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Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

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Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations

AGENCIES: U.S. Forest Service, Agriculture; Bureau of Land Management, Interior.

ACTION: Joint final rule.

SUMMARY: This final rule revises existing Onshore Oil and Gas Order Number 1 which was published in the October 21, 1983, edition of the **Federal Register**. The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (other than those of the Osage Tribe) onshore oil and gas leases, including leases where the surface is managed by the U.S. Forest Service (FS). It also covers most approvals necessary for subsequent well operations, including abandonment. The revision is necessary due to provisions of the 1987 Federal Onshore Oil and Gas Leasing Reform Act (Reform Act), the Energy Policy Act of 2005 (Act), legal opinions, court cases since the Order was issued, and other policy and procedural changes. The revised Order addresses the submittal of a complete Application for Permit to Drill or Reenter package (APD), including a Drilling Plan, Surface Use Plan of Operations, evidence of bond coverage and Operator Certification. The final rule ensures that the processing of APDs is consistent with the Act and clarifies the regulations and procedures that are to be used when operating in split estates, including those lands within Indian country. The final rule addresses using Master Development Plans (which address two or more APDs) to approve multiple well development proposals and encourages the voluntary use of Best Management Practices as a part of APD processing. Finally, the rule requires additional bonding on certain off-lease facilities and clarifies the BLM's authority to require this additional bond.

DATES: This final rule is effective April 6, 2007.

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SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Final Rule and Comments
III. Procedural Matters

I. Background

The regulations at 43 Code of Federal Regulations (CFR) part 3160, Onshore Oil and Gas Operations, in section 3164.1 provide for the issuance of onshore oil and gas orders to "implement and supplement" the regulations in part 3160. Also, 36 CFR 228.105 provides for the issuance of FS Onshore Orders or for the co-signing of orders with the BLM. Although they are not codified in the CFR, all onshore orders are issued using notice and comment rulemaking and, when issued in final form, apply nationwide to all Federal and Indian (other than those of the Osage Tribe) onshore oil and gas leases. The table in 43 CFR 3164.1(b) lists existing Orders. This rule revises existing Onshore Oil and Gas Order Number 1 (the Order) which supplements primarily 43 CFR 3162.3 and 3162.5. Section 43 CFR 3162.3 covers conduct of operations, applications to drill on a lease, subsequent well operations, other miscellaneous lease operations, and abandonment. Section 3162.5 covers environmental and safety obligations. In this rule the FS adopts the Order which would supplement 36 CFR 228 subpart E. The existing Order has been in effect since November 21, 1983. For further information, see the October 21, 1983 **Federal Register** at 48 FR 48916.

The BLM and the FS published the proposed rule in the **Federal Register** on July 27, 2005 (70 FR 43349), for a 30-day comment period and on August 26, 2005 (70 FR 50262) extended the comment period for 60 days. On August 8, 2005, the President signed the Energy Policy Act of 2005 (Act). Provisions in the Act impacted the timing of APD approval provisions in the original proposed rule. Therefore, on March 13, 2006, the BLM and the FS published a further proposed rule to make the provisions in the originally published proposed rule consistent with the Act. The further proposed rule also modified a provision in the proposal regarding proposed operations on lands with Indian surface and Federal minerals.

II. Discussion of the Final Rule and Comments

There are four primary reasons the Order is being revised:

1. The 1987 Reform Act, which amended the Mineral leasing Act, 30 U.S.C. 181 *et seq.*, included two significant changes affecting APD processing on Federal leases. The first important change is the addition of a provision for public notification of a proposed action before APD approval or substantial modification of the terms of a Federal lease.

The second important change the Reform Act made is the assignment of authority to the Secretary of Agriculture to approve and regulate the surface disturbing activity associated with oil and gas wells on National Forest System (NFS) lands. Where NFS lands are involved, a Surface Use Plan of Operations, included in an APD, is now approved by the FS. The FS also approves surface disturbing aspects of related and subsequent operations. The FS has actively participated in this revision, and is a cosigner of this Order. The Order would apply to FS review of oil and gas surface operations.

Section 366 of the Energy Policy Act of 2005 sets steps and time requirements for processing APDs. The Order has been revised to be consistent with section 366 requirements.

2. In response to protests to two Resource Management Plans in April 1988, the Office of the Solicitor of the Department of the Interior issued two memorandums related to oil and gas issues. The first and most far-reaching (issued by the Associate Solicitor, Energy and Resources on April 1, 1988, titled "Legal Responsibilities of BLM for Oil and Gas Leasing and Operations on Split Estate Lands"), concerned BLM responsibilities on Federal leases overlain by private surface (split estate). In this memorandum the Solicitor's Office opined that the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA) require the BLM to regulate exploration, development, and abandonment on Federal leases on split estate lands in essentially the same manner as a lease overlain by Federal surface. The memorandum also stated that while a private owner's wishes should be considered in decisions, they do not overrule requirements of these

statutes and their implementing regulations.

The second memorandum (issued by the Assistant Solicitor, Onshore Minerals, Division of Energy and Resources on April 4, 1988, titled "Legal Responsibilities of BLM for Oil and Gas Leasing and Operations under the National Historic Preservation Act") lays out in more detail the BLM's responsibilities under NHPA, elucidating further the discussion on cultural resources in the first opinion.

The pertinent requirements of the existing Order do not fully conform to the memorandums issued by the Solicitor's Office in 1988.

3. The existing Order does not adequately address the BLM Rights-of-Way or FS Special Use Authorizations which are often required for ancillary facilities or those activities outside of lands committed to a unitized area. This has led to confusion and delays on the part of both the agencies and industry. Under the existing Order, APD approval is often delayed pending completion and approval of a Right-of-Way or Special Use Authorization. We intend for the proposal to eliminate or reduce this delay. The rule provides for early identification of any needed Right-of-Way or Special Use Authorization, allows for conducting a single environmental analysis for the APD and Right-of-Way or Special Use Authorization, and permits concurrent approval of the Right-of-Way or Special Use Authorization with the APD. On NFS lands, the FS will approve activities directly related to the drilling and production of the well consistent with 36 CFR Subpart E.

4. Existing Order Number 1 is over 20 years old. Conditions, regulations, policies, procedures, and requirements have been altered, added, and eliminated since the Order was issued. The BLM is in the process of reviewing Field Office practices and the preliminary findings from that review were considered in the proposed revisions to the Order. The BLM has reorganized the Order to follow the review and approval process and the processing timeframes for each step are now in one section. Also, operations on split estate are discussed in more detail.

The BLM encourages operators to employ Best Management Practices when they develop their APDs. Best Management Practices are innovative, dynamic, and economically feasible mitigation measures applied on a site-specific basis to reduce, prevent, or avoid adverse environmental or social impacts. The BLM Field Offices incorporate appropriate Best Management Practices into proposed APDs and associated on-lease and off-lease Rights-of-Way approvals after required NEPA evaluation. They can then be included in approved APDs as Conditions of Approval. Typical Best Management Practices can currently be found on the BLM's Web site at *http://www.blm.gov/bmp/*.

Discussion of Major Changes

Definition of "Complete APD"

The term "Technically and Administratively Complete APD" has been replaced with a clear definition of "Complete APD." This new definition reflects what is already a common practice in many Field Offices and would require all Field Offices to adopt the same convention. The new definition makes the approval process more consistent. The BLM considered defining the terms "Administratively complete" and "Technically complete" separately, but abandoned this idea because it is difficult to separate the two concepts and because potential delays might be caused when processing APDs in certain circumstances. This final rule requires that an onsite inspection conducted jointly by the BLM (and the FS if appropriate) and the operator be completed prior to the BLM designating the APD package as complete. The BLM (and the FS if appropriate) currently conducts onsite inspections to determine if the material submitted in the APD package is accurate and to determine if Conditions of Approval are necessary. Examining existing on-the-ground circumstances is the only way to ensure that the information in the APD package is consistent with conditions at the proposed drill site and along the proposed access route. The final rule codifies the current BLM practice of onsite inspections as part of the APD approval process.

APD Processing

Section 366 of the Act amends the Mineral Leasing Act (30 U.S.C. 226(p)(1)) and adds the statutory requirement that the Secretary shall notify an applicant within 10 days of receiving an APD and state that either the APD is complete or specify what additional information is required to make the application complete.

The Act requires that the Secretary (the BLM is the delegated authority) approve an APD within 30 days after its completion or notify the applicant of: (1) Any actions that the operator can take to get approval; and (2) What steps, such as National Environmental Policy Act (NEPA) or other regulatory compliance, remain to be completed and the schedule for completion of these requirements. This provision of the Act is made a part of the final rule.

In those situations where the BLM defers the decision, the Act and the final rule give the applicant 2 years to take whatever actions are identified in the 30-day notice. The Act amends 30 U.S.C. 226 by adding a new paragraph (p)(3)(B), and the final rule also adds a new requirement that the BLM must make a final decision on the application within 10 days of the applicant's completion of these requirements, if all other regulatory requirements are complete. The timeframes established in this section apply to both individual APDs and to the multiple APDs included in Master Development Plans. Even though the time limits established in Section 366 of the Act are amendments to the Mineral Leasing Act and, therefore, do not apply to Indian leases, the final rule states that the same time limit will apply to both Federal and Indian leases.

The BLM does not approve Surface Use Plans of Operations for National Forest Service (NFS) lands. The FS notifies the BLM of its Surface Use Plan of Operations approval and the BLM proceeds with its APD review. For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan are subject to existing FS appeal procedures, which may take up to 105 days from the date of the decision. Pursuant to the Mineral Leasing Act (30 U.S.C. 226(g)), as amended by the Reform Act, the final rule in Section III.E.2.b. provides that the BLM may not approve an APD until the FS has approved the Surface Use Plan of Operations. This condition is consistent with the addition to Section 17 of the Mineral Leasing Act (30 U.S.C. 226(p)(2)) adopted in Section 366 of the Energy Policy Act, which provides that the Secretary shall issue a permit within 30 days only if requirements of other applicable law have been completed within that timeframe. Therefore, in situations where the Surface Use Plan of Operations is not approved, the BLM will provide notice within the 30-day period that action on the APD will be deferred until the FS completes action on the Surface Use Plan of Operations.

Operating on Split Estate Lands With Indian Surface Ownership

The final rule makes it clear that split estate lands include those having Indian surface and Federal minerals. It also explains that the operator is required to address surface use issues with the Bureau of Indian Affairs (BIA) when Indian trust lands are involved.

The final rule addresses the responsibility of the operator to confer

with surface owners in the case of privately owned surface and Federal/Indian leases, as well as Indian oil and gas leases where the surface is in different Indian ownership. The final rule applies to privately owned surface and to all Indian surface and Federal oil and gas lease situations. The final rule requires a good faith effort to reach a Surface Access Agreement, and provides for the posting of a bond to protect against covered damages in the absence of an agreement. This final rule codifies existing policy with the exception that surface owner compensation is based on the terms of the statute that reserved the mineral estate. Under the previous rules, this compensation was based on the terms of the Stockraising Homestead Act.

Drilling and Surface Use Plans

The final rule makes specific changes to the drilling and surface use plans as follows:

The former 8-point Drilling Program (also referred to as the Subsurface Use Plan) is replaced with a 9-point Drilling Plan. The new requirement in the final rule requires the operator to address the type and amount of cement to be used in setting each casing string.

The final rule replaces the former 13-point Surface Use Program (or Plan) with a 12-point Surface Use Plan of Operations. "Operator Certification" is a separate component of the APD in the final rule. The final rule makes it clear that the Operator Certification covers the entire APD package and not just the Surface Use Plan of Operations. Under the final rule, the operator is required to certify that they have made a good faith effort to provide the surface owner with a copy of the Surface Use Plan of Operations and any Conditions of Approval that are attached to the APD.

Master Development Plans

The final rule establishes a new approval process for Master Development Plans. An operator uses this process to submit plans for field development of a multiple well program. A Master Development Plan proposal can be addressed in a single NEPA analysis and approval. This facilitates the consideration of cumulative effects early in the process and enables broad application of identified mitigation measures, and minimizes the overall timeframe for approval. Because the process allows for better planning of field development, adverse environmental impacts are minimized.

Use of Best Management Practices

The final rule encourages operators to use Best Management Practices when developing their APDs. Using Best Management Practices is the BLM's current policy. Best Management Practices are innovative, dynamic, and economically feasible mitigation measures applied on a site-specific basis that reduce, prevent, and avoid adverse environmental or social impacts of oil and gas activities. The BLM Field Offices currently incorporate Best Management Practices into proposed APDs and associated on-lease and off-lease Rights-of-Way approvals if they are carried forward as part of the NEPA required evaluation or environmental review. This final rule clarifies the existing policy that Best Management Practices may be included as Conditions of Approval. The BLM started using Best Management Practices in 2004 and encourages the voluntary use of these practices.

Bonding Authority

The final rule clarifies the BLM's authority under 43 CFR 3104.5 to require an additional bond to be applied to off-lease facilities that are required to develop a lease, such as the large impoundments being created in Wyoming for water produced from Federal and non-Federal coalbed natural gas wells. The BLM is directed by the Reform Act to require sufficient bond to insure "the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease" 30 U.S.C. 226(g). An Assistant Solicitor's Opinion of July 19, 2004, concluded that the BLM has the authority under existing regulations to require an additional bond for such facilities and that the current regulation does not limit the BLM to increasing the required amount of an existing bond. Accordingly, the final rule does not represent a change in the regulatory scheme.

Response to Comments

The BLM received 81 comments on the proposed and further proposed rules. In the following discussion we categorize the comments according to the sections of the text or preamble to which the comments were directed. Some comments were general in nature and did not relate to a particular section in the text or preamble. These are grouped in a general category and addressed accordingly. Other comments are grouped by the section of the Order to which they pertain. If a section of the Order is not discussed in this preamble, that means that we received no public comment on that section. Note that, when used in conjunction with Section 106 of the National Historic Preservation Act and the Endangered Species Act, "inventory" and "survey" are equivalent terms and are used interchangeably.

Although we received no substantive comments on the proposed changes to 36 CFR 228.105(a)(1) (FS regulations), we amended that section in the final rule to make it consistent with the final Order.

General Comments

Several commenters asked that the five statutory categorical exclusions that are in Section 390 of the Energy Policy Act of 2005 be included in the Order. The Order does not address the statutory categorical exclusions because they are already a legal requirement and we believe they would best be addressed in subsequent manual and handbook updates. Some commenters were concerned that we would apply acreage limits for categorical exclusions to Master Development Plans rather than leases. These comments exemplify the problems that would be inherent in addressing categorical exclusions in the Order.

One commenter asserted that revising the Order was premature until the BLM has the data from the pilot project under Section 365 of the Energy Policy Act of 2005. We disagree. The BLM is looking forward to obtaining useful information from the pilot projects, but there is no reason to delay revisions to the Order.

A few commenters believed that we should use stronger language than saying that "BLM will comply with other applicable laws" before approving an APD as stated in Section III. and in numerous other places in the Order. We disagree. The language in the rule is similar to that in the Energy Policy Act of 2005 (Act). The Order is clear and requires that the BLM comply with applicable law naming NEPA, the National Historic Preservation Act, and the Endangered Species Act, which are the principal laws impacting Federal actions related to approval of APDs. We do not believe that a description of the requirements of other applicable law is needed or appropriate because those requirements are adequately addressed in other rules and policy specific to implementation of those laws.

One commenter said the rule should address conducting cultural inventories prior to approving geophysical operations. We disagree. Geophysical operations are outside the scope of this rule and are generally approved under

43 CFR subpart 3150 (or FSM 2860 on National Forest System (NFS) lands).

One commenter asked that we delay publishing a final rule until the split estate report to Congress required by Section 1835 of the Act was complete. We believe that it is not necessary to wait for completion of the report because the rule must be consistent with existing law and we cannot speculate on potential changes to law that may occur as a result of the split estate report. However, the rule has been written in consultation with those involved in drafting the split estate report and is consistent with their findings and existing law.

One commenter asked that we describe in the Order how we would revise existing leases and modify them with a stronger emphasis on monitoring and public involvement that result from new or updated land use plans. The BLM involves stakeholders in land use plans when they are written and this becomes the basis for subsequent leasing decisions. However, revision of existing leases is beyond the scope of this Order. We are required by the Reform Act to post for public notification each pending APD and we evaluate each APD and attach appropriate Conditions of Approval depending on the proposed action. While this may not change previously approved APDs, the duration of the approved APD and subsequent drilling activity is sufficiently short that we do not anticipate that they will need to be updated. We are required by the Reform Act to conduct a certain level of monitoring regardless of Conditions of Approval or even the vintage of the APD so that existing productive wells are similarly not likely to present a problem relevant to decisions based on old land use plans.

Several commenters suggested that the BLM and the FS adopt certain state procedures that the commenter said would greatly reduce the amount of time required to process an application. The BLM and the FS have other regulatory requirements that exceed the states' responsibilities. The additional requirements may lengthen the application and approval process. The BLM and the FS must comply with various legal mandates such as NEPA and the National Historic Preservation Act that do not apply to states, but must be addressed in the Order. These Federal mandates make the process for approving oil and gas operations different than the process for State governments and, therefore, we did not modify the final Order as a result of this comment.

A few commenters stated that as proposed, the Order will not streamline the APD process. The Order cannot eliminate any steps required by various environmental laws, but can provide clarification, for both industry and the involved agencies. We believe that the Order will facilitate and encourage up-front planning, application of Best Management Practices, submission of geospatial data, etc., which may shorten the time needed to approve an APD. Also, the use of Master Development Plans will facilitate early project design and analysis and help to streamline subsequent permitting.

Many commenters believe that the Order nullifies or preempts the various state laws related to drilling operations and private surface owner negotiations. We disagree. The Order only addresses Federal obligations for operations on Federal lands which may be distinct from state obligations or private surface owner agreements. The Order would only impact state law or private agreements to the extent that they conflict with Federal obligations. In addition, the Order does not negate or preempt other Federal, state, or local laws and/or ordinances.

Two commenters challenged our purpose for the proposed Order and said that our purpose was really to elevate the legal standing of the existing Order and to limit the ability of surface owners to negotiate damages with operators as may be provided in certain state laws. We disagree. The proposed Order will have the same level of importance as the existing Order. As a regulation the Order does not change or negate other Federal or state statutes. State laws are limited in their application to Federal leases by the terms of Federal law, such as those that are the source of the titles of the surface owners, i.e., Federal land patenting statutes, and not because of this regulation.

Several commenters challenged our inclusion of the April 1, 1988 solicitor's memorandum that defines the BLM's responsibilities regarding compliance with various laws without input from the current solicitor. The Office of the Solicitor was fully involved in review and drafting of the proposed rule, the further proposed rule, and this final rule. Contrary to what the commenters imply, the Solicitor's memorandum cited in the proposed rule still reflects the state of the law.

Several commenters suggested that the BLM and the FS honor state statutes which outline a procedure whereby private landowners negotiate with oil and gas lessees toward damages presumably caused by oil and gas development. Some commenters contended that the proposed rule would put new limits on compensation that are based in the original surface patents. The BLM and the FS do not enforce state law; however, we do not object to negotiations between the surface owner and operators. In fact, Federal law and our policy require that the operator make a good faith effort to enter into an agreement with the surface owner. How that negotiation takes place and the nature of any agreement reached is beyond our authority to direct. We do not determine the amount of compensation unless a bond is filed when the operator and surface owner are unable to reach an agreement. In those cases we must determine what, if any, limitations on compensation were contained in the original patent and then determine the amount of bond necessary under Federal law for the damages it addresses. We will assure that the bond amount is maintained throughout the life of the oil and gas operation by requiring replenishment of the bond if it is drawn upon for compensation. Whether states require, or can require, additional bonding is outside the scope of this rule.

Several commenters stated that the Surface Use Plan of Operations does not require the operator to identify the location of the proposed well and that the draft Order should require restoration, not reclamation. A listing of the proposed well location is a required part of a complete APD. A well plat is required as is a map in the Surface Use Plan of Operations that shows all proposed surface disturbance. Reclamation is described in the Order as returning the disturbed land to as near its predisturbed condition as is reasonably possible. Section XII.B. of the Order requires that the surface owner be notified and involved in determining reclamation requirements.

Several commenters stated that the rule removes the rights of private landowners granted by various state statutes pertaining to planning and damage compensation. We disagree. The final rule does not affect rights of private landowners; it is based on long established law.

Several commenters stated that the rule was contrary to the provisions of Executive Order 13352 on the facilitation of cooperative conservation. We disagree with the commenters. The same commenters believe that the Order eliminates private parties from significant decisions that affect their ability to manage their private property. It is unclear what in the rule these commenters believe is limiting private surface owner rights. This Order does not change existing laws that deal with

split estate situations. The laws (Stockraising Homestead Act and others and implementing regulations at 43 CFR subpart 3814) are not revised as a result of this rule. This Order clarifies and ensures the APD review process includes the private surface owner and that the BLM adheres to existing laws and legal decisions involving split estate. Also this rule offers surface owners more input into the process and also provides surface owners more information than did the previous Order.

Several commenters stated that the rule does not promote cooperative conservation, but rather removes rights of the private property owner and places them in the hands of BLM personnel with regards to negotiations for surface activities and damages. The commenters appear to be addressing the provisions in Section VI. of the Order that address operations on private surface with underlying Federal minerals. We disagree with the commenters that the Order does not promote cooperative conservation. This rule offers surface owners more input into the process and also provides surface owners more information than did the previous Order. In addition, the rule is not creating new procedures, but is merely implementing existing law and procedures.

Several commenters said that the BLM should acknowledge that its attempt to impose Federal regulations for oil and gas development underneath private lands in states with surface owner protection acts is not in any way simple or easy to understand. Commenters said that it complicates and confuses the issue, regardless of the words used and that it could have an effect on energy supplies. The same commenters said that if the BLM wants to clarify this issue, then it needs to intervene and have the courts resolve the issue of Federal preemption of state statutes. No intervention by the BLM on this subject is necessary; any party may raise that issue. The final rule implements existing law, it does not change its interpretation. There is no administrative action the rulemaking can take which will change the acts of Congress, the body of law, nor over a hundred years of legal decisions, highlighted by the decision in *Kinney-Coastal Oil Co.* v. *Kieffer, 277 U.S. 488 (1928).*

Several commenters disagreed that the rule will not have Federalism implications as defined by Executive Order 13132. We disagree. Existing policy and this final rule are based on a strict interpretation of existing law. Surface owners have only the substantive rights provided by Federal statute, including the laws under which the surface was patented. The Order adds a procedural requirement of a good faith attempt to notify the surface owner and attempt to reach an agreement, but that does not change the dominant character of the federally owned oil and gas or the rights of Federal lessees. The Order includes the lessee's right to post a bond if a good faith attempt to reach an agreement with the surface owner fails and requires compensation to surface owners as is required by the patenting act. The authority of states with respect to reserved Federal minerals is established in statutes dating back to the early twentieth century and is not altered by this Order and there are no Federalism implications because it is existing law, not this Order, that may conflict with state statutes.

Several commenters said that private landowners would be significantly impacted by the rule and were "* * * entitled to protection under the Regulatory Flexibility Act * * *." We disagree. Even if private land owners were considered to be "small entities" as that term is defined under the Regulatory Flexibility Act, we do not believe that private land owners are significantly impacted by the changes that this rule makes to the existing Order. Furthermore, it is existing law that governs split estate; this rule merely codifies the existing law.

Several commenters stated that the rule would constitute a taking because of diminution of land values that the rule causes. We disagree. This Order implements existing law. Surface owners still own the surface, which remains subservient to the dominant mineral ownership of the United States. The procedures adopted in this Order do not affect surface owners' property rights.

Many commenters disagreed with the statement in the proposed rule that the regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million citing costs private landowners are forced to bear by being limited in the damages that they can receive for oil and gas activities on their lands. We disagree. The changes that this rule makes to the existing Order and existing procedures do not alter the damages to be covered by bond. The changes this rule makes having to do with damages that occur on private surface as a result of operations to extract Federal minerals are not as a result of the BLM's exercise of this rulemaking, but our effort to more faithfully reflect existing statutory law. Furthermore, the rule primarily impacts lessees or operators filing APDs with the BLM and the FS, not State, local, or tribal governments.

Several commenters stated that they disagree with the statement in the proposed rule that "this proposed rule would not unduly burden the judicial system * * *." The commenters said that given the inherent legal conflict with states which have passed surface owner protection acts with provisions that are different than those included in this rule, the BLM's statement that this will not burden the judicial system is unsubstantiated. We disagree. As stated earlier, this rule implements well established law and therefore is not the source of the legal conflict in which the commenters are involved.

Section-By-Section Discussion

Section I. Introduction

Purpose: This section describes the statutory authority on which this Order is based and describes the purpose and scope of the Order. The authority upon which the Order is based has changed since the 1983 Order was published by the Reform Act and the Energy Policy Act of 2005. The Reform Act granted the Secretary of Agriculture authority to regulate all surface disturbing activities conducted pursuant to an oil and gas lease on NFS lands.

Comments and Responses: One commenter asked that the BLM consider delegating the permitting responsibility to state agencies. The BLM cannot delegate permitting responsibility because Federal law requires that the Department of Interior (delegated to the BLM) authorize permitting of oil and gas activities on Federal land. Also, 30 U.S.C. 1735 does not provide for delegation of APD approval as it does for other aspects of the oil and gas program. The process of delegation is available to State governments for consideration under 43 CFR subpart 3191; however, it is limited to inspection, enforcement, and investigation, but not for the approval of operations. Further, the commenter didn't offer any statutory authority for this delegation and we are not aware of any.

One commenter did not think it appropriate for the Order to apply to operations within a unit or communitized area on private minerals or private surface. We agree. While the site security, measurement, and production reporting regulations apply to unitized wells drilled on private minerals (43 CFR 3161.1), it is not appropriate for the BLM or the FS to exercise authority over surface operations conducted on privately

owned lands just because those lands are contained within a unit or communitized area. The BLM only requires a copy of the permit to be provided for non-Federal wells within a unit or communitized area and wording in the "Scope" section of the Order is revised to make this clear.

Section II. Definitions

Purpose: This section contains the meaning of terms that are necessary to ensure consistent interpretation and implementation of this Order.

Summary of Changes: We added definitions for Best Management Practices and Casual Use to make the definition of those terms clearer. Another change made in this section was to accept the many recommendations to change "Surface Management Entity" to "Surface Managing Agency." By doing so, many of the other comments that sought clarification of the role of BIA and tribes were resolved. We also added a definition of "Private Surface Owner" to provide clarity.

Comments and Responses: Several commenters expressed concern that all maps and plats required as part of a complete APD (see the definition of "Complete APD") must be submitted in both hard copy and geospatial data formats. They were concerned that the requirement could impose a financial hardship for some operators and that some of the data may be proprietary. They requested that the geospatial data format be optional. Geospatial data is a vital tool for facilitating timely processing of applications. The BLM and the FS use the geospatial data to link data and facilitate analysis. However, we recognize the concerns expressed in the comments and have modified the rule to make submission of geospatial data, except for the well plat, optional rather than mandatory. The BLM strongly recommends the submission of the data in geospatial format as it will assist us in timely review of applications. We will still require geospatial data for the well plat showing the proposed well location to assist us in assuring that the well is accurately located in relation to lease boundaries.

Many commenters made observations or asked questions about the definition of a complete APD. Many noted that the definition now includes an onsite inspection. A few commenters stated that this requirement circumvents the intent of Congress expressed in the Energy Policy Act of 2005 by making moot the statutory 10-day timeframe for the BLM to determine the completeness of an APD. These commenters note that there is no set timeframe from the date the APD is received until the onsite must be conducted. Many of these commenters assume that various inventories must be completed in order to hold the onsite, thereby creating additional delays. However, one commenter expressed support for including the onsite inspection as part of the "Complete APD" definition. A few other commenters expressed concerns that the Order fails to put timeframes on the BLM and the FS staff for the timely review of APDs and allows each specialist to review the APD on their own schedule. The BLM and the FS recognize the significance of these comments, but from our experience we know that it is necessary to conduct an onsite inspection to determine if certain aspects of the APD are accurate, sufficient to describe the proposed action and, thereby, complete. It is also our experience that scheduling and conducting an onsite inspection within a specific period of time (e.g., 15 days from receipt of the APD as is in the existing Order) is often not possible because of availability of key agency staff, the operator, and surface owner (in the case of private surface) or because of inclement weather. It is the policy of the BLM and the FS to conduct onsite inspections as soon as they can be scheduled. The BLM and the FS plan to closely monitor the interval between Notice of Staking or APD filing and onsite inspections to ensure that excessive delays do not occur and take corrective action if patterns of delay are noted. We added a requirement for the BLM and the FS, if appropriate, to evaluate any additional material requested in the 10-day notice or at the onsite inspection within 7 days (see Section III.D.2.a.). Inventories are not necessary for a complete APD and are not required before the onsite inspection. The operator may voluntarily provide cultural and wildlife survey data, but the responsibility to comply with NEPA, Endangered Species Act, National Historic Preservation Act, and other requirements is the responsibility of the agencies and therefore, is not a requirement of the applicant. Inventories are not part of an application. They are part of the analysis that must be made of the proposed action. They must be conducted prior to the approval of the proposed actions, not prior to determination of completeness of the application. In the final Order we modified the definition of "Complete APD" to clarify that inventories and NEPA documentation are not part of a "Complete APD" determination.

Several commenters wanted the definition of "Complete APD" to be expanded to clarify that a second onsite inspection is not needed if one was done as part of the Notice of Staking process. We believe that the Order adequately addresses this concern. The definition states that an onsite inspection is required for a complete APD. However, Section III. of the Order indicates that an onsite inspection will not be necessary after the APD is filed if one was conducted as part of the Notice of Staking process. These commenters also wanted the text to provide criteria for circumstances when an onsite would not be necessary. We understand that in some cases onsite inspections may not be necessary (e.g., new wells in developed fields). These situations are relatively uncommon and would be better addressed by a request for variance on a case-by-case basis, rather than by addressing it in the rule.

One commenter requested that "other information that may be required by Order or Notice" (see 43 CFR 3162.3–1(d)(4)) in the definition of "Complete APD" be deleted because it is not necessary. We did not delete the phrase from the definition in the final rule because the BLM may require additional information before approving an APD.

One commenter suggested that in addition to public health and safety or the environment, the definition of emergency repairs should be expanded to allow for repairs designed to preserve reservoir integrity. The BLM did not modify the final rule as a result of this comment because operators already have the option in Section VIII. to request approval of emergency operations verbally, if needed, followed by a Sundry Notice for reservoir operations.

Several commenters asked for clarification to the definitions of "Indian Oil and Gas" and "Indian lands." They also asked that in the final rule we add a definition of "Tribal Lands" and clarify what we mean by the reference to "tribal lands held in trust" in Section VII. of the proposed Order. For the purpose of this Order, the definitions for "Indian lands" and "Indian Oil and Gas" is limited to those lands held in trust by the United States or subject to Federal restrictions against alienation and as such do not include unrestricted fee lands. Only for surface held in trust by the United States or subject to Federal restrictions against alienation does the BLM seek input from the Bureau of Indian Affairs (BIA) for APD approval. For other lands held in unrestricted fee, Indian owners are

treated as any other private surface owner, including for the purposes of bonding in lieu of surface owner agreement. We have added a definition of "Private Surface Owner" that includes certain Indian surface owners. We deleted the term "Tribal lands" from the Order and, therefore, did not provide a definition for that term.

One commenter stated that the regulations on Master Development Plans should not require submission of detailed surveys and designs for projected or future potential development. We agree. The intent of the requirement is to have the operator provide sufficient detail in the Master Development Plan application to facilitate NEPA analysis. The detail submitted with a Master Development Plan can vary depending on the project size and other criteria. However, final design and surveys are required for subsequent APDs that will reference a Master Development Plan before those APDs are approved. Another commenter stated that the filing of Master Development Plans should start the 30-day public posting requirement rather than the subsequent APDs. The Master Development Plan does initiate the 30-day posting period for any APDs contained in the Master Development Plan. However, any subsequent APD will have its own 30-day posting. We do not believe that it is necessary to change the text as a result of these comments because the process the commenter points out can be followed within the provisions in the final Order.

Several commenters stated that the proposed reclamation standard of "reasonably practical," in the definition of "Reclamation" in Section II. is unacceptable. Commenters stated that this standard is so low that it flouts the Order's accountability mandate that lessees and operators properly reclaim disturbed lands in what could amount to a taking of private property. We understand the commenter's concern, but also recognize the difficulty in writing regulations that fit all circumstances when local conditions are highly variable. "Reasonably practical" is dependent upon the conditions at the specific site. The Conditions of Approval that address specific site conditions are much more effective in achieving reclamation goals than are general regulations. We also note that the surface owner is given an opportunity to participate in the development of the site specific reclamation standards and is consulted prior to acceptance of final abandonment. Other commenters were concerned that in some cases the BLM or the FS require that the disturbed area be reclaimed to a new use. They observe that some well pads have been reclaimed for trailheads rather than back to pre-existing condition. We agree and have added "or as specified in an approved APD" to the definition of reclamation to address these concerns.

Many commenters recommended replacing the term "Surface Management Entity" with "Surface Managing Agency" because use of the word "entity" implies that Federal agencies may delegate their responsibilities to states. Other commenters thought use of the word "entity" suggested that private land owners may have the same authority as state or Federal agencies. This definition also caused uncertainty relative to the role of tribes in the approval process. We agree with the commenters that the proposed term could cause confusion, therefore, in the final Order the term "Surface Management Entity" has been replaced by the term "Surface Managing Agency." Under existing regulations and this final rule the BIA is the Surface Managing Agency when tribal lands are held in trust, but if lands are held in fee by an individual Indian those lands are treated as private surface.

Many comments suggested that the definition of "split estate" include surface that is leased from the Federal Government (such as grazing permits), and require that these permittees be notified when an APD or Notice of Staking is filed. Permittees are given use privileges, not property rights, and, therefore, are not considered surface owners. Therefore we did not amend the definition of split estate as requested by the commenter. Posting requirements under Section III. of the final Order and in existing 43 CFR 3162.3–1(h) are intended to make this type of information available to the interested public, including other Federal permit holders.

Several commenters suggested that we add definitions for waivers, exceptions, and modifications and a few commenters were unclear about the criteria for granting of variances. Based on these comments, in the final rule we added a section that addresses waivers, exceptions, and modifications to distinguish them from variances. Waivers, exceptions, and modifications are described in the BLM guidance and FS regulations (see 36 CFR 228.104). A variance from the Order may be granted if the applicant shows to the authorized officer that the purpose of the Order will still be met. We removed the reference to 43 CFR 3101.1–4 from the definition of variance because that regulation applies to waivers and modifications. One commenter stated that the granting of waivers, exceptions, and modifications should be based solely on technical grounds and that all challenges or appeals be reserved to the lessee or operator. We disagree because challenges and appeals of waivers, exceptions, and modifications cannot be restricted to lessees or operators unless the basis for this decision has already been made in a land use plan or other document that received public comment. Further, 43 CFR 3101.1–4 requires that if the authorized officer determines that the modification or waiver of a lease term or stipulation is substantial, the modification or waiver is subject to public review for at least 30 days.

One commenter recommended that the Order include definitions of "Notice of Staking" and of "Sundry Notice." Proposed Section III.F. (Section III.C. in the final Order) describes the Notice of Staking option and a sample format is attached as an exhibit to the Order. The Sundry Notices and Reports on Wells (Form 3160–5) is self-explanatory and instructions are on the back of the form. We believe that the meaning of "Notice of Staking" and of "Sundry Notice" is adequately explained and, therefore, no change to the regulation text is necessary.

Section III. Application for Permit To Drill

Note: This section has been reorganized in the final rule and the references to sections used in this discussion of comments are from the proposed rule unless otherwise noted.

Purpose: This section describes where an operator files an APD; the early notification process; the Notice of Staking option; the components of a complete APD; how an APD is posted for public notice; how it is processed by the BLM and the FS; how the APD is approved; and the valid period of the APD. This section is the heart of the Order because it addresses the content of the APD; what an operator must do and some options an operator may take prior to filing an APD (in the form of early notification and Notice of Staking options); how the APD is processed and approved; and the period for which the APD is valid. We received more comments on this section than any other.

Summary of Changes: This section has been reorganized to follow the sequential progression of the APD submission and approval process. Information related to specific components of a complete APD was moved to the description of that component to make the process clearer. Many of the comments and changes in

this section related to timeframes associated with posting notices, holding onsite inspections, supplying needed information, and processing of the APD once deemed complete. The above mentioned reorganization and associated clarification should address those concerns and ensure that the Order is consistent with timeframes mandated by the Energy Policy Act of 2005.

In the final rule we added a provision stating the BLM's authority to deny an APD within 30 days after the BLM determines the APD to be complete (see Section III.C.2.b. of the further proposed rule or Section III.E.2.b. in the final rule). This addition restates the present authority to deny a permit in 43 CFR 3162.3–1(h). Denial of an APD is not mentioned in Section 366 (2) of the Energy Policy Act, but it is authorized by the Reform Act which added subsection (g) to 30 U.S.C. 226 which provides that no drilling permit may be issued unless the appropriate Secretary approves the surface disturbing activities. It has been the policy of the agency to deny APDs when analysis or negotiation with the operator will not enable the BLM to approve the permit. We believe that it is in the operator's best interest for the BLM to deny an APD that is so flawed that it cannot be modified to warrant approval as early as possible. We also believe that it is the intent of Congress to keep the agencies and operators working on APDs so that none would be left unresolved for unreasonable lengths of time. If the BLM decides that an APD is so flawed that we would deny it, the operator has the right to know promptly and to have an appeal right. The alternative would be to issue a deferment notice that would require the operator to wait up to 2 years before receiving a denial and an appeal right. That would defeat the purpose of expediency that motivated Congress in enacting Section 366 of the Act.

Associated with the timeframes is the clear recognition that compliance with non-discretionary environmental laws prior to approval of an APD is an integral part of those timeframes. In the final rule we made one discretionary timeframe change so that an approved APD is valid for 2 years rather than the 1 year period in the previous Order. Another change in this section of the Order is to require the operator to certify that they have provided or made a good faith effort to provide a copy of the Surface Use Plan of Operations to the private surface owner in the case of split estate. What constitutes a good faith effort will be determined by the authorized officer. The BLM has assumed the responsibility to ensure the private surface owner is invited to attend the onsite inspection and that their concerns are considered in the approval process.

We also modified this section and the definition of Best Management Practices to make it clear that Best Management Practices are voluntary for the operator to use in the design of their project and are only a requirement if they are a result of the NEPA process as a Condition of Approval for an APD. Finally, we modified Sections III.a. and b. to make it clear that the BLM is responsible for compliance with NEPA, the National Historic Preservation Act, and the Endangered Species Act on BLM lands and the FS has the same responsibility on their lands.

We received a number of comments about reposting when the proposed well location is moved. Existing BLM regulations require that the well location be described in the posting to the nearest quarter-quarter section in the Public Land Survey System. Therefore, if the proposed location is moved to a different quarter-quarter section, the APD will be reposted. For lands that do not have a Public Land Survey, proposed locations that are moved 660 feet or more will be reposted. We established the 660 feet criterion because a well at the center of a quarter-quarter section that is moved 660 feet will by definition be in a different quarter-quarter section.

In Section III.G. we deleted the language that stated that if no well is drilled during the initial period or extension of the APD, the APD expires. We deleted the statement because it is self evident.

In Section III.D.6., we modified the Operator Certification slightly by adding an entry for the operator to insert an email address where the operator can be contacted. This entry is optional, but will provide the BLM and the operator another avenue for communication.

In Section III.D.2.a. we added language to clarify who the operator should contact prior to surveying and staking on tribal or allotted lands. This is not a new requirement and is consistent with existing practice.

Comments and Responses: Several commenters recommended that the subsections within Section III. be rearranged to better follow the sequential progression of the APD submission and approval process. Another commenter asked for further clarification of the Notice of Staking section. We recognize that reorganization would add clarity and have reorganized the subsections in Section III. to follow the order in which they occur. In the final rule we:

(A) Explain where to file the APD (subsection A);

(B) Describe the advantages of Early Notification (subsection B) and Notice of Staking (subsection C);

(C) Provide a detailed discussion of the components of a complete APD (subsection D) and describe the posting and processing of the APD (subsection E); and

(D) Describe some of the responsibilities of the approving agencies and the period for which the APD is valid (subsections F and G).

This reorganization also makes clear the purpose and advantages of the Notice of Staking option.

Many commenters recommend that early notification in Section III.B. be mandatory. One commenter supported the early notification section as drafted. Early Notification, as the Order states, could help all parties identify unusual conditions of the land, time-sensitive issues, and potential areas of conflict. The BLM and the FS recognize the advantages of early notification, but the same level of resource protection will be applied whether there is early notification or not. There is no statutory requirement for early notification and we do not believe that it is necessary in all cases. Therefore, we did not change the Order based on this comment.

One commenter suggested that the wording "wildlife inventory" in Section III.B. be changed to "biological inventory" to cover flora as well as fauna. We adopted the commenter's suggestion and revised Section III.B., accordingly.

One commenter asked how early notification relates to the Notice of Staking Option. We amended the wording in the Early Notification section based on this comment to make it clear that early notification is different from and precedes the Notice of Staking, that neither option is required, and that one may be used without the other.

One commenter suggested that we revise the Order to make it clear that the operator is not required to conduct surveys or studies under Section III.B. We believe that the Order is clear on the subject of inventories, surveys, and studies; they are the responsibility of the agencies and are not required as part of the APD. However, in the final rule we added language in Section III.B. to clarify that they are not the responsibility of the operator.

A few commenters stated that the BLM must recognize in Section III.B., Early Notification, that in some cases it may be impossible to contact all private surface owners. Consistent with existing

practice, the Order requires the operator to make a good faith effort to contact private surface owners. However, a good faith effort does not mean that there is an absolute requirement to make contact with the surface owner. Section VI. of the Order provides procedures for operations on private surface.

One commenter stated that even if a categorical exclusion is used, the 30-day posting is required. We agree. Posting is an existing requirement under the Reform Act, even for actions covered by a statutory categorical exclusion. We did not revise the proposed Order because we do not discuss categorical exclusions in the Order.

Several commenters stated that they opposed the requirement that an APD be reposted for an additional 30 days when the operator subsequently moves the proposed well location. They further state that this 30-day reposting time period should not be required when the new location is covered by an existing NEPA document or if the new location is for an in-fill well within a developed field. One commenter said that posting for public notice was duplicative of NEPA requirements for soliciting public comments. We disagree. The 30-day public posting period is required by the Reform Act and is distinct from NEPA related public participation. However, we have revised proposed Section III.C.1. (final Section III.E.1.) to provide clarity and conform with regulations at 43 CFR 3162.3–1 and 36 CFR 228.115 that require posting. As previously discussed, we adopted a 660 feet criterion for reposting where no Public Land Survey exists because that would mean the well could be relocated in a different quarter-quarter section if the survey did exist. The 660 feet criterion would apply the same standard for reposting where Public Lands Survey descriptions are not available. We also retained the criterion of "substantial" to assure that the authorized officer can notify the public of changes that create essentially "new" proposals within the existing APD in the same quarter-quarter section.

Many commenters stated that the Order requires an agency to give at least 30 days public notice before approval of an APD. They suggested that the BLM inform the surface owner and any other Federal lease or permit holders directly. We did not amend the Order as a result of this comment. We are required by the Reform Act to post APDs for public notification. In the final rule we modified Section III. of the Order to require the operator to certify that they have provided to the private surface owner copies of the Surface Use Plan of Operations and any related subsequent changes. We believe that this provides ample notification to the surface owner. We addressed notification of other Federal permittees in the Section II. discussion above.

One commenter said it is unclear whether APD notices must be posted by the BIA and/or the affected Indian tribe, in addition to such notices being posted by the BLM, or whether only the BLM will post APD notices. The final rule requires that other Federal Surface Managing Agencies, including the BIA where Indian lands overlie Federal minerals, post the APD information for Federal leases. Posting is not required for an APD on an Indian oil and gas lease, since there is no requirement in the Indian leasing statutes similar to that in Section 17 of the Mineral Leasing Act.

One commenter stated that the Order needs to be revised to recognize the timeframes specified in the Energy Policy Act of 2005. The further proposed rule published in the **Federal Register** on March 13, 2006, incorporated the specified timeframes in Section III.C.2. (Section III.E.2. in the final Order), APD Posting and Processing, for APD processing as does the final rule.

One commenter stated that the Order should be revised to recognize the need to issue permits within 30 days of the BLM's receipt of a complete APD as the Energy Policy Act of 2005 requires. We recognize the importance of this comment, but also recognize that the Energy Policy Act does not relieve the BLM or the FS from complying with other applicable laws. Section 366 of the Act clearly states that the BLM cannot approve a permit without first complying with other applicable laws.

One commenter stated that the proposed timeframe in Section III. is so short as to be impractical and unrealistic, and encourages sloppy processing. They believe that no matter how much increased funding is channeled to the budgets, neither the BLM nor the FS could be sufficiently staffed to be able to competently handle the turnaround time in Section III. of the Order. Further, they believe there is no justification for expediting permits. The timeframe for processing APDs is mandated by the Energy Policy Act of 2005. As such, the agencies must comply with this timeframe. However, neither the Energy Policy Act nor this Order requires a final decision on an APD prior to compliance with non-discretionary statutes.

One commenter stated that the BLM must establish timelines for "outside agencies and surveyors" to act on pain of waiver of their participation. Regulation of other Federal, state, or local agencies or of their contractors is beyond the scope of this Order.

One commenter noted that there is no time limit for completion of a NEPA analysis nor is there a definitive time limit for approval of the APD once NEPA is completed. The commenter is correct; there is no time limit for the completion of the NEPA analysis but there is a requirement to comply with NEPA. The Order states (proposed Order Section III.C.2.c.1. and final rule Section III.E.2.c.1.) that the BLM should make the decision on whether to approve the APD within 10 days of the operator submitting the information or actions identified in the deferral notice (required by Section 366 (2)(B) of the Energy Policy Act), unless other legal requirements such as NEPA have not yet been met. When these requirements are met, the BLM will make the final decision on the APD. These requirements are consistent with Section 366 of the Act. The Energy Policy Act requires that the BLM comply with NEPA and other applicable laws, it does not set a time limit for compliance. The BLM and the FS understand the urgency for approving APDs, but cannot establish a regulatory time limit for complying with applicable law.

A few commenters noted that the operator is given 45 days after receiving notice from the BLM to provide any additional information requested before the APD is returned to the operator. The commenter stated that the data the BLM requests could take longer than 45 days to accumulate (*e.g.*, an endangered species survey); therefore, a rigid 45-day deadline may not be possible to meet. The commenter seems to misunderstand what is included in a "Complete APD" determination. The definition of a complete APD is very specific and does not include things such as endangered species surveys and therefore any information that the BLM requires to make a complete APD determination should be easily provided within 45 days; however, the authorized officer has the discretion to extend the 45-day limit especially if the operator so requests.

One commenter stated that the operator has 2 years and 45 days after receiving notice of a request for additional information from the BLM to provide the additional information or the BLM may return the APD to the operator. Under the proposed rule Section III.C.2.a. (final Section III.E.2.a.), the operator has 45 days (non-statutory) from the BLM's request at the onsite inspection to provide missing information that will make the APD

complete. The BLM has 30 days (Section 366 (2) of the Act) from the date that the APD is complete to approve the APD or to notify the operator that the decision must be deferred pending compliance with NEPA and other laws. The notice must also tell the operator what specific steps, if any, that the operator could take for the permit to be issued (Section 366 (2)(B) of the Act). Consistent with the Act, the operator has 2 years (Section 366 (3)(A) of the Act) to complete the steps specified in the notice. Without a complete APD the 30-day timeframe and, therefore, the 2-year timeframe do not begin. If the operator has not taken the specific steps within 2 years, the BLM must deny the APD (Section 366 (3)(C) of the Act).

One commenter stated that the phrase "Within 7 days of the onsite inspection, BLM, and the FS if appropriate, will notify the operator that the APD is complete or that additional information is required to make the APD complete" in Section III.C.2.b. of the proposed Order, should be deleted because it is inconsistent with paragraph (a) of the Order. We agree and in the final Order we moved Section III.C.2. to III.E.2. and revised the statement to state that "deficiencies will be identified at the onsite" and deleted the wording cited above. In the final Order we retained the 7-day timeframe for Notices of Staking because agencies typically would not have had a detailed proposal to review prior to an onsite inspection associated with a Notice of Staking (final Section III.C.).

Many commenters stated it is clear that no final decisions will be made until the regulatory requirements of the Endangered Species Act, National Historic Preservation Act, and NEPA have been satisfied. The commenters said that the Order should not violate the opinion of the two 1988 solicitor's memos. The commenter said that the memos required the BLM to consider and adopt landowner suggestions and concerns to the extent they do not violate the statutory requirements of the cited acts. We believe that the intent of the 1988 solicitor's memorandum was to emphasize that these statutes apply to private surface overlying Federal minerals and nothing in the memos preclude consideration of surface owner concerns and suggestions that do not conflict with Federal statutes or implementing regulations. We emphasize that we invite the surface owner to the onsite inspection (Section VI.) to facilitate surface owner input and to ensure consideration of their suggestions and concerns. As discussed earlier, we have added a requirement that the operators certify that they have provided a copy of the Surface Use Plan of Operations to the private surface owner so that the surface owner has the clearest possible understanding of the proposed action. The BLM will explain the statutory requirements of NEPA, National Historic Preservation Act, and Endangered Species Act to the surface owners and will discuss any concerns that the surface owner may have about compliance with these statutes. We believe that any substantive request of the surface owner can be accommodated within these statutory requirements.

One commenter referred to Section III.C.2.c., which states that no final decision is made pending regulatory compliance with Federal statutes and suggested that this provision should be revised to recognize the actions that have been categorically excluded from NEPA analysis pursuant to the Energy Policy Act of 2005. We did not modify the Order as a result of this comment. It is not the intent of this Order to make determinations on whether or not NEPA applies in a given situation.

One commenter requested that we revise Section III.C.2.c. to state that the BLM and the FS must be sure that the NEPA and Endangered Species Act analysis are current prior to approving the APD, especially in cases where there is a lengthy delay in APD approval. We did not modify the Order as a result of this comment. Nothing in this Order relieves the BLM or the FS from compliance with these statutes. Nor is it our intent to provide in this Order detailed procedures for compliance with other laws and regulations.

One commenter recommended that APDs should be effective within 60 days if no action is taken by the BLM within that time. We emphasize that the Energy Policy Act of 2005 establishes timeframes for APD approvals, but it also requires that all applicable environmental laws be complied with prior to APD approval (Section 366 (2)(A) and (3)(A) and (B)).

A few commenters referred to Section III.C.2.d. dealing with the FS Appeal procedures applicable to APDs on NFS lands and stated that they oppose having the FS appeal procedures apply to oil and gas operations on NFS lands. The commenter suggested that the FS conform its administrative appeals process to the BLM timeframes. We did not modify the Order as a result of this comment because the FS appeal timeframes contained in 36 CFR part 215 are consistent with timeframes in the Appeals Reform Act (P.L. 102–381) and therefore we did not make the suggested change.

Several commenters suggested that the BLM should continue reviewing the drilling plan while FS reviews the Surface Use Plan of Operations. One commenter stated that evaluation of the application should continue while waiting for the onsite inspection to be held. We agree. Our existing processes and those in the final Order are consistent with what the commenter suggests. Furthermore, the Order states that the application will be processed up to the point that missing information or actions makes it impractical (proposed Section III.C.2.a.). This statement will be moved to the lead paragraph for final Section III.E.2. so that it pertains to all of this section.

Several commenters noted that an APD approval is valid for 1 year from the date of approval and commented that this does not provide adequate flexibility for operators, particularly given the high demand for, and limited availability of, drill rigs. They suggested that the valid period should be expanded to at least 2 years to allow operator's more operating flexibility (i.e., drill rig availability). Another commenter stated that the shortest timeframe of either 1 year or lease expiration is too long a period for an APD to remain valid and requested that an extension not be automatically granted. We considered these comments and in the final Order will allow an APD to be valid for 2 years with an option to extend for an additional 2 years. This takes into account the narrow drilling windows created by seasonal conditions, wildlife habitat needs, and the availability of drilling rigs. We considered the adequacy of the information and analysis from the perspective of timeliness in this decision. We believe that NEPA documentation and cultural and wildlife surveys will be adequate for at least the 2 year term and potential 2 year extension. Our decision is consistent with the Energy Policy Act of 2005 in that the categorical exclusions in Section 390 are based on NEPA documents that are up to 5 years in age, which is longer than the initial APD term and extension in the final Order.

One commenter asked how we can require diligent drilling, continue the APD, and potentially extend a lease. The commenter also asked that we add a deadline for reclamation, especially on private surface. We did not modify the final Order as a result of these comments. We are not certain what the commenter meant by diligent drilling. If the commenter is asking how we will require the operator to commence drilling soon after the APD is approved, we do not believe this to be an issue of

concern. In fact, we are concerned that seasonal restrictions and drill rig availability may cause delays and we have extended the valid period for the APD to accommodate this potential problem. If the comment concerned environmental obligations (43 CFR 3162.5–1(b)), we believe that involving the surface owner in the onsite inspection, the environmental review process done before approving the APD, and the periodic inspection conducted by the BLM personnel are adequate to assure surface protection, compliance with lease terms and reclamation. Lease extension is beyond the scope of this Order and is covered in other regulations (43 CFR subpart 3107). Reclamation properly begins as soon as the drilling operation ends. We typically require interim reclamation of that portion of the site that is no longer needed once a producing well is established. We believe that interim reclamation can best be handled by attaching Conditions of Approval and by compliance with lease terms rather than by regulation.

One commenter recommended that the BLM develop a standard checklist of required information for processing an APD. This checklist should include NEPA, National Historic Preservation Act, and Endangered Species Act requirements applicable to the APD that have been, or still need to be, completed. The commenter said that this form would aid operators in ensuring that they submit to the BLM a complete APD and aid the BLM in efficiently ascertaining items that may be missing from the APD submission. We did not modify the rule as a result of this comment. Section III.D. of the final Order lists all of the components of a complete APD. The Order clearly states that the operator may voluntarily provide cultural and wildlife survey data, but the responsibility to comply with NEPA, Endangered Species Act, National Historic Preservation Act, and other applicable laws, is the responsibility of the agencies and not a requirement of the applicant and, therefore, is not listed as being part of a complete APD.

Many commenters stated that Best Management Practices should be strictly voluntary and not constitute a new set of stipulations or Conditions of Approval for every future Federal lease or APD. These commenters believe that while Best Management Practices may be innovative and dynamic, they must be considered for their economic viability and be applied to site specific projects only when necessary to mitigate adverse environmental, cultural, or social impacts. Other commenters stated that Best Management Practices should be mandatory to ensure protection from resource abuse. One commenter asked that operators be required to explain what Best Management Practices they intend to use in their Surface Use Plan of Operations. While the BLM encourages the use of Best Management Practices, they are voluntary unless after specific analysis during the APD processing, the BLM includes them as Conditions of Approval to mitigate impacts. In the cases where Best Management Practices are included as Conditions of Approval, costs of the Best Management Practices will be considered in the environmental review, but may not determine the final decision if the BLM finds that the Conditions of Approval are necessary to mitigate environmental, cultural, or social impacts. If an operator proposes using Best Management Practices, they should be included in the Surface Use Plan of Operations. We added a definition of "Best Management Practices" and we modified the definition of "Conditions of Approval" for clarity.

One commenter recommended deleting the paragraph about Best Management Practices that leads the discussion of components of a complete APD package because they should not be required. We agree that Best Management Practices are not a required component of a complete APD and we revised the final rule to make it clear that Best Management Practices are not mandatory unless they have been analyzed as a mitigation measure in the environmental review, but that we encourage their use.

One commenter asked why the BLM should be notified prior to entering private lands for surveying, staking, and inventories. The final rule does not require, but only encourages, operators to notify the BLM or the FS prior to entering private lands. In general, early BLM notification is encouraged regardless of surface ownership so that applicants are aware of lease specific issues (such as the presence of endangered species) before an operator commits to a particular course of action or completes an inventory that does not address all relevant issues.

A few commenters recommend that we revise the sentence that states, "No entry on private lands for surveying, staking, and inventories should occur without the operator first making an effort to notify the surface owner." Commenters said that requiring approval from a surface owner prior to entry could impair rights under their mineral lease. The BLM and the FS believe that it is important to involve the surface owner in the process as soon as possible. However, the final rule makes it clear that the Order only requires an operator to attempt to obtain approval from the surface owner, but after such effort, surveying and staking may proceed.

Many commenters noted that the level of effort required of the operators to notify the surface owners prior to staking is not clearly defined. We agree. We cannot add a requirement to contact the surface owner because in some circumstances such contact may not be possible. Such a requirement could negate lease rights. In the final rule we added language requiring the operator to certify that they have made a good faith effort to provide a copy of the Surface Use Plan of Operations to the surface owner but that plan may not have been prepared at the staking stage. One commenter disagreed with our statement that staking on private lands is casual use. We agree with this comment. The statement that staking is a casual use refers only to staking on public lands for which casual use is a defined term. Therefore, casual use does not apply to private surface. We understand that this is a sensitive issue, but the BLM cannot make an absolute requirement that the operator obtain surface owner consent prior to entering private land, because the Stockraising Homestead Act offers the option of bonding to the lessee. However, we do require that the operator make a good faith effort to contact the surface owner and enter into a Surface Access Agreement at the earliest possible time.

One commenter noted that not all access permits for Indian lands are granted by the area offices of the BIA, now known as regional offices. We agree and have replaced "Area Offices" with "appropriate office." Further discussion of access to Indian lands is in Section VII. of the Order.

Many commenters asked that we delete the following language in paragraph (d) of Section III.E.2.: "The operator must include the minimum design criteria, including casing loading assumptions and corresponding safety factors for burst, collapse, and tensions (body yield, and joint strength)." These commenters recommend that this provision be deleted because it is too detailed and no rationale for requiring such additional specificity in the APD has been given. We did not delete the language in the final rule because we believe that the information is necessary to ensure compliance with minimum standards defined in Onshore Orders Number 2, Drilling Operations (53 FR 46790) and Number 6, Hydrogen Sulfide Operations (55 FR 48958) and to meet

other regulatory requirements in 43 CFR 3161.2.

One commenter asked that all aspects of a Drilling Plan be made available to the surface owners at or before submission of the APD. The commenter believes that the surface owners are entitled to review the plan in order to assess the necessity and extent of the disturbance proposed. We believe that the Surface Use Plan of Operations is more useful to the surface owner and that the Drilling Plan would provide no useful information to the surface owner because it primarily contains technical information about the drilling of a well and down-hole issues. Although we did not amend the Order to require operators to provide drilling plans to surface owners, we amended the Order to require operators to certify that they have attempted to provide a copy of the Surface Use Plan of Operations to the surface owner. In addition, the complete APD is available for public review at the approving BLM office, with the exception of proprietary information under the provisions of the Freedom of Information Act—43 CFR part 2.

A few commenters stated that the proposed rule is unclear as to whether roads associated with an APD that cross Indian surface must meet the standards of the pertinent tribe or the standards of the BIA, or in the case of tribal Indian surface, both. If the roads are on the lease, the BLM will consult with the other Surface Managing Agencies (BIA) to obtain the appropriate road standards and route. After this consultation, in order to comply with the standards that the BIA provided to the BLM, the BLM may add Conditions of Approval. For off-lease roads the operator must contact the appropriate Surface Managing Agency or tribe.

A commenter suggested we add "map or" after "include" to the phrase, "the operator must include a plat diagram and geospatial database of facilities planned either on or off the well pad that shows, to the extent known or anticipated, the location of all production facilities and lines likely to be installed if the well is successfully completed for production." We agree with the commenter and we added the phrase because a map may in some cases provide sufficient detail rather than requiring a detailed survey in all cases.

One commenter stated that the information called for in Section III.E.3.d. (Location of Existing and Proposed Production Facilities) is usually provided before construction. We agree with the commenter. That section refers to existing production facilities within the general area of the proposed well and, therefore, no change is necessary.

One commenter says that they may not know where they will obtain water if they intend to buy it at the time they submit their APD. We did not modify the Order as a result of this comment. The BLM and the FS need the information to ascertain the impacts associated with operations and the need for any mitigation applicable to public lands. Under this provision, we don't require specific contract information, just the location of the water supply and transportation method proposed so that we can complete the NEPA analysis. If the water source is unknown at the time the APD is filed, the information can be submitted as a Sundry Notice once it is identified.

One commenter suggested that we add language to the Order to direct operators to obtain appropriate state agency water permits to avoid misunderstanding regarding jurisdiction in permitting water source wells. We did not modify the Order as a result of this comment since the Order is not intended to enforce regulations or requirements of other governing agencies and those rules stand on their own authority.

One commenter suggested deleting the last sentence of the Section III.E.3.f. on construction materials described in the Surface Use Plan of Operations. The provision requires that the operator contact the Surface Managing Agency or owner of construction materials before those materials are used. We believe that the operator should make arrangements with the owner prior to use; however, it is not necessary for the Order to regulate private agreements. Therefore, we removed the final sentence of that section.

Many commenters noted that an operator may amend his plan for surface reclamation at the time of abandonment, yet no notice must be given to a surface owner then or at any stage of the reclamation process. These commenters ask that the operator be required to notify and at least attempt discussing reclamation needs with the surface owners. We agree with the commenters. Changes to reclamation plans are not unusual because final reclamation may not occur for several years after the original plan was approved, especially if the well is productive or because reclamation standards or techniques change. We added language to the reclamation part of the abandonment section to require the operator to notify the surface owner and consider their views when an operator submits a reclamation plan for wells not having an approved plan. The surface owner will have an opportunity to express their views regarding all issues including reclamation before APDs for new wells are approved.

Several commenters recommended that the APD should only require a basic reclamation plan that meets current standards and then require a more detailed, site appropriate final reclamation plan when the notice of intent to abandon is filed. We disagree. The reclamation plan must be sufficiently detailed at the APD stage to facilitate analysis and identification of needed Conditions of Approval to ensure adequate reclamation. If changes are proposed prior to abandonment, they may be submitted with a Sundry Notice.

A few commenters suggested that "when obtainable" or "to the best of his ability" (regarding surface owner contact information) be added to the first sentence in proposed Section III.E.3.k. and in the last paragraph of proposed Section III.F. to recognize that some surface owners are difficult to locate. We believe the phrase "if known" already in that sentence addresses this concern and additional wording would be redundant (see Section III.D.4.k. in the final rule).

Some commenters supported the use of Master Development Plans and a few recommended that the BLM encourage their use. The commenters note that Master Development Plans are an effective method to address the impacts associated with Surface Use Plans of Operation in a comprehensive manner, especially the development of access roads and pipeline systems for wells that are to be developed under a common drilling plan. However, they note, because of the unique environmental impacts that each well site may pose, specific environmental assessments are imperative for each well pad location. We agree with the comment concerning the advantages gained by using Master Development Plans. Subsequent APDs will be reviewed in light of the Master Development Plan when such a Plan is in place. Any new environmental concerns that are identified will be addressed before any subsequent APD is approved. This is existing practice and no change in the Order is necessary.

One commenter suggested that the BLM should clarify whether all APDs submitted as part of the Master Development Plan will be approved at the same time. The commenter said that if all the APDs associated with the Plan were approved at one time, there may be a problem with validity (we assume this means difficulty in timely drilling because of the 1-year term). Under this

section the BLM will analyze all APDs proposed with the Plan and subsequent APDs that are anticipated in the Plan and make a decision on whether to approve the Master Development Plan. Subsequent phased implementation of that decision will involve approval of individual APDs. The operator should work with the BLM and the FS to assure that APDs are phased according to the operator's schedule. We believe that this can be achieved without changing the text of the Order. However, we have for other reasons extended the term of the APD to 2 years (see the discussion of Section III.D. above).

One commenter wanted master APDs to be included in a Master Development Plan. We agree and view a master APD to be the part of the proposed Master Development Plan that addresses proposed and anticipated future wells. Master APDs contain common details of multiple wells. The master APD can be approved by the BLM and then in subsequent APDs the operator references the master APD and makes any appropriate changes such that the material referenced in the master APD or Master Development Plan and the changes or new material constitute a complete APD. Our environmental review, including NEPA analysis, would then focus on the new or changed information and rely on the existing analysis of the referenced material in the master APD or Master Development Plan. We did not amend the Order as a result of this comment because we believe that the existing provisions allow for master APDs.

Several commenters expressed concerns about having to provide both state and Federal bonds in varying amounts. We understand the commenter's concerns, but operators are required by statute (30 U.S.C 226(g)) and our regulations to have a Federal bond (see 43 CFR subpart 3104). The Order cannot regulate bonds that may be required by states. The BLM requirements and procedures may be different than those of any given state. For example, states may have different criteria for releasing bonds than our criteria or they may release bonds without informing us and that could lead to insufficient bond coverage. State bonds cannot replace Federal bonds, but the BLM may, under certain circumstances, consider state bonds in setting Federal bond amounts. However, we did not modify the rule as a result of these comments.

A few commenters pointed out that several references in the bonding section were incorrect and related to coal leases rather than oil and gas. The commenters are correct. We did not intend to limit the regulatory requirements to only those in 25 CFR part 200 and those specific references have been deleted. The FS is required to consider the cost of reclamation and, if deemed necessary, require additional bonding. The operator has the option to either increase the bond held by the BLM or file a separate bond with the FS (36 CFR 228.109).

Many commenters expressed concern that the bond amounts are inadequate and do not address the concerns of the surface owners or consider other surface uses. They asked why the BLM and the FS do not have the ability to increase bond amounts. One commenter referenced the sentence in Section III.E.5. that states "In determining the bond amount, the BLM may consider impacts of activities on both Federal and non-Federal lands required to develop the lease that impact lands, waters, and other resources off the lease" and they requested that the BLM clarify what they may or may not consider in determining the bond amount under this rule. Lease bonds under 43 CFR 3104.1 ensure performance of the operator in the drilling, production, and reclamation of the well and compliance with lease terms and the approved APD. If lease operations adversely affect off lease lands or surface waters, these impacts may be covered by the bond. The preamble for the proposed rule (see 70 FR 43354) discussed the authority for considering the costs of restoration of any lands or surface waters that are adversely affected by lease operations in setting the bond amount, citing 30 U.S.C. 226(g). The Order does not, as the commenter requested, provide a comprehensive list of what may or may not be considered in setting the bond amount. However, existing regulations at 43 CFR 3104.5 as well as Section III.E.5.a. of the final Order provide criteria for that purpose.

Section III.E.5.a. of this Order and 43 CFR 3104.5 state the criteria for setting bond amounts. The regulation and our policy to require less than the full bond amounts have shown to be greatly effective in managing risk without excessive costs. We have not modified the Order as a result of these comments. Surface owner compensation is not provided by lease bonds under 43 CFR subpart 3104 or this section of the Order. Bonds for the benefit of the surface owner are addressed in Section VI. of this Order and are addressed later in the discussion of that section of this preamble.

One commenter asked why the bond number was included in the self certification when it is required on Form 3160–3. We agree with the commenter and since it is duplicative we eliminated it from being a requirement in the self certification clause in the final rule.

One commenter stated that the requirement to stake the outer limits of the pad, pit, etc., should not be required for the Notice of Staking option. We agree. Complete staking is not required for the Notice of Staking option, but is required for final staking when the APD is filed (see Section III.F. of the proposed rule (Section III.C. of the final Order)).

Many commenters noted that before filing an APD, the operator "may file a Notice of Staking with BLM" who will then inform the surface owner. Commenters asked why notice to those directly affected by operations is only voluntary, implying that the notice to surface owners should be mandatory. We did not modify the final rule as a result of this comment. It should be noted that the Notice of Staking is a voluntary process. The BLM will notify the surface owner if possible and invite them to the onsite inspection.

One commenter expressed concern that surveying and related requirements are scattered between the APD and Notice of Staking sections of the Order and are confusing. In the final rule we rearranged Section III. of the Order so that the provisions are in a more logical sequence and to make the process clearer.

One commenter suggested that the bottom-hole location should not be a requirement of the Notice of Staking option. We disagree. The bottom hole location is key in identifying the lease involved and the associated permitting requirements. The sooner this is known, the less likely there will be delays. Because of this importance, Attachment I, Sample Format for Notice of Staking, has been edited to eliminate the "if known" wording associated with the bottom hole location component.

One commenter stated that it is inconsistent to have the BLM as the lead agency for NEPA compliance and the BIA the lead for Right-of-Way approval. We disagree. Sections III.G.a. and III.G.c. refer to different, discrete actions, APD approval and Right-of-Way approval, respectively, and therefore may require separate NEPA analysis.

A few commenters stated that the proposed Order is inconsistent with 25 CFR 211.7 and 225.4, which gives the BIA environmental review authority. The commenters also note that our statement that the BIA has responsibility for approving Rights-of-Way on Indian lands is partially incorrect. The commenters stated that

Rights-of-Way on Indian lands are granted by the Secretary of the Interior, but only with the consent of the Indian landowner (see U.S.C. 323–328 and 25 CFR 169.3(a) and (b)). The BIA is responsible for NEPA analysis for actions that it approves, similarly, the BLM is responsible for NEPA analysis for actions that it approves. The BLM approves all lease operations that occur on the lease or under Indian Minerals Development Act of 1982 (IMDA), 25 U.S.C. 2101–2108. This includes drilling, access to drilling, flowlines to or from the wells, construction of on-lease facilities for oil and gas development, and other well operations. The BIA's role for on-lease activities is to consult with the BLM on those actions if the minerals or the surface are Indian trust.

Section IV. General Operating Requirements

Purpose: This section summarizes general requirements of the operator such as conducting operations to minimize impacts to surface and subsurface resources. It also summarizes responsibilities for protecting cultural and biological resources and briefly describes safety issues. It requires the operator to submit a Completion Report after it completes a well. This section identifies some key operating requirements without details that might limit or unnecessarily constrain operations based on site specific proposals.

Summary of Changes: No substantive changes have been made to this section. However, we changed "Watershed Protection" to "Surface Protection" because the term "watershed" has legal implications that are not intended and are beyond the scope of this Order. We also amended the Endangered Species Act language in this section to more accurately reflect the statutory language and existing policy.

Comments and Responses: One commenter stated that under the heading of "Operator Responsibilities," the proposed rule states that an "operator must conduct operations to minimize adverse effects to surface and subsurface resources and prevent unnecessary surface disturbance." The commenter suggested that to avoid vague and ambiguous language, the phrase "unnecessary surface disturbance" should be precisely and narrowly defined or explained. We disagree that narrowly defining "unnecessary surface disturbance" would be useful. We purposefully use broad language in the Order to cover the many different circumstances and conditions that may occur during drilling. Also, we carefully review surface use plans and limit surface disturbance to that which we think is necessary for the proposed operation. We limit the size of drill pads and require interim reclamation of the area no longer needed after drilling is complete.

One commenter stated that when third party contractors are used, the operator needs to have assurances that the work will be accepted by the BLM if established standards or procedures have been followed. We disagree. Products and services supplied by third party contractors will be reviewed on their own merits and, as with any operations on public lands, the BLM approval will not occur until we are sure that operations or reclamation is consistent with the APD, Orders, and regulations. Operators and third party contractors should contact the local BLM office if they are not clear what is expected of them.

A few commenters suggested that the sentence referring to 43 CFR 3163.1(b)(2) be corrected. They believe that sentence is partially incorrect as the regulatory language specifies "For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000." We believe that it is not necessary to include in the final Order all of the regulatory language in 43 CFR 3163.1(b)(2) since that provision is already a regulatory requirement. However, we removed from the final rule the text regarding the immediate daily assessment because it is not in 43 CFR 3163.1.

One commenter stated that cultural resource, endangered species, and watershed protection requirements are better addressed in Conditions of Approval, rather than imposing a broad requirement in this Order. In addition, the commenter stated that the proposed rule does not recognize the authority of the State Historic Preservation Officer with respect to cultural resources. With regard to the State Historic Preservation Office, we believe that failure to establish national procedures could potentially cause substantial delays and wide variation in procedures. Therefore, we believe it is advantageous to define a uniform process in this Order rather than to allow each BLM and FS office to develop unique procedures. With regard to the requirements in Section IV., we believe that the requirements in this section are broad and apply to every APD. Only specific requirements that apply to the actual conditions at the site are appropriate for Conditions of Approval.

A few commenters stated that the proposed language that requires recording of historical or archeological sites that the operator avoids is not appropriate. One commenter suggested changing "recording" to "reporting." We disagree. The operator is responsible for recording the site (Section 106 of the National Historic Preservation Act). Recordation means those routine procedures adopted by the BLM or the FS, as appropriate, and the State Historic Preservation Officer to record any cultural site inventoried or discovered during earthwork and are part of compliance with the requirements of 36 CFR part 800 regulations governing Section 106 compliance and many State Historic Preservation Officer protocols. Recordation is a routine part of any cultural survey provided by third party cultural contractors and does not refer to extensive data recovery or other site mitigation techniques that are necessary if the site is not avoided. Recordation is the least complicated method of reporting a site that is required under Section 106 regulations and most protocols.

One commenter stated that Section IV.a. of the Order (describing what an operator must do if cultural resources are uncovered during construction and the operator chooses to avoid further impacts to the site) does not provide adequate protection of cultural resources. They asked that the rule be amended to state that when an operator encounters cultural or historic resources during the conduct of operations, they would be immediately shut down and required to relocate, rather than to produce a report that potentially minimizes the impacts and allows the operator to proceed. We disagree. We believe that the process in the Order, which is consistent with existing practice, will provide and has provided adequate protection to cultural resources. A report intentionally falsified would likely result in revocation of permits and possible penalties, including revocation of authorizations to conduct cultural surveys.

One commenter requested clarity as to who is defined as the Surface Managing Agency in various scenarios relative to Indian lands. The final Order makes it clear that for tribal or allotted lands held in trust, the BIA is the Surface Managing Agency. The final Order also recognizes that surface owners have rights and responsibilities with respect to trust lands.

One commenter requested that the Order address the protection of vertebrate fossil materials. We did not modify the Order as a result of this comment. It is existing policy that will continue under this Order to address the protection of fossils through Conditions of Approval.

One commenter asked for an explanation of procedures for tribal involvement should cultural resources be encountered on lands covered by the APD. We did not modify the final rule as a result of this comment. Cultural resource compliance under the National Historical Preservation Act is covered by the implementing regulations for Section 106 of the National Historic Preservation Act along with various local agreements with State (and Tribal) Historical Preservation Officers. Since those procedures are defined elsewhere and are subject to protocols and agreements that differ depending on locale, we did not address them in this Order.

One commenter stated that in order to protect watersheds, an operator "must take measures to minimize or prevent erosion and sediment production." The commenter said that the agency should be much more specific and careful in protecting water values. Section IV.c. of the Order and 36 CFR 228.108(j) address watershed protection. In addition, it is existing policy that will continue under the Order to require site specific mitigation for each approved APD. Effective protective measures can be developed only after an actual proposed action is evaluated and this must be done on a case-by-case basis. Therefore, we did not modify the Order to address this comment. Many commenters wanted more specific protection of municipal watersheds and water resources. Protection of municipal watersheds and water resources is outside the scope of this Order. Measures to protect resources such as water are included in oil and gas leases, are addressed in Resource Management Plans, and are developed by site specific NEPA analysis, as appropriate.

One commenter requested that we remove the word, "may" from the sentence, "Such measures may include, but are not limited to: Avoiding steep slopes and excessive land clearing * * *" in the watershed protection provisions of the Order. The commenter believes that these measures should be mandatory, not discretionary. A few commenters suggested that this requirement should be reworded to say, "Construction with frozen material is prohibited and surface disturbance may be suspended during periods when the soil material is saturated or when watershed damage is likely to occur (from Wyoming BLM Surface Disturbance Mitigation Guidelines)." We did not accept these comments because the list is intended to illustrate conditions to be avoided and is not intended to be comprehensive. Detailed mitigation measures are best developed on a case-by-case basis or in guidance documents such as the one the commenters quoted.

A few commenters asked whether an operator is required to notify the affected tribe, the BIA, or both for operations on split estate lands containing Indian surface and Federal oil and gas when there are "emergency situations." We replaced "surface management entity" with "Surface Managing Agency" and revised the definition. As a result, it is now clear that in the emergency situation the commenter described, an operator should notify the BLM and Surface Managing Agency (BIA in this case).

Section V. Rights-of-Way and Special Use Authorization

Purpose: This section describes the requirements for obtaining a Right-of-Way (BLM) or Special Use Authorization (FS) for activities that are attendant to but not part of the APD.

Summary of Changes: No substantive changes were made to this section and comments focused on the desire or need to have both the Rights-of-Way and APD approved at the same time to avoid operating delays.

Comments and Responses: A few commenters suggested that the BLM should combine Right-of-Way filing and approval with the APD process because it would allow approval of the access road Right-of-Way at the same time as the APD approval. They also suggested that the BLM standardize the Right-of-Way process for all BLM offices. One commenter suggested that we not approve an APD until any associated Right-of-Way or other authorizations were also approved. We did not amend the Order as a result of these comments. There is no need to address these issues in regulation. Given the limited time of an APD, no operator would want to start the term running before it has access to the well site. While it is the intent of this Order and BLM policy to ensure uniformity in approval processes, local conventions sometimes evolve to accommodate local needs.

A few commenters said it was not clear whether to file a Right-of-Way application with the BIA for allotted Indian lands and to the tribe for tribal Indian lands for split estate easements, or whether the operator should file in accordance with the rules in 25 CFR part 169. The operator should comply with BIA regulations which define the appropriate tribal/Indian owner role in approving Rights-of-Way where Indian land is involved.

Section VI. Operating on Lands With Private/State Surface and Federal or Indian Oil and Gas

Purpose: This section discusses the requirements and procedures for operating on split estate lands. It describes:

(A) The requirement of the operator to contact the surface owner before entry, including entry to stake the location;

(B) Surface Access Agreements that are made with the surface owner for access to the private surface; and

(C) Compensation for damage to the surface estate that are provided by law and the bond for the benefit of the surface owner if a good faith effort to reach agreement fails.

The BLM will also make a good faith effort to contact the surface owner to assure that they understand their rights and to invite them to any onsite inspection that may be conducted.

Summary of Changes: We made several changes to this section that are as a result of public comment. Those changes include: (A) Adding a requirement of the operator to provide a copy of the Surface Use Plan of Operations, the Conditions of Approval, and any emergency notices to the surface owner; and (B) Removing from the rule the universal use of the Stockraising Homestead Act standard to define the damages covered.

We also clarified the section regarding access to Federal minerals underlying Indian surface. The new language makes clear that the operator must make a good faith effort to obtain a surface access agreement with a majority of the Indian surface owners who can be located with the assistance and concurrence of the BIA or with the tribe in the case of tribally owned surface. This is consistent with existing practice and 25 CFR 169.3.

Comments and Responses: One commenter complains that the Order would give new rights to surface owners. We disagree. The Order only formalizes the existing practice of making a good faith effort to notify the surface owners. The surface owners' participation and input is welcome, but the Order gives them no veto over development of Federal oil and gas.

Several commenters were uncertain whether or not privately owned surface includes tribal surface estates owned in fee simple. When tribal lands are held in trust or are subject to Federal restrictions against alienation the BIA is

the Surface Managing Agency, but if lands are held in unrestricted fee, those lands are treated the same as private surface.

Many commenters expressed concerns that the Order changed current procedures for operations on private surface with Federal oil and gas. We disagree. The Order does not change the existing legal relationship between the surface and mineral estates or the relationship between the surface owner and the operator, but clarifies the relationship between operators and surface owners.

Many commenters wanted the Order to support state laws that address split estate operations. Existing policy and this final rule are based on a strict interpretation of existing law. The authority of states with respect to reserved Federal minerals is established in statutes dating back to the early twentieth century and is not altered by this Order. Therefore, we did not amend the final rule as a result of this comment.

Some commenters wanted the policy stated in BLM's Instruction Memorandum 2003–131, Permitting Oil and Gas on Split Estate Lands and Guidance for Onshore Oil and Gas Order No. 1 (IM 2003–131), to be included in the final rule. Section VI. of the proposed and final rule is based on IM 2003–131. However, we addressed an inaccuracy in the existing 1983 version of the Order and IM 2003–131. The existing Order and the Instruction Memorandum extends the Stockraising Homestead Act (43 U.S.C. 299) limitation on compensation to all split estate. The Stockraising Homestead Act (and our regulations at 43 CFR 3814.1(c)) clearly limit compensation to grazing and associated tangible improvements. Other laws that created split estates may not have this same limitation. The final rule states that compensation is based on the law that reserved the mineral estate.

One commenter said that the Order and the BLM are biased toward surface owners in violation of law. The final rule incorporates the split estate policy that has been in effect since 2003 which is based on a strict interpretation of existing law. It adds nothing new with the exception that it bases compensation on the patenting act rather than extending the terms of the Stockraising Homestead Act to all split estate. As explained elsewhere, surface owners have only the substantive rights provided by statute, especially the laws under which the surface was patented. A procedural requirement of a good faith attempt to notify the surface owner and attempt to reach an agreement does not change the dominant character of the federally owned oil and gas or the rights of Federal lessees. The Order reflects no bias; it includes the lessee's right to post a bond if a good faith attempt to reach a Surface Access Agreement with the surface owner fails. This Order does not require compensation to surface owners beyond that which is required by the patenting act.

Several commenters objected to the surface owner compensation limitations in the Stockraising Homestead Act and wanted us to eliminate them. The BLM cannot modify a statute through rulemaking.

Several commenters want a clear definition of "good faith" as that term pertains to negotiations with a surface owner and a definition of what an operator must do to contact and negotiate with a surface owner. We did not modify the Order as a result of these comments. We believe that a good faith effort can be demonstrated in too many ways to be codified. For example, a single phone call does not demonstrate a good faith effort while in similar circumstances an extensive log of unanswered phone calls or evidence of numerous returned unopened properly addressed letters would. Therefore, the final Order does not contain such a definition. In response to the second comment, we believe that once contact has been made, negotiations are private and methods of negotiation are not easily codified. Some commenters oppose disclosing the terms of the Surface Access Agreements since the agreements are private contracts. Therefore, we have chosen to not address contract negotiations or terms of agreements in the Order. We have, however, eliminated the requirement that the operator provide the BLM with those terms of the Surface Access Agreement that could impact surface operations. We believe that the Surface Use Plan of Operations will contain sufficient detail to make this requirement redundant.

Several commenters want the BLM to devise reasonable bonding requirements and provide guidelines for setting surface values rather than rely on the Stockraising Homestead Act. Bonds are used in lieu of a Surface Access Agreement to assure surface owner compensation for damages as prescribed by the appropriate law. Bonds can only be used when the operator certifies that a Surface Access Agreement could not be reached and the BLM confirms that fact with the surface owner, if possible. Bonds are not required when a Surface Access Agreement has been made. A commenter expressed concern that an operator may take the easy way out and merely post a bond rather than to negotiate an agreement with the surface owner. The final rule states that bonds are in lieu of a Surface Access Agreement only when the operator certifies that a Surface Access Agreement could not be reached and the BLM confirms this fact with the surface owner, if possible. The bond amount will be reviewed by the BLM to assure that it is sufficient based on the appropriate law. Some commenters said that these bonds would constitute "double bonding." We disagree. Bonds for the benefit of the surface owner are for a different purpose than the reclamation bonds required for all APDs. When both bonds are required, they satisfy the requirements of different statutes, protect different parties, and assure performance of different obligations, i.e., surface restoration versus damage to structures.

One commenter alleged that the BLM managers actively dissuade surface owners from participating in the bonding process, thus somehow rendering the Order illegal. Any such conduct would be improper under the existing Order. No change to the Order is necessary based on this comment.

One commenter asked why we require the operator to enter into an agreement with the surface owner prior to approval of the APD since the agreement may need to be revised to comply with changes that the BLM may make to the proposed action. We did not revise the Order as a result of this comment. Under the terms of the patenting statutes, the BLM cannot approve entry onto the land for drilling until either agreement is reached or a bond is posted. Each party should anticipate that changes to a proposed action may occur during the APD approval process and negotiate accordingly.

Another commenter suggested that the Order should set minimum standards for Surface Access Agreements and suggested language for an agreement. The BLM and the FS believe that most surface owners and operators would object to such a requirement. In most split estate cases surface owners and operators do reach an agreement. This is evidenced by the very few bonds that we hold for the benefit of the surface owner. Also, there appears to be a general reluctance from both surface owners and operators alike to divulge the terms of these agreements and we take that to indicate that they would object to required terms for such agreements. We did not set minimum standards for Surface Access Agreements. However, the BLM and the FS are always willing to discuss

concerns with surface owners and operators.

Some commenters asked for more involvement of the surface owner in review of the proposed action and asked why the BLM will not include all surface owner requests in the approved APD. We emphasize that the BLM will always invite the surface owner to the onsite inspection if they can be located. The BLM will consider any input that the surface owner may have and will make adjustments to the operator's plans that are reasonable. These changes may include road realignment and other similar adjustments. They would not include terms of a Surface Access Agreement that are not directly related to the proposed action in the APD. A private contract may include an agreement to provide benefits that are not related to development of the oil and gas. These items would not be enforceable by the BLM and cannot be included in the Conditions of Approval of the APD. To avoid confusion, we removed the statement that suggested we would only consider the surface owner concerns to the extent that they are consistent with Federal land management policy.

One commenter asked why the BLM and the FS would only require reclamation and not restoration, but did not provide a distinction between the two terms. We define reclamation in the Order to mean "returning disturbed land as near to its predisturbed condition as is reasonably practical or as specified in an approved APD." Section XI.B. of the Order requires the BLM to contact the surface owner and involve them in determining reclamation requirements, any changes to reclamation plans, and the final approval of reclamation operations.

A few commenters stated that the private surface owner should be provided with notices of oil and gas lease sales and be allowed to provide input into the leasing process. The commenters also wanted improved involvement in decisions that affect their private surface. The BLM's leasing processes are outside the scope of this Order. However, under current rules and processes, diligent landowners have ample opportunities to make themselves aware of decisions to lease lands. The BLM makes decisions regarding areas to be made available for leasing and lease stipulations during the land use planning process. The land use planning process is open to public participation and comment and the BLM encourages private landowners to make their views known through this process. Also, lease sales are posted on the BLM's Web sites and the details are also available through individual BLM offices.

Several commenters stated that the BLM does not have the authority to require a private landowner to submit to cultural and biological surveys on privately owned surface. One commenter stated that it is incumbent upon the BLM to respect the wishes of the private landowner with respect to these surveys. We disagree. The Federal mineral estate is the dominant estate and the BLM and its lessees may enter the lands to perform such operations as are necessary to develop the minerals. The BLM and the FS are required to comply with Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act prior to approving the lease operations on Federal minerals regardless of surface ownership. Satisfying statutory requirements may include conducting specific inventories. To the extent that these inventories are a necessary prerequisite to developing the minerals, they are within the rights reserved to the United States in the patent. We modified Section VI. of the Order to make this clear.

One commenter wanted the Order to adopt language in proposed Federal legislation pending before Congress that provides more protections for surface owners. The final rule is consistent with existing law pertaining to split estate and the rights possessed by the holders of outstanding leases that limit what the BLM can do under current law. Therefore, we did not modify the Order as requested by the commenter.

Section VII. Leases for Indian Oil and Gas

Purpose: This section discusses the requirements and procedures for operating on Indian oil and gas leases. It also discusses the process for approval of APDs, Master Development Plans, and Sundry Notices on Indian tribal and allotted oil and gas leases held in trust and Indian Mineral Development Trust mineral agreements.

Summary of Changes: In the final rule we clarified the relationship of the BIA as the Surface Managing Agency and the Indian mineral owners relative to the BLM approvals under the Order.

Comments and Responses: A few commenters stated that the reference to Indian oil and gas does not clearly address the issues surrounding the relationship between the BLM and the tribal management with respect to APDs. They encouraged the BLM to approve APDs on tribal lands within 30 days of receipt of a complete APD. The final rule reduces the confusion caused by using the term "Surface Management Entity" that included both the BIA and the Indian mineral owner. The final rule refers to the "Surface Managing Agency," which is the BIA and not the tribe. The BLM cannot approve an APD until all non-discretionary actions are completed and other Surface Managing Agencies, including the BIA in these cases, are consulted. The BLM must seek BIA input for Indian oil and gas leases and will strive to issue permits in a timely manner.

One commenter asked for an explanation of the procedure to be used for processing APDs on tribal lands. The final rule makes it clear that on tribal lands held in trust or subject to Federal restrictions against alienation, the BLM will review and process APDs in the same manner as on BLM lands, but will consult and consider recommendations for the Surface Use Plan of Operations from the Surface Managing Agency (BIA) and surface owners (the tribe). We modified the provisions on surface access of Indian lands to make them consistent with BIA regulations. Decisions on APD approval are subject to State Director Review and the BLM's appeal procedures.

Section VIII. Subsequent Operations and Sundry Notices

Purpose: This section describes approval of operations that occur after the APD has been approved, including changes to the drilling plan. The additional operations occasionally include additional surface disturbance.

Summary of Changes: In the final rule we added a requirement that the operator must make a good faith effort to provide a copy of any Sundry Notice that requires additional surface disturbance to the private surface owner in the case of split estate. This is consistent with the requirement in the final rule to make a good faith effort to provide the Surface Use Plan of Operations to the split estate surface owner and is a result of comments that we received.

Comments and Responses: One commenter suggested that operators be allowed to use e-mail and voice messages for notification of emergency repair. We agree. In the final rule the form of the contact is not specified, but the BLM will allow any form of contact as long as it is reasonable. The BLM and the FS contact information is listed on the approved APD.

Section IX. Well Conversion

Purpose: This section describes the process of converting an existing well into either an injection well or water well.

Summary of Changes: We added language to the final rule to clarify that if a Surface Managing Agency or surface owner acquires a water supply well, they assume liability for that well.

Comments and Responses: One commenter noted that the proposed Order requires application to both the BLM and the Surface Managing Agency to convert a production well to an injection well. The commenter stated that actual approval to inject rests with either the Environmental Protection Agency (EPA) or a state to which primacy has been granted by the EPA. The BLM recognizes the EPA's (and the primacy states') role in the Underground Injection Control program. However, that does not mean that the BLM does not have a role to play in the approval of the conversion of a well to an injection well on Federal lands. The BLM approves underground injection on Federal and Indian oil and gas leases under existing regulations at 43 CFR 3162.3–4(b) (see also Onshore Order Number 7, Disposal of Produced Water, 58 FR 47354).

Several commenters questioned the authority given to the Surface Managing Agency regarding approval of injection well conversions. One commenter asked if the Surface Managing Agency has veto authority over the approval. Under existing procedures and this final rule, if another Federal agency other than the FS manages the surface, the decision will be made by the BLM in consultation with that agency if additional surface disturbance is involved. The FS approves surface use on NFS lands. The commenters also asked if the disapproval is the result of the position of the Surface Managing Agency, whether such disapproval is subject to appeal under Section XIII. The commenters pointed out that Interior Board of Land Appeals (IBLA) has no authority over BIA decisions. There are no decisions by other agencies to appeal. All BLM decisions under this rule are appealable to the IBLA. The FS's decisions are appealable under Title 36 of the CFR. One cannot appeal a recommendation from another agency. One commenter stated that it is inappropriate to request that operators file the listed applications with Surface Managing Agencies that do not have any regulatory authority over conversions. The requirement to submit a Sundry Notice to a Surface Managing Agency other than the BLM has been eliminated from the Order if no additional surface disturbance is required.

One commenter mentioned that in addition to the BLM approval, notice to the state agency with authority for conversion to a water well will also be required. They suggested that including a reference to the appropriate state agency with authority over groundwater would help avoid failing to meet any state requirements. We did not revise the Order as a result of this comment because such a list would be extensive and would have the potential to change periodically. Also, the Order only covers Federal approvals and, therefore, the suggested list is outside the scope of this rule.

Section X. Variances

Purpose: This section provides guidance and requirements for obtaining a variance from the requirements of the Order or Notice to Lessee. A request for variance must show how the operator expects to meet the intent of the Order with the variance.

Summary of Changes: In the final rule we moved the discussion of waiver, exceptions, and modifications to a new section. We also explain that operators must demonstrate in their request for a variance that they will still meet the intent of the Order. This is based on comments requesting that we clarify the variance process (see the discussion in Section II. of this rule).

Comments and Responses: One commenter asked why the BIA's concurrence is not needed for variances. The BIA's concurrence is not necessary to grant a variance because it is a request to vary from the provisions of this Order for which the BLM and the FS have responsibility.

Section XI. Waivers, Exceptions, or Modifications

We added this section to the final rule to distinguish variances, which concern requirements of the Order, from waivers, exceptions, and modifications which concern lease terms. We did not add a definition for these three terms in Section II.; however, we did add language that clarifies the differences between the waivers, exceptions, and modifications. The text in this section was moved from the variance section in the proposed rule.

One commenter asked whether the BIA has authority to approve or deny waivers, exceptions, or modifications to lease stipulations. We did not amend the final rule as a result of this comment. On Indian oil and gas leases, where the surface is held in trust, the BIA is the sole authority for approval of waivers, exceptions, or modifications to lease stipulations.

One commenter pointed out that a 30-day posting is not always necessary when a waiver, exception, or modification of lease terms is requested because these are often addressed in the planning document. We agree. A 30-day posting is only required if the waiver, exception, or modification is substantial. The granting of a waiver, exception, or modification would not be considered substantial if the circumstances warranting a waiver, exception, or modification were prescribed in the planning document and the associated impacts were disclosed in the environmental impact statement for the Resource Management Plan.

One commenter was concerned that the requirement for concurrence from the Surface Managing Agency for waiver, exception, or modification will result in unnecessary delays. The BLM is required by the Reform Act to provide public notice whenever a waiver, exception, or modification is substantial (Section 5102(d) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, 101 Stat. 1330–256, P.L. 100–203). The reason the BLM consults with the Surface Managing Agency is because the agency developed the lease stipulations and therefore any associated waivers, exceptions, or modifications must be based on that agency's concurrence as well.

Section XII. Abandonment

Note: Since the final rule adds a separate section for waivers, exceptions, and modifications, the abandonment section has been renumbered from XI. to XII.

Purpose: This section describes the requirements for notification of intent to abandon a well and reclaim the site. It describes requirements for providing notice of intended change in reclamation. Some of the comments related to this section dealt with timing of reclamation and involvement of a private surface owner (also see Section VI.).

Summary of Changes: In the final rule we moved from this section to Section IX. the statements about the BLM and the FS approving complete abandonment of the well if the Surface Managing Agency or surface owner commits to acquiring it as a water well and the acquiring party's assumption of liability. We also modified this section to require the operator to notify and consider the views of the private surface owner prior to a Notice of Abandonment being filed.

Comments and Responses: One commenter asked that we add to the final rule a deadline for reclamation, especially on private surface. Reclamation properly begins as soon as the drilling operation ends. We typically require interim reclamation of that portion of the site that is no longer

needed when a producing well is established. We believe that this can best be handled in Conditions of Approval and by lease terms rather than in the Order. We made no change based on this comment.

XIII. Appeal Procedures

Note: With the addition of a separate section for waivers, exceptions, and modifications the appeal procedures section has been renumbered from XII. to XIII.

Purpose: This section describes the process of appealing decisions of the agencies and statutory basis for appeal procedures.

Summary of Changes: The only change to this section was to change the term "are subject to" to "may be subject to" as that phrase applies to appeals of FS decisions. We made this change because some decisions based on categorical exclusions may not be subject to 36 CFR part 215.

Comments and Responses: Comments received on this section are discussed earlier in previous section discussions of this preamble.

XIV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The final rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis has not been prepared. The final rule primarily involves changes to the BLM's and the FS's administrative processes. The revision to the definition of "Complete APD" requiring onsite inspections would have no impact on operators since onsite inspections are currently required as part of the APD approval process. The provisions are consistent with existing policy and practice when operating on split estate lands with Indian surface ownership, and therefore would have no economic impact. Other changes, such as adding a provision for the use of Master Development Plans, may improve processing and predictability of operations due to better advance planning of field development. Clarifying that our authority to require additional bond applies to off-lease facilities would have no economic impact since the BLM already has the authority under the existing regulatory scheme to require this bond. The other revisions this final rule makes to the Order primarily involve changing the BLM and the FS's administrative processes. Because of clearer rules, operators will have a better understanding of the BLM and the FS requirements, processes, and timelines, and thus the result may be a reduction in delays when processing APDs. The BLM and operators should both see administrative cost savings realized from implementing the final rule.

The final rule will not create inconsistencies with other agency actions. The BLM has worked closely with the FS in assuring the maximum consistency between the policies of the two agencies. In fact, the Forest Service will adopt the final rule under their regulations at 36 CFR 228.105.

The final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. As stated above, the final rule primarily revises administrative processes for APD approvals and should not impact any of the above listed items.

The final rule does not raise novel legal or policy issues. Legal and policy issues addressed by the final rule are already addressed in the existing Order, existing regulations, existing policy, or existing law.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. For the purposes of this analysis, we will assume that all entities (all lessees and operators) that may be impacted by these regulations are small entities.

The final rule deals mainly with the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (other than those of the Osage Tribe) onshore oil and gas leases. These changes are not significantly different from the existing Order and primarily consist of changes to the BLM's and the FS's administrative processes. As a result of clearer rules, operators will have a better understanding of the BLM's and the FS's requirements, processes, and timelines. This will likely reduce delays in processing and both the BLM and operators should see some administrative cost savings. The provision(s) for operating on split estate lands with Indian surface ownership is consistent with existing policy and practice and therefore would have no economic impact. Therefore, the BLM has determined under the RFA that the final rule would not have a significant economic impact on a substantial number of small entities.

The use of Best Management Practices in Conditions of Approval for a permit to drill is not new. The BLM currently uses them as Conditions of Approval and therefore this provision will have no economic impact on small entities.

The bonding provision in the rule will not impact small entities since the provision merely clarifies the existing regulations. As stated earlier, an Assistant Solicitor's Opinion of July 19, 2004, concluded that under the current regulation the BLM has the authority to require additional bond for off-site facilities and to require either a separate bond or an increase in the required amount of an existing bond. Accordingly, the rule does not represent a change in the regulatory scheme.

Small Business Regulatory Enforcement Fairness Act

These final regulations are not a "major rule" as defined at 5 U.S.C. 804(2). For the reasons stated in the RFA and Executive Order 12866 discussions, this rule would not have an annual effect on the economy greater than $100 million; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

These final regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The final rule codifies certain decisions made by the Congress in the Energy Policy Act of 2005. The discretionary provisions primarily involve changes to the BLM's and the FS's administrative processes and would not have any significant effect monetarily, or otherwise, on the entities listed and therefore would not add to any burden imposed by the final rule. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12630, the final rule does not have significant takings implications. A takings implication assessment in not required. This final rule identifies the procedural requirements necessary for approval of proposed exploratory, development of service wells, and most subsequent well operations. All such actions are subject to lease terms which expressly require that subsequent least activities must be approved in compliance with applicable Federal laws and regulations, including NEPA, ESA, and NHPA. The final rule carefully conforms to the terms of those Federal leases and regulations and as such the rule is not a governmental action capable of interfering with constitutionally protected property rights. Furthermore, this final rule has no potential to affect property rights because the changes reduce the burdens on regulated parties. Therefore, the final rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the final rule does not have significant Federalism effects. A Federalism assessment is not required because the rule does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The final rule will not have any effect on any of the items listed. The final rule affects the relationship between operators, lessees, and the BLM and the FS, but would not impact states. Therefore, in accordance with Executive Order 13132, the BLM has determined that the final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 Departmental Manual 2, the BLM evaluated possible effects on federally recognized Indian tribes. The BLM approves proposed operations on all Indian (other than those of the Osage Tribe) onshore oil and gas leases and agreements and therefore the final rule has the potential to impact Indian tribes. The BLM has consulted with the tribes on the proposed revisions to the Order.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the final rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order. We have reviewed the final rule to eliminate drafting errors and ambiguity. It has been written to minimize litigation, provide clear legal standards for affected conduct rather than general standards, and promote simplification and burden reduction. The final rule was written in plain language and legal counsel assisted in all of these areas.

Paperwork Reduction Act

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the Office of Management and Budget for review. The OMB approved the information collection requirements under Control Number 1004–0137, which expires on March 31, 2007.

National Environmental Policy Act

We have analyzed this final rule in accordance with the criteria of the NEPA and 516 Departmental Manual. The revisions to the existing Order will not impact the environment significantly. For the most part, the revisions would involve changes to the BLM's administrative processes. For example, changes to the meaning of "Complete APD" only pertain to the application and the process the BLM will use to review APD packages and would have no impact on the environment. Other changes, such as adding provisions for the use of Master Development Plans, should provide improved environmental protection due to better advance planning of field development. The clarification as to the BLM's obligation under the National Historic Preservation Act and the Endangered Species Act on split estate lands should reduce effects on cultural resources and protected species and their habitats. The clarification of the BLM's authority to increase bond requirements to cover off-site facilities should also reduce potential effects on the environment. Also, procedural and clarifying changes will have no meaningful impact on the environment. The use of Best Management Practices as Conditions of Approval can lead to reduced environmental damage. Furthermore, environmental effects of proposed operations on public and Federal lands are analyzed on a case-by-case basis. The BLM and the FS have prepared an environmental assessment and have found that this final rule would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the NEPA, 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. The BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub.L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that the proposed rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule would clarify the administrative processes involved in approving an APD and more clearly lay out the timeline for processing applications. It is not clear to what extent clarification of the rules will save the BLM, the FS, or operators' administrative cost, but we anticipate that the cost savings will be minimal, as will any direct effects on the energy supply, distribution or use.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that the final rule primarily involves changes to the BLM and Forest Service administrative processes. This rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; has no effect on local participation in the Federal decision-making process except to enhance the opportunities for surface owners; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

Authors

The principal authors of this rule are: James Burd of the BLM Washington Office; Bo Brown of the BLM Alaska State Office; Brian Pruiett and Jennifer Spegon of the BLM Buffalo, Wyoming Field Office; Gary Stephens of the BLM New Mexico State Office; Hank Szymanski of the BLM Colorado State Office; Al McKee of the BLM Utah State Office; Howard Clevinger of the BLM Vernal, Utah Field Office; Roy Swalling of the Montana State Office; Greg Noble of the Alaska State Office; Steve Hansen of the BLM Arizona State Office; and Barry Burkhardt of the FS Intermountain Regional Office, Ogden, Utah, and assisted by the staff of the BLM's Division of Regulatory Affairs and the Department of the Interior's Office of the Solicitor.

List of Subjects

36 CFR Part 228

Environmental protection; Mines; National forests; Oil and gas exploration; Public lands-mineral resources; Public lands-rights-of-way; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

43 CFR Part 3160

Administrative practice and procedure; Government contracts; Indians-lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands-mineral resources; Reporting and recordkeeping requirements.

36 CFR Chapter II

■ For the reasons set out in the joint preamble, the FS amends 36 CFR part 228 as follows:

PART 228—MINERALS

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, Sec. 5102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 681, as amended (30 U.S.C. 601); 61 Stat. 914, as amended (30 U.S.C. 352); 69 Stat. 368, as amended (30 U.S.C. 611); and 94 Stat. 2400.

■ 2. Revise § 228.105(a)(1) to read as follows:

§ 228.105 Issuance of onshore orders and notices to lessees

(a) * * *

(1) *Surface Use Plans of Operations and Master Development Plans.* Operators shall submit Surface Use Plans of Operations or Master Development Plans in accordance with Onshore Oil and Gas Order No. 1. Approval of a Master Development Plan constitutes a decision to approve Surface Use Plans of Operations submitted as a part of the Master Development Plan. Subsequently submitted Surface Use Plans of Operations shall be reviewed to verify that they are consistent with the approved Master Development Plan and whether additional NEPA documentation or consultation pursuant to the National Historic Preservation Act or the Endangered Species Act is required. If the review determines that additional documentation is required, the Forest Service will review the additional documentation or consult as appropriate and make an independent decision regarding the subsequently submitted Surface Use Plan of Operations, and notify the BLM and the operator whether the Surface Use Plan of Operations is approved.

* * * * *

■ 3. Revise § 228.107(c) to read as follows:

§ 228.107 Review of surface use plan of operations.

* * * * *

(c) *Public notice.* The authorized Forest Service officer will give public notice of the decision regarding a surface use plan of operations and include in that notice whether the decision is appealable under the applicable Forest Service appeal procedures.

* * * * *

Appendix A to subpart E of part 228 [Removed]

■ 4. Remove Appendix A to subpart E of part 228.

Dated: February 9, 2007.

David P. Tenny,

Deputy Under Secretary, Natural Resources Environment, Forest Service.

43 CFR Chapter II

■ For the reasons set out in the joint preamble, the Bureau of Land Management amends 43 CFR part 3160 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 2. Amend § 3164.1(b) by revising the first entry in the table as follows:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1.	Approval of operations	May 7, 2007	71 FR	NTL–6.

* * * * *

The following Order would be implemented by the BLM and the FS, but will not be codified in the Code of Federal Regulations.

Dated: December 1, 2006.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

Appendix—Text of Oil and Gas Onshore Order

Note: This appendix will not appear in the BLM regulations in 43 Code of Federal Regulations.

Onshore Oil and Gas Order Number 1

Approval of Operations

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Onshore Oil and Gas Order Number 1

Approval of Operations

I. Introduction

A. Authority

The Secretaries of the Interior and Agriculture have authority under various Federal and Indian mineral leasing laws, as defined in 30 U.S.C. 1702, to manage oil and gas operations. The Secretary of the Interior has delegated this authority to the Bureau of Land Management (BLM), which has issued onshore oil and gas operating regulations codified at part 3160 of Title 43 of the Code of Federal Regulations. The operating regulations at 43 CFR 3164.1 authorize the BLM's Director to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations. The section also states that all such Orders are binding on the operator(s) of Federal and Indian onshore oil and gas leases (other than those of the Osage Tribe). For leases on Indian lands, the delegation to the BLM appears at 25 CFR parts 211, 212, 213, 225, and 227.

The Secretary of Agriculture has authority under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (P.L. 100–203) (Reform Act) to regulate surface disturbing activities conducted pursuant to a Federal oil and gas lease on National Forest Service (NFS) lands. This authority has been delegated to the Forest Service (FS). Its regulatory authority is at Title 36 CFR, Chapter II, including, but not limited to, part 228 subpart E, part 251 subpart B, and part 261. Section 228.105 of 36 CFR authorizes the Chief of the FS to issue, or cosign with the Director of the BLM Onshore Oil and Gas Orders necessary to implement and supplement the operating regulations. The FS is responsible only for approving and regulating surface disturbing activities on NFS lands and appeals related to FS decisions or approvals.

B. Purpose

The purpose of this Order is to state the application requirements for the approval of all proposed oil and gas and service wells, certain subsequent well operations, and abandonment.

C. Scope

This Order applies to all onshore leases of Federal and Indian oil and gas (other than those of the Osage Tribe). It also applies to Indian Mineral Development Act agreements. For proposed operations on a committed state or fee tract in a federally supervised unit or communitized tract, the operator must furnish a copy of the approved state permit to the authorized officer of the BLM which will be accepted for record purposes.

II. Definitions

As used in this Order, the following definitions apply:

Best Management Practices (BMP) are practices that provide for state-of-the-art mitigation of specific impacts that result from surface operations. Best Management Practices are voluntary unless they have been analyzed as a mitigation measure in the environmental review for a Master Development Plan, APD, Right-of-Way, or other related facility and included as a Condition of Approval.

Blooie Line means a discharge line used in conjunction with a rotating head in drilling operations when air or gas is used as the circulating medium.

Casual Use means activities involving practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. This term does not apply to private surface. Casual use includes surveying activities.

Complete APD means that the information in the APD package is accurate and addresses all of the requirements of this Order. The onsite inspection verifies important information that is part of the APD package and is a critical step in determining if the package is complete. Therefore, the onsite inspection must be conducted, and any deficiencies identified at the onsite corrected, before the APD package can be considered to be complete. While cultural, biological, or other inventories and environmental assessments (EA) or environmental impact statements (EIS) may be required to approve the APD, they are not required before an APD package is considered to be complete. The APD package must contain:

- A completed Form 3160–3 (Application for Permit to Drill or Reenter) (see 43 CFR 3162.3–1(d));
- A well plat certified by a registered surveyor with a surveyor's original stamp (see Section III.D.2. of this Order);
- A Drilling Plan (see 43 CFR 3162.3–1(d) and Section III.D.3. of this Order);
- A Surface Use Plan of Operations (see 43 CFR 3162.3–1(d) and Section III.D.4. of this Order);
- Evidence of bond coverage (see 43 CFR 3162.3–1(d) and Section III.D.5. of this Order);
- Operator certification with original signature (see Section III.D.6. of this Order); and
- Other information that may be required by Order or Notice (see 43 CFR 3162.3–1(d)(4)).

The BLM and the Surface Managing Agency, as appropriate, will review the APD package and determine that the drilling plan, the Surface Use Plan of Operations, and other information that the BLM may require (43 CFR 3162.3–1(d)(4)), including the well location plat and geospatial databases, completely describe the proposed action.

Condition of Approval (COA) means a site-specific requirement included in an approved APD or Sundry Notice that may limit or amend the specific actions proposed by the operator. Conditions of Approval minimize, mitigate, or prevent impacts to public lands or other resources. Best Management Practices may be incorporated as a Condition of Approval.

Days means all calendar days including holidays.

Emergency Repairs means actions necessary to correct an unforeseen problem that could cause or threaten immediate substantial adverse impact on public health and safety or the environment.

Geospatial Database means a set of georeferenced computer data that contains both spatial and attribute data. The spatial data defines the geometry of the object and the attribute data defines all other characteristics.

Indian Lands means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to a Federal restriction against alienation.

Indian Oil and Gas means any oil and gas interest of an Indian tribe or on allotted lands where the interest is held in trust by the United States or is subject to Federal restrictions against alienation. It does not include minerals subject to the provisions of Section 3 of the Act of June 28, 1906 (34 Stat. 539), but does include oil and gas on lands administered by the United States under Section 14(g) of Public Law 92–203, as amended.

Master Development Plan means information common to multiple planned wells, including drilling plans, Surface Use Plans of Operations, and plans for future production.

National Forest System Lands means those Federal lands administered by the U.S. Forest Service, such as the National Forests and the National Grasslands.

Onsite Inspection means an inspection of the proposed drill pad, access road, flowline route, and any associated Right-of-Way or Special Use

Authorization needed for support facilities, conducted before the approval of the APD or Surface Use Plan of Operations and construction activities.

Private Surface Owner means a non-Federal or non-state owner of the surface estate and includes any Indian owner of surface estate not held in trust by the United States.

Reclamation means returning disturbed land as near to its predisturbed condition as is reasonably practical.

Split Estate means lands where the surface is owned by an entity or person other than the owner of the Federal or Indian oil and gas.

Surface Managing Agency means any Federal or state agency having jurisdiction over the surface overlying Federal or Indian oil and gas.

Variance means an approved alternative to a provision or standard of an Order or Notice to Lessee.

III. Application for Permit To Drill (APD)

An Application for Permit to Drill or Reenter, on Form 3160–3, is required for each proposed well, and for reentry of existing wells (including disposal and service wells), to develop an onshore lease for Federal or Indian oil and gas.

A. Where To File

The operator must file an APD or any other required documents in the BLM Field Office having jurisdiction over the lands described in the application. As an alternative to filing in a local BLM office, an operator may file an APD using the BLM's electronic commerce application for oil and gas permitting and reporting. Contact the local BLM Field Office for details before using the electronic commerce application.

B. Early Notification

The operator may wish to contact the BLM and any applicable Surface Managing Agency, as well as all private surface owners, to request an initial planning conference as soon as the operator has identified a potential area of development. Early notification is voluntary and would precede the Notice of Staking option or filing of an APD. It allows the involved Surface Managing Agency or private surface owner to apprise the prospective operator of any unusual conditions on the lease area. Early notification also provides both the Surface Managing Agency or private surface owner and the prospective operator with the earliest possible identification of seasonal restrictions and determination of potential areas of conflict. The prospective operator should have a map of the proposed project available for Surface Managing Agency review to determine if a cultural or biological inventory or other information may be required. Inventories are not the responsibility of the operator.

C. Notice of Staking Option

Before filing an APD or Master Development Plan, the operator may file a Notice of Staking with the BLM. The purpose of the Notice of Staking is to provide the operator with an opportunity to gather information to better address site-specific resource concerns while preparing the APD package. This may expedite approval of the APD. Attachment I, Sample Format for Notice of Staking, provides the information required for the Notice of Staking option.

For Federal lands managed by other Surface Managing Agencies, the BLM will provide a copy of the Notice of Staking to the appropriate Surface Managing Agency office. In Alaska, when a subsistence stipulation is part of the lease, the operator must also send a copy of the Notice of Staking to the appropriate Borough and/or Native Regional or Village Corporation.

Within 10 days of receiving the Notice of Staking, the BLM or the FS will review it for required information and schedule a date for the onsite inspection. The onsite inspection will be conducted as soon as weather and other conditions permit. The operator must stake the proposed drill pad and ancillary facilities, and flag new or reconstructed access routes, before the onsite inspection. The staking must include a center stake for the proposed well, two reference stakes, and a flagged access road centerline. Staking activities are considered casual use unless the particular activity is likely to cause more than negligible disturbance or damage. Off-road vehicular use for the purposes of staking is casual use unless, in a particular case, it is likely to cause more than negligible disturbance or damage, or otherwise prohibited.

On non-NFS lands, the BLM will invite the Surface Managing Agency and private surface owner, if applicable, to participate in the onsite inspection. If the surface is privately owned, the operator must furnish to the BLM the name, address, and telephone number of the surface owner if known. All parties who attend the onsite inspection will jointly develop a list of resource concerns that the operator must address in the APD. The operator will be provided a list of these concerns either during the onsite inspection or within 7 days of the onsite inspection. Surface owner concerns will be considered to the extent practical within the law. Failure to submit an APD within 60 days of the onsite inspection will result in the Notice of Staking being returned to the operator.

D. Components of a Complete APD Package

Operators are encouraged to consider and incorporate Best Management Practices into their APDs because Best Management Practices can result in reduced processing times and reduced number of Conditions of Approval. An APD package must include the following information that will be reviewed by technical specialists of the appropriate agencies to determine the technical adequacy of the package:

1. A Completed Form 3160–3; And
2. Well Plat

Operators must include in the APD package a well plat and geospatial database prepared by a registered surveyor depicting the proposed location of the well and identifying the points of control and datum used to establish the section lines or metes and bounds. The purpose of this plat is to ensure that operations are within the boundaries of the lease or agreement and that the depiction of these operations is accurately recorded both as to location (latitude and longitude) and in relation to the surrounding lease or agreement boundaries (public land survey corner and boundary ties). The registered surveyor should coordinate with the cadastral survey division of the appropriate BLM State Office, particularly where the lands have not been surveyed under the Public Land Survey System.

The plat and geospatial database must describe the location of operations in:

- Geographical coordinates referenced to the National Spatial Reference System, North American Datum 1983 or latest edition; and
- In feet and direction from the nearest two adjacent section lines, or, if not within the Rectangular Survey System, the nearest two adjacent property lines, generated from the BLM's current Geographic Coordinate Data Base.

The surveyor who prepared the plat must sign it, certifying that the location has been staked on the ground as shown on the plat.

a. Surveying and staking are necessary casual uses, typically involving negligible surface disturbance. The operator is responsible for making access arrangements with the appropriate Surface Managing Agency (other than the BLM and the FS) or

private surface owner. On tribal or allotted lands, the operator must contact the appropriate office of the BIA to make access arrangements with the Indian surface owners. In the event that not all of the Indian owners consent or may be located, but a majority of those who can be located consent, or the owners of interests are so numerous that it would be impracticable to obtain their consent and the BIA finds that the issuance of the APD will cause no substantive injury to the land or any owner thereof, the BIA may approve access. Typical off-road vehicular use, when conducted in conjunction with these activities, is a necessary action for obtaining a permit and may be done without advance approval from the Surface Managing Agency, except for:

- Lands administered by the Department of Defense;
- Other lands used for military purposes;
- Indian lands; or
- Where more than negligible surface disturbance is likely to occur or is otherwise prohibited.

b. No entry on split estate lands for surveying and staking should occur without the operator first making a good faith effort to notify the surface owner. Also, operators are encouraged to notify the BLM or the FS, as appropriate, before entering private lands to stake for Federal mineral estate locations.

3. Drilling Plan

With each copy of Form 3160–3, the operator must submit to the BLM either a Drilling Plan or reference a previously submitted field-wide drilling plan (a drilling plan that can be used for all the wells in a field, any differences for specific wells will be described in the APD specific to that well). The Drilling Plans must be in sufficient detail to permit a complete appraisal of the technical adequacy of, and environmental effects associated with, the proposed project. The Drilling Plan must adhere to the provisions and standards of Onshore Oil and Gas Order Number 2 (see 53 FR 46790) (Order 2) and, if applicable, Onshore Oil and Gas Order Number 6 (see 55 FR 48958) (Order 6), and must include the following information:

a. Names and estimated tops of all geologic groups, formations, members, or zones.

b. Estimated depth and thickness of formations, members, or zones potentially containing usable water, oil, gas, or prospectively valuable deposits of other minerals that the operator expects to encounter, and the operator's plans for protecting such resources.

c. The operator's minimum specifications for blowout prevention equipment and diverter systems to be used, including size, pressure rating, configuration, and the testing procedure and frequency. Blowout prevention equipment must meet the minimum standards outlined in Order 2.

d. The operator's proposed casing program, including size, grade, weight, type of thread and coupling, the setting depth of each string, and its condition. The operator must include the minimum design criteria, including casing loading assumptions and corresponding safety factors for burst, collapse, and tensions (body yield and joint strength). The operator must also include the lengths and setting depth of each casing when a tapered casing string is proposed. The hole size for each well bore section of hole drilled must be included. Special casing designs such as the use of coiled tubing or expandable casing may necessitate additional information.

e. The estimated amount and type(s) of cement expected to be used in the setting of each casing string. If stage cementing will be used, provide the setting depth of the stage tool(s) and amount and type of cement, including additives, to be used for each stage. Provide the yield of each cement slurry and the expected top of cement, with excess, for each cemented string or stage.

f. Type and characteristics of the proposed circulating medium or mediums proposed for the drilling of each well bore section, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the circulating system. The operator must submit the following information when air or gas drilling is proposed:

- Length, size, and location of the blooie line, including the gas ignition and dust suppression systems;
- Location and capacity of the compressor equipment, including safety devices, describe the distance from the well bore, and location within the drill site; and
- Anticipated amounts, types, and other characteristics as defined in this section, of the stand by mud or kill fluid and associated circulating equipment.

g. The testing, logging, and coring procedures proposed, including drill stem testing procedures, equipment, and safety measures.

h. The expected bottom-hole pressure and any anticipated abnormal pressures, temperatures, or potential hazards that the operator expects to encounter, such as lost circulation and hydrogen sulfide (see Order 6 for information on hydrogen sulfide operations). A description of the operator's plans for mitigating such hazards must be included.

i. Any other facets of the proposed operation that the operator would like the BLM to consider in reviewing the application. Examples include, but are not limited to:

- For directional wells, proposed directional design, plan view, and vertical section in true vertical and measured depths;
- Horizontal drilling; and
- Coil tubing operations.

4. Surface Use Plan of Operations

The Surface Use Plan of Operations must:

- Describe the access road(s) and drill pad, the construction methods that the operator plans to use, and the proposed means for containment and disposal of all waste materials;
- Provide for safe operations, adequate protection of surface resources, groundwater, and other environmental components;
- Include adequate measures for stabilization and reclamation of disturbed lands;
- Describe any Best Management Practices the operator plans to use; and
- Where the surface is privately owned, include a certification of Surface Access Agreement or an adequate bond, as described in Section VI. of this Order.

All maps that are included in the Surface Use Plan of Operations must be of a scale no smaller than 1:24,000, unless otherwise stated below. Geospatial vector and raster data must include appropriate attributes and metadata. Georeferenced raster images must be from the same source as hardcopy plats and maps submitted in the APD package. All proposed on-lease surface disturbance must be surveyed and staked as described below in items a through l, including:

- The well location;
- Two 200-foot (61-meter) directional reference stakes;
- The exterior pad dimensions;
- The reserve pit;
- Cuts and fills;
- Outer limits of the area to be disturbed (catch points); and
- Any off-location facilities.

Proposed new roads require centerline flagging with stakes clearly visible from one to the next. In rugged terrain, cut and fill staking and/or slopestaking of proposed new access roads and locations for ancillary facilities that may be necessary, as determined by the BLM or the FS.

The onsite inspection will not occur until the required surveying and staking

is complete, and any new access road(s) have been flagged, unless a variance is first granted under Section X. of this Order.

Information required by the Surface Use Plan of Operations may be shown on the same map if it is appropriately labeled or on separate diagrams or maps and must include the following:

a. *Existing Roads:* The operator must submit a legible map such as a highway or county road, United States Geological Survey (USGS) topographic, Alaska Borough, or other such map that shows the proposed well site and access route to the proposed well in relation to a town, village, or other locatable public access point.

1. The operator must improve or maintain existing roads in a condition the same as or better than before operations began. The operator must provide any plans for improvement and/or maintenance of existing roads. The information provided by the operator for construction and use of roads will be used by the BLM for any Right-of-Way application, as described in Section V. of this Order. The operator may use existing terrain and two-track trails, where appropriate, to assure environmental protection. The operator should consider using Best Management Practices in improving or maintaining existing roads.

2. The operator may use existing roads under the jurisdiction of the FS for access if they meet the transportation objectives of the FS. When access involves the use of existing roads, the FS may require that the operator contribute to road maintenance. This is usually authorized by a Road Use Permit or a joint road use agreement. The FS will charge the operator a pro rata share of the costs of road maintenance and improvement, based upon the anticipated use of the road.

b. *New or Reconstructed Access Roads:* The operator must identify on a map all permanent and temporary access roads that it plans to construct or reconstruct in connection with the drilling of the proposed well. Locations of all existing and proposed road structures (culverts, bridges, low water crossings, etc.) must be shown. The proposed route to the proposed drill site must be shown, including distances from the point where the access route exits established roads. All permanent and temporary access roads must be located and designed to meet the applicable standards of the appropriate Surface Managing Agency, and be consistent with the needs of the operator. The operator should consider using Best Management Practices in designing and constructing roads.

The operator must design roads based upon the class or type of road, the safety requirements, traffic characteristics, environmental conditions, and the vehicles the road is expected to carry. The operator must describe for all road construction or reconstruction:

- Road width;
- Maximum grade;
- Crown design;
- Turnouts;
- Drainage and ditch design;
- On-site and off-site erosion control;
- Revegetation of disturbed areas;
- Location and size of culverts and/or bridges;
- Fence cuts and/or cattleguards;
- Major cuts and fills;
- Source and storage of topsoil; and
- Type of surfacing materials, if any, that will be used.

c. *Location of Existing Wells:* The operator must include a map and may include a geospatial database that includes all known wells, regardless of the well status (producing, abandoned, etc.), within a one-mile radius of the proposed location.

d. *Location of Existing and/or Proposed Production Facilities:* The operator must include a map or diagram of facilities planned either on or off the well pad that shows, to the extent known or anticipated, the location of all production facilities and lines likely to be installed if the well is successfully completed for production.

The map or diagram and optional geospatial database must show and differentiate between proposed and existing flow lines, overhead and buried power lines, and water lines. If facilities will be located on the well pad, the information should be consistent with the layout provided in item i. of this section.

The operator must show the dimensions of the facility layouts for all new construction. This information may be used by the BLM or the FS for Right-of-Way or Special Use Authorization application information, as specified in Section V. of this Order.

If the operator has not developed information regarding production facilities, it may defer submission of that information until a production well is completed, in which case the operator will follow the procedures in Section VIII. of this Order. However, for purposes of NEPA analysis, the BLM or the FS will need a reasonable estimate of the facilities to be employed.

e. *Location and Types of Water Supply:* Information concerning water supply, such as rivers, creeks, springs, lakes, ponds, and wells, may be shown by quarter-quarter section on a map or plat, or may be described in writing. The operator must identify the source, access route, and transportation method for all water anticipated for use in drilling the proposed well. The operator must describe any newly constructed or reconstructed access roads crossing Federal or Indian lands that are needed to haul the water as provided in item b. of this section. The operator must indicate if it plans to drill a water supply well on the lease and, if so, the operator must describe the location, construction details, and expected production requirements, including a description of how water will be transported and procedures for well abandonment.

f. *Construction Materials:* The operator must state the character and intended use of all construction materials, such as sand, gravel, stone, and soil material. The proposed source must be shown on a quarter-quarter section of a map or plat or in a written description.

g. *Methods for Handling Waste:* The Surface Use Plan of Operations must contain a written description of the methods and locations proposed for safe containment and disposal of each type of waste material (e.g., cuttings, garbage, salts, chemicals, sewage, etc.) that results from drilling the proposed well. The narrative must include plans for the eventual disposal of drilling fluids and any produced oil or water recovered during testing operations. The operator must describe plans for the construction and lining, if necessary, of the reserve pit.

h. *Ancillary Facilities:* The operator must identify on a map the location and construction methods and materials for all anticipated ancillary facilities such as camps, airstrips, and staging areas. The operator must stake on the ground the approximate center of proposed camps and the centerline of airstrips. If the ancillary facilities are located off-lease, depending on Surface Managing Agency policy, the BLM or the FS may require the operator to obtain an additional authorization, such as a Right-of-Way or Special Use Authorization.

i. *Well Site Layout:* A diagram of the well site layout must have an arrow indicating the north direction. Diagrams with cuts and fills must be surveyed, designed, drawn, digitized, and certified by licensed professional surveyors or engineers. The operator must submit a plat of a scale of not less than 1 inch = 50 feet showing the location and orientation of:

- The proposed drill pad;
- Reserve pit/blooie line/flare pit location;

• Access road entry points and their approximate location with respect to topographic features and with cross section diagrams of the drill pad; and

• The reserve pit showing all cuts and fills and the relation to topography.

The plat must also include the approximate proposed location and orientation of the:

• Drilling rig;

• Dikes and ditches to be constructed; and

• Topsoil and/or spoil material stockpiles.

j. *Plans for Surface Reclamation:* The operator must submit a plan for the surface reclamation or stabilization of all disturbed areas. This plan must address interim (during production) reclamation for the area of the well pad not needed for production, as well as final abandonment of the well location. Such plans must include, as appropriate:

• Configuration of the reshaped topography;

• Drainage systems;

• Segregation of spoil materials (stockpiles);

• Surface disturbances;

• Backfill requirements;

• Proposals for pit/sump closures;

• Redistribution of topsoil;

• Soil treatments;

• Seeding or other steps to reestablish vegetation;

• Weed control; and

• Practices necessary to reclaim all disturbed areas, including any access roads and pipelines.

The operator may amend this reclamation plan at the time of abandonment. Further details for reclamation are contained in Section XII. of this Order.

k. *Surface Ownership:* The operator must indicate (in a narrative) the surface ownership at the well location, and of all lands crossed by roads that the operator plans to construct or upgrade, including, if known, the name of the agency or owner, phone number, and address. The operator must certify that they have provided a copy of the Surface Use Plan of Operations required in this section to the private surface owner of the well site location, if applicable, or that they made a good faith effort if unable to provide the document to the surface owner.

l. *Other Information:* The operator must include other information required by applicable orders and notices (43 CFR 3162.3–1(d)(4)). When an integrated pest management program is needed for weed or insect control, the operator must coordinate plans with state or local management agencies and include the pest management program in the Surface Use Plan of Operations. The BLM also encourages the operator to submit any additional information that may be helpful in processing the application.

5. Bonding

a. Most bonding needs for oil and gas operations on Federal leases are discussed in 43 CFR subpart 3104. The operator must obtain a bond in its own name as principal, or a bond in the name of the lessee or sublessee. If the operator uses the lessee or sublessee's bond, the operator must furnish a rider (consent of surety and principal) that includes the operator under the coverage of the bond. The operator must specify on the APD, Form 3160–3, the type of bond and bond number under which the operations will be conducted.

For Indian oil and gas, the appropriate provisions at 25 CFR Subchapter I, govern bonding.

Under the regulations at 43 CFR 3104.5 and 36 CFR 228.109, the BLM or the FS may require additional bond coverage for specific APDs. Other factors that the BLM or the FS may consider include:

• History of previous violations;

• Location and depth of wells;

• The total number of wells involved;

• The age and production capability of the field; and

• Unique environmental issues.

These bonds may be in addition to any statewide, nationwide, or separate lease bond already applicable to the lease. In determining the bond amount, the BLM may consider impacts of activities on both Federal and non-Federal lands required to develop the lease that impact lands, waters, and other resources off the lease.

Separate bonds may be required for associated Rights-of-Way and/or Special Use Authorizations that authorize activities not covered by the approved APD.

b. On Federal leases, operators may request a phased release of an individual lease bond. The BLM will grant this reduction after reclamation of some portion of the lease only if the operator:

• Has satisfied the terms and conditions in the plan for surface reclamation for that particular operation; and

• No longer has any down-hole liability.

c. If appropriate, the BLM may reduce the bond in the amount requested by the operator or appropriate Surface Managing Agency. The FS also may reduce bonds it requires (but not the BLM-required bonds). The BLM and the FS will base the amount of the bond reduction on a calculation of the sum that is sufficient to cover the remaining operations (including royalty payments) and abandonment (including reclamation) as authorized by the Surface Use Plan of Operations.

6. Operator Certification

The operator must include its name, address, and telephone number, and the same information for its field representative, in the APD package. The following certification must carry the operator's original signature or meet the BLM standards for electronic commerce:

I hereby certify that I, or someone under my direct supervision, have inspected the drill site and access route proposed herein; that I am familiar with the conditions which currently exist; that I have full knowledge of state and Federal laws applicable to this operation; that the statements made in this APD package are, to the best of my knowledge, true and correct; and that the work associated with the operations proposed herein will be performed in conformity with this APD package and the terms and conditions under which it is approved. I also certify that I, or the company I represent, am responsible for the operations conducted under this application. These statements are subject to the provisions of 18 U.S.C. 1001 for the filing of false statements.

Executed this ____ day of_____, 20____.

Name _____

Position Title _____

Address _____

Telephone _____

Field representative (if not above signatory) _____

Address (if different from above) _____

Telephone (if different from above) ____

E-mail (optional) _____

Agents not directly employed by the operator must submit a letter from the operator authorizing that agent to act or file this application on their behalf.

7. Onsite Inspection

The onsite inspection must be conducted before the APD will be considered complete.

E. APD Posting and Processing

1. Posting

The BLM and the Federal Surface Managing Agency, if other than the BLM, must provide at least 30 days public notice before the BLM may approve an APD or Master Development Plan on a Federal oil and gas lease. Posting is not required for an APD for an Indian oil and gas lease or agreement.

The BLM will post the APD or Notice of Staking in an area of the BLM Field Office having jurisdiction that is readily accessible to the public and, when possible, electronically on the internet. If the surface is managed by a Federal agency other than the BLM, that agency also is required to post the notice for at least 30 days. This would include the BIA where the surface is held in trust but the mineral estate is federally owned. The posting is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral operations has been requested. The BLM or the FS will not post confidential information.

Reposting of the proposal may be necessary if the posted location of the proposed well is:

a. Moved to a different quarter-quarter section;

b. Moved more than 660 feet for lands that are not covered by a Public Land Survey; or

c. If the BLM or the FS determine that the move is substantial.

2. Processing

The timeframes established in this subsection apply to both individual APDs and to the multiple APDs included in Master Development Plans and to leases of Indian minerals as well as leases of Federal minerals.

If there is enough information to begin processing the application, the BLM (and the FS if applicable) will process it up to the point that missing information or uncorrected deficiencies render further processing impractical or impossible.

a. Within 10 days of receiving an application, the BLM (in consultation with the FS if the application concerns NFS lands) will notify the operator as to whether or not the application is complete. The BLM will request additional information and correction of any material submitted, if necessary, in the 10-day notification. If an onsite inspection has not been performed, the applicant will be notified that the application is not complete. Within 10 days of receiving the application, the BLM, in coordination with the operator and Surface Managing Agency, including the private surface owner in the case of split estate minerals, will schedule a date for the onsite inspection (unless the onsite inspection has already been conducted as part of a Notice of Staking). The onsite inspection will be held as soon as practicable based on participants' schedules and weather conditions. The operator will be notified at the onsite inspection of any additional deficiencies that are discovered during the inspection. The operator has 45 days after receiving notice from the BLM to provide any additional information necessary to complete the APD, or the APD may be returned to the operator.

b. Within 30 days after the operator has submitted a complete application, including incorporating any changes that resulted from the onsite inspection, the BLM will:

1. Approve the application, subject to reasonable Conditions of Approval, if the appropriate requirements of the NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable law have been met and, if on NFS lands, the FS has approved the Surface Use Plan of Operations;

2. Notify the operator that it is deferring action on the permit; or

3. Deny the permit if it cannot be approved and the BLM cannot identify any actions that the operator could take that would enable the BLM to issue the permit or the FS to approve the Surface Use Plan of Operations, if applicable.

c. The notice of deferral in paragraph (b)(2) of this section must specify:

1. Any action the operator could take that would enable the BLM (in consultation with the FS if applicable) to issue a final decision on the application. The FS will notify the applicant of any action the applicant could take that would enable the FS to issue a final decision on the Surface Use Plan of Operations on NFS lands. Actions may include, but are not limited to, assistance with:

(A) Data gathering; and

(B) Preparing analyses and documents.

2. If applicable, a list of actions that the BLM or the FS need to take before making a final decision on the application, including appropriate analysis under NEPA or other applicable law and a schedule for completing these actions.

d. The operator has 2 years from the date of the notice under paragraph (c)(1) of this section to take the action specified in the notice. If the appropriate analyses required by NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable laws have been completed, the BLM (and the FS if applicable), will make a decision on the permit and the Surface Use Plan of Operations within 10 days of receiving a report from the operator addressing all of the issues or actions specified in the notice under paragraph (c)(1) of this section and certifying that all required actions have been taken. If the operator has not completed the actions specified in the notice within 2 years from the operator's receipt of the paragraph (c)(1) notice, the BLM will deny the permit.

e. For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to FS appeal procedures. The BLM cannot approve an APD until the appeal of the Surface Use Plan of Operations is resolved.

F. Approval of APDs

a.1. The BLM has the lead responsibility for completing the environmental review process, except in the case of NFS lands.

2. The BLM cannot approve an APD or Master Development Plan until the requirements of certain other laws and regulations including NEPA, the National Historic Preservation Act, and the Endangered Species Act have been met. The BLM must document that the needed reviews have been adequately conducted. In some cases, operators conduct these reviews, but the BLM remains responsible for their scope and content and makes its own evaluation of the environmental issues, as required by 40 CFR 1506.5(b).

3. The approved APD will contain Conditions of Approval that reflect necessary mitigation measures. In accordance with 43 CFR 3101.1–2 and 36 CFR 228.107, the BLM or the FS may require reasonable mitigation measures to ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights. The BLM will incorporate any mitigation requirements, including Best Management Practices, identified through the APD review and appropriate NEPA and related analyses, as Conditions of Approval to the APD.

4. The BLM will establish the terms and Conditions of Approval for any associated Right-of-Way when the application is approved.

b. For NFS lands, the FS will establish the terms and Conditions of Approval for both the Surface Use Plan of Operations and any associated Surface Use Authorization. On NFS lands the FS has principal responsibility for compliance with NEPA, the National Historic Preservation Act, and the Endangered Species Act, but the BLM should be a cooperating or co-lead agency for this purpose and adopt the analysis as the basis for its decision.

After the FS notifies the BLM it has approved a Surface Use Plan of Operations on NFS lands, the BLM must approve the APD before the operator may begin any surface-disturbing activity.

c. On Indian lands, BIA has responsibility for approving Rights-of-Way.

d. In the case of Indian lands, the BLM may be a cooperating or co-lead agency for NEPA compliance or may adopt the NEPA analysis prepared by the BIA (516 DM 3).

G. Valid Period of Approved APD

1. An APD approval is valid for 2 years from the date that it is approved, or until lease expiration, whichever occurs first. If the operator submits a written request before the expiration of the original approval, the BLM, in coordination with the FS, as appropriate may extend the APD's validity for up to 2 additional years.

2. The operator is responsible for reclaiming any surface disturbance that resulted from its actions, even if a well was not drilled.

H. Master Development Plans

An operator may elect to submit a Master Development Plan addressing two or more APDs that share a common drilling plan, Surface Use Plan of Operations, and plans for future development and production. Submitting a Master Development Plan facilitates early planning, orderly development, and the cumulative effects analysis for all the APDs expected to be drilled by an operator in a developing field. Approval of a Master Development Plan serves as approval of all of the the APDs submitted with the Plan. Processing of a Master Development Plan follows the procedures in Section III.E.2. of this Order. After the Master Development Plan is approved, subsequent APDs can reference the Master Development Plan and be approved using the NEPA analysis for the Master Development Plan, absent substantial deviation from the Master Development Plan previously analyzed or significant new information relevant to environmental effects. Therefore, an approved Master Development Plan results in timelier processing of subsequent APDs. Each subsequent proposed well must have a survey plat and an APD (Form 3160–3) that references the Master Development Plan and any specific variations for that well.

IV. General Operating Requirements

Operator Responsibilities

In the APD package, the operator must describe or show, as set forth in this Order, the procedures, equipment, and materials to be used in the proposed operations. The operator must conduct operations to minimize adverse effects to surface and subsurface resources, prevent unnecessary surface disturbance, and conform with currently available technology and practice. While appropriate compliance with certain statutes, such as NEPA, the National Historic Preservation Act, and the Endangered Species Act, are Federal responsibilities, the operator may choose to conduct inventories and provide documentation to assist the BLM or the Surface Managing Agency to meet these requirements. The inventories and other work may require entering the lease and adjacent lands before approval of the APD. As in Staking and Surveying, the operator should make a good faith effort to contact the Surface Managing Agency or surface owner before entry upon the lands for these purposes.

The operator can not commence either drilling operations or preliminary construction activities before the BLM's approval of the APD. A copy of the approved APD and any Conditions of Approval must be available for review at the drill site. Operators are responsible for their contractor and subcontractor's compliance with the requirements of the approved APD and/or Surface Use Plan of Operations. Drilling without approval or causing surface disturbance without approval is a violation of 43 CFR 3162.3–1(c) and is subject to a monetary assessment under 43 CFR 3163.1(b)(2).

The operator must comply with the provisions of the approved APD and applicable laws, regulations, Orders, and Notices to Lessees, including, but not limited to, those that address the issues described below.

a. *Cultural and Historic Resources.* If historic or archaeological materials are uncovered during construction, the operator must immediately stop work that might further disturb such materials, contact the BLM and if appropriate, the FS or other Surface Managing Agency. The BLM or the FS will inform the operator within 7 days after the operator contacted the BLM as to whether the materials appear eligible for listing on the National Register of Historic Places.

If the operator decides to relocate operations to avoid further costs to mitigate the site, the operator remains responsible for recording the location of any historic or archaeological resource that are discovered as a result of the operator's actions. The operator also is responsible for stabilizing the exposed cultural material if the operator created an unstable condition that must be addressed immediately. The BLM, the FS, or other appropriate Surface Managing Agency, will assume responsibility for evaluation and determination of significance related to the historic or archaeological site.

If the operator does not relocate operations, the operator is responsible for mitigation and stabilization costs and the BLM, the FS, or appropriate Surface Managing Agency will provide technical and procedural guidelines for conducting mitigation. The operator may resume construction operations when the BLM or the FS verifies that the operator has completed the required mitigation.

Relocation of activities may subject the proposal to additional environmental review. Therefore, if the presence of such sites is suspected, the operator may want to submit alternate locations for advance approval before starting construction.

b. *Endangered Species Act.* To comply with the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations, the operator must conduct all operations such that all operations avoid a "take" of listed or proposed threatened or endangered species and their critical habitats.

c. *Surface Protection.* Except as otherwise provided in an approved Surface Use Plan of Operations, the operator must not conduct operations in areas subject to mass soil movement, riparian areas, floodplains, lakeshores, and/or wetlands. The operator also must take measures to minimize or prevent erosion and sediment production. Such measures may include, but are not limited to:

- Avoiding steep slopes and excessive land clearing when siting structures, facilities, and other improvements; and
- Temporarily suspending operations when frozen ground, thawing, or other weather-related conditions would cause otherwise avoidable or excessive impacts.

d. *Safety Measures.* The operator must maintain structures, facilities, improvements, and equipment in a safe condition in accordance with the approved APD. The operator must also take appropriate measures as specified in Orders and Notices to Lessees to protect the public from any hazardous conditions resulting from operations.

In the event of an emergency, the operator may take immediate action without prior Surface Managing Agency approval to safeguard life or to prevent significant environmental degradation. The BLM or the FS must receive notification of the emergency situation and the remedial action taken by the operator as soon as possible, but not later than 24 hours after the emergency occurred. If the emergency only affected

drilling operations and had no surface impacts, only the BLM must be notified. If the emergency involved surface resources on other Surface Managing Agency lands, the operator should also notify the Surface Managing Agency and private surface owner within 24 hours. Upon conclusion of the emergency, the BLM or the FS, where appropriate, will review the incident and take appropriate action.

e. *Completion Reports.* Within 30 days after the well completion, the lessee or operator must submit to the BLM two copies of a completed Form 3160–4, Well Completion or Recompletion Report and Log. Well logs may be submitted to the BLM in an electronic format such as ".LAS" format. Surface and bottom-hole locations must be in latitude and longitude.

V. Rights-of-Way and Special Use Authorizations

The BLM or the FS will notify the operator of any additional Rights-of-Way, Special Use Authorizations, licenses, or other permits that are needed for roads and support facilities for drilling or off-lease access, as appropriate. This notification will normally occur at the time the operator submits the APD or Notice of Staking package, or Sundry Notice, or during the onsite inspection.

The BLM or the FS, as appropriate, will approve or accept on-lease activities that are associated with actions proposed in the APD or Sundry Notice and that will occur on the lease as part of the APD or Sundry Notice. These actions do not require a Right-of-Way or Special Use Authorization. For pipeline Rights-of-Way crossing lands under the jurisdiction of two or more Federal Surface Managing Agencies, except lands in the National Park Service or Indian lands, applications should be submitted to the BLM. Refer to 43 CFR parts 2800 and 2880 for guidance on BLM Rights-of-Way and 36 CFR part 251 for guidance on FS Special Use Authorizations.

A. Rights-of-Way (BLM)

For BLM lands, the APD package may serve as the supporting document for the Right-of-Way application in lieu of a Right-of-Way plan of development. Any additional information specified in 43 CFR parts 2800 and 2880 will be required in order to process the Right-of-Way.

The BLM will notify the operator within 10 days of receipt of a Notice of Staking, APD, or other notification if any parts of the project require a Right-of-Way. If a Right-of-Way is needed, the information required from the operator to approve the Right-of-Way may be submitted by the operator with the APD package if the Notice of Staking option has been used.

B. Special Use Authorizations (FS) (36 CFR 251 Subpart B)

When a Special Use Authorization is required, the Surface Use Plan of Operations may serve as the application for the Special Use Authorization if the facility for which a Special Use Authorization is required is adequately described (*see* 36 CFR 251.54(d)(ii)). Conditions regulating the authorized use may be imposed to protect the public interest, to ensure compatibility with other NFS lands programs and activities consistent with the Forest Land and Resources Management Plan. A Special Use Authorization, when related to an APD, will include terms and conditions (36 CFR 251.56) and may require a specific reclamation plan or incorporate applicable parts of the Surface Use Plan of Operations by reference.

VI. Operating on Lands With Non-Federal Surface and Federal Oil and Gas

The operator must submit the name, address, and phone number of the surface owner, if known, in its APD. The BLM will invite the surface owner to the onsite inspection to assure that their concerns are considered. As provided in the oil and gas lease, the BLM may request that the applicant conduct surveys or otherwise provide information needed for the BLM's National Historic Preservation Act consultation with the State Historic Preservation Officer or Indian tribe or its Endangered Species Act consultation with the relevant fisheries agency. The Federal mineral lessee has the right to enter the property for this purpose, since it is a necessary prerequisite to development of the dominant mineral estate. Nevertheless, the lessee or operator should seek to reach agreement with the surface owner about the time and method by which any survey would be conducted.

Likewise, in the case of actual oil and gas operations, the operator must make a good faith effort to notify the private surface owner before entry and make a good faith effort to obtain a Surface Access Agreement from the surface owner. This section also applies to lands with Indian trust surface and Federal minerals. In these cases, the operator must make a good faith effort to obtain surface access agreement with the tribe in the case of tribally owned surface, otherwise with the majority of the Indian surface owners who can be located with the assistance and concurrence of the BIA. The Surface Access Agreement may include terms or conditions of use, be a waiver, or an agreement for compensation. The operator must certify to the BLM that: (1) It made a good faith effort to notify the surface owner before entry; and (2) That an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed. If no agreement was reached with the surface owner, the operator must submit an adequate bond (minimum of $1,000) to the BLM for the benefit of the surface owner sufficient to: (1) Pay for loss or damages; or (2) As otherwise required by the specific statutory authority under which the surface was patented and the terms of the lease.

Surface owners have the right to appeal the sufficiency of the bond. Before the approval of the APD, the BLM will make a good faith effort to contact the surface owner to assure that they understand their rights to appeal.

The BLM must comply with NEPA, the National Historic Preservation Act, the Endangered Species Act, and related Federal statutes when authorizing lease operations on split estate lands where the surface is not federally owned and the oil and gas is Federal. For split estate lands within FS administrative boundaries, the BLM has the lead responsibility, unless there is a local BLM/FS agreement that gives the FS this responsibility.

The operator must make a good faith effort to provide a copy of their Surface Use Plan of Operations to the surface owner. After the APD is approved the operator must make a good faith effort to provide a copy of the Conditions of Approval to the surface owner. The APD approval is not contingent upon delivery of a copy of the Conditions of Approval to the surface owner.

VII. Leases for Indian Oil and Gas

A. Approval of Operations

The BLM will process APDs, Master Development Plans, and Sundry Notices on Indian tribal and allotted oil and gas leases, and Indian Mineral Development Act mineral agreements in a manner similar to Federal leases. For processing such applications, the BLM considers the BIA to be the Surface Managing Agency. Operators are responsible for obtaining any special use or access permits from appropriate BIA and, where applicable, tribal offices. The BLM is not required to post for public inspection APDs for minerals subject to Indian oil and gas leases or agreements.

B. Surface Use

Where the wellsite and/or access road is proposed on Indian lands with a different beneficial owner than the minerals, the operator is responsible for entering into a surface use agreement with the Indian tribe or the individual Indian surface owner, subject to BIA approval. This agreement must specify the requirements for protection of surface resources, mitigation, and reclamation of disturbed areas. The BIA, the Indian surface owner, and the BLM, pursuant to 25 CFR 211.4, 212.4 and 225.4, will develop the Conditions of Approval. If the operator is unable to obtain a surface access agreement, it may provide a bond for the benefit of the surface owner(s) (see Section VI. of the Order).

VIII. Subsequent Operations and Sundry Notices

Subsequent operations must follow 43 CFR part 3160, applicable lease stipulations, and APD Conditions of Approval. The operator must file the Sundry Notice in the BLM Field Office having jurisdiction over the lands described in the notice or the operator may file it using the BLM's electronic commerce system.

A. Surface Disturbing Operations

Lessees and operators must submit for BLM or FS approval a request on Form 3160–5 before:

- Undertaking any subsequent new construction outside the approved area of operations; or
- Reconstructing or altering existing facilities including, but not limited to, roads, emergency pits, firewalls, flowlines, or other production facilities on any lease that will result in additional surface disturbance.

If, at the time the original APD was filed, the lessee or operator elected to defer submitting information under Section III.E.3.d. (Location of Existing and/or Proposed Facilities) of this Order, the lessee or operator must supply this information before construction and installation of the facilities. The BLM, in consultation with any other involved Surface Managing Agency, may require a field inspection before approving the proposal. The lessee or operator may not begin construction until the BLM approves the proposed plan in writing.

The operator must certify on Form 3160–5 that they have made a good faith effort to provide a copy of any proposal involving new surface disturbance to the private surface owner in the case of split estate.

B. Emergency Repairs

Lessees or operators may undertake emergency repairs without prior approval if they promptly notify the BLM. Lessees or operators must submit sufficient information to the BLM or the FS to permit a proper evaluation of any:

- Resulting surface disturbing activities; or
- Planned accommodations necessary to mitigate potential adverse environmental effects.

IX. Well Conversions

A. Conversion to an Injection Well

When subsequent operations will result in a well being converted to a Class II injection well (*i.e.*, for disposal of produced water, oil and gas production enhancement, or underground storage of hydrocarbons), the operator must file with the appropriate BLM office a Sundry Notice, Notice of Intent to Convert to Injection on Form 3160–5. The BLM and the Surface Managing Agency, if applicable, will review the information to ensure its technical and administrative adequacy. Following the review, the BLM, in consultation with the Surface Managing Agency, where applicable, will decide upon the approval or disapproval of the application based upon relevant laws and regulations and the circumstances (e.g., the well used for lease or non-lease operations, surface ownership, and protection of subsurface mineral ownership). The BLM will determine if a Right-of-Way or Special Use Authorization and additional bonding are necessary and notify the operator.

B. Conversion to a Water Supply Well

In cases where the Surface Managing Agency or private surface owner desires to acquire an oil and gas well and convert it to a water supply well or acquire a water supply well that was drilled by the operator to support lease operations, the Surface Managing Agency or private surface owner must inform the appropriate BLM office of its intent before the approval of the APD in the case of a dry hole and no later than the time a Notice of Intent to Abandon is submitted for a depleted production well. The operator must abandon the well according to BLM instructions, and must complete the surface cleanup and reclamation, in conjunction with the approved APD, Surface Use Plan of Operations, or Notice of Intent to Abandon, if the BLM or the FS require it. The Surface Managing Agency or private surface owner must reach agreement with the operator as to the satisfactory completion of reclamation operations before the BLM will approve any abandonment or reclamation. The BLM approval of the partial abandonment under this section, completion of any required reclamation operations, and the signed release agreement will relieve the operator of further obligation for the well. If the Surface Managing Agency or private surface owner acquires the well for water use purposes, the party acquiring the well assumes liability for the well.

X. Variances

The operator may make a written request to the agency with jurisdiction to request a variance from this Order. A request for a variance must explain the reason the variance is needed and demonstrate how the operator will satisfy the intent of the Order. The operator may include the request in the APD package. A variance from the requirements of this Order does not constitute a variance to provisions of other regulations, laws, or orders. When the BLM is the decision maker on a request for a variance, the decision whether to grant or deny the variance request is entirely within the BLM's discretion. The decision on a variance request is not subject to administrative appeals either to the State Director or pursuant to 43 CFR part 4.

XI. Waivers, Exceptions, or Modifications

An operator may also request that the BLM waive (permanently remove), except (case-by-case exemption) or modify (permanently change) a lease stipulation for a Federal lease. In the case of Federal leases, a request to waive, except, or modify a stipulation should also include information demonstrating that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or that the proposed operation would not cause unacceptable impacts.

When the waiver, exception, or modification is substantial, the proposed waiver, exception, or modification is subject to public review for 30 days. Prior to such public review, the BLM, and when applicable the FS, will post it in their local Field Office and, when possible, electronically on the internet. When the request is included in the Notice of Staking or APD, the request will be included as part of the application posting under Section III.C. of this Order. Prior to granting a waiver, exception, or modification, the BLM will obtain the concurrence or approval of the FS or Federal Surface Managing Agency. Decisions on such waivers, exceptions,

or modifications are subject to appeal pursuant to 43 CFR part 4.

After drilling has commenced, the BLM and the FS may consider verbal requests for waivers, exceptions, or modifications. However, the operator must submit a written notice within 7 days after the verbal request. The BLM and the FS will confirm in writing any verbal approval. Decisions on waivers, exceptions, or modifications submitted after drilling has commenced are final for the Department of the Interior and not subject to administrative review by the State Director or appeal pursuant to 43 CFR part 4.

XII. Abandonment

In accordance with the requirements of 43 CFR 3162.3–4, before starting abandonment operations the operator must submit a Notice of Intent to Abandon on Sundry Notices and Reports on Wells, Form 3160–5. If the operator proposes to modify the plans for surface reclamation approved at the APD stage, the operator must attach these modifications to the Notice of Intent to Abandon.

A. Plugging

The operator must obtain BLM approval for the plugging of the well by submitting a Notice of Intent to Abandon. In the case of dry holes, drilling failures, and in emergency situations, verbal approval for plugging may be obtained from the BLM, with the Notice of Intent to Abandon promptly submitted as written documentation. Within 30 days following completion of well plugging, the operator must file with the BLM a Subsequent Report of Plug and Abandon, using Sundry Notices and Reports on Wells, Form 3160–5. For depleted production wells, the operator must submit a Notice of Intent to Abandon and obtain the BLM's approval before plugging.

B. Reclamation

Plans for surface reclamation are a part of the Surface Use Plan of Operations, as specified in Section III.D.4.j., and must be designed to return the disturbed area to productive use and to meet the objectives of the land and resource management plan. If the operator proposes to modify the plans for surface reclamation approved at the APD stage, the operator must attach these modifications to the Subsequent Report of Plug and Abandon using Sundry Notices and Reports on Wells, Form 3160–5.

For wells not having an approved plan for surface reclamation, operators must submit to the BLM a proposal describing the procedures to be followed for complete abandonment, including a map showing the disturbed area and roads to be reclaimed. The BLM will forward the request to the FS or other Surface Managing Agency. If applicable, the private surface owner will be notified and their views will be carefully considered.

Earthwork for interim and final reclamation must be completed within 6 months of well completion or well plugging (weather permitting). All pads, pits, and roads must be reclaimed to a satisfactorily revegetated, safe, and stable condition, unless an agreement is made with the landowner or Surface Managing Agency to keep the road or pad in place. Pits containing fluid must not be breached (cut) and pit fluids must be removed or solidified before backfilling. Pits may be allowed to air dry subject to BLM or FS approval, but the use of chemicals to aid in fluid evaporation, stabilization, or solidification must have prior BLM or FS approval. Seeding or other activities to reestablish vegetation must be completed within the time period approved by the BLM or the FS.

Upon completion of reclamation operations, the lessee or operator must notify the BLM or the FS using Form 3160–5, Final Abandonment Notice, when the location is ready for inspection. Final abandonment will not be approved until the surface reclamation work required in the Surface Use Plan of Operations or Subsequent Report of Plug and Abandon has been completed to the satisfaction of the BLM or the FS and Surface Managing Agency, if appropriate.

XIII. Appeal Procedures

Complete information concerning the review and appeal processes for BLM actions is contained in 43 CFR part 4 and subpart 3165. Incorporation of a FS approved Surface Use Plan of Operations into the approval of an APD or a Master Development Plan is not subject to protest to the BLM or appeal to the Interior Board of Land Appeals.

The FS's decisions approving use of NFS lands may be subject to agency appeal procedures, in accordance with 36 CFR parts 215 or 251.

Decisions governing Surface Use Plan of Operations and Special Use Authorization approvals on NFS lands that involve analysis, documentation, and other requirements of the NEPA may be subject to agency appeal procedures, under 36 CFR part 215.

The FS's regulations at 36 CFR part 251 govern appeals by an operator of written FS decisions related to Conditions of Approval or administration of Surface Use Plans of Operations or Special Use Authorizations to occupy and use NFS lands.

The operator may appeal decisions of the BIA under 25 CFR part 2.

Attachment I—Sample Format for Notice of Staking

Attachment I Sample Format for Notice of Staking

(Not to be used in place of Application for Permit to Drill or Reenter Form 3160–3)

1. Oil Well
Gas Well
Other (Specify)
2. Name, Address, and Telephone of Operator
3. Name and Telephone of Specific Contact Person
4. Surface Location of Well
Attach:
(a) Sketch showing road entry onto pad, pad dimensions, and reserve pit
(b) Topographical or other acceptable map (e.g., a USGS 7½″ Quadrangle) showing location, access road, and lease boundaries
5. Lease Number
6. If Indian, Allottee or Tribe Name
7. Unit Agreement Name
8. Well Name and Number
9. American Petroleum Institute (API) Well Number (if available)
10. Field Name or Wildcat
11. Section, Township, Range, Meridian; or Block and Survey; or Area
12. County, Parish, or Borough
13. State
14. Name and Depth of Formation Objective(s)
15. Estimated Well Depth
16. For directional or horizontal wells, anticipated bottom-hole location.
17. Additional Information (as appropriate; include surface owner's name, address and, if known, telephone).
18. Signed _____ Title_____ Date

Note: When the Bureau of Land Management or the Forest Service, as appropriate, receives this Notice, the agency will schedule the date of the onsite inspection. You must stake the location and flag the access road before the onsite inspection. Operators should consider the following before the onsite inspection and incorporate these considerations into the Notice of Staking Option, as appropriate:

(a) H_2S Potential;
(b) Cultural Resources (Archeology); and
(c) Federal Right-of-Way or Special Use Permit.

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