally—Oil and Gas Leases: Royalties: Payments

   A finding that a lessee must pay the United States for the full value of vented gas that was avoidably lost from 1980 to 1984 is reversed, because 43 CFR 3162.7-1(d), issued in October 1984, changed Departmental policy to require that compensation for avoidably lost gas shall be limited to payment of the royalty value of gas so vented. Because the 1984 regulation changed the prior policy, which had been to assess vented gas at full value, affected lessees who would benefit by the amended rule are allowed the benefit of the change.

2. Administrative Authority: Generally—Appeals: Jurisdiction—Board of Land Appeals—Judicial Review

   A statute establishing time limitations for commencement of civil actions for damages by the United States does not apply to limit administrative review within the Department of the Interior.

APPEARANCES: Robert A. Luettgen, Esq., Dallas, Texas, and Charles L. Kaiser, Esq., Denver, Colorado, for appellant; Michael F. Deneen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Mobil Exploration & Producing U.S., Inc. (Mobil), has appealed from an October 25, 1989, decision by the Wyoming Acting Deputy State Director, Division of Mineral Resources, Bureau of Land Management (BLM), finding that Mobil should pay the United States the full value of gas vented from the Bear Creek No. 1 well on lease No. WYW-089382 from April 1, 1980, to October 21, 1984. It is undisputed that the gas was vented without authorization. The only question before us on appeal is whether compensation should be paid for the full value of the vented gas, or whether payment of the royalty value for the gas would satisfy the requirements of law.

On August 3, 1989, BLM's Platte River Resource Area Manager notified Mobil that an audit of the Bear Creek Unit revealed that Mobil had avoidably lost gas which it had reported flared because of compressor failure. The Area Manager found that:

> We have calculated the maximum allowable flared volumes under the provisions of NTL-4A and determined from that figure any excess flared volumes * * *. From this analysis we have determined that between the dates of April 1, 1980 thru October 21, 1984, that avoidably lost gas (excess flared volume) total 9,139 MCF. You will be assessed full value on this amount of production. Since

> October 21, 1984 to the present, we have determined avoidably lost gas totaled 19,791 MCF. You will be assessed royalty value of this amount of production.

From this decision, Mobil appealed to the State Director, whose office conducted a hearing on October 11, 1989. The Acting Deputy State Director set aside so much of the Area Manager's decision as assessed compensatory royalty from January 1985 to September 1987, but, pertinent to this appeal, affirmed the determination that full value should be assessed from April 1980 to October 21, 1984, explaining, concerning this aspect of the case, that:

> We agree with the Area Manager's interpretation. The longstanding practice of assessing compensation that equals the full value of the avoidably lost gas is clearly stated in the Mineral Leasing Act of 1920, as amended in 1931, Section 1(h). Apparently, at that time, and in an attempt to discourage waste, the Department deemed it necessary to assess full value compensation for avoidably lost gas. The fact that the percentage value due the government exceeds the royalty rate may be construed as a "penalty." As oil and gas prices began to rise in the late 70's and early 80's, the Department concluded that assessing only the royalty value for avoidably lost gas would be a sufficient deterrent, in most cases, to insure that an operator would not waste gas that is economically feasible to market. We affirm the Area Manager's decision to assess compensation that equals the full value of the avoidably lost gas for the period from April 1, 1980, to October 22, 1984 (the effective date of the revised regulations at 43 CFR 3162.7-1(d).

(Decision at 3).

Pertinently, 43 CFR 3162.7-1(d) provides that one in the position of Mobil "shall be liable for royalty payments on * * * gas lost or wasted from a lease." BLM argues that this regulation, however, may not be applied

retroactively, because to do so would disparage other provisions of the Mineral Leasing Act not repealed by enactment of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. §§ 1701-1757 (1988), the statute implemented by 43 CFR 3162.7-1(d).

[1] Similar arguments were rejected by this Board in Conoco, 115 IBLA 105 (1990), where it was urged that retroactive application of a rule more generous to a Federal lessee than the rule it replaced would be in derogation of past policy in effect before the rule change. Rejecting this argument and a parallel contention that retroactive application of the new rule would overrule past decisions of the Department that implemented the prior rule, we found that "the Department may, in the absence of intervening rights of others or prejudice to the interests of the United States, apply the amendment to pending cases." Id. at 106. Insofar as the argument that to do so would derogate the effect of prior law, we reasoned that "[i]t [the prior rule] has now been amended; thus, the law has changed. The only question is whether [the appellant] should have the benefit of the change. * * * there is ample authority for providing an affected party with the benefits of a regulatory change." Id. at 107 n.3.

We also gave retroactive effect to policy changes in the administration of oil and gas royalty payments involving vented gas in Ladd Petroleum Corp., 107 IBLA 5 (1989). In that case, compensation for avoidably lost gas was at issue. Setting aside the BLM decision finding that payment was due the United States Government as described by NTL-4A Part I, we ordered BLM to reconsider whether the gas had been avoidably lost in light of the

fact that Departmental policy had changed. We explained that, while the new policy had not been in effect when the decision under review had issued, the regulatory change made necessary a reconsideration of the question of payment because the newly promulgated rules

> reflect the present policy of BLM concerning the proper application of NTL-4A and the regulations on which it is based to make determinations of avoidably lost gas. In the past, this Board has applied an amended version of a regulation to a pending matter if to do so would benefit the affected party, and if there were no countervailing public policy reasons or intervening rights. James E. Strong, 45 IBLA 386 (1980). The rationale for such an action is equally appropriate here where BLM has indicated a change in its policy regarding the application of NTL-4A concerning avoidably lost gas which would benefit appellants, and there are no countervailing regulations, public policy considerations, or intervening rights. See Somont Oil Co., Inc., 91 IBLA 137 (1986).

Id. at 8.

The case under review is such a case. As we pointed out in Conoco, supra, to give retroactive application to the 1984 regulation in this case also permits us to avoid an inequitable inconsistency in administration of this gas lease, since to do otherwise would allow assessment of two different rates of compensation for gas vented at the No. 1 well although the only distinction between the two very different charges is the passage of an instant of time at midnight on October 21, 1984. On the record before us, we find that the the application of 43 CFR 3162.7-1(d) will not adversely affect intervening rights or prejudice the interests of the United States, and is not in derogation of prior law, but a proper implementation of existing law after amendment.

[2] Mobil also argues that the limitation on actions provided by 28 U.S.C. § 2415 (1988), bars recovery of compensation on gas flared by Mobil before August 3, 1983. This statute, which governs civil actions for money damages brought by the United States, does not affect the administration of this Federal lease by BLM. Whether the manner in which the flared gas audit was conducted was so slow that it would bar recovery in some hypothetical suit for damages we are unable to say, nor is it "within our authority to decide" such a question. Alaska Statebank, 111 IBLA 300, 312 (1989). An appeal to this Board is in no sense the commencement of an action for damages: it is the continuation and conclusion of administrative review that began in the Area BLM office with the audit of Mobil's operation of the Bear Creek Unit No. 1 well. Our review is conducted on behalf of the Secretary, pursuant to Departmental regulation, and is not a commencement of an action for damages. The purpose of our review in the instant case is limited to a determination, on the record before us, of how compensation due the United States should be calculated. See 43 CFR 4.1. We do not hold that there are no limits on the time that may be spent in administrative review, but only find that, in this case, there has been no showing that any limit on such review set by law has been infringed. On March 1, 1989, Mobil was placed on notice that an audit of the No. 1 well had taken place. Thereafter, it has vigorously defended its interests before the Department. There has been no showing that it was denied the right to participate effectively in the administration of the affected lease. See generally Leo Titus, Sr., 89 IBLA 323, 92 I.D. 578 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed in part, affirmed in part, and the case file is remanded to permit computation of the amount of royalty due on gas avoidably lost from Bear Creek Unit No. 1 well between April 1, 1980, and October 21, 1984.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge

ATTACHMENT 2

MMS-90-0018-IND, Merrion Oil & Gas Corporation

Comments: Involves Navajo Tribal Lease No. 14-20-603-385. Case appears to have originated from an audit by the Navajo Tribe. Nothing found in case file to clearly indicate that BLM ever made a determination of avoidable loss pursuant to IM No. 87-652. Absent such a BLM determination, no avoidable loss can be said to have occurred. The billing period was September 1, 1979, through May 31, 1982. Clearly, the wells involved were completed prior to January 1, 1980. Thus, in accordance with NTL-4A and IM No. 87-652, if it is ultimately determined by BLM that an avoidable loss did occur in this case, the billing period would be limited to April 1, 1980, through May 31, 1982, in accordance with IM No. 92-91.

Recommendation: The case should be remanded to our New Mexico State Director for a determination pursuant to the procedures in IM No. 92-91.

MMS-90-0226-O&G, Arco Oil & Gas Company

Comments: Involves Federal lease Sacramento 022385 and certain other Federal leases within the Russell Ranch and South Cuyama Units, California. Case appears to have originated from an audit by the State of California. Nothing found in the case file to clearly indicate that BLM ever made a determination of avoidable loss pursuant to IM No. 87-652. Absent such a BLM determination, no avoidable loss can be said to have occurred. The billing periods for Sacramento 022385 (4/1/80 - 12/31/87) and for the South Cuyama Unit (1/1/83 - 12/31/87) are appropriate if an avoidable loss did occur; however, the billing period for the Russell Ranch Unit (1/1/79 - 12/31/87) would be in error if it is ultimately determined by BLM that an avoidable loss did occur. In that event, the billing period would commence April 1, 1980, in accordance with IM No. 92-91.

Recommendation: The case should be remanded to our California State Director for a determination pursuant to the procedures in IM No. 92-91.

MMS-90-0229-O&G, Exxon Co., USA

Comments: Involves Federal lease Los Angeles 087651-A which is in the South Cuyama Unit, California. Case appears to have originated from an audit by the State of California, probably the same audit as in MMS-90-0226-O&G. Nothing found in the case file

to clearly indicate that BLM ever made a determination of avoidable loss pursuant to IM No. 87-652. Absent such a BLM determination, no avoidable loss can be said to have occurred. The billing period (11/1/83 - 12/31/87) would be appropriate if an avoidable loss did occur. It seems odd that this case is separate from the other leases in the South Cuyama Unit under MMS-90-0226-O&G and raises the question of possible duplication.

Recommendation: The case should be remanded to our California State Director for a determination pursuant to the procedures in IM No. 92-91.

MMS-90-0339-O&G, Mobil Exploration & Producing U.S., Inc.

Comments: Involves four Federal leases in the Bear Creek Unit, Wyoming. This is the only one of the six pending appeals which originated from a BLM determination that an avoidable loss had occurred. That determination was made in accordance with IM No. 87-652. This appeal emanated from MMS's related billing. However, Mobil also appealed BLM's determination to IBLA which resulted in the decision which prompted the issuance of IM No. 92-91.

Recommendations: Since IBLA has remanded the case to BLM for the computation of the royalty value on the gas avoidably lost between April 1, 1980, and October 21, 1984, it would appear that Mobil's appeal to MMS can be dismissed.

MMS-91-0133-O&G, Chevron, USA, Inc.

Comments: Involves Federal lease Sacramento 019376. Case appears to have originated from an audit by the State of California. Nothing found in the case file to indicate that BLM ever made a determination of avoidable loss pursuant to IM No. 87-652. Absent such a BLM determination, no avoidable loss can be said to have occurred. The billing period (1/1/83 - 6/30/83) would be appropriate if an avoidable loss did occur.

Recommendation: The case should be remanded to our California State Director for a determination pursuant to the procedures in

MMS-91-0267-IND, Texaco, USA

Comments: Involves Shoshone-Arapaho Tribal Lease No. 14-20-258-60. Case appears to have originated from an internal MMS audit. Nothing found in the case file to clearly indicate that BLM ever made a determination of avoidable loss pursuant to IM No. 87-652. Absent such a determination, no avoidable loss can be said to have occurred. The billing period (4/1/80 forward) would be appropriate if an avoidable loss did occur.

Recommendation: The case should be remanded to our Wyoming State Director for a determination pursuant to the procedures in IM No. 92-91.

Department of the Interior
GEOLOGICAL SURVEY
CONSERVATION DIVISION MANUAL

Transmittal Sheet

Release No. 7 May 10, 1974

This release, CDM 644.3, sets forth guidelines and procedures related to the combining of production prior to sale and/or the off-lease storage or measurement of liquid hydrocarbons produced from onshore public domain, acquired, and Indian oil and gas leases under the jurisdiction of the Conservation Division.

This Manual release is being approved at this time with the understanding that it may be subject to further change based on the experience we gain from applying these guidelines and procedures to our day-to-day operations. As long as this release is in effect, all personnel shall conform to these guidelines and procedures. Any departure from such guidelines or procedures must receive the prior approval of the Chief, Conservation Division. Such requests for departure must be fully documented and submitted through the Regional Conservation Manager to the Chief, Conservation Division. Documentation must include specific language suggested along with reasons why the change or departure is necessary. Departures will be authorized only when fully justified.

Russell G. Wayland
Chief, Conservation Division

FILING INSTRUCTIONS:

Remove:	Insert:
None	CDM 644.3 (pages 1-10)

.1 Purpose and Objective.

This chapter provides Division personnel with guidelines related to combining of production and/or off-lease storage or measurement of liquid hydrocarbons produced from onshore public domain, acquired, and Indian oil and gas leases under the jurisdiction of the Conservation Division.

Requests for approval to combine production from various sources may involve diversified equipment arrangements, methods, and types of leases. This chapter provides general guidelines establishing minimum qualifications for approval of most common arrangements. No attempt is made to discuss every possible situation since the basic concepts discussed should lend themselves to application in virtually every case. No revisions, changes, or modifications in existing facilities are required, if these facilities currently provide for proper measurement and equitable allocation of revenues and production.

.2 Authority.

A. 30 CFR 221 (7 F.R. 4132, June 2, 1942)

(1) 221.33 Gaging and storing oil.

"All production run from leased lands shall be gaged or measured according to methods approved by the supervisor. The lessee shall provide tanks located on the leasehold, unless otherwise approved by the supervisor, suitable for containing and measuring accurately all crude oil produced from the wells...."

(2) 221.47 Value basis for computing royalty.

"Under no circumstances shall the value of production... for the purpose of computing royalty be...less than the gross proceeds accruing to the lessee...."

B. 25 CFR 171.20 (22 F.R. 10588, December 24, 1957)

"Written permission must be secured from the supervisor before any operations are started on the leased premises. After such permission is secured, the operations must be in accordance with the operating regulations...."

C. 25 CFR 172.24 (22 F.R. 10592, December 24, 1957)

"Lessees will be required to carry out and observe the operating regulations...governing oil and gas operations on restricted Indian lands...."

D. Standard Lease Terms - Section 2(d) for Public Domain

"To pay...royalties in amount or value of production removed or sold from the leased lands."

.3 Guidelines.

A. General

The lease terms and regulations require that hydrocarbon production from each Federal or Indian oil and gas lease be accurately measured for royalty purposes on the leasehold. However, under certain circumstances (in accordance with 30 CFR 221.33), and subject to certain requirements, the Area Supervisor may authorize the lessee to remove production from a lease (communitized tract or unit participating area) to a central or off-lease point for purposes of treating, measuring, storing, or combinations thereof. When moving such production, the lessee may combine the production from various wells, leases, pools, fields, and operations, if such "combining of production" is done in accordance with provisions contained in this chapter. For purposes of this chapter, production from a communitized area or unit participating area will be considered as though it were production from a single lease.

The combining of production, or the off-lease measurement or storage of production, from public domain or Indian leases with other Federal, Indian, or non-Federal leases may be authorized when it can be demonstrated by the lessee/operator that such action will be in the interest of conservation and will not result in reduced Federal or Indian royalty revenues or improper allocation of Federal or Indian production.

B. Definitions

The phrase "combining of production" as used in this chapter means any form of commingling or common storage whereby production from one source is combined with production from other sources prior to sale. Depending on the circumstances

involved, allocation to each source shall be either by approximate measurement (calculated apportionment) or accurate measurement.

The phrase "off-lease storage and/or measurement" as used in this chapter refers to the locating of a tank battery or measurement facility off the leasehold for valid economic or topographic reasons, such as accessibility to all weather roads, pipeline connections, truck loading points, or to increase the price received for production by reducing the cost of transportation.

C. Measurement

Measurement of liquid hydrocarbons for royalty purposes is discussed in CDM 644.4. All facilities used in selling combined production, or in accurately measuring production for allocation purposes, must be approved, installed, and operated according to the instructions contained in CDM 644.4. Approximate measurement (or calculated apportionment), when appropriate for allocation of volumes and royalties, can be made by any means acceptable to the Supervisor, including but not limited to well tests, net oil computers, and dump meters.

As outlined in the following paragraphs, accurate measurement for allocation purposes may not be required in cases of economic necessity. However, accurate measurement for sales purposes is always required.

D. Royalty Determination

As provided by the lease terms and regulations, royalty will be based on the amount and value of production at the leasehold, communitized tract, or unit participating area, or at such other central sales point as may be authorized by the Supervisor. However, under no circumstances can royalty be based on less than the gross proceeds accruing to the Federal or Indian lessee/operator from the sale of combined production. CDM 647.1 contains guidelines for determining product values for royalty purposes on crude oil. Thus, royalties will be computed on either the volume, gravity, and value measured at the leasehold or on the price allocated to the lessee from the sale of combined production (allocation factor, volume, gravity, and value at the sales facility), whichever is greater.

E. Extent of Approvals

Approval for combining production from various sources is a privilege which is granted to lessees for the purpose of aiding conservation. Failure to operate in accordance with the provisions outlined in the Area Supervisor's approval letter and/or subsequent stipulations or modifications required by the Supervisor will subject such approval to revocation. All approvals for combining production or for off-lease measurement and/or storage granted by the Supervisor simply provide that the method approved is a proper way to measure, store, and/or dispose of the Federal or Indian royalty portion of production. As such, the applicant should be advised that it does not relieve the lessee or operator from any legal obligations he may have regarding consent from other interest holders or State regulatory agencies.

F. Applications to Combine Production

The following items must be included with any application requesting approval to combine production:

(1) A formal request for approval to combine production with an appropriate explanation and diagram(s) describing the proposed operation in detail.

(2) A map showing the lease numbers and location of all leases and wells that will contribute production to the proposed commingling or common storage facility. All unitized or communitized areas, producing zones, or pools, etc. must be clearly illustrated or detailed by suitable means.

(3) A schematic diagram which clearly identifies all equipment that will be utilized.

(4) Estimated amounts and types of production involved.

(5) Details of the proposed method for allocating production to contributing sources.

(6) A statement that all interest owners have been notified of the proposal.

(7) Evidence that Federal or Indian royalties will not be reduced through approval of the application.

(8) Detailed economic justification, when the application to combine production is based upon economic necessity, i.e. the applicant contends that such approval is necessary for continued operation of the Federal or Indian lease(s).

G. Mixing Different Gravity Hydrocarbons

When liquid hydrocarbons of diversified gravities are to be mixed and sales prices fluctuate with variances in gravity, the applicant must provide data comparing prices received for individual lease production to the price that would be received for the combined production. Production and sales data reported on the most recent Forms 9-329 and 9-361 must serve as the basis for such comparisons. If an application for approval to combine production involves newly developed leases which do not have a history of production, the applicant may provide the required comparisons using well test results as the basis for estimating monthly sales volumes, gravities, and values.

H. Requirements for Different Types of Operations Involving Combining of Production

Accepting approximate measurement or calculated apportionments of oil for Federal royalty allocation purposes is only appropriate where the leases involved are Federal leases with identical royalty rates. Calculated apportionment between Federal and non-Federal leases or Federal leases with different royalty rates may be approved only when it can be economically justified, i.e. necessary to allow the continued successful operation of the Federal lease(s).

All other situations involving the combining of production must require that all production be accurately measured and sampled for allocation purposes prior to being combined. Accordingly, combining of production at the surface between Federal leases with different royalty rates, or between Federal, Indian tribal, and non-Federal leases, can be approved only if Federal or Indian tribal production from all different sources is accurately measured and sampled for royalty purposes prior to being combined, unless justified as economically necessary in the interest of conservation.

Combining of production at the surface from two or more zones or pools on a single Federal or Indian tribal lease is authorized without requiring formal application or accurate measurement of

the individual sources, if royalty rates for all producing zones are identical and gravity and crude oil types are fairly similar. If royalty rates for production from various zones or pools differ, or if gravities or crude oil types differ widely, then each source of production must be accurately and individually measured, unless the lessee/operator can show that no royalty loss will occur through the combining of production.

When production is authorized to be combined without accurate measurement for allocation purposes, this combined production must be accurately measured before being further combined with production from other sources, such as non-Federal leases or Federal leases with differing royalty rates. For example, if production from four leases is being combined and three of the leases are 12½ percent public domain while the fourth is a non-Federal lease, production from the three 12½ percent leases can be combined without accurate measurement for allocation purposes. However, the combined production from these leases must be accurately measured and sampled before being combined with production from the non-Federal lease.

Also, all production from each Indian allotted lease must be accurately measured before combining with any other lease, whether Federal, tribal, or other. Commingling production from Indian tribal or allotted leases should not be considered, unless it is an economic necessity to continue production from the leaseholds.

I. Off-Lease Storage and/or Measurement

Off-lease storage and/or measurement of Federal or Indian tribal production may be approved by the Area Supervisor when justified by the lessee. Consolidated batteries or separate individual lease batteries located at a common site would fall in this category. When tank batteries are consolidated, the individual lease facilities must be kept completely separate prior to measurement. Provisions must also be included in these types of approvals requiring that royalty be paid on any hydrocarbon liquids that may be lost between the lease and the off-lease measurement or storage point. Application for approval of off-lease storage and/or measurement must include the following items:

(1) A formal request for approval of off-lease storage and/or measurement with appropriate explanations and diagrams

describing the proposed operation in detail and containing the reasons for the proposal.

(2) A map showing the lease numbers and location of all leases and wells that will be connected to the proposed off-lease facility. All unitized or communitized areas, producing zones, or pools, etc. must be clearly illustrated or detailed by suitable means.

(3) A schematic diagram which clearly locates and identifies all equipment that will be utilized.

(4) Estimated amounts and types of production involved.

(5) Details of the proposed method for handling and measuring production for each lease involved.

J. Temporary Approvals - Unit Operations

Under certain circumstances, approval may be granted by the District Engineer to temporarily allow production from a new unit well to be combined with existing unit production until final disposition of the new production can be determined. In such situations, approximate measurements may be used for allocation purposes.

K. Addition of Wells or Leases to Existing Facilities

Any wells or leases proposed to be added to approved commingling, common storage, or off-lease storage and/or measurement facilities must be approved by the Area Supervisor prior to their being included in the facility.

L. Limitations

The above instructions are not applicable when the lessee/operator delivers production to a common point and is paid by the purchaser on the basis of volumes and gravities measured prior to combining production from the various sources. In this case, royalty will be based on the volume and quality of liquids metered and/or measured and removed from the lease prior to being combined.

.4 Responsibility and Procedures.

A. District Engineer

The District Engineer is responsible for initially reviewing all applications for combining production or for off-lease storage and/or measurement, forwarding applications to the Supervisor with recommendations, and periodically inspecting all facilities for compliance.

B. Area Supervisor

The Area Supervisor is responsible for reviewing the District Engineer's report and for approving or disapproving all proposals for combining production or for off-lease storage and/or measurement.

C. The following procedural steps will be followed in fulfilling these responsibilities:

Responsible Official	Step	Action
District Engineer	1	Receives and initially reviews applications.
	2	Recommends modifications, approval or disapproval of applications and forwards to Area Office for final action.
	3	Has primary responsibility for ensuring that all measurement, storage, and sales facilities are equipped and operated in a manner which adequately protects the Federal Government's or Indians' interests. Recommendations to the Supervisor must specifically detail requirements necessary in this regard.
	4	Inspects newly approved facilities within six months after final Area Office approvals are granted to ensure that equipment is installed and operated in accordance with

Responsible Official	Step	Action
District Engineer	4	stipulations set forth in approval letters.
	5	Incorporates inspection of systems into routine inspection trips. If a system is found operating in non-compliance with the stipulations set forth in the approved application, demands that corrective action be taken. If corrective action is not promptly taken, the District Engineer takes such temporary action as may be necessary to prevent loss of Federal or Indian royalties and reports to the Supervisor recommending that approval be rescinded.
Area Accountant	6	Reviews proposals for allocating and reporting production and sales, and advises Supervisor of data required to fulfill accounting requirements.
Area Supervisor	7	Grants final approval for combining production or for off-lease storage and/or measurement and stipulates all requirements needed to implement Division guidelines.
	8	Ensures that copies of all approval letters are sent to the District Engineer and Area Accountant.
	9	Reviews District Engineer's recommendations for rescinding approvals and takes appropriate action to prevent loss of Federal or Indian royalties.

.5 Background and Reference.

Current Area requirements regarding surface commingling and common storage are contained in the following memorandums: